GREENING THE PROPOSED AUSTRALIAN CAPITAL TERRITORY BILL OF RIGHTS

SUBMISSION TO THE BILL OF RIGHTS CONSULTATIVE COMMITTEE

IN DELIBERATIONS ON WHETHER THE AUSTRALIAN CAPITAL TERRITORY OUGHT TO ESTABLISH A BILL OF RIGHTS

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Submission by the
Australian Centre for Environmental Law - ANU (ACEL)

The King himself, however, ought not to be under man but under . . . the Law, because the Law makes the King. Therefore, let the King render back to the Law what the Law gives to him, dominion and power; for there is no King where will, and not Law, yields dominion.

Bracton (ca. 1256)

This is the great problem to be solved in politics:
to find a form of government that places the law above man and government.

Rousseau (1767)

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

Stockholm Declaration (1972)

INTRODUCTION

The Australian Centre for Environmental Law at The Australian National University (ACEL) is pleased to make the following contribution to the debate on the appropriateness and necessity of a Bill of Rights for the Australian Capital Territory.

The Australian Centre for Environmental Law

By way of background, ACEL was established in 1991 as a collaborative venture between the law schools of three of Australia’s leading Universities (ANU, Sydney and Adelaide). Today, ACEL is widely respected as an independent, non-partisan centre of excellence in learning. Its mission is to deliver world class environmental legal education, publish cutting-edge research, and stimulate environmental law and policy development. These activities are designed to lead to better environmental, social and economic outcomes in Australia and internationally.

ACEL aims to meet the growing demand for environmental law expertise - in practice, in teaching, in research and in public policy development. In particular, the Centre:

* Henry Bracton, De Legibus et Consuetudinibus Angliae 39 (Sir Travers Twiss, ed) (G.P Putnam’s Sons, 1878-83). The phrase was invoked by Coke in Prohibitions Del Roy (Fuller’s Case) 77 Eng Rep 1342-3 (K.B. 1607).

** Félicité Robert de Lamennais, Des Progrès de la Révolution, p.87 [quoting Jean-Jacques Rousseau, in a letter to Honore G. Victor Mirabeau Sr., 26 July 1767].

• contributes to the reform and development of environmental law and policy
• attracts funding to conduct, promote, facilitate and publish research into the legal and policy dimensions of environmental issues
• provides consultancy services to public and private sector organisations and to community groups
• provides specialist in-house training for government, the private sector and community organisations
• facilitates institutional links and interdisciplinary co-operation both within the University and at national and international levels
• hosts conferences and seminars on important environmental law and policy issues
• attracts Australian and overseas specialists in the field as visitors
• conducts environmental law research on a contract basis for government, industry, environmental groups and other organisations
• offers an extensive range of post-graduate and under-graduate courses and opportunities for post-graduate research, in particular specialist Master and Graduate Diploma and Certificate courses in Environmental Law and Environmental Law, Management and Business

Overview

As a matter of principle, ACEL-ANU strongly supports the establishment of an entrenched Bill of Rights that establishes enforceable civil, political, economic, social and cultural rights within the ACT as outlined within the Committee’s terms of reference. Some of the most compelling and cogent reasons and persuasive arguments for taking such action in the face of reasoned resistance can be found in influential texts by Philip Alston, Hilary Charlesworth, Bede Harris, and George Williams - amongst others - and will not be rehearsed in any detail in this submission.

Suffice that it to say here that the ideas of individual liberty and human rights have been the grand innovation of the state under the rule of law, at first as moral imperatives and later through establishment by law. As experience has made plain, however, "without a

1 "Entrenchment" could either take place through amendment to the Australian Capital Territory (Self-Government) Act 1988 (Cth) or through an Act passed by the ACT Legislative Assembly which requires that the Bill of Right can only be amended through the modification, addition or deletion of provisions by the combination of: (i) a two-third majority vote in favour of the amendment in a public referendum of ACT voters, and (ii) a two-third majority vote in favour of the amendment by the ACT Legislative Assembly.


4 Bede Harris, A New Constitution for Australia (2002).

5 George Williams, A Bill of Rights for Australia (2000).

6 See also The Hon Sir Anthony Mason, A Bill of Rights for Australia?; Address to the Australian Bar Association Bicentennial Conference (1988);
political guarantee of legal recourse, there are no individual rights but only pious profession of the value of human beings. Accordingly, it is only by recognising rights as elements of law - through protection, for example, by a Bill of Rights - that those rights serve as an effective limit on power under the rule of law. By establishing a Bill of Rights a society protects its members against in at least two ways. First, it protects against despotism -- government acting against the will of its constituents. Second, and much more importantly, it protects against "acts in which the Government is the mere instrument of the major number of the constituents."

This protection against the tyranny of the majority is the very thing that detractors of rights use most frequently to claim that rights are undemocratic and also undermine notions of parliamentary sovereignty. Such a claim is, if not demonstrably false as a general proposition, particularly specious under the present circumstances of this Inquiry -- an Inquiry in which the people can help choose its own destiny and decide on what rights, if any, should be given legal status to serve as a protective agent in the community.

This brings us to the crux of the matter. The remainder of this submission concentrates on an item that goes unmentioned in the terms of reference -- whether a right to a safe, clean and healthy environment ought to be protected by an ACT Bill of Rights. The Australian Centre for Environmental Law submits that such a right is vital in the contemporary world. In a democratic country such as Australia, environmental pollution may be one of the most significant threats to the realisation of basic human rights. Government action and inaction in the field of environment implicates core international human rights, including the right to life, the right to security of the person, and more controversially, a general right to a safe environment.

A cursory survey of environmental statistics in Australia indicates that too often Australia is failing to provide adequate environmental protection necessary to ensure that rights to human life, health and safety do not suffer. As an example, some Australian studies have found a relationship between the levels of pollutants in the outdoor air and increased death rates, attendances at hospital emergency departments or hospital admissions. Thus, there is a clear need to include the environment in the ACT Bill of Rights, if for no other reason than to make certain that other core rights, such as the right to life, are effectively implemented.

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10 One important critique of a human rights approach to environmental protection is its anthropocentricity; that a human right to a clean, healthy or decent environment ignores the rights of all other living beings and non-living aspects of nature. See R. Eckersly, Environmentalism and Political Theory: Towards An Ecocentric Approach (1992), p. 37. While elements of anthropocentricity may be involved in a human rights approach to the environment, it is not exclusively so. Although put in terms of human rights, these rights include protection and preservation of flora and fauna, essential process and ecosystems necessary to maintain biological diversity, as ACEL, Submission on Greening the ACT Bill of Rights.
For the purpose of this submission, the broad area of environmental human rights can be broken down into five components: environmental aspects of the rights to life and security of the person, the free-standing right to a healthy environment, the right to a non-discriminatory allocation of environmental burdens and benefits, indigenous environmental rights, and the right to environmental information, public participation and access to justice. It is submitted that any ACT Bill of Rights ought to include provisions in these five areas for the following reasons.

A. The rights to life and security of the person in the environmental context

The notion of an environmental deprivation of the rights to life and security of the person is cognisable at international law. The right to life entails a corresponding duty on the part of the state to take positive measures to protect its citizens from life-threatening environmental harm.

The right to life is a key component of all of the major international human rights instruments, as well as the constitutions of democratic states. The Universal Declaration of Human Rights, echoed by the remaining instruments of the International Bill of Human Rights, provides: "Everyone has the right to life, liberty and security of person."\(^{11}\)

The environmental aspects of the rights to life and security of the person have been widely recognized in scholarship and jurisprudence. As judge Weeremantry states in his separate opinion in the *Gabcikovo-Nagymaros Case*:

The protection of the environment is . . . a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.\(^{12}\)

Of course, at the time most human rights instruments were drafted, the right to life and security was aimed at preventing arbitrary killing by the government. Yet, as Michael Anderson has written:

Established human rights standards which do not directly touch upon environmental issues may house an implicit relevance capable of juridical development. The right to life, for example, may be deemed to be infringed where a state fails to abate the emission of highly toxic products into supplies of drinking water. If enforcement bodies explicitly recognize such links, then environmental criteria may be

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\(^{12}\) Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia), 1997 I.C.J. 92.
incorporated overtly into the monitoring and enforcement of the right to life. This approach has been developed probably most fully by the Indian judiciary, which has been active for more than a decade in fashioning environmental rights out of a more conventional catalogue of constitutional rights.

In his comprehensive analysis of the legal foundations of environmental human rights, scholar Neil A.F. Popovic comments:

The right to life represents the most basic human rights doctrine, the essential and non-derogable prerequisite to the enjoyment of all other rights. Environmental problems that endanger life—directly or indirectly—implicate this core right. As stated by human rights scholar B.G. Ramcharan, "Threats to the environment or serious environmental hazards may threaten the lives of large groups of people directly; the connection between the right to life and the environment is an obvious one."

Similarly, Downs writes that

[...]

In “Human Rights, Environmental Rights, and the Right to Environment”, human rights scholar Dinah Shelton writes that

environmental problems may be combated through the assertion of existing human rights such as the right to life, personal security, health, and food. In this regard, a safe and healthy environment may be viewed either as a precondition to the exercise of existing rights or as inextricably intertwined with the enjoyment of these rights.

In the context of environmental threats to indigenous peoples, William Andrew Shutkin observes that

[...]


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and the environment. With threats to the environment…these most basic human rights of self-preservation are jeopardized.\(^{17}\)

Further, the right to life entails a corresponding duty on the part of states to take positive actions to protect life within their jurisdictions.\(^{18}\) It is clear that “the affirmative duty of states to protect the right to life should logically apply to circumstances in which a state’s activities pose life-threatening environmental risks. The few judicial pronouncements on the subject support this conclusion.”\(^{19}\)

In *E.H.P. v. Canada* the International Human Rights Committee considered whether a nuclear waste disposal site in Port Hope Canada, represented a potential violation of the right to life of nearby residents. Although the case was dismissed on jurisdictional grounds (as domestic remedies had not been exhausted), the Committee observed that it “raised serious issues with regard to the obligation of states to protect human life.”\(^{20}\) Similarly, in the *Yanomami Case*,\(^{21}\) the Inter-American Commission on Human Rights found that the Brazilian government’s authorization of environmentally destructive development in the Yanomami indigenous people’s territory constituted a violation of their rights to life, health, and well-being.

A number of democratic states have interpreted the right to life as encompassing a right to a level of environmental quality necessary to support life.

*Costa Rica*

In 1993, the Supreme Court of Costa Rica recognized that the use of a neighborhood cliff as a dump violated the plaintiff’s and his neighbors’ right to life and their right to a healthy environment.\(^{22}\) The Court ordered the dump closed immediately. Quoting the decision of the lower court, the Supreme Court asserted that life

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\text{is only possible when it exists in solidarity with nature, which nourishes and sustains us--not only with regard to physical food, but also with physical well-being. It constitutes a right which all citizens possess to}
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18 Ibid.


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live in an environment free from contamination. This is the basis of a just and productive society.  

India

In 1990 a constitutional bench of the Supreme Court of India explicitly recognized the link between environmental quality and the right to life. In *Subhash Kumar v. State of Bihar*, the Indian Supreme Court declared that the Indian constitutional right to life “includes the right to enjoyment of pollution free water and air for full enjoyment of life.” In *M.C. Mehta v. Union of India*, the Supreme Court found a violation of the right to life as a result of the escape of toxic gas.

Pakistan

In the *Human Rights Case (Environment Pollution in Baluchistan)*, the Supreme Court of Pakistan interpreted the Pakistani constitutional right to life to include the right to a clean environment. Popovic concludes that the Pakistani high court’s ruling that dumping of nuclear waste in coastal areas of Pakistan could violate the right to life contributes to the establishment of a general principle of international law to the effect that environmental hazards may violate basic human rights.

B. An independent Right to a Safe Environment

In addition to the environmental aspects of the recognized "first-generation" rights, there also exists a free-standing right to a safe environment which forms part of the "third-generation" of human rights.

23 Ibid.


27 In re: Human Rights Case (Environmental Pollution in Balochistan), P.L.D. 1994 S.C. 102 (Pak.);

28 See Martin Lau, Case Study: Public Interest Litigation in Pakistan, 3 Rev. Eur. Com. & Int'l Envtl. L. 268 (1994); see also supra note 33 and accompanying text (discussing the concept of general principles of law).

29 Discussions as to the concept, and variations of it, can be traced back to at least the 1970s: Lynch and Maggio, *Human Rights, Environment, and Economic Development: Existing and Emerging Standards in International Law and Global Society* (1997) at www.ciel.org International instruments began to endorse the concept beginning in 1992.

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A human right to a healthy environment has been the subject of much academic discussion and foreign jurisprudence, a significant number of national constitutions, and non-binding international instruments and, most recently and importantly, an international agreement, which was designed to be binding (the Protocol of San Salvador).

The Arhaus Convention in its preamble recognizes that "every person has the right to live in an environment adequate to his or her health and well-being." Australia has not acceded the Aarhus Convention and therefore is not strictly bound by its terms. However, in 1998 it was observed that the current international materials on a human right to a environment "suggest the direction in which international law may be heading" and are therefore "relevant in determining the existence of a normative, if not a legal, right to environment."

Several other non-binding international documents, such as resolutions and declarations, contain variations of an environmental human right. The Hague Declaration of 1989 was one of the most important international statements connecting environmental degradation to human rights issues. It declared that environmental harm threatens "the right to live in dignity in a viable global environment." Another major development was the 1994 Final Report on Human Rights and the Environment (the ‘Ksentini Report’), which set out the legal foundations of a right to a healthy, decent and balanced environment. In addition, UNEP’s 1993 Proposal for a Basic Law on Environmental Protection and the Promotion of Sustainable Development includes within its governing principles "[the] right of present and future generations to enjoy a healthy environment and decent quality of life…"

30 See Appendix B to this submission.


32 The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters known as the Aarhus Convention, was adopted in June 1998 and entered into force in 2002, reprinted in

33 Preamble, Id.

34 Lynch and Maggio, supra

35 The African Charter on Human and Peoples’ Rights, (1982) 21 ILM 58, is not binding on Australia but is another example. It provides in Article 24 that "All peoples shall have the right to a general satisfactory environment favourable to their development."

36 Lynch and Maggio, supra.

37 Ksentini, supra note 16. See also Appendix C.

38 Supra, at pp.7, 22, 31, 36 and 49.

39 UNEP, Handbook of Environmental Law (1993). ACEL Submission on Greening the ACT Bill of Rights
Finally, foreign jurisprudence may persuade the ACT Legislative Assembly that a human right to a healthy environment should be taken seriously. A right to a healthy environment has already been affirmed by courts in several other countries, including Costa Rica, Argentina, Chile, Ecuador, Peru, India, and Pakistan. In the Philippine case of Oposa v Secretary of the Department of Environment and Natural Resources, the Supreme Court held that the constitutional right to a balanced and healthful ecology is a self-evident and actionable human right. Deciding in favour of the plaintiffs, the Court noted that this right "concerns nothing less than self-preservation and self-perpetuation…the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights…are assumed to exist from the inception of humankind." It concluded that "The right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment."

The Supreme Court of Canada has given considerable recognition to the right to a healthy environment in two key environmental precedents. In R. v. Canadian Pacific Ltd. (1995), 125 D.L.R. (4th) 385 in which at 417-418 the Court stated:

... Everyone is aware that, individually and collectively, we are responsible for preserving the natural environment. I would agree with the Law Reform Commission of Canada, Crimes Against the Environment [Working Paper 44 (Ottawa: The Commission, 1985), which concluded at p. 8 that:

... a fundamental and widely shared value is indeed seriously contravened by some environmental pollution, a value which we will refer to as the right to a safe environment. ... [emphasis added]

40 As noted by Cameron and Abouchar, ‘The Status of the Precautionary Principle in International Law’, in E. Hey and D. Freestone (eds), supra at 48


42 Bustos Miguel y otros v Dirección de Fábricas Militares, S/Acción de Amparo, Juzgado Federal de Primera Instancia No.2, La Plata, December 30, 1986.


44 Arco Iris v Instituto Ecuatoriano de Ministerio de Agricultura y Ganadería, Tribunal de Garantías Constitucionales, Casa No. 224/90, Resolución No. 054-93-CP.


48 Minors Oposa v Secretary of the Environment and Natural Resources Fulgencio Factoran, (1994) 33 ILM 173. Several minors sued on behalf of themselves and future generations ‘to prevent the misappropriation or impairment of Philippine rainforests…’ Cited in Cameron and Abouchar, supra, at 48.
The Supreme Court of Canada adopted this same passage once again in the subsequent case of *R v. Hydro Quebec*.

From the above it is clear that there is a need to recognize a human right to a healthy environment even if it has not yet attained binding status for Australia. The repeated reference in international treaties, declarations, resolutions, and reports to the human right to a healthy environment provides evidence of a customary international legal obligation of Canada to guarantee human rights protection by ensuring environmental conservation.

C. Environmental Justice: The Right to a non-Discriminatory Allocation of Environmental Benefits and Burdens and States' Duty to Provide Special Protection to Vulnerable Groups

There is substantial support in international law for the proposition that states have a duty to pursue environmental policies in a non-discriminatory manner.\(^{50}\)

The American "Environmental Justice" movement has called attention to the disproportionate imposition of environmental burdens (e.g. hazardous waste) on marginalized communities, including African-Americans, the economically disadvantaged, indigenous peoples, and the developing world.\(^{51}\) There is a strong argument that the right to equality and the corresponding state duty of non-discrimination imposes an obligation on states to ensure that environmental burdens are not disproportionately imposed on particular segments of the population. This should be so in the ACT.

In addition to or as a component of the duty to refrain from discrimination, states may also have a duty to take special measures to protect those sub-populations that are particularly vulnerable to the effects of environmental degradation. The following excerpt from Popovic addresses the equality interests of children and people with disabilities in equal protection from environmental hazards.

Certain groups in society sometimes require extra protection, either because of physical vulnerability, socioeconomic or political status or some combination thereof.

\[\ldots\]

Children receive special attention in international environmental and international human rights instruments. The ICESCR states that "special measures of protection and assistance should be taken on behalf of all children and young persons."...Agenda 21 calls on governments to take measures to increase


\(^{50}\) See Popovic *supra* n 14.


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participation by children and youth in environmental planning and decision-making and to ensure their "survival, protection and development."

The Convention on the Rights of the Child requires parties to "undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised" in the convention. As part of the child's right to health, the convention requires states:

to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. [emphasis added]

... According to Agenda 21, "children in both developing and industrialized countries are highly vulnerable to the effects of environmental degradation."

... Disabled also have special needs in connection with environmental degradation. Disabilities result from many and varied causes; environmental factors are significant among those causes. Pollution... and other environmental problems all contribute to the incidence of disability.

... Disabled people may …suffer disproportionately from the effects of pollution. They require special attention because "environmental threats are disabling and make disabilities more serious. In order for states to comply with their human rights obligations vis-a-vis disabled persons, states must therefore takes special measures on behalf of disabled persons.

D. Indigenous Environmental Rights

Indigenous peoples also have heightened environmental rights at international law. The concept of indigenous environmental rights has been gaining recognition at the international level.\(^5\) The environmental rights of indigenous peoples have also been recognized in international human rights documents. Article 28 of the United Nations Draft Declaration on the Rights of Indigenous Peoples declares:


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[I]ndigenous peoples have the right to the conservation, restoration and protection of the total environment and the productive capacity of their lands, territories and resources, as well as to assistance for this purpose from States and through international cooperation.\textsuperscript{53}

Of particular relevance in this context is the minority protection rights contained in the International Covenant on Civil and Political Rights (ICCPR), which Australia has signed and ratified. The Human Rights Committee accepted an application in 1991 from indigenous Finnish citizens who asserted that their right to enjoy their own culture as members of a minority was threatened.\textsuperscript{54} They argued that the reindeer population in their area would be affected by a road construction and logging project.\textsuperscript{55} The Committee requested that the Finnish Government take interim protection measures in response.

The \textit{Landsman v Finland} decision\textsuperscript{56} it sets a valuable example for combining environmental and indigenous rights in the Australian context. Its significance is reinforced by a case involving Canada and its own First Nations people. In \textit{Ominayak v Canada}, the Chief of the Lubicon Lake Band complained of the expropriation, for purposes of oil and gas exploitation, of land on which band members had lived since time immemorial.\textsuperscript{57} The Committee found that the way of life of the band had indeed been threatened by the expropriations in a manner that was incompatible with Article 27.\textsuperscript{58} Adding further support, the Human Rights Committee has issued a statement on the interpretation of Article 27, recognizing that the right to minority protection may cover such activities as road construction, logging and mining.\textsuperscript{59}

More recently in the \textit{Case of the Mayagna (Sumo) Indigenous Community of Awas Tingni},\textsuperscript{60} the Inter-American Court of Human Rights held that Nicaragua “violated the right

\textsuperscript{53} Working Group on Indigenous Populations, Draft Declaration As Agreed Upon by the Members of the Working Group at its Eleventh Session, 1993.


\textsuperscript{55} \textit{Ibid.}

\textsuperscript{56} \textit{Ibid.}


\textsuperscript{58} \textit{Ibid.}

\textsuperscript{59} General Comment No. 23(50), adopted April 6, 1994, UN Doc. CCPR/C/21/Rev.1/Add.5, as quoted in Kamminga, \textit{supra}, at 174: ‘The Committee observed that ‘culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.’

\textsuperscript{60} Inter-Am. Ct. H.R. (Ser. C)(Judgement, August 31, 2001).

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\textsuperscript{14}
of the members of the Awas Tingni Community to the use and enjoyment of their property, by not delimiting and demarcating their communal property, and by authorizing concessions to third parties for the exploitation of the land and natural resources in an area that, wholly or partially, corresponds to the lands that should be delimited . . . and titled in their favour." The implication of such a holding for Native Title in Australia is obvious.

D. The Right to Public Participation

The participatory norms embodied in Principle 10 of the Rio Declaration, more than many aspects of International Environmental Law, challenge traditional ideas and limits of both international law and municipal law. In one way, the norms elaborated in Principle 10 can be seen as an attempt to break the external "sovereignty barrier" by conferring participatory rights on individuals and other non-state actors in fundamental aspects of the international system -- formerly the preserve of states -- such as international law-making and monitoring compliance with and enforcing breaches of international law. For instance,

61 The term "sovereignty barrier" is taken from an anon article appearing in an NGO newspaper for the 1992 United Nations Conference on Environment and Development (UNCED). Sovereignty Barrier to Environmental Law, Crosscurrents, August 14-15, 1991, p. 2, col. 1. Alan James has characterized the external dimension of sovereignty thus: "For the Solomon Islands and Tuvalu, as for all other internationally active states, the sovereignty on which their international activity is based amounts to constitutional separateness . . . . A sovereign state may have all sorts of links to other states, but the one sore of link which, by definition, it cannot have is a constitutional one. For sovereignty . . . consists of being constitutionally apart, of not being contained, however, loosely, within a wider constitutional scheme". ALAN JAMES, SOVEREIGN STATEHOOD: THE BASIS OF INTERNATIONAL SOCIETY (1986). This external constitutional independence, or separateness, based on the characteristics of statehood is what provides states with legal personality on the international plane and the exclusive ability to create international law, including law that allows or prohibits non-state actors from participating in the international legal system. See ANTHONY C. AREND, LEGAL RULES AND INTERNATIONAL SOCIETY 86-87 (1999).

62 While states may have a diminishing role in international affairs, as compared to times past, states remain the main actors in the international system. It is true that the impetus for reform and innovation in international environmental law and policy in large measure comes from non-state actors, but most, if not all, the important decisions are still made by states. See Oscar Schachter, The Decline of the Nation-State and its Implications for International Law, in POLITICS, VALUES AND FUNCTIONS: INTERNATIONAL LAW IN THE 21ST CENTURY: ESSAYS IN HONOR OF PROFESSOR LOUIS HENKIN 26-28 (Jonathan I. Charney, Donald K. Anton & Mary Ellen O'Connell, eds., 1997).

63 While the focus of this article is on public participation in the municipal sphere, it is important to note that the extent to which Principle 10 extends to the international level is subject to some debate. The text's predominant focus seems to be municipal, with specific mention made about the participation of "citizens" of "states", including at "the national level". On the other hand, the first reference to participation at the "the relevant level" in the texts first sentence could be argued to include participation at the international level through international institutions. James Cameron and Ruth Mackenzie, Access to Environmental Justice and Procedural Rights in International Institutions, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION 129, 135 (Alan Boyle and Michael Anderson, eds., 1996). See also David A. Wirth, Public Participation in International Processes: Environmental Case Studies at the National and International Levels, 7 COLO. J. INTL. ENVTL. L. & POL’Y 1, 2-3 (1996)(noting the lack of international guarantees for public participation in international norm creation). In the context of Agenda 21, it is much more certain that an international standard of participation is contemplated. See e.g., Agenda 21, Report of the United Nations Conference on Environment and Development, A/CONF.151/26/Rev.1 (Vol. 1) (3 -14 June 1992), Annex II, chaps. 23.2, 27.9, and 38.44.

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with increasing frequency non-state actors are finding voice and influence (even if not a vote) within meetings of treaty Conference of Parties and International Commissions. Expanding participatory norms internationally in this way poses a direct challenge to the traditional ordering of the international system. To establish individual rights of access to information, public participation, and access to justice within the various international fora of the international system would, to paraphrase Phillip Allott, go a long way to making the international state system appear to the initiated to be a process for a real collective formation of environmental objectives of all human individuals, collectivized through the state system.

In another way, international norms of public participation elaborated in Principle 10 appear to interlope into areas thought to be the cloister of a state's domain réservé. The inward bearing of these international participatory norms have the potential to impinge upon fundamental aspects of the state including state secrecy, legal procedure, public administration - even the limits of the very form of municipal governance itself. International participatory norms increasingly have the potential to either require or exert pressure on states to alter forms or avenues of participation in municipal governance through the enactment of legislation, as well as alteration of domestic institutions and legal procedures.

International participatory norms increasingly require three things from government: (i) access to information, (ii) public participation, and (iii) access to justice — something I have termed informed and effective participation. These sorts of democratic procedural avenues and checks on decision-making processes that ignore environmental values were formulated during, and came out of, the frenetic legal activity at the emergence of municipal environmental law as we now understand it in the 1960s and 1970s. These procedures

64 Indeed, James Rosenau observes that even though the decisions in the international system "may be formally adopted by the votes of states, . . . their substance is in many ways a product of pressures from outside to which they have been subjected by diverse non-governmental constituencies". JAMES ROSENAU, ALONG THE DOMESTIC-FOREIGN FRONTIER: EXPLORING GOVERNANCE IN A TURBULENT WORLD 250 (1997). The flip side of this observation is that it is precisely because of the lack of decision-making authority that non-state actors have to pressure states to do what they cannot. REIN MÜLLERSON, ORDERING ANARCHY: INTERNATIONAL LAW IN INTERNATIONAL SOCIETY 96 (2000).

65 Phillip Allott, Mare Nostrum: A New International Law of the Sea, 86 AM. J. INT'L. L. 764, 777 (1992). This sort of internationalization of Principle 10 is beyond the scope of this article.


68 I use the adjectives “informed” and “effective” to modify “participation” in order to encompass the three aspects contained in Principle 10: (i) access to information, (ii) public participation in decision-making, and (iii) access to justice.

69 See JOSEPH L. SAX, DEFENDING THE ENVIRONMENT: A STRATEGY FOR CITIZEN ACTION (1970); Orlando E. Deloug, United States Experience with the Preparation and Analysis of Environmental Impact Statements: The ACEL Submission on Greening the ACT Bill of Rights
forced the informed consideration first by courts and then by administrators - of the potential environmental consequences of development and planning decisions by public and private actors. While this sort of procedural approach has its limitations, especially without the concurrent development of a substantive theory of environmental quality entitlement, its establishment as a matter of international law remains vital if for no other reason than that informed and effective participation remains elusive in too many places around the world. Informed participatory procedure is extremely useful to force consideration of new ideas about the environment and development and planning alternatives. Moreover, the threat of judicial intervention under rights of access to justice has produced both more democratic open processes and better environmental decisions.

In the ten years since the United Nations Conference on Environment and Development, there has been a flourishing of national and international activity designed to promote public participation in the environmental realm. Today, increasing numbers of


70 A. Dan Tarlock, _Environmental Law, But Not Environmental Protection,_ in _NATURAL RESOURCES POLICY AND LAW: TRENDS AND DIRECTIONS_ 162, 171-74 (1993). Tarlock convincingly highlights how, at least in the United States, the "procedural approach has atrophied". _Id._, 174.


74 For surveys of public participation in the environmental laws of various municipal systems, see PUBLIC INTEREST PERSPECTIVES IN ENVIRONMENTAL LAW (David Robinson & John Dunkley, eds., 1995); _MANUAL ON PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISIONMAKING: CURRENT PRACTICE AND FUTURE POSSIBILITIES IN CENTRAL AND EASTERN EUROPE_ (Magdolna T. Nagy, 1994); PARTICIPATION AND LITIGATION RIGHTS OF ENVIRONMENTAL ASSOCIATIONS IN EUROPE (M. Führ & G. Rollers, ed., 1991).

75 For informed discussions about public participation in the municipal context since 1992, see generally SUSTAINABLE DEVELOPMENT AND GOOD GOVERNANCE, Part II - Participatory Development, chaps. 9-14, pp. 137-242 (Konrad Ginther, Erik Denters & Paul J.I.M. de Waart, eds., 1995); Adam Babich, Citizen Suits: The ACEL Submission on Greening the ACT Bill of Rights
commentators are advancing the view that the normative suasion of Principle 10 of the Rio Declaration is approaching - if it has not already arrived as - a general rule of international law.\footnote{See, e.g., Carl E. Bruch & Roman Czebiniak, Globalizing Environmental Governance: Making the Leap from Regional Initiatives on Transparency, Participation and Accountability in Environmental Matters, 32 ENVTL. L. REP. 10428 (2002)(pointing to "the emergence of international norms that seek to ensure that people have a voice in decisions that may affect them by guaranteeing public access to information, participation, and justice."); Fergus MacKay, Universal Rights or a Universe unto Itself? Indigenous Peoples' Human Rights and the World Bank's Draft Operational Policy 4,10 on Indigenous Peoples, 17 AM. U. INT'L L. REV. 527, 577-78 (2002)("To what extent "all human rights" can be said to be part of the customary law of sustainable development is questionable. However, access to information, informed participation, due process guarantees, effective judicial remedies, . . . and rights related to environmental health and safety are certainly primary candidates.").}

Conclusion

The foregoing five aspects of human rights and environmental protection should be addressed in some manner and form by any ACT Bill of Rights that is ultimately promulgated. One suggest formulation of environmental rights connected with these five aspects of human rights is detailed in the Draft Principles on Human Rights and the Environment set out in Annex A below. The Australian Centre for Environmental Law strongly urges that the Committee give serious consideration to incorporating these principles into any Bill of Rights that it recommends.

ANNEX A

DRAFT PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Preamble

Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Programme of Action of the World Conference of Human Rights, and other relevant international human rights instruments,

Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law,

Guided further by the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development,

Guided by fundamental principles of international humanitarian law,

Reaffirming the universality, indivisibility and interdependence of all human rights,

Recognizing that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment,

Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Deeply concerned by the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes,

Convinced that the potential irreversibility of environmental harm gives special responsibility to prevent such harm,

Concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations,

Declare the following principles:

Part I

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.

3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.

4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.

6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.

7. All persons have the right to the highest attainable standard of health free from environmental harm.

8. All persons have the right to safe and healthy food and water adequate to their well-being.

9. All persons have the right to a safe and healthy working environment.

10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.

11. (a) All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means.

(b) All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.

12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.

13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual and other purposes. This includes ecologically sound access to nature. Everyone has the right to preservation of unique sites consistent with the fundamental rights of persons or groups living in the area.

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14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence. Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

Part III

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions or courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.

17. All persons have the right to environmental and human rights education.

18. All persons have the right to active, free and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.

20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV

21. All persons, individually and in association with others, have the duty to protect and preserve the environment.

22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt administrative, legislative and other measures necessary to effectively implement the rights in this Declaration. These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, inter alia, - Collection and dissemination of information concerning the environment; - Prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment; - Public participation in environmental decision-making; - Effective administrative and judicial remedies and redress for environmental harm or the threat of such harm; - Monitoring, management and equitable sharing of natural resources;
- Measures to reduce wasteful processes of production and patterns of consumption;
- Measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and
- Measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.

23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

24. All international organizations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realized.
ANNEX B

Comparative Constitutional Language for Environmental Provisions in an ACT Bill of Rights

I. Preambular Language

Andorra

PREAMBLE
The Andorran People, with full liberty and independence, and in the exercise of their own sovereignty,
***
Willing to bring their collaboration and effort to all the common causes of mankind, and especially to those of preserving the integrity of the Earth and guaranteeing an environment fit for life for the coming generations,
***
Approve the present Constitution, in the exercise of their sovereignty.

Belize

WHEREAS THE PEOPLE OF BELIZE
***
e. require policies of state which protect and safeguard the unity, freedom, sovereignty and territorial integrity of Belize; which eliminate economic and social privilege and disparity among the citizens of Belize whether by race, color, creed or sex; which protect the rights of the individual to life, liberty and the pursuit of happiness; which preserve the right of the individual to the ownership of private property and the right to operate private businesses; which prohibit the exploitation of man by man or by the state; which ensure a just system of social security and welfare; which protect the environment; which promote international peace, security and co-operation among nations, the establishment of a just and equitable international economic and social order in the world with respect for international law and treaty obligations in the dealings among nations;
***

II. General Provisions

Armenia

Article 10. The state shall ensure the protection and reproduction of the environment and the rational utilization of natural resources.
***

Article 89. The Government:

1. shall submit its program to the National Assembly for approval in accordance with Article 74 of the Constitution;

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23
2. shall submit the draft state budget to the National Assembly for approval, guarantee the implementation of the budget and submit financial reports on the budget to the National Assembly;
3. shall manage state property;
4. shall ensure the implementation of unified state policies in the areas of finances, economy, taxation and loans and credits;
5. shall ensure the implementation of state policies in the areas of science, education, culture, health, social security and environmental protection;
6. shall ensure the implementation of the defense, national security and foreign policies of the Republic;
7. shall take measures toward the strengthening of legality, the protection of the rights and freedoms of citizens, and the protection of property and public order.

Bulgaria

Article 15 [Nature]
The Republic of Bulgaria shall ensure the protection and reproduction of the environment, the conservation of living nature in all its variety, and the sensible utilization of the country's natural and other resources.

Cambodia

Article 59 [Environmental Protection]
The State protects the environment and balances of abundant natural resources and establishes a precise plan of management of land, water, air, wind geology, ecologic system, mines, energy, petrol, and gas, rocks and sand, gems, forests and forestrial products, wildlife, fish, and aquatic resources.

Chechen Republic

Article 11 []
The state takes 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.

Czech Republic

Article 7 [Natural Resources]
The state shall see to it that natural resources are used economically and natural wealth is protected.

Eritrea

Article 10 [Economic and Social Development]
(1) The State shall endeavour to create opportunities to ensure the fulfillment of citizens' rights to social justice and the economic development and to fulfill their material and spiritual needs.
(2) The State shall 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.

(3) The State shall have the responsibility 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; and to create the right conditions for securing the participation of the people to safeguard the environment.

Ethiopia

Article 92 Objectives for Environmental Protection

1. The State shall have the responsibility to strive to ensure a clean and healthy environment for all Ethiopians.
2. Any economic development activity shall not in any way be disruptive to the ecological balance.
3. The people concerned shall be made to give their opinions in the preparation and implementation of policies and programs concerning environmental protection.
4. The State and citizens shall have the duty to protect the environment.

Greece

Article 24 [Environment]

(1) The protection of the physical and cultural environment constitutes an obligation to the State. The State must take special preventive or repressive measures for the conservation thereof. A law shall regulate matters relating to the protection of forests and forest areas in general. Any change in the land uses of public forests or public forest areas shall be prohibited, unless the agricultural use thereof or any other use be beneficial to the national economy or dictated by the national interests.

(2) The regional restructuring of the country, the configuration, development, planning, and extension of cities and housing areas in general shall be placed under the regulatory competence of and control by the State with a view to achieving the best possible living conditions and enhancing the functionality and development of the said housing areas.

(3) The properties contained in a given area shall compulsorily participate, without receiving any compensation form the local agencies, in making the necessary land available for the construction of roads, squares, and communal units and spaces, and in covering the cost of the construction of basic town planning works for public use, as the law provides, with a view to recognizing the said area as housing area and revitalizing the same.

(4) A law may provide for the participation by the property owners of a given area designated as residential in the overall development and planning on the basis of an approved plan, through an exchange of their real estate property in blocks of flats not extending to the land underneath (horizontal property), sited in the parts of the area which shall finally be designated as building land or structures in the said area.

(5) The provisions of the foregoing paragraphs shall apply to the rehabilitation of already existing housing areas. The areas cleared as a result shall be used for the creation as communal spaces or the construction of communal units or sold in order to cover the cost of the town redevelopment, as the law provides.
(6) Monuments and historical sites shall be protected by the State. A law may determine the measures necessary for such protection which may restrict the rights of the owners therein, and the mode and kind of compensation payable to the said owners.

Guyana

36. 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.

Haiti

CHAPTER II -- THE ENVIRONMENT
ARTICLE 253: Since the environment is the natural framework of the life of the people, any practices that might disturb the ecological balance are strictly forbidden.
ARTICLE 254: the State shall organize the enhancement of natural sites to ensure their protection and make them accessible to all.
ARTICLE 255: To protect forest reserves and expand the plant coverage, the State encourage the development of local sources of energy: solar, wind and others.
ARTICLE 256: Within the framework of protecting the environment and public education, the State has the obligation to proceed to establish and maintain botanical and zoological gardens at certain points in its territory.
ARTICLE 257: The law specifies the conditions for protecting flora and fauna, and punishes violations thereof.
ARTICLE 258: No one may introduce into the country wates or residues of any kind from foreign sources.

India

Article 48A [Protection and improvement of environment and safeguarding of forests and wildlife]

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Iran

Article 50 [Preservation of the Environment]

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. Economic and other activities that inevitably involve pollution of the environment or cause irreparable damage to it are therefore forbidden.

Iriquois Nations

THE GREAT BINDING LAW, GAYANASHAGOWA

* * *

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7. Whenever the Confederate Lords shall assemble for the purpose of holding a council, the Onondaga Lords shall open it by expressing their gratitude to their cousin Lords and greeting them, and they shall make an address and offer thanks to the earth where men dwell, to the streams of water, the pools, the springs and the lakes, to the maize and the fruits, to the medicinal herbs and trees, to the forest trees for their usefulness, to the animals that serve as food and give their pelts for clothing, to the great winds and the lesser winds, to the Thunderers, to the Sun, the mighty warrior, to the moon, to the messengers of the Creator who reveal his wishes and to the Great Creator who dwells in the heavens above, who gives all the things useful to men, and who is the source and the ruler of health and life.

* * *

73. The soil of the earth from one end of the land to the other is the property of the people who inhabit it. By birthright the Ongwehonweh (Original beings) are the owners of the soil which they own and occupy and none other may hold it. The same law has been held from the oldest times.

The Great Creator has made us of the one blood and of the same soil he made us and as only different tongues constitute different nations he established different hunting grounds and territories and made boundary lines between them.

Kazakhstan

Article 31.
1. The state shall set an objective to protect the environment favorable for the life and health of the person.
2. Officials shall be held accountable for the concealment of facts and circumstance endangering the life and health of the people in accordance with law.

Latvia

Article 43
The protection of nature cultural centers, historical and architectural monuments and the environment is the responsibility of each person, the entire society and the State.

Lithuania

Article 53
(1) The State shall take care of people's health and shall guarantee medical aid and services in the event of sickness. The procedure for providing medical aid to citizens free of charge at State medical facilities shall be established by law.
(2) The State shall promote physical culture of the society and shall support sports.
(3) The State and each individual must protect the environment from harmful influences.

Malta

Section 9 [Environment, History, Arts]
The State shall safeguard the landscape and the historical and artistic patrimony of the Nation.

Malawi

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13. The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals--

* * *

(d) The Environment
To manage 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.

Model Constitutional Code (of the International Constitutional Centre)

Article 4 General Constitutional Objectives
(1) The State promotes justice and universal protection of human rights as individual rights. The State encourages fraternity among its citizens by establishing solidarity, general welfare, and national unity.
(2) The State acknowledges the right of the People to national autonomy and self-determination, and the right of minorities to group autonomy.
(3) The State promotes:
(a) public health care;
(b) education and schooling;
(c) schemes for social welfare;
(d) preservation and development of culture;
(e) preservation and maintenance of historical objects;
(f) environmental protection, intergenerational equity, and the protection of nature for its intrinsic value including the protection of nature's right;
(g) natural and social sciences.

Moldova

Article 10. Responsibility of the State in respect to a citizen and to the society
(1) The state is the official representative of the society and through its bodies and institutions expresses the wish of the society. The state, its bodies, institutions and officials are responsible in respect to a citizen and to the society.
(2) The duty of the State will be

* * *

d) to ensure a rational exploitation and use of the national patrimony to the interest of the people;
e) to undertake measures of the economic development and social protection adequate to ensure a decent living standard for people;
f) to ensure the development of culture and science, a rational use of the creative and productive potentials;
g) to ensure the protection of environment and the ecological equilibrium;
* * *

Article 123. The Economy
   (1) The economy of the Republic of Moldova is a market economy based on the private or public property.
   (2) The state will have to ensure:
   * * *
   d) the exploitation of raw materials to the benefit of the nation;
   e) the restoration and the protection of the environment and preservation of the ecological balance;

Nepal

Article 26 State Policies
(1) The State shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country.
(2) The State shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.
(3) The State shall pursue a policy of mobilising the natural resources and heritage of the country in a manner which might be useful and beneficial to the interest of the nation.
(4) The State shall 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 the State shall also make arrangements for the protection of the rare wildlife, the forests and the vegetation.
(5) The State shall create conditions for the economic progress of the majority of the people, who are dependent on agriculture, by introducing measures which will help in raising productivity in the agricultural sector and develop the agricultural sector on the principles of industrial growth by launching land reform programmes.
(6) The State shall pursue a policy of increasing the participation of the labour force, the chief socio-economic force of the country, in the management of enterprises by gradually securing employment opportunities to it, ensuring the right to work, and thus protecting its rights and interests.
(7) The State shall pursue a policy of making the female population participate, to a greater extent, in the task of national development by making special provisions for their education, health and employment.
(8) The State shall make necessary arrangements to safeguard the rights and interests of children and shall ensure that they are not exploited, and shall make gradual arrangements for free education.
(9) The State shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons, as well as ensure their protection and welfare.
(10) The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health, and employment.

(11) The State shall, with a view to bringing about prosperity in the country, pursue a policy of giving priority to the development of science and technology and shall also give due consideration to the development of local technology.

(12) The State shall, for the purposes of national development, pursue a policy of taking measures necessary for the attraction of foreign capital and technology, while at the same time promoting indigenous investment.

(13) The State shall pursue a policy of creating conditions for the acceleration of the speed of rural development, keeping in view the welfare of the majority of the rural population.

(14) The State shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law.

(15) The foreign policy of Nepal shall be guided by the principles of the United Nations Charter, nonalignment, Panchsheel, international law and the value of world peace.

(16) The State shall pursue a policy of making continuous efforts to institutionalise peace for Nepal through international recognition, by promoting cooperative and good relations in the economic, social and other spheres on the basis of equality with neighbouring and all other countries of the world.

The Netherlands

Article 21 [Environment]
It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.

Nicargaua

Article number: 18

(1) The State social order is founded on ideals of Freedom, Equality and Justice.

(2) In furtherance of the social order -

* * *

(c) exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community shall be prevented;

Oman

Article 12 [Social Principles]
The social principles are:
- Justice, equality and equality of opportunity between Omanis are the pillars of society, guaranteed by the State.
- Co-operation, compassion, strong ties between citizens, and the reinforcement of national unity are a duty. The State shall prevent anything that could lead to division, discord, or the disruption of national unity.
- The family is the basis of society, and the Law regulates the means of protecting it, safeguarding its legal structure, reinforcing its ties and values, providing care for its
members, and creating suitable conditions for the development of their aptitudes and capabilities.
- The State guarantees assistance for the citizen and his family in cases of emergency, sickness, incapacity and old age in accordance with the social security system. It also encourages society to share the burdens of dealing with the effects of public disasters and calamities.
- The State cares for public health and for the prevention and treatment of diseases and epidemics. It endeavours to provide health care for every citizen and to encourage the establishment of private hospitals, clinics and other medical institutions under State supervision and in accordance with the rules laid down by Law. It also works to conserve and protect the environment and prevent pollution.
- The State enacts laws to protect the employee and the employer, and regulates relations between them. Every citizen has the right to engage in the work of his choice within the limits of the Law. It is not permitted to impose any compulsory work on anyone except in accordance with the Law and for the performance of public service, and for a fair wage.

Peoples’ Republic of China

Article 26 [Environment]
(1) The state protects and improves the living environment and the ecological environment, and prevents and remedies pollution and other public hazards.
(2) The state organizes and encourages afforestation and the protection of forests.

Portugal

Article 9 Basic Tasks of the State
The basic tasks of the State are:
a) To safeguard national independence and create the political, economic, social, and cultural conditions conducive to it;
b) To safeguard fundamental rights and freedoms and respect for the principles of the democratic State based on law;
c) To defend political democracy, secure and promote the democratic participation of the citizens in solving the national problems;
d) To promote the people's welfare and quality of life, real equality among the Portuguese as well as the realization of economic, social, and cultural rights by way of transforming and modernizing the economic and social structures;
e) To protect and enhance the cultural heritage of the Portuguese people, defend nature and the environment, conserve natural resources, and ensure a proper regional planning;
f) To secure training on and constant valorization of the Portuguese language, to defend its use and promote its international circulation.

Puerto Rico

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Section 19.
It shall be the public policy of the Commonwealth to conserve, develop and use its natural resources in the most effective manner possible for the general welfare of the community; to conserve and maintain buildings and places declared by the Legislative Assembly to be of historic or artistic value; to regulate its penal institutions in a manner that effectively achieves their purposes and to provide, within the limits of available resources, for adequate treatment of delinquents in order to make possible their moral and social rehabilitation.

Republic of Croatia

Article 3 [State Values]
Freedom, equal rights, national equality, peace, social justice, respect for human rights, inviolability of ownership, conservation of nature and the human environment, the rule of law, and a democratic multiparty system are the highest values of the constitutional order of the Republic of Croatia.

Republic of Macedonia

Article 8
(1) The fundamental values of the constitutional order of the Republic of Macedonia are:
- the basic freedoms and rights of the individual and citizen, recognized in international law and set down in the Constitution;
- the free expression of national identity;
- the rule of law;
- the division of state powers into legislative, executive and judicial;
- the legal protection of property;
- the freedom of the market and entrepreneurship;
- humanism, social justice and solidarity;
- local self-government;
- proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development; and
- respect for the generally accepted norms of international law.
(2) Anything that is not prohibited by the Constitution or by law is permitted in the Republic of Macedonia.

* * *

Article 56
(1) All the natural resources of the Republic of Macedonia, the flora and fauna, amenities in common use, as well as the objects and buildings of particular cultural and historical value determined by law, are amenities of common interest for the Republic and enjoy particular protection.
(2) The Republic guarantees the protection, promotion and enhancement of the historical and artistic heritage of the Macedonian people and of the nationalities and the treasures of which it is composed, regardless of their legal status. The law regulates the
mode and conditions under which specific items of general interest for the Republic can be ceded for use.

Romania

Article 134 [Free Market Economy]
(1) Romania's economy is a free market economy.
(2) The State must secure:
a) a free trade, protection of loyal competition, provision of a favorable framework in order to stimulate and value every factor of production;
b) protection of national interests in economic, financial, and currency activity;
c) promotion of national scientific research;
d) exploitation of natural resources, in conformity with national interests;
e) environmental protection and recovery, as well as preservation of the ecological balance; and
f) creation of all necessary conditions so as to increase the quality of life.

Saudi Arabia

Article 32 [Environment, Nature]
The state works for the preservation, protection, and improvement of the environment, and for the prevention of pollution.

Soviet Union (Former)

Article 18
In the interests of the present and future generations, the necessary steps are taken in the USSR to protect and make scientific, rational use of the land and its mineral and water resources, and the plant and animal kingdoms, to preserve the purity of air and water, ensure reproduction of natural wealth, and improve the human environment.

Taiwan

Article 9
(1) The State shall encourage development of and investment in science and technology, facilitate the upgrade of industry, promote the modernization of agriculture and fishery, emphasize the exploitation and utilization of water resources, and intensify international economic cooperation.
(2) Environmental and ecological protection shall be given equal consideration with economic and technological development.
(3) The State shall manage government-run financial organizations in line with the principles of business administration. The management, personnel, budgets, final accounts, and audit of the government-run financial organizations shall be specially regulated by law.
(4) The State shall inaugurate universal health insurance coverage and promote the research and development of both modern and traditional medicines.
(5) The State shall protect the dignity of women, safeguard their personal safety, eliminate sexual discrimination, and further substantive equality between the sexes.
(6) The State shall safeguard the rights of the handicapped and disabled to insurance, medical care, education, training, employment assistance, support for daily living needs and relief, so as to help them attain independence and further their careers.

(7) The State shall accord to the aborigines in the free area legal protection of their status and the right to political participation. It shall also provide assistance and encouragement for their education, cultural preservation, social welfare and business undertakings. The same protection and assistance shall be given to the people of Kinmen and Matsu areas.

(8) The State shall accord to Chinese nationals residing overseas protection of their rights to political participation.

**Tajikistan**

Article 13: The earth, its resources, water, the atmosphere, flora, fauna, and other natural resources are the exclusive property of the state, and the government guarantees their effective utilization in the interests of the people.

**Thailand**

Section 78. The State should conserve environment, balance of natural resources and its substation and should prevent and eliminate pollution and should plan suitable use of soil and water.

Section 87. The State should have a demographic policy appropriate for natural resources, economic and social conditions, and technological progress for the benefit of economic and social development and for the security of state.

**Turkmenistan**

Article 10: The government is responsible for preserving the national historico-cultural heritage and natural environment, as well as for ensuring equality between social and national groups. The government encourages the scientific and creative arts and the dissemination of their achievements, and facilitates the development of international contacts in the fields of science, culture, education, sports, and tourism.

**Uzbekistan**

Article 55: The earth, its resources, water, flora, fauna, and other natural resources are national riches and are subject to rational use and protection by the government.

**Venezuela**

Article 104. Railways, highways, pipelines, and other means of communication or transportation constructed by enterprises exploiting natural resources shall be at the service of the public, under the conditions and with the limitations established by law.

Article 106. The State shall attend to the protection and conservation of the natural
resources within its territory, and their exploitation shall be directed primarily toward the collective benefit of Venezuelans.

II. Federal Environment Power

Albania

Article 33 [Council of Ministers]
(1) The Council of Ministers is the highest executive and legislative organ.
(2) The Council of Ministers is assigned in the first session of the People's Assembly.
(3) The president of the Republic assigns the chairman of the Council of Ministers and upon the proposal of the latter the ministers too.
(4) The composition of the government and its program are adopted by the People's Assembly with majority of votes, within 5 days from the date it is submitted.
(5) In case he does not get the vote of confidence, the chairman of the Council of Ministers immediately submits his resignation to the president of the Republic, who assigns the new chairman of the Council of Ministers.
(6) Before resuming the functions, the chairman of the Council of Ministers and the ministers swear before the president of the Republic.

Article 36 [Competences]
The Council of Ministers has the following main competences:
1. Directing the activity for the realization of the domestic and foreign policy of the state.
2. Issuing the decisions, ordinances, and instructions in compliance with the Constitution and laws and on their implementation. They are signed by the chairman of the Council of Ministers and, when having a normative character, are published in the official gazette, excluding separate cases foreseen by law.
3. Guiding and controlling the activity of ministries and other central organs of the state administration. Coordinating and monitoring the activity of local organs of administration ensuring the compulsory and similar implementation of the laws and acts of the government.
4. Directing the activity for the fulfillment of the tasks in the field of the country's defence, conforming to the decisions of the Council of Defence.
5. Adopting measures on security, the preservation and strengthening of juridical order, and of the citizens' rights.
6. Reaching international agreements, adopting and denouncing those that are not subjected to ratification.
7. Working out economic and social programs of the country's developments and the synthetic economic indices, the state budget, pursuing and controlling their implementation, coordinating, disciplining and controlling the state finances and the monetary and credit system.
8. Making the division or unification of the administrative-territorial units.
9. Adopting measures to ensure the protection of the environment, the suitable working conditions, and the protection of the citizens' health.

Austria
Article 10 [Federal Legislation and Execution]
(1) The Federation has powers of legislation and execution in the following matters:
1. the Federal Constitution, in particular elections to the House of Representatives, and
   referenda as provided by the Federal Constitution; the Constitutional Court;
2. external affairs, including political and economic representation with regard to other
   countries and in particular the conclusion of international treaties of all kinds,
   demarcation of frontiers; trade in goods and livestock with other countries; customs;
3. regulation and control of entry into and exit from the federal territory; immigration and
   emigration; passports; deportation, turning back at the frontier, expulsion, and
   extradition from or through the federal territory;
4. federal finances, in particular taxes to be collected exclusively or in part on behalf of
   the Federation; monopolies;
5. the monetary, credit, stock exchange and banking system; the weights and
   measures, standards, and hallmark system;
6. civil law, including the rules relating to economic association, but excluding
   regulations which render real property transactions with aliens subject to restrictions by
   the administrative authorities; criminal law, excluding administrative penal law and
   administrative penal procedure in matters which fall within the autonomous sphere of
   competence of the States; administration of justice; establishments, such as
   compulsory labor and similar institutions, for the protection of society against criminal,
   degenerate or otherwise dangerous elements; the Administrative Court; copyright;
   Press affairs; expropriation for the purposes of urban and rural reclamation,
   reconditioning, restoration; expropriation in so far as it does not concern matters falling
   within the autonomous sphere of competence of the States, matters of notaries,
   lawyers, and related professions;
7. the maintenance of peace, order and security, excluding the local public safety
   administration; the right of association and assembly; matters of personal status,
   including the registration of births, marriages and deaths, and change of name; aliens
   police and residence registration; matters of weapons, ammunition and explosives, and
   the use of fire-arms;
8. matters of trade and industry; public advertising and commercial brokerage; restraint
   of unfair competition; patent matters and the protection of designs, trade marks, and
   other commodity descriptions; matters of patent agents; matters of civil engineering;
   chambers of commerce, trade, and industry; establishment of professional associations
   in so far as they extend to the federal territory as a whole, but with the exception of those
   in the field of agriculture and forestry;
9. the traffic system relating to the railways, aviation, and shipping in so far as the last of
   these does not fall under Article 11; motor traffic; matters, with exception of the highway
   police, which concern roads declared by federal law as federal highways on account of
   their importance for transit traffic; river and navigation police in so far as these do not fall
   under Article 11; the postal, telegraph, and telephone system;
10. mining; forestry, including timber flotage; water rights; control and conservation of
    waters for the safe diversion of floods or for shipping and raft transport; regulation of
    torrents; construction and maintenance of waterways regulation and standardization of
    electrical plants and establishments as well as safety measures in this field; provisions
    of electric power transmission in so far as the transmission extends over two or more
    States, matters of steam- and other power-driven engines; surveying;
11. labor legislation in so far as it does not fall under Article 12; social and contractual
insurance; chambers for workers and salaried employees with the exception of those relating to agriculture and forestry;
12. public health with the exception of burial and disposal of the dead and community sanitation and first aid services, but only sanitary supervision with respect to hospitals, nursing homes, health resorts and natural curative resources; measures to counter factors hazardous to the environment through the transcendence of input limits, veterinary affairs; nutrition affairs, including foodstuffs inspection;
13. archive and library services for the sciences and specialist purposes; matters of federal collections and establishments serving the arts and sciences, all matters of the federal theaters not however including the settlement of their structural alignment and level nor the treatment accorded by the official building authorities to constructions which concern surface elements in such edifices; the preservation of monuments; religious affairs; census as well as, allowing for the rights of the States to engage within their own territory in every kind of statistical activity, other statistics in so far as they do not serve the interests of one State only; endowments and foundations when their purposes extend beyond a single State's sphere of interests and they have hitherto not been autonomously administered by the States;
14. organization and conduct of the federal police and the federal gendarmerie; settlement of the conditions of establishment and organization of other protective forces, including their armament and the right to make use of their weapons;
15. military affairs; matters of war damage and welfare measures for combatants and their surviving dependents; care of war graves; whatever measures seem necessary by reason or in consequence of war to ensure the uniform conduct of economic affairs, in particular with regard to the population's supply with essentials;
16. the establishment of federal authorities and other federal agencies; service code for and staff representation rights of federal employees; and
17. population policy in so far as it concerns the grant of children's allowances and the organization of burden equalization on behalf of families.
(2) In federal laws on the right of succession to undivided farm estate as well as in federal laws promulgated in accordance with Paragraph (1) no.10, State legislatures can be empowered to issue implementing provisions with respect to individual provisions which must be specifically designated. The provisions of Article 15 (6) shall be analogously applied to these State laws. Execution of the implementing laws issued in such cases lies with the Federation, but the enabling ordinances, in so far as they relate to the implementing provisions of the State law, need foregoing agreement with the State government concerned.
(3) The Federation must allow the States opportunity to present their views before its conclusion of treaties which within the meaning of Article 1 render necessary enabling measures or affect the autonomous sphere of competence of the States in another way.

Article 11 [Federal Legislation and State Execution]
(1) In the following matters legislation is the business of the Federation, execution that of the States:
1. nationality and right of citizenship;
2. professional associations in so far as they do not fall under Article 10, but with the exception of those in the field of agriculture and forestry;
3. national housing affairs;
4. highway police;
5. sanitation; and

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6. inland shipping as regards shipping licenses, shipping facilities and compulsory measures of such facilities in so far as it does not apply to the Danube, Lake Constance, Lake Neusiedl, and boundary stretches of other frontier waters.

(2) In so far as a need for the issue of uniform regulations is considered to exist, the administrative procedure the general provisions of administrative penal law, the administrative penal procedure and the administrative execution also in matters where legislation lies with the States in particular also in matters of taxation, are prescribed by federal law; divergent regulations can be made in Federal or State laws settling the individual spheres of administration only when they are requisite for regularization of the matter in hand.

(3) Enabling ordinances to the federal laws promulgated in accordance with Paragraphs (1) and (2) shall be issued, save as otherwise provided in these laws, by the Federation. The manner of publication for enabling ordinances whose issue by the States in matters concerning Paragraph (1) no.4 and 6 is empowered by federal law can be prescribed by federal law.

(4) The application of the laws promulgated pursuant to Paragraph (2) and the enabling ordinances issued hereto lies with the Federation or the States, depending on whether the business which forms the subject of the procedure is a matter for execution by the Federation or the States.

(5) In proceedings before the administrative authorities the final decision on administrative contraventions lies with administrative penal tribunals to be constituted within the framework of the competent authorities. The members of these tribunals are independent in the exercise of their office and not bound by any instructions. The senior official of the authority concerned or a deputy delegated by him, who must have legal training, presides. The Federation appoints two members also in cases where the tribunals have not been constituted within the framework of the federal authorities. Acting on applications from the administrative penal tribunals, the State-Governors are competent to exercise the right of pardon provided for by law where penal administrative business arises under the indirect federal administration, the State Governments in matters of the autonomous sphere of competence of the States. Details regarding the establishment of administrative penal tribunals and their activity will be prescribed by federal law.

Article 12 [Federal Framework Legislation]

(1) In the following matters, framework legislation is the business of the Federation, the issue of implementing laws and execution the business of the States:

1. social welfare; population policy in so far as it does not fall under Article 10; public social and welfare establishments; maternity, infant, and adolescent welfare; hospitals and nursing homes; requirements to be imposed for health reasons on health resorts, sanatoria, and health establishments; natural curative resources;

2. public institutions for the adjustment of disputes out of court;

3. land reform, in particular land consolidation measures and resettlement;

4. the protection of plants against diseases and pests;

5. matters of electric power in so far as they do not fall under Art. 10; and

6. labor legislation and the protection of workers and employees in so far as it is a matter of workers and employees engaged in agriculture and forestry.

(2) In matters of land reform the final decision and that at State level lies with tribunals composed of a chairman and judges, administrative officials, and experts the tribunal
qualified to pronounce final judgment will be appointed within the framework of the competent Federal Ministry. The organization, the duties and the procedure of the tribunals as well as the principles for the organization of other authorities concerned with matters of land reform will be prescribed by federal law. This shall provide that the decisions by the tribunals are not subject to repeal and change by way of administrative ruling; the exclusion of ordinary appeal from the authority of first instance to the State jurisdiction is inadmissible.

(3) If and inasmuch as the rulings of State authorities in matters of electric power deviate from one another or a State Government was the sole competent State authority, the competence in such a matter passes, provided a party so demands within the deadline to be fixed by federal law, to the Federal Ministry competent in the business. As soon as the Ministry has reached a decision, the rulings hitherto made by the State authorities are invalidated.

Brazil

Article 24 [Concurrent Legislation]

(0) It is incumbent upon the Union, the States, and the Federal District to legislate concurrently on:
I. tax, financial, penitentiary, economic, and city planning law;
II. the budget;
III. commercial registries;
IV. costs of forensic services;
V. production and consumption;
VI. forests, hunting, fishing, fauna, reservation of nature, defense of the soil and natural resources, protection of the environment, and pollution control;
VII. protection of historical, cultural, artistic and touristic monuments, including natural scenic beauties;
VIII. liability for damages to the environment, to consumers, to assets and rights of an artistic, aesthetic, historical and touristic value, including natural scenic beauties;
IX. education, culture, teaching, and sports;
X. creation, operation, and proceedings of the small claims courts;
XI. court procedure;
XII. social security, protection, and defense of health;
XIII. legal assistance and public defense;
XIV. protection and social integration of handicapped persons;
XV. protection of childhood and of youth;
XVI. organization, guarantees, rights and duties of the civil police.

(1) Within the scope of concurrent legislation, the jurisdiction of the Republic is limited to establishing general rules.

(2) The jurisdiction of the Republic to legislate under general rules does not preclude the supplementary jurisdiction of the States.

(3) If there is no federal law on general rules, the States exercises full legislative jurisdiction to provide for their peculiarities.

(4) The supervenience of a federal law over general rules suspends the effectiveness of a State law, to that extent that it is contrary thereto.

Congo (Brazzaville)

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Article 104 [Domain of the Law]
(1) It shall be in the domain of the law:
- the citizenship, the civic rights and fundamental guarantees accorded to citizens in the exercise of public liberties, the subjugations imposed, in the interest of the national defense, and public security of citizens, in their person and their goods;
- the nationality, the state and the capacity of persons, matrimonial systems, successions, and liberalities;
- the determination of crimes, misdemeanors, and contraventions of the fifth class as well as the penalties which shall be applicable to them, the organization of justice and the procedure followed before the jurisdictions and for the execution of judicial decisions, the status of the magistrate and the juridical program of the High Council of the Magistrate, ministerial offices and liberal professions;
- the base, rate, and manner of recovering impositions of every nature, borrowing and financial engagements of the State;
- the program for the minting of coinage;
- the electoral program of Parliament and Local Assemblies;
- the general status of the Public Authority;
- the right to work and programs of social security;
- nationalizations, denationalizations of enterprises, and the transfer of property of enterprises from the public sector to the private sector;
- the disposition of free and charge titles of public and private goods and of the public and private domain of the State;
- the plan for economic and social development;
- the environment and the conservation of natural resources;
- the system of ownership, of real rights, and civil and commercial obligations;
- the system of political parties and the press;
- the approval of international treaties and accords;
- the organization of the national defense;
- the administration and disposition of the domain of the State;
- the free administration of local units, their areas of competence, and their resources;
- the management of the territory;
- the mutuality, monetary system, and credit;
- the system of transport, communications, and information; and
- the penitentiary system.
(2) The law shall equally determine the fundamental principles:
- of instruction,
- of health,
- of science and technology,
- of culture, arts, and sports, and
- of agriculture, husbandry, fishing, waters and forests.

Federal Republic of Yugoslavia

Article 77 []
Through its organs, the Federal Republic of Yugoslavia shall formulate policy, enact and enforce federal legislation, other laws and general enactments, and ensure judicial protection in matters concerning:

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1) the freedoms, rights and duties of man and the citizen, enshrined in the present 
Constitution; due process of law before courts and other state authorities; responsibility 
and sanctions for violation of the freedoms, rights and duties of man and the citizen as 
laid down by the present Constitution, and for violation of federal statutes, other laws 
and general enactments; amnesty and pardon for federal statutory criminal offenses; 
2) the single market; the legal status of enterprises and other economic agents; the 
monetary, banking, foreign exchange, foreign trade and customs regimes; the system of 
credit relationships with foreign countries, the basic principles of the fiscal system; 
3) the development of the Federal Republic of Yugoslavia, scientific and technological 
advances, regional development and efforts to close the developmental gap between 
different regions; 
4) technical and technological systems and communications; the principles of 
environmental protection; the regime of the atmosphere and watercourses of national 
interest and international waters; the regime of territorial waters, with reference to the 
international relations of the Federal Republic of Yugoslavia; navigation on waters under 
an international or intergovernmental regime of navigation; 
5) safety in all types of transportation, contractual relations and the principles of the 
system of property relations, the principles of social security and labor relations; 
6) international relations; border crossing and control of the circulation of goods, 
services and passengers across the border; the status of aliens and foreign artificial 
persons; 
7) the defense and security of the Federal Republic of Yugoslavia; 
8) protection of human life and health against contagious diseases which threaten the 
country as a whole; manufacture and sale of medicaments; protection of animals 
against contagious diseases and protection of plants against diseases and pests which 
threaten the country as a whole; sales of plant and animal protection chemicals, and 
control of animals and plants crossing state frontiers; genetic material in agriculture and 
forestry; protection against ionizing radiation; production, sales and transport of 
weapons and of toxic, inflammable, explosive, radioactive and other dangerous 
substances; 
9) the financing of the competencies of the Federal Republic of Yugoslavia as laid down 
by the present Constitution; 
10) the organization and work of the organs of the Federal Republic of Yugoslavia; 
11) national holidays and decorations bestowed by the Federal Republic of Yugoslavia; 
12) other spheres as laid down by the present Constitution.

Georgia

Article 3.

1. The special administration of Georgian supreme state bodies are responsible for: 
a legislation on Georgian citizenship, human rights and freedoms, emigration and 
immigration, entrance to and departure from Georgia, foreign nationals and stateless 
persons temporarily or permanently residing on the territory of Georgia. 
b. the status and protection of boundaries and their protection; the status of territorial 
waters, airspace, continental shelf and special economic zones . 
c. state defence and security; military forces, military industry and the trading of arms. 
d. the issue of war and peace; the determination of a legal regime for a state of 
emergency and a state of war and their introduction.
e. foreign policy and international relations.
f. custom and tariff regimes and foreign trade.
g. state finances and state loans; the minting of money; legislation on banking, credit
and insurance.
h. standards and models; geodesy and cartography; time; state statistics.
i universal system and regime of energy; communications; the merchant fleet; flags of
ships; harbours of state importance; airports and airfields; the control of airspace;
transit and air transport; registration of air transport; meteorological services and the
system of environmental protection.
j. railways and roads of importance to the whole state.
k. fishing in oceans and open seas.
l. boundary-sanitary cordon.
m. legislation on pharmaceutical medicines.
n. certification and accreditation of secondary and high schools, legislation on
academic, scientific and professional titles and honours.
o. legislation on intellectual property rights
p. legislation on trade, criminal and civil law.
r. criminal police and investigation.
s. legislation on land, minerals and natural resources

Germany

Article 75 [Power to pass framework legislation]
(1) Subject to the conditions laid down in Article 72, the Federation has the right to
enact framework legislation for the legislation of the States concerning:
1. the legal status of persons in the public service of the States, communes or other
corporate bodies under public law, insofar as Article 74a does not provide otherwise;
1a. the general principles governing higher education;
2. the general legal status of the press;
3. hunting, nature conservation and landscape management;
4. State distribution, regional planning and the management of water resources;
5. matters relating to the registration of residence or domicile and to identity cards;
6. protection against transfer of items of German culture to foreign countries.
Article 72 (3) applies mutatis mutandis.
(2) Framework legislation may contain detailed or directly applicable provisions only in
exceptional cases.
(3) If the Federation adopts framework legislation, the States are bound to adopt the
necessary State statutes within an adequate time frame stipulated by the legislation.

Hawaii (Indigenous peoples)

Part 1] Business of the Nation; The Congress of the Nation of Hawaii
We, the Kanaka Maoli Nationals and Descendants hereby establish this Constitution,
and acknowledge that the business of the nation shall be authorized in accordance with
this Constitution. All government officials shall comply with this Constitution. All
legislative powers shall be vested in a Congress composed of the Senate and the
House of Representatives. All powers and subjects of legislation shall not be
inconsistent with this Constitution.

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Article V Legislative Powers and Limitations
The Congress has the power to make all laws necessary and proper for carrying into execution the business of the Nation, and all other powers vested in this Constitution.

Section 1 Of Making Laws, Generally
(a) To lay and collect taxes, duties, tariffs, and excises; to pay the debts and provide for the common defense and general welfare of the Nation. All duties and tariffs shall be uniform in nature throughout the Nation.
(b) To borrow money on the equity of the Nation.
(c) To regulate commerce with foreign nations.
(d) To establish a uniform rule of Naturalization and citizenship.
(e) To establish a uniform rule on the subject of bankruptcies.
(f) To coin money, regulate the value thereof, and of foreign money, and to fix a standard of weights and measures; and to provide for the punishment of counterfeiting the securities and current coin of the Nation.
(g) To establish post offices and postal services, national and foreign.
(h) To promote the progress of science, technologies, arts and culture, and environment.
(i) To declare martial law in the event of rebellion, and to provide calling forth the militia to execute the laws to suppress insurrections and to repel invasions.
(j) To raise and support armies and navy for National Peace and Security.
(k) To exercise exclusive legislation, in all cases whatsoever, over the Nation and possessions over all places purchased by lawful cession by the Nation of Hawaii, in foreign soil or territory.
(l) To define and punish piracies and felonies committed on the high seas, and offenses committed against the law of nations.
(m) To devise and make all laws necessary and proper for the execution of the powers vested by this constitution.

Madagascar

Article 82 [Legislation]
(1) Laws shall be voted by Parliament under conditions established by this section. Parliament shall consist of the National Assembly and the Senate.
(2) In addition to matters referred to the Parliament by other articles of the Constitution:

I) The law shall establish rules concerning:
- civil rights and fundamental guarantees granted to individuals and groups for the exercise of rights and liberties;
- nationality and citizenship;
- obligations imposed by national defense upon citizens and their property;
- organization of the family, the State, and the status of persons, the regulation of marriage, inheritance and gifts, and the drafting and codification of customs regarding citizenship;
- the creation of new jurisdictions, the organization of administrative and financial agencies and the rules of procedure applicable to them, civil and commercial rules of procedure, the status of magistrates, and the guarantees of their independence;
- the determination of crimes and misdemeanors, as well as the applicable penalties, criminal procedure, and amnesty;

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- judicial regulation of property and the conditions under which property may be subject to expropriation or requisition for public use or transfer of property to the State;
- the creation of categories of public establishments;
- election procedures in the territorial entities, the jurisdiction and resources of these entities, and their relation to the State;
- property transfers from the public sector to the private sector; and
- regulation of currency.

II) The law shall establish the fundamental principles of the following:
- the organization of national defense and the use of the Armed Forces or police forces by civil authorities, the status of the armed forces, and their neutrality;
- the status of civil servants and public agents;
- the status of teachers and researchers in higher education;
- the status of the national police;
- the status of correctional officers;
- the judicial regulation of civil and commercial obligations;
- the juridical framework of relations between employers and employees, trade union rights, and the right to strike;
- professional training;
- the organization of professions; and
- protection of the environment.

III) The law shall determine the basis, rate, and methods of collection for assessments of all types. The budget shall establish the amount and nature of State resources and obligations for budgetary balance; this shall be discussed and voted upon under the conditions provided for in Article 88.

IV) The law shall determine the policies and goals of State action in economic, social and environmental areas.

V) War may only be declared by Parliament.

VI) A state of national emergency may be declared by the President of the Republic in accordance with Article 59; extension beyond two weeks may only be authorized by Parliament.

VII) The law shall establish limitations to individual and public liberties during emergencies.

VIII) Ratification or approval of alliances or commercial treaties, treaties or agreements regarding international organization which commit State finances, which deal with the status of persons, peace treaties, treaties which involve the ceding exchange or acquisition of territory must be authorized by law. Prior to any ratification, treaties shall be submitted by the President of the Republic to the Constitutional Court. In case of non-conformity with the Constitution, ratification may take place only after Constitutional revision.

Mauritania

Article 56 [Legislation]
The laws are voted by the Parliament.

Article 57 [Competences]
(1) The following subjects are the domain of the law:

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- fundamental rights and duties, especially the system of public freedoms, the safeguard of individual freedoms, and the obligations imposed by national defense on citizens in their person and on their property;
- nationality, the status and ability of persons, marriage, divorce, and inheritance;
- the conditions of settlement of persons and the regulation of aliens;
- the determination of crimes and misdemeanors as well as the sentences which are applicable, penal procedure, amnesty, the creation and organization of tribunals, and the regulation of magistrates;
- civil procedure and means of execution;
- customs regulation, regulation of coining of money, regulation of banks, credit, and insurance;
- electoral regulations and the territorial division of the country;
- regulation of property, real rights, and civil and commercial obligations;
- general regulation of water, mines, and hydro-carbons, fishing and the merchant marine, fauna, flora, and the environment;
- the protection and safeguard of the cultural and historical patrimony;
- general regulations concerning education and health;
- general regulations concerning workers rights, right to work, and social welfare;
- the general organization of the administration;
- the free administration of local districts, their jurisdiction, and their resources;
- the tax base, the tax rate, and the modes of collecting taxes of all kinds;
- the creation of categories of public establishments;
- the fundamental protection granted to civil and military employees as well as the general regulation of the Civil Service;
- nationalizations of enterprises and the transfers of property from the public sector to the private sector; and
- general regulations concerning the organization of the National Defense.

(2) The laws governing finances shall determine the resources and expenses of the State within the conditions and subject to the reservations as set forth in an organic law. (3) Laws and programs shall determine the objectives of the economic and social action of the State. (4) The provisions of the present article may be stipulated and completed by an organic law.

Mongolia

Article 38 [Powers]
(1) The Government is the highest executive body of the State. (2) In discharging the duty of directing economic, social, and cultural development of the country in observance of State laws, the Government exercises the following powers: 1) to organize and ensure nation-wide implementation of the Constitution and other laws; 2) to work out a comprehensive policy on science and technology, guidelines for economic and social development, the State budget, credit and fiscal plans, to submit these to the National Parliament, and to execute decisions taken thereon; 3) to elaborate and implement comprehensive measures on sectoral, intersectoral, as well as regional development; 4) to undertake measures on the protection of the environment and on the rational use
and restoration of natural resources;
5) to provide efficient leadership of central state administrative bodies and to direct the activities of local administrations;
6) to strengthen the country’s defense capabilities and to ensure national security;
7) to take measures for the protection of human rights and freedoms, enforcement of public order, and prevention of crime;
8) to realize the State foreign policy;
9) to conclude and implement international treaties with the consent of and subsequent ratification by the National Parliament as well as to conclude and abrogate intergovernmental treaties.

(3) The specific powers, structure, and procedure of the Government are determined by law.

Paraguay

Article 8 [Environment Protection]
(1) Those activities that are likely to cause environmental changes will be regulated by law. Similarly, the law may restrict or prohibit those activities that are considered hazardous.

Poland

Article 5 []
The Republic of Poland shall safeguard the independence and integrity of its territory and ensure the freedoms and rights of persons and citizens, the security of the citizens, safeguard the national heritage and shall ensure the protection of the natural environment pursuant to the principles of sustainable development.

Russian Federation

Article 71
The jurisdiction of the Russian Federation shall include:
a) the adoption and amendment of the Constitution and federal laws and supervision over compliance with them;
b) the federal structure and territory of the Russian Federation;
c) regulation and protection of the rights and liberties of the human being and citizen; citizenship of the Russian Federation; regulation and protection of the rights of national minorities;
d) establishment of the system of federal bodies of legislative, executive and judiciary power, procedure for the organization and activities thereof; formation of federal bodies of state power;
e) federal and state property and management thereof;
f) determining the basic principles of federal policy and federal programs in the field of state structure, the economy, the environment, and the social, cultural and national development of the Russian Federation;
g) establishment of the legal framework for a single market; financial, monetary, credit and customs regulation, emission of money and guidelines for price policy; federal economic services, including federal banks;
h) the federal budget; federal taxes and levies; federal funds of regional development;
i) federal power grids, nuclear energy, fissionable materials; federal transport, railways,
information and communications; space activities;
j) foreign policy and international relations of the Russian Federation, international
treaties of the Russian questions of war and peace;
k) foreign trade relations of the Russian Federation;
l) defense and security; defense production; determining procedures for the sale and
purchase of arms, ammunition, military hardware and other equipment; production of
fissionable materials, toxic substances, narcotics and procedure for the use thereof;
m) defining the status and protection of the state border, territorial waters, the air space,
the exclusive economic zone and the continental shelf of the Russian Federation;
n) law courts; Prosecutor's Office; criminal, criminal-procedural and criminal-executive
legislation; amnesty and pardon; civil, civil-procedural and arbitration-procedural
legislation; legal regulation of intellectual property;
o) federal conflict of laws;
p) meteorological service; standards, models, the metric system and time
measurement; geodesy and cartography; names of geographical objects; official
statistics and accounting;
q) state decorations and honorary titles of the Russian Federation;
r) federal state service.

South Africa

Section 44(1)[National legislative authority]

44. (1) The national legislative authority as vested in Parliament _
a.confers on the National Assembly the power _
   i.to amend the Constitution;
   ii.to pass legislation with regard to any matter, including a matter within a
      functional area listed in Schedule 4, but excluding, subject to subsection (2),
      a matter within a functional area listed in Schedule 5; and
   iii.to assign any of its legislative powers, except the power to amend the
      Constitution, to any legislative body in another sphere of government; and
b.(b) confers on the National Council of Provinces the power _
   i.to participate in amending the Constitution in accordance with section 74;
   ii.to pass, in accordance with section 76, legislation with regard to any matter
      within a functional area listed in Schedule 4 and any other matter required by
      the Constitution to be passed in accordance with section 76; and
   iii.to consider, in accordance with section 75, any other legislation passed by
      the National Assembly.
(2) Parliament may intervene, by passing legislation in accordance with section 76(1),
with regard to a matter falling within a functional area listed in Schedule 5, when it is
necessary _
   a.to maintain national security;
   b.to maintain economic unity;
   c.to maintain essential national standards;
   d.to establish minimum standards required for the rendering of services; or
   e.to prevent unreasonable action taken by a province which is prejudicial to the
interests of another province or to the country as a whole.

(3) Legislation with regard to a matter that is reasonably necessary for, or incidental to, the effective exercise of a power concerning any matter listed in Schedule 4 is, for all purposes, legislation with regard to a matter listed in Schedule 4.

(4) When exercising its legislative authority, Parliament is bound only by the Constitution, and must act in accordance with, and within the limits of, the Constitution.

Schedule 4

Functional Areas of Concurrent National and Provincial Legislative Competence

Part A

Administration of indigenous forests
Agriculture
Airports other than international and national airports
Animal control and diseases
Casinos, racing, gambling and wagering, excluding lotteries and sports pools
Consumer protection
Cultural matters
Disaster management
Education at all levels, excluding tertiary education
Environment
Health services
Housing
Indigenous law and customary law, subject to Chapter 12 of the Constitution
Industrial promotion
Language policy and the regulation of official languages to the extent that the provisions of section 6 of the Constitution expressly confer upon the provincial legislatures legislative competence
Media services directly controlled or provided by the provincial government, subject to section 192
Nature conservation, excluding national parks, national botanical gardens and marine resources
Police to the extent that the provisions of Chapter 11 of the Constitution confer upon the provincial legislatures legislative competence
Pollution control
Population development
Property transfer fees
Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5
Public transport
Public works only in respect of the needs of provincial government departments in the discharge of their responsibilities to administer functions specifically assigned to them in terms of the Constitution or any other law
Regiona planning and development
Road traffic regulation
Soil conservation
Tourism
Trade
Traditional leadership, subject to Chapter 12 of the Constitution
Urban and rural development
Vehicle licensing
Welfare services

Switzerland

Article 24septies [Environmental Protection]
(1) The Confederation shall legislate for the protection of man and his natural environment against harmful or annoying acts. In particular it shall counter air pollution and noise.
(2) The carrying out of federal provisions shall fall to the Cantons, insofar as the law does not limit this to the Confederation.

Turkmenistan

Article 78: The Cabinet of Ministers:
1) organizes the execution of laws, Presidential acts, and decisions of the People's Council;
2) takes measures to ensure and defend the rights and freedoms of citizens, and to protect property, social order, and national security;
3) develops and introduces in the People's Council proposals concerning the basic directions of the government's domestic and foreign policy activity, and programs for the economic and social development of the country;
4) implements governmental management of economic and social development and ensures the rational use of and protection of natural resources;
5) takes measures to strengthen the monetary and credit systems;
6) in case of necessity, forms committees, bureaus, and other agencies under the auspices of the Cabinet of Ministers.
7) effectuates foreign economic policy and ensures the development of cultural connections with foreign governments;
8) manages the activities of governmental institutions and state enterprises and organizations, and has the right to repeal the acts of ministries and agencies;
9) meets other obligations ascribed by laws and other normative acts to its jurisdiction.

Article 85: The local meetings and organs of territorial civic self-government form a system of local self-government. The local meetings are representative organs of popular power on the territory of towns, villages, and settlements. They are elected directly by citizens for a term of five years and are not administratively subordinate to each other

Article 86: Within the jurisdiction of local meetings are:
1) determining the basic directions of economic, social, and cultural development of their areas;
2) approving the local budget and the report of its utilization;  
3) establishing local taxes and tariffs and the manner of their collection;  
4) determining measures for the rational use of natural resources and for nature protection;  
5) other issues ascribed to the jurisdiction of local meetings by law.  
Without transgressing their authority, local meetings adopt decisions which must be adhered to in their areas.

**Ukraine**

**ARTICLE 85.**

Powers of the Chamber of Deputies include the following:
1) to give consent for appointment of the Prime-Minister of Ukraine by the President of Ukraine;  
2) to consider and to adopt a decision on the program of activity of the Cabinet of Ministers of Ukraine;  
3) to perform oversight of the activity of the Cabinet of Ministers of Ukraine in accordance with the Constitution of Ukraine;  
4) to approve the most important state programs of economic, scientific and technical, social and national cultural development, and environmental protection;

**Uzbekistan**

Article 99: Councils of People's Deputies are the representative organs of power in regions, districts, and cities (except cities subordinate to districts, or districts which are part of cities), are headed by governors, and, proceeding from the interests of the government and citizens, decide issues ascribed to their jurisdiction.

Article 100: Within the jurisdiction of local organs of power are:  
ensuring the legality, legal order, and security of citizens;  
issues of the economic, social, and cultural development of the territory;  
composition and utilization of the local budget, establishing local taxes and tariffs, and composition of extra-budgetary funds;  
managing local public property;  
protecting the environment;  
ensuring registration of acts of civic status;  
adopting normative acts, and other powers not contrary to the Constitution and laws of the Republic of Uzbekistan.

Article 101: Local organs of power enact laws of the Republic of Uzbekistan, decrees of the President, and decisions of higher organs of governmental power, as well as managing the operations of lower Councils of People's Deputies and participating in discussions of issues of republican and local significance. Compliance with decisions of higher organs, adopted within the bounds of their jurisdiction, is obligatory for lower organs. The term of office for a Council of People's Deputies or governor is five years.

**Venezuela**
Article 136. The following are within the competence of the National Power:

1. The international relations of the Republic;
2. The protection and supreme oversight of the general interests of the Republic, the preservation of the peace, and the just application of the laws throughout the national territory;
3. The flag, coat of arms, hymn, holidays, decorations, and honors of a national character;
4. The naturalization, admission, extradition, and expulsion of foreigners;
5. The identification and national police services;
6. The organization and government of the Federal District and of the Federal Territories and Dependencies;
7. The monetary system and the circulation of foreign currencies;
8. The organization, collection, and control of taxes on income, capital, and estates and gifts; of levies on imports and for registration and fiscal stamps, and those on the production and consumption of goods which the law reserves in whole or in part to the National Power, such as those on alcohol, liquors, cigarettes, matches, and saltworks; those on mines and hydrocarbons; and all other taxes, excises, and revenues not attributed to the States or Municipalities which the law may create with a national character;
9. The organization and operation of the customs;
10. The operation and administration of mines and hydrocarbons, saltworks, unimproved lands, and oysterpearl beds; and the conservation, development, and utilization of forests, waters, and other natural resources of the country.
The National Executive may, in conformity with the law, sell, lease, or make free grants of unimproved lands; but saltworks may not be alienated and mining concession may not be granted for an indefinite period.
The law shall establish a system of special appropriations for the benefit of States within whose territory the property mentioned in this numbered paragraph is located, without prejudice to the possibility of it also establishing other special appropriations for the benefit of other States. In all cases these appropriations shall be subject to the standards on coordination provided for in article 229 of this Constitution.
Unimproved lands on sea, river, or lake islands may not be alienated, and concessions for their use may be granted only in a manner that does not involve, directly or indirectly, a transfer of the ownership of the land,
11. The organization and mode of operation of the National Armed Forces;
12. The system of weights and measures;
13. The national census and statistics;
14. The establishment, coordination, and unification of technical standards and procedures for engineering, architectural, and urban development works;
15. The execution of public works of national interest;
16. The directives end bases for national education;
17. The technical direction, the establishment of administrative standards, and the coordination of services for protection of public health. The law may provide for the nationalization of these public services in accordance with the collective interest;
18. The conservation and stimulation of agricultural, fishery, and forest production;
19. The promotion of low-cost housing;
20. Matters relating to land transportation, to air, maritime, river, and lake navigation, and to wharves and other port works;
21. The opening and maintenance of national means of communication; aerial traction cables and railways, even if located within the boundaries of a State, with the exception of urban streetcars or cable cars, the concession and regulation of which are within the jurisdiction of the respective Municipalities;
22. The mails and telecommunications;
23. The administration of justice and the creation, organization, and competence of the courts; the Public Ministry;
24. Legislation regulating the guarantees conferred by this Constitution; civil, commercial, criminal, penitentiary and, procedural legislation; legislation on elections; legislation on expropriation by reason of public or social utility, that on public credit; that on intellectual, artistic, and industrial property; agrarian legislation; that on immigration and settlement; that on tourism; that on labor, welfare, and social security; that on animal and plant health; that on notaries and public registers; that on banks and other institutions of credit; that on lotteries, racetracks, and betting in general; and that concerning all matters within the national competence;
25. Any other matter which the present Constitution assigns to the National Power or which pertains to it by its nature or kind.

Vietnam

ARTICLE 112:
Following are the duties and powers of the Government:
1. To direct the work of the ministries, the organs of ministerial rank and the organs of the Government, the People's Committees at all levels; to build and consolidate the unified system of the apparatus of State administration from the centre to the grassroots; to guide and control the People’s Councils in their implementation of the directives of superior organs of State administration; to create favourable conditions for the People's Councils to fulfil their duties and exercise their powers as laid down by law; to train, foster, dispose and use State officials and employees;
2. To ensure the implementation of the Constitution and the law in State organs, economic bodies, social organizations, units of the armed forces, and among citizens; to organize and direct propaganda and educational work among the people concerning the Constitution and the law;
3. To present draft laws, decree-laws and other projects to the National Assembly and its Standing Committee;
4. To ensure the overall management of the building and development of the national economy; to carry into effect national financial and monetary policies; to manage and ensure the effective use of property in the ownership of the entire people; to promote the development of culture, education, health care, science and technology; to carry out the plan for socio-economic development and to give effect to the State budget;
5. To take measures to protect the rights and legitimate interests of the citizen, to create conditions for him to exercise his rights and fulfil his duties,
protect the property and interests of the State and society; to protect the environment;

IV. Environmental Rights and Duties

Angola

Article 24
(1) All citizens shall have the right to live in a healthy and unpolluted environment.
(2) The State shall take the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance.
(3) Acts that damage or directly or indirectly jeopardize conservation of the environment shall be punishable by law.

Belarus

Article 46
Everyone shall be entitled to a pleasant environment and to compensation for loss or damage caused by the violation of this right.

Article 55
It shall be the duty of everyone to protect the environment.

Brazil

Article 5
LXXIII. any citizen has standing to institute an action seeking to annul an act to the public property or to property pertaining to an entity in which the State participates, to administrative morality, to the environment, and to historical and cultural monuments, and the plaintiff shall, except in the vent of proven bad faith, be exempt from court costs and from the burden of loss of suit;

Article 225
(0) All persons are entitled to an ecologically balanced environment, which is an asset for the people's common use and is essential to healthy life, it being the duty of the Government and of the community to defend and preserve it for present and future generations.
(1) In order to ensure the effectiveness of this right, it is incumbent upon the Government to:
I. preserve and restore essential ecological processes and provide ecological handling
of the species and ecosystems;
II. preserve the variety and integrity of Brazil's genetic wealth and supervise entities engaged in research and handling of genetic material;
III. determine, in all units of the Federation, territorial spaces and components which are to receive special protection, any alteration and suppression only being allowed by means of a law, and any use which adversely affects the integrity of the attributes which justify their protection being forbidden;
IV. demand, according to the law, for the installation of works or activities which may cause significant degradation of the environment, a prior environment impact study, which shall be made public;
V. control the production, marketing, and use of techniques, methods, and substances which represent a risk to life, to the quality of life, and to the environment;
VI. promote environmental education at all school levels and public awareness of the need to preserve the environment;
VII. protect the fauna and the flora, all practices which jeopardize their ecological function, cause the extinction of species or subject animals to cruelty being forbidden according to the law.
(2) Those who explore mineral resources shall be required to restore the degraded environment according to the technical solution required by the proper government agency, according to the law.
(3) Conduct and activities considered harmful to the environment shall subject the individual or corporate wrongdoers to penal and administrative sanctions, in addition to the obligation to repair the damages caused.
(4) The Brazilian Amazon Forest, the Atlantic Woodlands, the "Serra do Mar", the "Pantanal Mato Grossense" and the Coastline are part of the national wealth, and they shall be used, according to the law, under conditions which ensure preservation of the environment, including the use of natural resources.
(5) Vacant governmental lands or lands seized by the States through discriminatory actions, which are necessary to protect natural ecosystems, are inalienable.
(6) Power plants operated by nuclear reactor shall have their location defined in a federal law and may otherwise not be installed.

**Bulgaria**

Article 55 [Environment]
Citizens shall have the right to a healthy and favorable environment corresponding to the established standards and norms. They shall protect the environment.

**Chechen Republic**

Article 34 []
(1) The citizens of Chechen Republic have the right to favorable environment.
(2) The damage caused to citizen, his health or property by wrongful actions in the area of nature utilization is liable to compensation.

**Congo (Brazzaville)**

Article 46 [Environment]
ACEL Submission on Greening the ACT Bill of Rights
Each citizen shall have the right to a healthy, satisfactory, and enduring environment and the duty to defend it. The State shall strive for the protection and the conservation of the environment.

Article 47 [Waste Management, Pollution Compensation]
(1) Storing, manipulating, incinerating, and discharging toxic, polluting or radio-active wastes originating in factories and other industrial or artisan units installed on the national territory shall be regulated by law.
(2) All pollution resulting from an economic activity shall give compensation for the benefit of the populations of the exploited zones.
(3) The law shall determine the nature of compensatory measures and the forms of their execution.

Article 48 [Polluting Liabilities]
(1) The transport, importation, storage, concealment, dumping, in the continental waters and maritime space under the national jurisdiction and including the exclusive economic zone, and dispersal in the airspace, of toxic, polluting, or radioactive wastes or any other dangerous product of a foreign origin shall constitute a crime punishable by law.
(2) Any accord relative to these domains shall be prohibited.

Article 65 [Environment]
(1) Every individual shall have the duty 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.
(2) Also, he shall have the duty not to negatively effect his environment nor the well-being of his neighbors.

Estonia

Article 53 [Preservation of Human and Natural Environment]
Everyone shall be obligated to preserve human and natural environment and to compensate for damages caused by him or her to the environment. The procedures for compensation shall be determined by law.

Ethiopia

Article 43 The Right to Development
1. The right of the peoples of Ethiopia collectively, or the nations, nationalities and peoples in Ethiopia, individually, to improve their standard of living and to sustainable development is guaranteed.
2. Citizens shall have the right to participate in national development, and in particular, to demand that their opinions be heard on matters of policies and of projects pertaining to the community of which they are members.
3. International agreements entered into or relations formed by the State shall be such as to guarantee the right to the sustainable development of Ethiopia.

Article 44 Right to the Protection of the Environment.
1. Everyone has the right to a clean and healthy environment.

**Federal Republic of Yugoslavia**

Article 52 []
(1) Man shall be entitled to a healthy environment and timely information about its condition.
(2) It is everyone's duty to protect the human environment and make use of it in a rational manner.
(3) The state shall be charged with maintaining a healthy human environment and to this end shall prescribe the conditions and manner of the performance of economic and other activities.

**Finland**

Section 14a [Environment, Cultural Heritage]
(1) Everyone shall be responsible for the natural world and for its diversity, for the environment and for the cultural heritage.
(2) Public authorities shall strive to ensure for everyone the right to a healthy environment as well as the opportunity to influence decision-making concerning his living environment.

**Georgia**

Article 37.

3. Everyone has the right to live in a healthy environment and use natural and cultural surroundings. Everyone is obliged to protect the natural and cultural surroundings.

**Guyana**

25. Every citizen has a duty to participate in activities designed to improve the environment and protect the health of the nation.

**Haiti**

ARTICLE 52-1: Civic duties are the citizen's moral, political, social and economic obligations as a hole to the State and the country. These obligations are:

a. To respect the Constitution and the national emblem;
b. To respect the laws;
c. To vote in elections without constraint;
d. To pay his taxes;
e. To serve on a jury;
f. To defend the country in the event of war;
g. To educate and improve himself;
h. To respect and protect the environment;
i. To respect scrupulously the revenues and properties of the State;
j. To respect the property of others;
k. To work to maintain peace;

ACEL Submission on Greening the ACT Bill of Rights
l. To provide assistance to persons in danger;
m. To respect the rights and freedom of others.

**Hawaii (Indigenous peoples Constitution)**

Article I Declaration of Fundamental Rights
Ke Akua has endowed every human being with rights and equal protection with the inherent and inalienable rights that shall not be denied nor infringed upon. Every individual person is born free by nature and is accorded the mutual respect of these rights. Every individual person has the corresponding obligation, duty and responsibility to honor and respect these basic fundamental rights before the law.

Section 1 The Fundamental Rights
(a) The right of everyone to life, liberty and the pursuit of happiness.
(b) The right of everyone to religious freedom and spiritual practices, providing that it does not infringe on anyone's right to life, liberty and their pursuit to happiness.
(c) The right of everyone to choose one's nationality.
(d) The right of everyone to liberty of movement and freedom to choose one's residence.
(e) The right of everyone to be free from discrimination, regardless of race, creed, color, age, nationality, religion, gender or disability.
(f) The right of everyone to a healthy and sustainable environment.
(g) The right of everyone to a living according to the fruits of their labor.
(h) The right of everyone to work.
(i) The right of everyone to freedom of association.
(j) The right of every citizen to take part in government.
(k) The right of every citizen to vote.
(l) The right of everyone to freedom of speech.
(m) The right of everyone to an education.
(n) The right of everyone to privacy.
(o) The right of everyone to personal property.
(p) The right of everyone to be self-sufficient.
(q) The right to a nuclear free and independent Pacific.
(r) The right of everyone to speak the language of their choice.

**India**

Article 51A Fundamental duties
It shall be the duty of every citizen of India -
(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
(c) to uphold and protect the sovereignty, unity and integrity of India;
(d) to defend the country and render national service when called upon to do so;
(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
(f) to value and preserve the rich heritage of our composite culture;
(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
(i) to safeguard public property and to abjure violence;
(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Kyrgyz Republic

Article 35
1. Citizens of the Kyrgyz Republic shall have the right to a healthy and safe environment and to the indemnification of damage, caused to one’s health or property by the improper use of the nature.
2. Protection of the environment, natural resources and historical monuments shall be a sacred duty of every citizen.

Madagascar

Article 35 [Minority Rights]
(1) The Fokonolona may take appropriate measures to prevent destruction of their environment, loss of their land, seizure of herds of cattle, or loss of their ceremonial heritage, unless these measures jeopardize the common interest or public order.
(2) The coverage and terms of these provisions shall be determined by law.

Article 39 [Environment]
Everyone shall have the duty to respect the environment; the State shall assure its protection.

Moldova

Article 55. [The protection of the environment and the protection of the monuments]
Each person is obliged to protect the environment, to contribute to the conservation and preservation of the monuments of history and culture.

Mongolia

Article 16 [Citizen's Rights]
The citizens of Mongolia are enjoying the following rights and freedoms:
1) The right to life. Deprivation of human life is strictly prohibited unless capital punishment as constituted by Mongolian penal law for the most serious crimes is imposed as final decision by a competent court.
2) The right to healthy and safe environment and to be protected against environmental pollution and ecological imbalance.

Article 17 [Citizen's Duties]
(1) Citizens of Mongolia, while upholding justice and humanism, shall fulfill in good faith...
the following basic duties:
1) to respect and abide by the Constitution and other laws;
2) to respect dignity, reputation, rights, and legitimate interests of others;
3) to pay taxes levied by law;
4) to defend the motherland and serve in the army according to law.

(2) It is a sacred duty for every citizen to work, protect his or her health, bring up and educate his or her children and to protect nature and the environment.

**Norway**

Article 110 b

Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. 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.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.

The State authorities shall issue further provisions for the implementation of these principles.

**Paraguay**

Article 7 Right to a Healthy Environment
(1) Everyone has the right to live in a healthy, ecologically balanced environment.
(2) The preservation, recovery, and improvement of the environment, as well as efforts to reconcile these goals with comprehensive human development, are priority objectives of social interests. The respective laws and government policies will seek to meet these objectives.

**Poland**

Article 71
Citizens of the Republic of Poland shall have the right to benefit from the natural environment and it shall be their duty to protect it.

Article 74 [1]
(1) Public authorities shall pursue policies ensuring the ecological security of current and future generations.
(2) Protection of the environment shall be the duty of public authorities.
(3) Everyone shall have the right to be informed of the quality of the environment and its...
protection.
(4) Public authorities shall support the activities of citizens to protect and improve the quality of the environment.

Article 86 [ ]
Everyone shall care for the quality of the environment and shall be held responsible for causing its degradation. The principles of such responsibility shall be specified by statute.

Portugal
Article 66 Environment and Quality of Life
(1) Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it.
(2) It is the duty of the State, acting through appropriate bodies and having recourse to or taking support on popular initiatives, to:
a) Prevent and control pollution, its effects and harmful forms of erosion;
b) Order and promote regional planning aimed at achieving a proper location of activities, a balanced social and economic development, and resulting in biologically balanced landscapes;
c) Create and develop natural reserves and parks and recreation areas and classify and protect landscapes and sites so as to ensure the conservation of nature and the preservation of cultural assets of historical or artistic interest;
d) Promote the rational use of natural resources, safeguarding their capacity for renewal and ecological stability.

Republic of Croatia

Article 69 [Health, Environment, Nature]
(1) Everyone has the right to a healthy life.
(2) The Republic ensures citizens the right to a healthy environment.
(3) Citizens, government, public and economic bodies, and associations are bound, within their powers and activities, to pay special attention to the protection of human health, nature, and the human environment.

Republic of Hungary

Article 18 [Healthy Environment]
The Republic of Hungary recognizes and shall implement the individual's right to a healthy environment.

Republic of Macedonia

Article 43
(1) Everyone has the right to a healthy environment to live in.
(2) Everyone is obliged to promote and protect the environment.
(3) The Republic provides conditions for the exercise of the right of citizens to a healthy environment.

Romania

Article 41 [Property, Foreigners' Restrictions]
(1) The right of property, as well as the debts incurring on the State are guaranteed. The content and limitations of these rights shall be established by law.
(2) Private property shall be equally protected by law, irrespective of its owner. Foreigners and stateless persons may not acquire the right of property on land.
(3) No one may be expropriated, except on grounds of public utility, established according to the law against just compensation paid in advance.
(4) For projects of general interest, the public authorities are entitled to use the subsoil of any real estate with the obligation to pay compensation to its owner for the damages caused to the soil, plantations, or buildings, as well as for other damages imputable to these authorities.
(5) Compensations provided under Paragraph (3) and (4) shall be agreed upon with the owner, or by the decision of the court when a settlement cannot be reached.
(6) The right of property compels to the observance of duties relating to environmental protection and ensurance of neighborliness, as well as of other duties incumbent upon the owner, in accordance with the law or custom.
(7) Legally acquired assets may not be confiscated. Legality of acquirement shall be presumed.
(8) Any goods in ended for, used or resulting from a criminal or minor offence may be confiscated only in accordance with the provisions of the law.

Russian Federation

Article 36
(1) Citizens and their associations shall have the right to have land in their private ownership.
(2) The possession, use and management of the land and other natural resources shall be freely exercised by their owners provided this does not cause damage to the environment or infringe upon the rights and interests of other persons.
(3) The terms and procedures for the use of land shall be determined on the basis of federal laws.

Article 42
Everyone shall have the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.

Article 58
Everyone shall be obliged to preserve nature and the environment, and care for natural wealth.
Slovakia

Article 44
(1) Everyone has the right to an auspicious environment.

(2) Everyone is obliged to protect and enhance the environment and the cultural heritage.
(3) No one must endanger or damage the environment, natural resources, and the cultural heritage beyond the extent established by law.
(4) The state looks after an economical use of natural resources, ecological balance, and effective environmental care.

Article 45
Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of its condition.

South Africa

4. Everyone has the right:
   a. to an environment that is not harmful to their health or well-being; and
   b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that:
      i. prevent pollution and ecological degradation;
      ii. promote conservation; and
      iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

South Korea

Article 35 [Environment, Housing]
(1) All citizens have the right to a healthy and pleasant environment. The State and all citizens shall endeavor to protect the environment.
(2) The substance of the environmental right is determined by law.
(3) The State endeavors to ensure comfortable housing for all citizens through housing development policies and the like.

Slovenia

Article 72 Healthy Living Environment
(1) Each person shall have the right in accordance with statute to a healthy environment in which to live.
(2) The State shall be responsible for such an environment. To this end, the conditions and the manner in which economic and other activities shall take place shall be regulated by statute.
(3) The conditions under which any person damaging the environment shall be obliged to make compensation shall be determined by statute.
(4) The protection of animals from cruelty shall be regulated by statute.
Spain

Article 45 [Environment]
(1) Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.
(2) The public authorities shall 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, supporting themselves on an indispensable collective solidarity.
(3) For those who violate the provisions of the foregoing paragraph, penal or administrative sanctions, as applicable, shall be established and they shall be obliged to repair the damage caused.

Sweden

Article 2
(1) Public power shall be exercised with respect for the equal worth of all and for the freedom and dignity of the individual.
(2) The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. In particular, it shall be incumbent upon the public administration to secure the right to work, housing and education, and to promote social care and social security and a good living environment.
(3) The public administration shall promote the ideals of democracy as guidelines in all sectors of society. The public administration shall guarantee equal rights to men and women and protect the private and family lives of the individual.
(4) Opportunities should be promoted for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own.

Tajikistan

Article 38: Each person has the right to health care. This right is ensured through free medical assistance in governmental health care institutions, measures to improve the condition of the environment, formation and development of mass athletics, physical fitness, and other sports. Other forms of medical assistance to be provided are determined by law.

Thailand

Section 57. (bis) Every person shall have a duty to conserve natural resources and environment as the law provided.

Turkey

ARTICLE 56. Everyone has the right to live in a healthy, balanced environment.

It is the duty of the State and the citizens to improve the natural environment, and to prevent environmental pollution.
To ensure that everyone lead their lives in conditions of physical and mental health and to secure cooperation in terms of human and material resources through economy and increased productivity, the State shall regulate central planning and functioning of the health services.

The State shall fulfill this task by utilizing and supervising the health and social assistance institutions, in both the public and private sectors.

In order to establish widespread health services general health insurance may be introduced by law.

Ukraine

ARTICLE 45.

Every person has the right to a safe and healthy environment, and to compensation for damages resulting from the violation of this right.

The law guarantees every person the right to free access to information on the environmental situation, the quality of food and housing equipment, as well as the dissemination of such information.

ARTICLE 62.

No person may damage the environment, cultural heritage, and shall pay compensation for damage caused by him/her.
Uzbekistan

Article 50: Citizens are obligated to treat the natural environment with care.

Article 54: A property owner, at her or his own discretion, owns, uses, and disposes of property belonging to her or him. The use of property may not cause harm to the environment or violate the rights or legally protected interests of citizens, legal persons, or the government,
COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
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Item 4 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED HUMAN RIGHTS AND THE ENVIRONMENT

Final report prepared by Mrs. Fatma Zohra Ksentini, Special Rapporteur

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INTRODUCTION

1. The environment, development, democracy, human rights: these are the key issues which characterize the close of this century and pose a continuing challenge to the establishment of an order in which, in conformity with the Universal Declaration of
Human Rights, the rights set out therein can be fully realized. Revolt against oppression, the quest for justice, the search for progress and the pursuit of development are fundamental concerns of mankind. They were apparent in the acts of the Founder and King of Babylon, Hammurabi, who, 16 centuries before Jesus Christ, sought to bring in the reign of justice to protect the weak from being wronged. They also emerge from the thoughts of the Confucian Meng-tzu who, 300 years before Jesus Christ, asserted: "The individual is infinitely important; what matters least is the person of the sovereign". They also mark Antigone's act of revolt when she invoked her right to disobedience in order to transgress the orders of the King, and Spartacus' courage when he led the slaves to break their chains.

2. When, on 10 December 1948, the international community solemnly proclaimed the Universal Declaration of Human Rights, it acknowledged the dynamics of the triptych of oppression-revolt-repression, and underscored in two essential preambular paragraphs that "disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people" and that "it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".

3. The Universal Declaration also underscores the full importance of the legal expression of human rights and of establishing a legal framework that provides effective remedies. The protection of human rights by the rule of law indeed remains one of the means of democratic expression of claims, within a structured framework that guarantees legal action while fostering dialogue.

4. For the particular purposes of this study of human rights and the environment, it is equally important to establish the legal framework for pursuing what have become the essential demands of this century, in order to take up the legitimate concerns of our generation, to preserve the interests of future generations and mutually to agree upon the components of a right to a healthy and flourishing environment.

5. The Special Rapporteur remains convinced that providing the various agents and beneficiaries of this evolving right with the legal framework and means of expression, communication, participation and action will reinforce the channels for dialogue, discussion and cooperation nationally, regionally and internationally, thereby making it possible to define the mutually agreed component of this right as well as its harmonious application, in conformity with the universally recognized fundamental principles of human rights. Human rights would thereby gain a new dimension. In addition, they should make it possible to go beyond reductionist concepts of "mankind first" or "ecology first" and achieve a coalescence of the common objectives of development and environmental protection. This would signify a return to the principal objective that inspired the Universal Declaration of Human Rights, whose article 28 states: "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

6. For many years environmental problems were almost exclusively considered from the standpoint of the pollution in one part of the world, i.e. the industrialized countries. "Immediately after the Stockholm Conference, perception of environmental problems was limited to a specific geographical area, the industrialized countries, and reduced to the simplest of terms, pollution". Mohammed Sahnoun, "Environnement et développement", Revue algérienne des relations internationales, No. 8, 1987, OPU, Algiers. Acknowledgement of the link between the environment and human rights
was fostered by an awareness of the global, complex, serious and multidimensional nature of environmental problems. Moreover, attention is being focused more and more on environmental deterioration wherever it occurs, on understanding its causes and on examining its repercussions and the risks involved.

7. This new attitude has the virtue of going beyond the limited framework and narrow vision that previously circumscribed environmental problems, and it tackles the issue from a universal angle, involving a global economic, social and cultural approach to which it adds the human dimension (the human right to a healthy and balanced environment and to "sustainable development"). As regards this notion of "sustainable development", see the work of the World Commission on Environment and Development, General Assembly resolution 42/186 dated 11 December 1987 and entitled "Environmental Perspective to the Year 2000 and Beyond".

A. Origin of the study
8. In Decision 1989/108 dated 31 August 1989, adopted without a vote, the Sub-Commission on Prevention of Discrimination and Protection of Minorities asked Mrs. Fatma Zohra Ksentini to prepare a concise note setting forth methods by which a study could be made of the problem of the environment and its relation to human rights. The above decision also indicates that the information on human rights and the environment provided to the Sub-Commission at its forty-first session by Friends of the Earth, the Sierra Club Legal Defense Fund, Inc. and the Association of Humanitarian Lawyers, and by certain members, together with the Environmental Perspective to the Year 2000 and Beyond (General Assembly resolution 42/186, dated 11 December 1987) justified the Sub-Commission's consideration of this issue.

9. On 6 March 1990 the Commission on Human Rights adopted resolution 1990/41, entitled "Human rights and the environment", in which it underscored the link between the preservation of the environment and the promotion of human rights and welcomed the decision of the Sub-Commission to have a note prepared for its forty-second session on methods by which a study on the problems of the environment and its relation to human rights could be made.

10. Although this is the first time the Sub-Commission has considered environmental problems as a whole and in relation to human rights, it has already dealt with some aspects of the problem, such as the movement and dumping of toxic and dangerous products and wastes (resolution 1988/26, dated 1 September 1988). See also the report prepared by the Secretary-General in accordance with Commission on Human Rights resolution 1989/42 (E/CN.4/Sub.2/1989/3).

11. Debates within the Sub-Commission and the Commission, together with written observations submitted to the Special Rapporteur pursuant to resolution 1989/108, have focused on the following points:
(a) A universal awareness of the scale, seriousness and complexity of environmental problems;
(b) The need for appropriate national, regional and international measures to address such problems;
(c) The close link between the environment and human rights. Some human rights violations are allegedly the causes of or factors in environmental degradation; moreover, deterioration of the environment affects the enjoyment of human rights (life, health, work, information, participation, self-determination, the right to development, to peace and security, and so on);
(d) Specific regional and other development projects were advanced as illustrations of environmental degradation and infringement of human rights;
(e) The Sub-Commission and the Commission on Human Rights should focus greater attention on the environmental problems that affect human rights.

B. Terms of reference of the Special Rapporteur


13. The Sub-Commission examined the progress report (E/CN.4/Sub.2/1992/7 and Add.1) containing an analysis of national and international provisions and the decisions and comments of human rights bodies relating to human rights and the environment as well as information on the results of the United Nations Conference on Environment and Development held in Rio de Janeiro from 3 to 14 June 1992, in which the Special Rapporteur participated as an observer.

14. In resolution 1992/31 dated 27 August 1992, the Sub-Commission took note with appreciation of the progress report and requested the Special Rapporteur to continue her study and to submit to the Sub-Commission at its forty-fifth session a second progress report containing additional information and an analysis of decisions and views of international human rights organs and other relevant organs, as well as information on and an analysis of national laws and practice. The Commission on Human Rights endorsed this request in decision 1993/144 dated 10 March 1993.

15. The Special Rapporteur submitted her second progress report (E/CN.4/Sub.2/1993/7) in which she reviews developments in regard to the recognition and implementation of environmental rights as human rights on the basis of the standards and practices developed at the national, regional and universal levels. The report contains preliminary recommendations with a view to the submission of conclusions and final recommendations to the Sub-Commission at its forty-sixth session, in conformity with paragraph 3 of resolution 1992/31 of the Sub-Commission.


17. The Special Rapporteur wishes to express her gratitude to the members of the Sub-Commission, States, United Nations organs, specialized agencies and non-governmental organizations for the information with which they have provided her and for the advice they have given. See annexes to this report: II (Meetings with, and contributions of, experts and non-governmental organizations) and III (Developments in national legislation and practices, essentially composed on the basis of replies
received from Governments). She wishes to mention, in particular, the support given by the Sierra Club Legal Defense Fund, Inc., which has committed itself totally to this study and provided valuable assistance in organizing international meetings, including a seminar in Geneva from 15 to 19 May 1994, for the purpose of drawing up the guiding principles annexed to this report. She also wishes to thank the participants whose presence and expertise enabled her to improve the text submitted in the form of "draft principles on human rights and the environment".

18. Throughout the period of her mandate, the Special Rapporteur has received communications from Governments and non-governmental organizations drawing her attention to specific situations. As a rule she has used them as a source for identifying emerging trends, their use being restricted to the thematic aspects of the study for which she was responsible.

19. As the study concerns human rights and the environment, the Special Rapporteur's main concern has been to bring out those aspects of the environment that affect the enjoyment of human rights. As a result, the sources drawn on in preparing this report have essentially been the relevant international human rights instruments and the legislation and practices developed in this area nationally, regionally and universally. In this respect, the replies of Governments and intergovernmental and non-governmental organizations have proved very useful, as have the Special Rapporteur's consultations with representatives of Governments, international agencies, human rights bodies and non-governmental organizations, and with representatives of indigenous peoples.

C. Plan of the study

20. With these considerations in mind, this study will comprise six chapters. Chapter I is devoted to the legal foundations of the right to the environment. Chapter II addresses the specific relationship between development and the environment. Chapter III concerns other aspects of the relationship between human rights and the environment. Chapters IV and V analyse the impact of the environment on vulnerable groups and on the enjoyment of fundamental rights. In chapter VI, the Special Rapporteur sets out her conclusions and recommendations. The annexes contain a draft declaration of principles on human rights and the environment, an overview of consultations with non-governmental organizations and a summary of national legislation and practices compiled by the Special Rapporteur, essentially on the basis of replies by Governments.

CHAPTER I. FROM ENVIRONMENTAL LAW TO THE RIGHT TO A SATISFACTORY ENVIRONMENT: LEGAL FOUNDATIONS

A. General provisions

21. Environmental protection is not solely a concern of this day and age; this moral principle may be found in the precepts of Islam. Ibn Jarir al-Tabari narrates the recommendations of the first Caliph, Abu Bakr as-Siddiq, to the commander of the Arab armies, Ussama Ibn Zeid, who led an expedition towards the "Sham" (Syria): "Remember that you are always under the eye of God, behave like men, do not run away, nor let the blood of women or children and old people stain your victory. Do not destroy palm trees, do not burn houses or fields of wheat, never cut down fruit trees and kill cattle only when you need to eat it. When you sign a treaty, make sure you respect its clauses. As you advance, you will meet men of faith living in
monasteries and who serve God through prayer; leave them alone, do not kill them and do not destroy their monasteries”.

22. International environmental regulations, which emerged from a worldwide movement and a collective realization of the dangers threatening our planet and the future of mankind, were initially sectoral and essentially envisaged within the traditional framework of inter-State relations; they have finally attained a global dimension, which has made possible the shift from environmental law to the right to a healthy and decent environment.

23. The qualitative leap taken at the United Nations Conference on the Human Environment (Stockholm, 5-16 June 1972) was preceded by sectoral regulations dating back to the turn of the century with the drafting of the Paris International Convention for the Protection of Birds useful to Agriculture. The obligation to protect the environment during armed conflict is considered to derive from the customary norms of international humanitarian law, and in particular the St. Petersburg Declaration of 1868, which laid down restrictions on methods of conducting hostilities by asserting that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military force of the enemy".

24. International environmental law has developed to such an extent that there are some 350 multilateral treaties, 1,000 bilateral treaties and a multitude of instruments of intergovernmental organizations that have been adopted in the form of declarations, programmes of action and resolutions. International regulations initially focused on combating maritime, river and air pollution and radioactivity. The latter is illustrated by the Treaty of Moscow of 5 August 1963 Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, the Antarctic Treaty, signed in Washington on 1 December 1959, and the conventions and standards drawn up under the aegis of International Atomic Energy Authority to safeguard against the risks of irradiation and to ensure the physical protection of nuclear material.

25. Regulation of global transboundary pollution has made it possible to define a range of relevant principles which, according to Michel Prieur, "may be considered as binding upon States". "La protection de l'environnement", Annuaire français de droit international, 1991, p. 1093. In this respect he cites the following principles:

Before engaging in any activity that may have perceptible effects on the environment of another State, the State under whose jurisdiction or control the activity is to take place must assess its consequences;

It must inform the other State and transmit to it relevant details of the project, provided they constitute information and data whose transmission is not prohibited by national legislation or by relevant international treaties;

In the case of activities liable to damage the environment of another State, it must consult the State concerned if the latter so requests;

States must urgently inform the other States likely to be affected, cooperate by providing mutual assistance in order to take the necessary preventive measures and, where necessary, eliminate, mitigate or repair the environmentally harmful consequences;

If the activities that take place within the jurisdiction or under the control of a State damage, or are liable to damage, the environment of another State, the latter's residents who are affected or liable to be affected by them must be able to have access to the administrative and judicial procedures of the State in which the environmental damage originates, on the same conditions as residents of that State. If persons living abroad have already suffered damage, the same remedies must be available to them as
to residents. During these procedures, non-residents must receive the same treatment as residents;
A State must not discriminate in its legislation or in the application of that legislation on the basis of the location of the environmentally harmful effects, by applying less stringent rules to activities whose adverse environmental effects are felt beyond its frontiers.

26. As early as 1968, in resolution 2398 (XXII) dated 3 December 1968, the General Assembly underscored the consequent effects of impairment of the quality of the human environment on the condition of man and on his enjoyment of basic human rights. In the same year, the Proclamation of Tehran drew attention to the fact that, while recent scientific discoveries and technological advances had opened vast prospects for economic, social and cultural progress, such developments might nevertheless endanger the rights and freedoms of individuals and would require continuing attention (A/CONF.32/41, Proclamation, para. 18). The Stockholm Declaration of 1972 went on to recognize the relationship between the environment, man and his basic rights, even the right to life itself.

27. The Declaration of the 1972 United Nations Conference on the Human Environment See Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (United Nations publication, Sales No. E.73.II.A.14). contains, in addition to its 26 principles, an Action Plan for the Human Environment, which made possible the establishment of the United Nations Environment Programme, decided upon by the General Assembly. General Assembly resolution 2997 (XXVII). Although it is not mandatory, the Stockholm Declaration none the less represents a set of values whose fundamental nature is acknowledged by the international community. The Declaration proclaims that "man is both creature and moulder of his environment" and that "Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights - even the right to life itself". The question of environmental protection and improvement is described as "a major issue which affects the well-being of peoples and economic development throughout the world ... and the duty of all Governments". The Declaration recognizes that "In the developing countries most of the environmental problems are caused by underdevelopment. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation". The Declaration also recognizes that "To defend and improve the human environment for present and future generations has become an imperative goal for mankind - a goal to be pursued together with" the achievement of the goals of peace and development.

28. Noteworthy among the essential principles defined by the Stockholm Declaration is Principle 21, in accordance with which:
"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

29. The concept of the international responsibility of States implied by this principle is also present in Principle 12 of the decision adopted on 19 May 1978 by the Governing Council of the United Nations Environment Programme concerning shared natural resources. It is also evident, in the provisions of the Charter of Economic Rights and Duties of States, General Assembly resolution 3281 (XXIX) of 12
December 1974. which asserts the sovereign right of States over their wealth and natural resources, while affirming their responsibility to protect and preserve the environment for present and future generations. The Charter also emphasizes the special responsibility of occupying Powers over territories under their domination and the obligation to preserve such territories from the plundering of their natural resources.

30. Principle 1 of the Stockholm Declaration is also noteworthy. It states: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated".

31. The relationships established by the Stockholm Declaration between the environment, development, satisfactory living conditions, dignity, well-being and individual rights, including the right to life, constitute recognition of the right to a healthy and decent environment, which is inextricably linked, both individually and collectively, to universally recognized fundamental human rights standards and principles, and which may be demanded as such by their beneficiaries, i.e. individuals alone or in association with others, communities, associations and other components of civil society, as well as peoples.

32. Many documents have since been adopted by international, regional and national bodies to strengthen the notion of the right to the environment and underscore its interdependence with other human rights (the Declaration on Social Progress and Development adopted in General Assembly resolution 2542 (XXIV), dated 11 December 1969 the Charter of Economic Rights and Duties of States; "By stating that economic, political and other relations must be governed in particular by the principle of respect for human rights and fundamental freedoms, this instrument asserts the need to work towards establishing the essential conditions for protecting, preserving and improving the environment". Andrzej Makarewicz, "La protection internationale du droit à l'environnement", Environnement et droits de l'homme, edited by Pascale Kromarek, UNESCO, 1987. United Nations environmental programmes, including resolution 42/186, dated 11 December 1987, relating to the Environmental Perspective to the Year 2000 and Beyond; See also General Assembly resolution 36/43, dated 19 November 1981, in which the General Assembly endorses the Global Strategy for Health for All by the Year 2000 adopted by the World Health Assembly on 22 May 1981, and General Assembly resolution 37/137 of 17 December 1982 relating to the publication and updating of a list of products harmful to health and the environment. General Assembly resolution 37/7, dated 28 October 1982, proclaiming the World Charter for Nature).

33. The World Charter for Nature proclaims 24 principles of conservation "by which all human conduct affecting nature is to be guided and judged", with as its basic precept the idea that "nature shall be respected and its essential processes shall not be impaired". Particular attention should be drawn to the following principles, which are directly linked to the rights set out in the international human rights instruments (right to health, to well-being, to an education, to participate in decision-making).

Principle 11, which concerns in particular the control of activities which might have an impact on nature, assessment of their consequences and environmental impact studies of development projects, and the rehabilitation of degraded areas for purposes
in accord with their natural potential and compatible with the well-being of affected populations;
Principle 15, relating to broad dissemination of knowledge of nature, particularly by "ecological education as an integral part of general education";
Principle 23, which recognizes that "All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation";
Principle 24, pursuant to which "each person has a duty to act in accordance with the provisions" of the Charter and each person "acting individually, in association with others or through participation in the political process ... shall strive to ensure that the objectives and requirements" of the Charter are met.

B. International human rights instruments

34. International human rights instruments contain few specific provisions relating to the environment. The Universal Declaration of Human Rights recognizes that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". It is generally accepted that the "order" to which the Declaration refers also covers the environmental concerns of this day and age.

35. In article 24, the African Charter on Human and Peoples' Rights states that "All people shall have the right to a general satisfactory environment favourable to their development".

36. The Additional Protocol to the American Convention on Human Rights (San José, 1969), which relates to economic, social and cultural rights, adopted at San Salvador in 1988, contains a clause concerning the right to an environment. Article 11 provides that everyone shall have the right to live in a healthy environment and to have access to basic public services; the States parties are required to promote the protection, preservation and improvement of the environment.

37. The Convention on the Rights of the Child, dated 20 November 1989, explicitly refers to the need for the education of the child to be directed, inter alia, to "the development of respect for the natural environment" (art. 29, para. (e)). Moreover, as with most other instruments, many of its provisions are intended to be implemented from an ecological standpoint, bearing in mind the relationship between the environment, development and human rights (see para. 31 above).

38. These links are even more apparent where children are concerned in view of their vulnerability. From this standpoint, the following articles cannot be dissociated from environmental considerations: article 6 (inherent right of a child to life, survival and development); article 11 (protection against transfer); articles 12, 13, 14 and 15 (freedom of opinion, expression, thought and association); article 16 (protection of privacy and against arbitrary or unlawful interference [cf. case law of the European Court of Human Rights relating to infringements of privacy]); articles 17 and 29 on the role of the media, information and education; article 19 concerning protection against all forms of violence, abandonment, neglect, ill-treatment (cf. in this connection the phenomenon of urban growth and its effects on the well-being of children; the problems of abandoned children and street children); article 22 on refugee children (bearing in mind the concept of environmental refugees); article 24 on the right to health, including preventive health care; article 27 on the right of every child to a standard of living adequate for his or her physical, mental, spiritual, moral
and social development; article 30 on the protection of the rights of indigenous children or children belonging to minorities.

39. The same is true of the other international human rights instruments. Without claiming to provide an exhaustive list, the way in which these instruments should be implemented from an ecological standpoint may be illustrated by the following examples.

(a) Universal Declaration of Human Rights

40. In addition to article 28, referred to above, the fifth preambular paragraph (worth of the human person; social progress; better standard of life); article 22 ("Everyone ... is entitled to realization ... of the economic, social and cultural rights indispensable for his dignity and the free development of his personality"); article 24 (right to rest and leisure); article 25 (right to an adequate standard of living).

(b) Proclamation of Tehran

41. Article 18 calls for vigilance concerning scientific discoveries and technological advances which, although they have opened vast prospects for economic, social and cultural progress, may nevertheless endanger the rights and freedoms of individuals.

(c) International Covenant on Economic, Social and Cultural Rights

42. Article 1 (right of peoples to self-determination and to freely dispose of their natural wealth and resources), article 7 (a decent living, safe and healthy working conditions, rest and leisure), article 11 (right to an adequate standard of living, and to be free from hunger; programmes to improve methods of production, conservation and distribution of food; disseminating knowledge of principles of nutrition; measures to achieve the most efficient development and utilization of natural resources; equitable distribution of world food supplies), article 12 (right to health; steps to be taken for the healthy development of the child, improvement of all aspects of environmental and industrial hygiene), article 15 (right to enjoy the benefits of scientific progress and its applications).

(d) International Covenant on Civil and Political Rights

43. Article 1 (right of peoples to self-determination and to freely dispose of their natural wealth and resources), article 6 (right to life), article 7 (prohibition of cruel, inhuman or degrading treatment or punishment, medical or scientific experimentation without the consent of the person concerned), article 17 (arbitrary or unlawful interference with privacy or the family) and article 20 (prohibition of propaganda for war).

(e) International Convention on the Elimination of All Forms of Racial Discrimination

44. The flagrant discrimination to which marginalized persons, vulnerable groups, minorities and indigenous peoples are subjected vis-à-vis ecological risks, raises sharply the issue of the effective implementation of the basic principle of non-discrimination set out in the Convention, and that of the practical implementation of all the provisions of the Convention on behalf of disadvantaged individuals and groups (and more particularly article 5 on the right to equal treatment before the tribunals, the right to security of person, political and civil rights, economic, social and cultural rights, the right of access to any place or service intended for use by the general public, and article 6 on the right to effective protection and remedies).

(f) Convention on the Elimination of All Forms of Discrimination against Women

45. The observations concerning the Convention referred to above are also valid for this Convention. The Special Rapporteur further wishes to stress the basic role played by women in promoting economic, social, cultural and political activities for sustainable development. She would therefore emphasize the importance of the
participatory role of women and the particular value of the following provisions of the Convention on the Elimination of All Forms of Discrimination against Women: article 5 on measures to be taken to modify adverse social and cultural patterns of conduct of men and women; article 7 on participation in political and public life, particularly the right to vote and to stand for election, the right to participate in the formulation of government policy and the implementation thereof, and the right of participation and association; article 10 on the right of equal access to education; article 11 on the right to work; article 12 on the right to health and to appropriate services during and after pregnancy (with regard to this latter point, environmental factors have a decisive effect on pregnant women, embryos and young children); article 14 on the specific protection of rural women and the efforts to be made to ensure their full participation in the elaboration and implementation of development planning and in its benefits.

(e) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

46. The Convention rightly stresses "the situation of vulnerability in which migrant workers and members of their families frequently find themselves", as well as the need to ensure the international protection of their rights, which should be implemented on the basis of the principle of non-discrimination. The observations concerning the International Convention on the Elimination of All Forms of Racial Discrimination are valid for this Convention also, but the situation of vulnerability mentioned above must be kept in mind.

CHAPTER II. RIGHT TO DEVELOPMENT, PARTICIPATORY DEMOCRACY AND THE ENVIRONMENT

A. Some aspects of the problem
1. Indivisibility and interdependence of all human rights

47. The close relationship which exists between development - recognized as a human right by several international texts, including the Declaration on the Right to Development adopted by the General Assembly in its resolution 41/128 of 4 December 1986 - and the environment throws into relief the indivisible and interdependent nature of all human rights. The idea of indivisibility has already been emphasized by the Proclamation of Tehran of 13 May 1968, which states in paragraph 13 that:

"Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development".

48. General Assembly resolution 32/130 of 16 December 1977 and the subsequent resolutions on "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms" share the objective of "reconciling" different generations of rights and rehabilitating economic, social and cultural rights. This task of reconciliation was to be completed by the Declaration on the Right to Development, which reaffirms in the preamble the principle already embodied in the Universal Declaration of Human Rights of 1948 that:

"everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized".
In article 6 the Declaration on the Right to Development states unequivocally that "All human rights and fundamental freedoms are indivisible and interdependent" and that they should receive equal attention and urgent consideration. Furthermore, the Declaration passes over neither the internal nor the external factors impeding the realization of the right to development (denial of civil, political, economic, social and cultural rights; inappropriate development policies; unfavourable national and international conditions; need to establish a new international economic order, to realize the right of peoples to self-determination and enable them to exercise their inalienable rights to full sovereignty over all their natural wealth and resources; primary responsibility of States for the creation of national and international conditions favourable to the realization of the right to development, and so on).

49. Underlying the links between the right to development and the right to the environment is the notion of the indivisibility and interdependence of all human rights, whether civil or political, economic, social or cultural. Moreover, it is impossible to separate the claim to the right to a healthy and balanced environment from the claim to the right to "sustainable" development, which implies a concentration of efforts to combat poverty and underdevelopment.

2. Poverty, underdevelopment, environmental degradation and enjoyment of human rights

50. The Stockholm Declaration of 1972 affirms the inextricable link that exists not only between the environment and human rights (right to freedom, equality and dignity) but also between the environment and the right to development (right to live under adequate conditions and in an environment of a quality that permits a life of well-being and dignity).

51. For its part, the World Commission on Environment and Development, established by the General Assembly in 1983, submitted a report in 1987 Brundtland Report, "Our Common Future", UNEP/GC.14/13. which is a veritable plea for "sustainable development". The World Commission analysed the crises besetting certain regions of the world and emphasized the interaction of the economy and the environment, of national development policies but also of the world economic system which takes from a poor continent more than it gives to it. The Commission points out that "Debts that they cannot pay force African nations relying on commodity sales to overuse their fragile soils, thus turning good land to desert" (Introduction, para. 19). "As a consequence of the 'debt crisis' of Latin America, that continent's natural resources are now being used not for development but to meet financial obligations to creditors abroad. This approach to the debt problem is short-sighted from several standpoints: economic, political, and environmental. It requires relatively poor countries simultaneously to accept growing poverty while exporting growing amounts of scarce resources" (Introduction, para. 20).

52. It is now widely recognized and acknowledged that poverty and underdevelopment have an adverse effect that causes serious damage to the environment and everywhere impedes realization of the right to development and of other fundamental rights of the individual and of peoples. This cause-and-effect relationship has been demonstrated in many studies. Thus the South Commission, in its report "The Challenge to the South", Report of the South Commission "The Challenge to the South", 1990, Economica, p. 228. affirms that "The North, with its lifestyle conducive to waste, is mainly responsible for the degradation of the environment. But poverty too makes a heavy contribution to that degradation, and an effective strategy designed to eliminate poverty ultimately serves to protect the environment". The South Commission also analyses some aspects of national
development strategies which, when they are inappropriate, inadequate, unsuitable or socially ill-oriented, carry great risks to the environment. By way of illustration, the South Commission argues that the absence of social services in rural areas speeds up the flight to the towns, to which the poor inhabitants emigrate in search of a better level of living (education, health, plumbing, water and well-being). This influx increases the pressure on urban social services and worsens the overpopulation of the towns. The South Commission concludes that the result is chaos and a sordid environment in the towns and desertion of the countryside, and that the only way to break out of this vicious circle is by improving education, health services, water supply and hygiene in rural areas.

53. The data on the extent of poverty given in the preliminary report (E/CN.4/Sub.2/1991/8) have not basically changed. As can be seen from the World Bank's "World Development Report 1992", 1 billion people lack an adequate water supply, and about 1.7 billion people do not have adequate sanitation facilities. "World Development Report 1992", World Bank, Washington 1992, p. 103. UNDP's "Human Development Report 1993" states that in the developing countries some 800 million people still do not get enough food; nearly 1 billion people - 35 per cent of the adult population - are still illiterate; about one third of the world's total population, or 1.3 billion people, are in absolute poverty; about 17 million people die every year from infectious and parasitic diseases; approximately 95 per cent of the 10-12 million HIV-infected people are in the developing world; each day, 34,000 young children still die from malnutrition and disease; two thirds of illiterates are women; internal conflicts affect some 60 countries, and about 35 million people are refugees or internally displaced; more than 850 million people live in areas that are suffering from desertification. "Human Development Report 1993", Paris, Economica, data taken from box 1.2, p. 12.

54. It is impossible to draw up an exhaustive or final balance sheet showing the effect of environmental degradation on human rights the enjoyment of which is already very much affected by underdevelopment and poverty (intolerable infant mortality and undernourishment; illiteracy; lack of primary health care and of social services; precarious housing; marginalization of the underprivileged strata, or even racism and discrimination; non-participation in the conduct of public affairs and in the country's political, economic and cultural decision-making, and so on). It is easy to see, however, that the poor populations, the underprivileged strata, the minority groups and others are the most affected in that they are more vulnerable to ecological risks and repercussions (absence of legal and material means of protection; lack of access to information; lack of suitable care, etc.). Furthermore poverty, underdevelopment and marginalization reduce the prospects of economic, social and cultural integration or reintegration of the victims. Those victims find themselves in a vicious circle which includes a series of violations of human rights: assaults on life and health; degradation of living conditions and disintegration of the family unit; unemployment; emigration, exodus, resettlement and even forced migrations which lead to further violations of human rights (racism; discrimination; xenophobia; acculturation; violations of dignity and arbitrary detention; refoulement; marginalization; precarious living and housing conditions; prostitution; drugs; street children, etc.).

3. The external factors

55. The structure of international relations, and more particularly the burden of debt and the impact of structural adjustment measures on the least favoured categories, may constitute serious impediments to the achievement of sustainable development.

56. The Brundtland report referred to above had already noted that:
"A mainspring of economic growth is new technology, and while this technology offers the potential for slowing the dangerously rapid consumption of finite resources, it also entails high risks, including new forms of pollution and the introduction to the planet of new variations of life forms that could change evolutionary pathways. Meanwhile, the industries most heavily reliant on environmental resources and most heavily polluting are growing most rapidly in the developing world, where there is both more urgency for growth and less capacity to minimize damaging side effects" (Introduction, para. 14).

57. There is indeed a considerable risk that the developing countries, ill-informed as they are or pursuing growth at all costs, will become the outfall of the polluting industries which the North, alerted or impelled by well-informed public opinion, wishes to remove from its own doorstep.

58. One author, analysing the combined effect of certain development policies on the environment, noted that "today it is widely acknowledged that certain international policies in the fields of investment, trade and aid may have harmful effects on environmental conditions. The conditions laid down by IMF, for example, may give rise to policies that generate practices that in their turn cause the destruction of the environment. The imposition of extensive agricultural production on marginal land, with the aim of increasing a given country's exports and improving its balance of payments, may have catastrophic results." Mohammed Sahnoun, op.cit.

59. The Special Rapporteur of the Sub-Commission on the question of the realization of economic, social and cultural rights notes for his part that "structural adjustment package policies, which invariably include increasing exports, often result in the overexploitation of natural resources, which counteracts governmental attempts to solve environmental problems." E/CN.4/Sub.2/1992/16, para. 118, p. 32. The author goes on to make an exhaustive analysis of the effects of adjustment on the exercise of economic, social and cultural rights. E/CN.4/Sub.2/1991/17, pp. 36-50, especially paras. 124-166.

60. The developing countries' debt now exceeds 1,500 billion United States dollars. It is agreed by various sources that the debt crisis has brought with it an unprecedented reverse flow of capital from the countries of the third world to the developed countries. The countries of the South are estimated to have paid some 500 billion dollars to the North between 1982 and 1990.

61. According to the European Network on Debt and Development (EURODAD), the reimbursement of the debt should not take priority over the fundamental rights of the populations of debtor countries to food, housing, clothes, work, health services, and a healthy and viable environment. Each country should have access to sufficient resources to permit sustainable and sustained development and growth. EURODAD, "Target 92", 1991, p. 16.

62. The Global Consultation on the Right to Development as a Human Right for its part noted that "Transfer of control of resources located in developing countries to interests in developed countries, which intensified in the 1980s, is another obstacle to development. Similarly, the growing burden of indebtedness and structural adjustment falls heaviest on the poorest and weakest sectors of society and has clear human rights implications." "The realization of the right to development", Consultation, Geneva, 8-12 January 1990, HR/PUB/91/2, 1991, para. 166, p. 48.

B. Right to development; sustainable and environmentally sound development
63. Awareness of the major challenges emerging both as regards development and with reference to the environment has made possible a consensus on the concept of "sustainable and environmentally sound development" which the "Earth Summit", meeting in Rio in 1992, endeavoured to focus by defining an ambitious programme of action, Agenda 21, clarified by a Declaration of 27 principles solemnly adopted on that occasion. The Special Rapporteur does not intend to revert to the results of this Conference, which she outlined in her earlier reports. See E/CN.4/Sub.2/1992/7/Add.1 and E/CN.4/Sub.2/1993/7. However, she wishes to refer to the features which seem to her to underlie the consensual approach to environmental problems.

64. Reference should be made at this point to the content of the Declaration on International Economic Cooperation adopted by the General Assembly in May 1990, in particular the "Revitalization of economic growth and development of the developing countries", which pays ample heed to the environment, thus forging an inseparable link between development and the environment. The Declaration recognizes that "Economic development must be environmentally sound and sustainable," (para. 16) and notes that "The current threat to the environment is the common concern of all. All countries should take effective actions for the protection and enhancement of the environment in accordance with their respective capacities and responsibilities and taking into account the specific needs of developing countries. As the major sources of pollution, the developed countries have the main responsibility for taking appropriate measures urgently. The economic growth and development of developing countries are essential in order to address problems of the degradation and protection of the environment. New and additional financial resources will have to be channelled to developing countries," (para. 29).

65. One should in this respect bear in mind the premises, defined by the General Assembly in resolution 44/228 of 22 December 1989, premises which, according to the Secretary-General, "were accepted when the nations of the world called for the United Nations Conference on Environment and Development". A/CONF.151/PC/100/Add.1, para. 3. It will be noted in particular that this resolution stresses that the major cause of the deterioration of the environment is the "pattern of production and consumption, particularly in the industrialized countries" and that "the responsibility for containing, reducing and eliminating the global environmental damage must be borne by the countries causing such damage". It recognizes that "new and additional financial resources will have to be channelled to developing countries in order to ensure their full participation in global efforts for environmental protection". It was also decided to examine "environmental degradation and the international economic environment... without introducing new forms of conditionality". The examination of strategies for national and international action conducive to "sustained and environmentally sound development" should take place "bearing in mind that the incorporation of environmental concerns and considerations in development planning and policies should not be used to introduce new forms of conditionality in aid or in development financing and should not serve as a pretext for creating unjustified barriers to trade".

66. The Agenda 21 programme is considered as giving expression to the now accepted principle whereby responsibilities are shared but separate, in accordance with the similarly accepted principle that the polluter pays - reaffirmed in Principle 16 of the Declaration of Rio, on the basis of the idea that "the polluter should, in principle, bear the cost of pollution", and establishing a global partnership on a new and equitable basis. In this
context, "environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it" (Principle 4), while the eradication of poverty is "an indispensable requirement for sustainable development" (Principle 5). The "common but differentiated responsibilities" of States imply acknowledgement of the responsibility the developed countries bear "in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command" (Principle 7). In addition to the principle enshrined in the Declaration, the United Nations Conference on Environment and Development agreed on the need to support and complement the efforts of developing countries and recognized that the implementation of the Agenda 21 programmes would require providing developing countries with substantial new and additional financial resources. The Conference also recognized the importance of achieving during solutions to the debt problem.

C. Development, participation and the environment
67. The idea of partnership, initiated by the Earth Summit, is also based on the notion of participatory democracy at all levels, nationally and internationally. It thus ties in with the principle contained in article 1, paragraph 1, of the Declaration on the Right to Development that the right to development is also "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."
68. A development strategy which did not take into account the human, social and cultural dimension could have only adverse repercussions on the environment. It was emphasized in particular at the Global Consultation on the Right to Development as a Human Right that "What constitutes 'development' is largely subjective, and in this respect development strategies must be determined by the people themselves and adapted to their particular conditions and needs".
69. Failure to take part in decision-making, whether internationally or nationally, has been and still is at the origin of development choices or the imposition of development strategies which have had serious adverse effects on the environment. In this respect, the internal and external factors affecting the realization of the right to development are so many elements affecting the realization of the right to the environment. It may thus be said that a national development strategy is viable from the economic, social and ecological standpoint only if it gains the active adherence of the various social strata of the population. Such adherence cannot be gained on the basis of denying the rights of the human person, whether civil and political or social, cultural and economic (discrimination, racism, slavery, servitude, forced migration; freedom of thought, information, participation, association and expression; the right to work, to health, to an adequate level of living and to fair remuneration; cultural rights, etc.). Such adherence will also be lacking if the development model recommended is incompatible with the fundamental socio-cultural characteristics of the populations concerned. In this context attention should be drawn to some conclusions reached at the Global Consultation on the Right to Development as a Human Right, which acknowledged that:
"Development strategies which have been oriented merely towards economic growth and financial considerations have failed to a large extent to achieve social justice; human rights have been infringed, directly and through the depersonalization of social
relations, the breakdown of families and communities, and of social and economic life" (para. 153).

70. The right to participation has both individual and collective dimensions; it covers economic, social, cultural and political aspects which give full meaning to the concept of democracy. Without going back to the fruitful discussions on this issue, the Special Rapporteur wishes to emphasize the full importance of the concept of participatory democracy in the context of the environment, without which the concept of sustainable development would be totally without substance.

71. The United Nations Conference on Environment and Development had the merit of stressing the importance of this participation by including it in various solemnly adopted principles (see in particular Principle 10 of the Declaration of Rio on the participation of citizens, Principle 20 on the participation of women, or Principle 22 on the participation of indigenous people and their communities). Moreover, the underlying principle of the implementation of Agenda 21 is the adequate reinforcement of the role which the main groups are required to play. A whole section is devoted to this issue. The Conference was of the opinion that critical to the effective implementation of the objectives, policies and mechanisms agreed to by Governments in all programme areas of Agenda 21 would be the commitment and genuine involvement of all social groups, and that one of the fundamental prerequisites for the achievement of sustainable development was broad public participation in decision-making. Furthermore, the Conference recognized, in the specific context of environment, "the need for new forms of participation" and "the need of individuals, groups and organizations to participate in environmental impact assessment procedures and to know about and participate in (pertinent) decisions".

72. The Conference implicitly linked the notion of real participation in the right of access to information by noting that "Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information on environmental protection measures". Ibid. The link between participation and information can also be found in Principle 10 of the Declaration of Rio.

73. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, places particular emphasis on participatory democracy and states solemnly that "Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives." A/CONF.157.23, Sect. I, para. 8.

CHAPTER III. OTHER ASPECTS OF THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

A. Indigenous peoples and the environment

74. "This we know, the Earth does not belong to man; man belongs to the Earth. This we know, all things are connected, like the blood which unites one family. Whatever befalls the Earth, befalls the sons of the Earth. Man did not weave the thread of life; he is merely a strand in it. Whatever he does to the web he does to himself." This letter from Chief Seattle, Patriarch of the Duwamish and Squamish Indians of Puget
Sound to United States President Franklin Pierce (1855) underlines the specific relationship of indigenous peoples to the land.

75. The Special Rapporteur considers the issue of indigenous peoples' rights and the environment of such importance that it warrants attention in her final report. The human rights problems facing indigenous peoples due to environmental factors are rapidly increasing. The number of communications received, the seriousness of the many situations presented, and the need for a multifaceted approach militate in favour of attention being paid to this issue. In this light, the Special Rapporteur has welcomed the interest of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which, in paragraph 2 of its resolution 1990/27 of 31 August 1990, invited the Special Rapporteur "to take into account the special relationship between fragile habitats and indigenous peoples, especially with regard to sustainability". The Commission on Human Rights, in its resolution 1991/44 of 5 March 1991, requested the Secretary-General to invite indigenous peoples and their organizations to provide the Special Rapporteur with information for this study.

76. The Special Rapporteur presented an introductory discussion of indigenous peoples' rights and the environment in her Note, in her preliminary report, in her first progress report, and in her second progress report. E/CN.4/Sub.2/1990/12, para. 33 and note 9; E/CN.4/Sub.2/1991/8, paras. 23-30; E/CN.4/Sub.2/1992/7, paras. 19, 94-95, 99; E/CN.4/Sub.2/1992/7/Add.1; E/CN.4/Sub.2/1993/7, paras. 29-32, 69, 89-90, 126. She received useful information at meetings with indigenous leaders that took place in New York and San Francisco in 1991 and in Rio de Janeiro in conjunction with the Global Forum at the United Nations Conference on Environment and Development in 1992. She also has received numerous communications from indigenous peoples and their organizations throughout the period of the study and has reviewed a wide range of materials from other non-governmental organizations and from United Nations and other sources.

77. As indigenous representatives have pointed out to the Special Rapporteur, international, regional and national action taken by indigenous peoples and their organizations to promote and protect their rights have always focused on the need of indigenous peoples to protect their traditional territories. This is because removal from or destruction or degradation of traditional lands inevitably leads to serious loss of life and health and damage to the cultural integrity of indigenous peoples. Describing his people's relationship to the land, in 1885 Chief Seattle stated: "My people venerate each corner of this land, each shining pine needle, each sandy beach, each wreath of mist in the dark woods, each glade, each humming insect; in the thought and practice of my people, all these things are sacred. The sap rising in the tree carries the memory of the red man." Cited in Mario Ibarra, "Traditional practices in respect of the sustainable and environmentally sound self-development of indigenous people" (E/CN.4/Sub.2/1992/31/Add.1), para. 94.

78. Echoing Chief Seattle, one Indian leader stated to the Working Group on Indigenous Populations at its 1985 session: "Our principal and fundamental struggle is for the land, our territory and natural resources ... Our defence of the land and natural resources is for the cultural and human survival of our children ... For us, the first thing is to secure our land, which belongs to us by right, because we are the true owners of the land and natural resources. We indigenous peoples know that without land there can be no education, there can be no health and there can be no life." J. Uranavi, Statement on behalf of the International Work Group for Indigenous Affairs, 1985.
79. Experts in the field have been particularly critical of large-scale development schemes in Indian lands, as reflected in the background papers submitted at the United Nations Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States (Geneva, 16-20 January 1989). In one background paper, Prof. Rodolfo Stavenhagen writes: "Much damage has been done to the indigenous peoples through economic development projects ... The isolated, marginal areas often occupied by indigenous peoples constitute the last great and, until recently, unexploited reserves of natural resources. Neither State planners nor multinational corporations nor international development agencies have hesitated to 'incorporate' these areas into the national and international economy. In the process, indigenous peoples have suffered genocide and ethnocide." E/CN.4/1989/22, annex III C, para. 3.

80. Another expert, Prof. Vitit Muntarbhorn, writes: "[Cultural] disintegration is compounded by destruction of the ecology and habitat upon which indigenous groups depend for their physical and cultural survival. Deforestation, particularly of rain forests, and pollution introduced by outsiders jeopardize the modus vivendi of indigenous groups. The social nexus binding members of the group to the environment is thus annihilated." Ibid, annex III A, pp. 27-28.

81. In part as a reflection on the comments of the experts at the 1989 seminar, the issue of indigenous peoples was addressed at the 1990 Global Consultation on the Realization of the Right to Development. Once again, the assessment of the environmental factors of human rights and indigenous peoples was harsh: "The experience of indigenous peoples and development clearly demonstrated that human rights and development are inseparable, for the abuse of the rights of indigenous peoples is principally a development issue. Forced development has deprived them of their human rights, in particular the right to life and the right to their own means of subsistence, two of the most fundamental of human rights. Indigenous peoples have been, in fact, victims of development policies which deprive them of their economic base - land and resources - and they are almost never the beneficiaries. "It was underlined that the most destructive and prevalent abuses of indigenous rights are a direct consequence of development strategies that fail to respect the fundamental right of self-determination. Using illustrations, participants described how indigenous peoples are routinely perceived as obstacles to development and excluded from decision-making in matters that affect them. The result has been the elimination and degradation of the indigenous land base; destruction, degradation and removal of natural resources, water, wildlife, forests and food supplies from indigenous lands either through commercial exploitation or incompatible land use; the degradation of the natural environment; removal of indigenous peoples from their lands; and their displacement or pre-emption from the use of their lands by outsiders." The realization of the right to development, Global Consultation on the Right to Development as a Human Right, United Nations publication, (HR/PUB/91/2).

82. The relationship between environmental concerns, development and the rights of indigenous peoples was also addressed at the 1992 United Nations Conference on Environment and Development and at the 1993 United Nations Conference on Human Rights. It was also a prominent feature in issues addressed in conjunction with the 1993 International Year for the World's Indigenous People.

83. The United Nations and its specialized agencies have long been concerned with the human rights of indigenous peoples. International action to safeguard the rights of indigenous peoples has increasingly focused on the land and environmental issues.
For example, in 1957 ILO promulgated the Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (No. 107). This Convention was revised by the Convention concerning Indigenous and Tribal Peoples in Independent Countries, (1989 No. 169), primarily to address the land rights issue. These two Conventions are the only international treaties specifically concerning indigenous peoples, although a number of indigenous groups signed treaties with Governments during the period of penetration of indigenous lands. The subject of treaties, arguments and other constructive arrangements between States and indigenous populations is now under review by the Sub-Commission and its Special Rapporteur, Mr. Miguel Alfonso Martínez.

84. The revised Convention shows the influence of indigenous peoples and their organizations in its new emphasis on land and the vital importance of land to indigenous peoples. Convention No. 169 represents substantial progress at the international level. Article 4 requiring special measures to protect the environment of indigenous peoples is especially important. This mandate is reinforced by article 7, which requires the direct participation of indigenous peoples and environmental impact studies prior to any development schemes in their territories. Part II (arts. 13-19) of the Convention specifically addresses land: article 13 recognizes the "special importance for the cultures and spiritual values" of their land; article 14 recognizes land ownership rights; article 15 recognizes the right to resources of their own lands; article 16 protects indigenous peoples from unlawful relocation from their lands; article 17 provides for procedures for redress, including the requirement that Governments prevent indigenous people from being deprived of their land by unscrupulous acts; article 18 require penalties for land violations; article 19 requires provision of adequate land to enable indigenous peoples to live and increase normally.

85. ILO has a well-developed enforcement process by which indigenous peoples could seek remedies for the violation of the Convention. Regrettably, few Governments have ratified Convention No. 169 and there is no public information regarding complaints that are lodged. Additional ratifications will provide increased access to the ILO dispute-resolution mechanisms, including a procedure by which individuals may petition the ILO Governing Body through recognized representative organizations. Under other ILO procedures, organizations may call the matter to the attention of ILO in the form of a "representation". Or the ILO Governing Body may open a complaint on its own motion or at the insistence of a delegate to the International Labour Conference. Both representations and complaints are investigated, and the results may be published if the situation is not corrected.


86. The study on racial discrimination, begun by the Special Rapporteur of the Sub-Commission, Mr. Hernán Santa Cruz, in 1965, contained a chapter on indigenous peoples. Hernán Santa Cruz, Racial Discrimination, United Nations publication, Sales No. E.71.XIV.2, 1971. The Special Rapporteur's suggestion that the United Nations study the situation of indigenous peoples in a comprehensive fashion led to the appointment in 1971 by the Sub-Commission of Mr. José Martínez Cobo to carry out such a study. His report José Martínez Cobo, "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add. 1-4). Addendum 4 containing the conclusions and recommendations, issued as a United Nations publication, Sales No. E.86.XIV.3. contains much discussion about indigenous peoples and their land. In 1981, the Sub-Commission proposed the establishment of
the Working Group on Indigenous Populations, which met for the first time in 1982. The Working Group has prepared a draft declaration on indigenous rights, which is still under consideration by the Working Group. Throughout the drafting period, indigenous land rights and environmental concerns have been the most keenly contested, with indigenous organizations insistent that any formulation of their rights must firmly protect their lands from exploitation and ecological degradation. Their concern is clearly reflected in the 1992 draft as contained in the report of the Working Group on its tenth session, E/CN.4/Sub.2/1992/33, annex I, especially in operative paragraphs 17-20 and 38 which the Special Rapporteur set out in her second progress report, E/CN.4/Sub.2/1993/7, para. 89.


88. In her review of cases brought to the Human Rights Committee and to the Inter-American Commission on Human Rights by or on behalf of indigenous peoples, the Special Rapporteur is impressed by the fact that the human rights violations at issue almost always arise as a consequence of land rights violations and environmental degradation and indeed are inseparable from these factors. In her progress report E/CN.4/Sub.2/1992/7, the Special Rapporteur described Communication No. 167/1984 addressed to the Human Rights Committee by Chief Ominayak and the Lubicon Lake Band of Canada involving the threat to the lives and traditional ways and culture of the Band posed by oil and gas exploitation. The Human Rights Committee found violations of article 17 (minority/cultural rights) of the International Covenant on Civil and Political Rights in that case. Report of the Human Rights Committee (A/45/40), vol.II, annex IX A.

89. At the Inter-American Commission on Human Rights the two cases already presented by the Special Rapporteur - the Yanomani case in Brazil Case 7615 of 5 March 1985, in the annual report of the Inter-American Commission on Human Rights, 1984-1985 (OEA/Ser.L/V/II.66, doc. 10 rev.1), referred to by the Special Rapporteur in E/CN.4/Sub.2/1992/7, para. 94 and E/CN.4/Sub.2/1993/7, para. 69. and the Huaorani case in Ecuador Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana, petition filed 25 June 1990 and now subject of in situ investigation by the Inter-American Commission, referred to by the Special Rapporteur in E/CN.4/Sub.2/1992/7, para. 95 and E/CN.4/Sub.2/1993/7, para. 69. raise questions concerning violations of the right to life, the right to health, the right to the promotion and protection of indigenous peoples' culture caused by development projects in their traditional territories. Other cases reviewed by the Inter-American Commission include the Guahibo Indians of Colombia, the Ache and Toba-Maskoy of Paraguay, the Miskito of Nicaragua, the Mayan of Guatemala, the Inuit and Athabascan of Alaska, the Kanaka Maoli of Hawaii. The Inter-American Commission has also raised Indian human rights issues in reports of States parties to the American Convention on Human Rights, Organization of American States, Treaty Series 36, involving the human rights consequences of displacement from and/or degradation of traditional indigenous lands.
90. The Inter-American Commission, in its Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, OEA/Ser.L/V/II.62/doc.10 rev. 3 of 29 November 1983 and OEA/Ser.L/V/II.62/doc. 26 of 16 May 1994, analysed relocation of indigenous peoples from their traditional lands from the point of view of human rights. The Commission found that involuntary relocation of indigenous peoples could be justified only under article 27 of the American Convention which allows for derogation of rights "in time of war, public danger, or other emergency that threatens the independence or security of a State Party". The Inter-American Commission reiterated that the danger must be extremely serious. However, involuntary relocation under these circumstances "should not outlive the emergency, and termination of the emergency should allow the return of the civilian populace to their original region". Inter-American Commission, ibid., pp. 112-118. The Inter-American Commission asserted that relocation for lesser national goals, such as economic development, do not meet article 27 criteria, and may not be undertaken involuntarily. Ibid.

91. National courts are also increasingly being presented with indigenous human rights issues. Here too, the preponderance of cases involve indigenous lands and subsistence rights being effected by confiscation, degradation, inappropriate development or inappropriate regulation. In her second progress report, the Special Rapporteur described the Organización Indígena de Antioquia v. Codechoco y Madarien, Decision of the Third Agrarian Court of the District of Antioquia, Colombia (24 February 1993), in which the court emphasized that the destruction of the forest lands of indigenous peoples places their lives and cultures in danger. In this regard the Special Rapporteur would also like to note that in Regina v. Sparrow, Supreme Court reports of 31 May 1990, the Canadian Supreme Court in 1990 upheld the fishing rights of Canadian indigenous peoples. In holding that Canada must be held to a "high standard of honourable dealing", the Court emphasized that the rights of indigenous peoples "must be interpreted flexibly to permit their evolution over time". The Special Rapporteur notes with interest initiatives by indigenous peoples themselves to encourage indigenous self-development. The 1992 United Nations Technical Conference referred to above produced a wide array of useful strategies, many of them currently employed by indigenous people. Recent sessions of the Inter-Commission Task Force on Indigenous Peoples of the IUCN World Conservation Union, at which indigenous leaders and others exchanged information and presented case studies on indigenous sustainable development, Reports of a 1994 session in New Mexico, USA, and a 1993 session in Gland, Switzerland, are available from the IUCN World Conservation Union. are also encouraging developments. The Special Rapporteur is pleased by the increasing cooperation between indigenous peoples and their organizations and environmental organizations which should enhance the abilities of indigenous peoples to preserve their territories from ecological destruction. 93. In spite of some encouraging events, the Special Rapporteur is aware that existing efforts to protect indigenous peoples' rights and their fragile habitat have been inadequate. The situation of indigenous peoples, especially as it relates to human rights and the environment, is at a critical point. No one single solution can hope to address the multifaceted problems. None the less, she is aware that alternatives to large-scale development schemes, with their potentially destructive consequences, exist.

94. These alternatives must be encouraged. Indigenous peoples must genuinely participate in all decision-making regarding their lands and resources. The
international community, in particular the United Nations and regional monitoring procedures, must respond accordingly.

B. Protection of the environment in periods of armed conflict

95. Montesquieu wrote in *L'esprit des lois*: "The right of peoples is naturally based on this principle - that the various nations must in peace do one another the greatest good and in war the least evil". Despite the United Nations Charter's prohibition - in Article 2, paragraph 4 - of the use of force in international relations, war unfortunately remains a constant that fully demonstrates the value of international humanitarian law, a law which imposes rules for the conduct of hostilities, restricts the methods and means of warfare, and protects persons, property and environment liable to be affected in conflicts.

96. The principle of humanity and the concept of proportionality impose limits on war, the Declaration of St. Petersburg recognizing as early as 1868 that "the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy".

97. For their part, the Hague Conventions of 18 October 1907 and the regulations relating thereto contain provisions which deal with the protection of the environment, even though this term is not expressly used. In a report submitted to the General Assembly in 1993, See A/48/269, sect. II. ICRC rightly notes that "The destruction of property in times of armed conflict is also restricted by customary international law".

98. The Stockholm Declaration of 1972, apart from enunciating the general duty to protect and improve the environment, expressly states, in Principle 26, that "Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons".

99. The World Charter for Nature recognizes that "Nature shall be secured against degradation caused by warfare or other hostile activities" (sect. I, para. 5) and that "Military activities damaging to nature shall be avoided" (sect. III, para. 20).

100. These fundamental principles find their legal expression in various international instruments, and more particularly in the 1977 Protocol I Additional to the Geneva Conventions of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts. Protocol I contains two provisions relating to the protection of the environment:

"Article 35 - Basic rules

..."3. It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment.

...

"Article 55 - Protection of the natural environment

"1. Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population.

"2. Attacks against the natural environment by way of reprisals are prohibited."

101. As emphasized by the International Committee of the Red Cross (ICRC) in its reply to the Special Rapporteur, Letter DDN/JUR/89/1405 AAB/VR of 29 December 1989. several factors have generally speaking prompted States to adopt, at the
international level, rules relating to the protection of the environment: growing awareness of the deterioration of the environment; the realization of the risks entailed for the environment by certain technical and technological developments; or finding that certain types of damage to the environment are international in character. In the case of the protection of the environment in periods of armed conflict (principal sphere of application of the rules of international humanitarian law), two additional factors may be mentioned: the evaluation of the damage caused by the massive use of defoliants during the Viet Nam war, and a concern to differentiate ever more precisely between military objectives and civilian property.

102. In its analysis of the articles cited above, ICRC considers that the two provisions, which appear similar, do not duplicate one another, given the place they occupy in the systematics of the treaty and the objective they pursue: article 35, paragraph 3, falls within the context of methods and means of warfare and refers in particular to the principle - fundamental in international humanitarian law - whereby it is forbidden to inflict unnecessary harm. It protects the environment as such and is therefore broader in scope than article 55, which is intended to protect the civilian population from the effects of warfare on the environment. In both cases the following are prohibited: (a) attacks on the environment as such; and (b) making use of the environment as an instrument of warfare". Above-mentioned reply to the Special Rapporteur and document DOM/DIRHPG/AAB/RAF entitled "Protection of the natural environment in time of armed conflict: an overview of the state of international humanitarian law and of the position of the International Committee of the Red Cross", Geneva, 7 August 1991.

103. ICRC considers that, besides article 35, paragraph 3, and article 55, other provisions of Protocol I touch incidently on protection of the environment in armed conflict. In particular, article 56 deals with the danger to the environment resulting from the destruction of dams, dykes or nuclear electrical generating stations. Under the heading "Protection of objects indispensable to the survival of the civilian population", article 54 prohibits in certain circumstances the destruction of, among other things, agricultural areas or irrigation works. Finally, article 36 obliges the parties to Protocol I to determine whether the acquisition, development or use of a new weapon would be compatible with international law. Of course, the rules on the protection of the environment are to be taken into account during this assessment.

104. Several other legal instruments also deal with protection of the environment in wartime, in particular: the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, of 17 June 1925; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 10 April 1972; the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, of 10 December 1976; the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects, of 10 October 1980; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, of 13 January 1993; the Convention for the Protection of Cultural Property in the event of Armed Conflict, of 14 May 1954; and the Convention concerning the Protection of the World Cultural and Natural Heritage, of 23 November 1972.

105. ICRC states that the rules protecting the victims of non-international armed conflict are less well developed than those governing international armed conflict. Article 3 common to the four Geneva Conventions of 1949 does not say anything
about protecting the environment during civil wars; it addresses only humanitarian issues in the strictest sense. Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, contains no provisions relating explicitly to the environment. However, article 14, on the protection of objects indispensable to the survival of the civilian population, has a direct impact on warfare and the environment, with its prohibition of attacks on agricultural areas, irrigation works and so on.

106. The protection of the environment in time of armed conflict has come tragically to the fore in the Iran-Iraq conflict, the Gulf war and in the conflict in the former Yugoslavia. Although the ecological consequences of these recent conflicts cannot yet be determined precisely, they have fuelled questions about the content, limits, shortcomings and indeed effectiveness of international humanitarian law intended to protect the environment as such, together with persons and their property, against damage to the environment in the course of hostilities. See in particular:

- Antoine Bouvier, "La protection de l'environnement naturel en période de conflit armé", Revue internationale de la Croix-Rouge, No. 792, 1991;
- Philippe Antoine, "Droit international humanitaire et protection de l'environnement en cas de conflit armé"; Adams Roberts "La destruction de l'environnement pendant la guerre du Golfe de 1991"; and Antoine Bouvier "Travaux récents relatifs à la protection de l'environnement en période de conflit armé", Revue internationale de la Croix-Rouge, No. 798, 1992;

107. Although the United Nations Conference on Environment and Development did not pay the closest attention to the question of protection of the environment in periods of armed conflict, Agenda 21 states that "Measures in accordance with international law should be considered to address, in times of armed conflict, large-scale destruction of the environment that cannot be justified under international law". In addition, the Declaration of Rio recognizes, in Principle 24, that "Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary".

108. For its part, the General Assembly adopted decision 46/417 on 9 December 1991 at the conclusion of its deliberations on the agenda item entitled "Exploitation of the environment as a weapon in times of armed conflict and the taking of practical measures to prevent such exploitation". It decided, in resolution 48/30 of 9 December 1993, to continue to consider the question of the protection of the environment in periods of armed conflict in the context of the United Nations Decade of International Law. At the same time, it took note with appreciation of the results of the International Conference on the Protection of War Victims, (Geneva, 30 August to 1 September 1993), and its Final Declaration "as an important means for reaffirming, strengthening and promoting international humanitarian law", and reminded "all States of their responsibility to respect and ensure respect for international humanitarian law in order to protect the victims of war".

109. The aims of this Conference, convened by the Swiss Government on the initiative of ICRC, were, inter alia "to elicit a strong reaction from the various States to widespread violations of international humanitarian law" and to consider "the measures which the States undertake and should further develop to prevent violations of international humanitarian law". On the question of the environment, the
participants solemnly declared the need to "Reaffirm and ensure respect for the rules of international humanitarian law applicable during armed conflicts protecting cultural property, places of worship and the natural environment, either against attacks on the environment as such or against wanton destruction causing serious environmental damage, and continue to examine the opportunity of strengthening them".

110. In conclusion, the participants affirmed their "conviction that, by preserving a spirit of humanity in the midst of armed conflicts, international humanitarian law keeps open the road to reconciliation, facilitates the restoration of peace between the belligerents, and fosters harmony between all peoples". The Special Rapporteur fully shares this conviction. Its translation into reality depends on the realization of the commitment entered into by the States parties to the Geneva Conventions to "respect and to ensure respect for" these Conventions "in all circumstances", and on the positive measures to be taken with a view to the prevention of conflicts and of violations of humanitarian law.

C. The environment, and international peace and security


112. The present potential for purposeful or even accidental environmental harm is a serious threat to peace and security, whether during war or in peacetime. Nuclear weapons and biological and chemical substances can eliminate much if not all of life. There are now many methods of altering the climate and destroying essential foodstuffs, and the deprivation that would certainly follow would create social unrest and instability. Population pressures, with or without intentional environmental degradation, will inevitably lead to States vying with each other for resources essential for survival.

113. The International Law Commission recognizes the ominous potential of purposeful environmental destruction and has characterized serious and intentional harm to the environment as a crime against humanity. In the course of the debates in the Commission, it has been stated that acts with grave consequences to humans and the environment should be considered crimes and that there should be culpability for "flagrant errors and omissions". The debates also reflect the growing trend that destruction of the property of an ethnic group should be included in the concept of environmental harm.

114. In the Special Rapporteur's view, acts with substantial environmental and human damage falling short of crimes against humanity can still have a negative impact on international peace and security and are within the scope of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the
Benefit of Mankind, the Charter of Economic Rights and Duties of States, and other relevant international instruments. The International Law Commission has also been considering this problem in preparing a draft instrument on international liability for injurious consequences arising out of acts not prohibited by international law. Work on this topic began in 1978. Mr. Robert Quentin-Baxter was Special Rapporteur from 1978 until 1985. In 1985, Mr. Julio Barboza was appointed Special Rapporteur.

115. The World Health Organization has for its part notified the Economic and Social Council that, pursuant to resolution WHA 46.40 adopted by the World Health Assembly on 14 May 1993, the Director-General filed in the Registry of the International Court of Justice a request for an advisory opinion on the following question:

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law, including the WHO Constitution?" E/1994/16.

116. The Special Rapporteur believes that it would also have been useful to ask that distinguished Court whether the manufacture, testing, possession and stockpiling of nuclear weapons and other weapons of mass destruction are lawful under international law.

CHAPTER IV. ENVIRONMENTAL DEGRADATION AND ITS IMPACT ON VULNERABLE GROUPS

A. Overview

117. Major environmental crises, such as the 1967 (Torrey Canyon), 1978 (Amoco Cadiz) and 1980 (EKOFIX) oil-spills, the Seveso (1976) and Bhopal (1984) chemical disasters, and the Chernobyl nuclear accident (1986), have highlighted the transnational nature of their impact and their multidimensional repercussions. The state of the environment is nowadays perceived as a worldwide problem that should be addressed globally, in a coordinated and coherent manner and through the concerted efforts of the international community. Issues such as the preservation of natural balances, the stability of the ecosystem as a whole, the preservation of natural resources or the very survival of the Earth are urgent because of the scale of environmental damage to the planet and its impact on the individual, on his well-being, and consequently on the enjoyment of fundamental rights, including the right to life.

118. According to the World Commission on Environment and Development (Brundtland Commission), since 1970, when the first Earth Day was celebrated, the world has lost almost 200 million hectares of forest; 11.4 million hectares of tropical forest have disappeared each year; one fifth of arable land has been affected by desertification. The Commission analysed the ecosystems and economic structures of various developed and developing countries. It drew attention to the need to match regulatory measures with planning in order to achieve "sustainable development" that would make it possible to satisfy the needs of present generations without jeopardizing the opportunities of future generations. The 1992 Earth Summit again highlighted the major threats looming over the planet and the interaction among various phenomena, as is illustrated by the following examples:

1. Climate changes

119. Emissions resulting from human activities increase the atmospheric concentration of gases producing a greenhouse effect. The greenhouse effect will take the form of heating up the planet, probably accompanied by a rise in the level of the
sea that might seriously threaten the sea and the climate. The rise in that level in many parts of the world, in particular islands and low-lying areas, will have an effect on life, land, lifestyles, natural resources, cultural heritage and so on. Apart from the fact that the varying effects of climate on socio-economic systems have always imposed substantial constraints on development, the climate changes expected from the greenhouse effect may render those constraints utterly unbearable (effects on the water cycle and on food production chains; floods and drought; increase in the number, intensity and seriousness of natural disasters). These phenomena, while producing their own adverse effects on the enjoyment of human rights, will also worsen several existing problems and will affect most of all those populations, regions and countries that are particularly vulnerable.

120. In the words of the Ministerial Declaration of the Second World Climate Conference, "The potential impact of such climate change could pose an environmental threat of an up to now unknown magnitude; and could jeopardize the social and economic development of some areas. It could even threaten survival in some small island States and in low-lying coastal, arid and semi-arid areas".

A/45/696/Add.1, annex, second preambular paragraph.

2. Deforestation and wood stripping

121. Forests are subjected to a great many natural and man-made pressures (climate changes; air pollution; intensive logging, etc.) which have led to substantial losses of standing timber. The stripping and wasting away of forests are in evidence in all parts of the world, whether boreal, temperate or tropical; they contribute to environmental degradation (drought, desertification, erosion, genetic losses, extinction of species of fauna and flora, etc.) and to the disruption of local communities, their way of life and their crops, and impair their well-being and health.

3. Biological diversity

122. According to the progress report of the Secretary-General of the United Nations Conference on Environment and Development on conservation of biological diversity:

"Biological diversity is fundamental to human life. It is a basic feature of the way in which living organisms are structured. As such, it provides support for ecosystems, for the regulation of water and the atmosphere and the basis for agricultural production. When genetic variations are lost, therefore, not only are specific and potential properties and adaptations also lost, but with them species are diminished, ecosystems are impaired and the ability to sustain human life is damaged".

4. Pollution, discharge of toxic and dangerous products, etc.

123. Pollution of the air, water and land from various sources, in particular through industrial disasters, presents great risks to the health, life and well-being of populations. Ecological disasters such as those of Bhopal and Chernobyl, to mention only two, have claimed many victims and caused shifts of population. According to the estimates of the League of Red Cross and Red Crescent Societies, "the Chernobyl disaster affected and still affects some 4 million people who, not to speak of the 135,000 evacuees from the villages closest to the power station, are still living on land contaminated by radiation and growing their food on it. These potential victims fear for their future, fear the illnesses and genetic mutations that the medical experts are still unable to predict; but most of them have nowhere else to go. "Spotlight Tchernobyl", Bulletin of the League of Red Cross and Red Crescent Societies, January 1991.

124. The effects of ecological accidents, whether nuclear or not, are not merely dangerous to health; they are liable to contaminate land, watercourses, the air and the
atmosphere. The same applies to the discharge of untreated wastewater into the ground and into surface water bodies, leading to the concentration of chemicals, dangerous substances and pathogenic agents in living environments. Furthermore these accidents are accompanied by traumas and emotional shocks associated with the evacuation of whole communities, their displacement and the splitting up of families. Another result is the breakdown of the habitual lifestyle of the populations, who in addition live in a state of constant anxiety. The absence or shortage of reliable information about the induced or delayed effects of such disasters does nothing to reassure those populations. In some instances, where the disasters have occurred in underdeveloped regions or have befallen marginalized population groups, the relief, assistance and allowances extended to the victims fall far short of the requisite minimum standards, to the point where it is possible to detect practices akin to a veritable discrimination that flouts the principles of dignity and equality innate in every human being.

5. Transboundary transfer of hazardous wastes

125. The transfer of toxic and dangerous products and wastes across frontiers and their dumping also lead to violations of human rights, not only having regard to the risks incurred by man and his environment but also considering the observed trend to export dangerous substances produced in the North to developing countries, particularly in Africa. These intolerable practices, which impose severe risks on the South, are particularly outrageous in that they transfer problems to particularly vulnerable regions and populations (lack of resources for monitoring and prevention and of appropriate technology; absence of suitable legislation; broken-down sanitation; information that is unreliable, unusable, non-existent or inaccessible).

126. Until the mid-1980s, 80 per cent of the imports and exports of hazardous waste were between developed countries. A.E. Fry: "International Transport of Hazardous Waste", Environmental Science and Technology, 1989, p. 509. In 1988, from 2 to 2.5 million tons of waste were transported among the European member countries of OECD. H. Yakowitz: "Global Hazardous Transfers", Environmental Science and Technology, 1989, p. 540. It was essentially only after 1986 that the North-South trend emerged. In this connection, Greenpeace has pointed out that between 1986 and 1988 over 6 million tons of hazardous waste were exported from the developed countries to the developing countries and the countries of Eastern Europe, in particular Romania and Hungary. Ibid. It also asserted that of the 100 to 300 million tons of waste produced each year by the developed countries, some 50 million were shipped to Africa. S. Rublack: "Fighting transboundary waste streams: Will the Basel Convention help?", Verfassung und recht in ubersee 1989, p. 367.

127. While the local capacity for hazardous waste storage and elimination in the developed countries is steadily declining, the volume of waste produced continues to rise. Thus, the European Union is reported to have the capacity to eliminate an estimated 10 million tons of waste while it produces as much as 30 million tons a year. C. Hitz and J.R. Ehrnfeld: "Transboundary Movement of Hazardous Wastes. A Comparative Analysis of Policy Options to Control the International Waste Trade", Environmental Affairs, Vol. 3, Winter 1991, p. 29.

128. The scandals of 1987 and 1988, in particular the revelation concerning contracts between Western companies and African countries to which the companies concerned paid ridiculously low sums for land on which they could get rid of toxic waste, prompted the developing countries, and especially the countries of Africa, to react. Within this context, the Council of Ministers of the Organization of African Unity declared, in resolution 1153 (XLVIII) dated 25 May 1988, that such dumping was "a

129. Similarly, on 7 December 1988, the United Nations General Assembly adopted a resolution condemning the dumping of nuclear and industrial wastes in Africa. Resolution 43/75 - entitled "Dumping of radioactive wastes".


131. The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal was the outcome of a compromise between the advocates of a complete ban on transboundary movements of wastes and those who wished to define the legal framework and conditions for the international transfer of wastes.

132. The 1989 Basel Convention marks a step forward in the assumption of responsibility for the problem, although it was considered inadequate by many countries, particularly those in Africa which drew up the Bamako Convention on the Banning of the Import into Africa and the Control of the Transboundary Movement of Hazardous Wastes within Africa, adopted on 29 January 1991.

133. At the 1992 Earth Summit, the international community expressed its concern that part of the international movement of hazardous wastes was in violation of national legislation and of existing international instruments, to the detriment of the ecology and public health of all countries, in particular the developing countries.

134. The following objectives were adopted within the framework of Agenda 21 in order to prevent the illegal transboundary movement of hazardous wastes: (a) to reinforce national capacities to detect and halt any illegal attempt to introduce toxic and dangerous products into the territory of any State, in contravention of national legislation and relevant international legal instruments; (b) to assist all countries, particularly developing countries, in obtaining all appropriate information concerning illegal traffic in toxic and dangerous products; (c) to cooperate, within the framework of the 1989 Basel Convention in assisting countries that suffer the consequences of illegal traffic.

135. Governments were also urged to exchange information on illegal transboundary movements of hazardous wastes.

136. In the Vienna Declaration, the World Conference on Human Rights, held in 1993, recognized that "illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone" (A/CONF.157/24 (Part I), para. 11).

B. Vulnerable groups

137. The Special Rapporteur has already referred to the vulnerability of indigenous peoples to ecological hazards (chap. III, sect. A), and to that of individuals and groups who are marginalized by poverty (chap. II, sect. A). The specific situation of peoples under domination will be considered later. The following sections are concerned with other groups that illustrate this vulnerability, albeit not exhaustively.

1. Women
138. There was good reason why Agenda 21, which was drawn up by the United Nations Conference on Environment and Development, devoted considerable attention to "Global action for women towards sustainable and equitable development", and proposed a series of objectives for national Governments, together with activities and tangible measures to be undertaken to achieve the full integration of women into the development process and to ensure the effective implementation of their rights. A/CONF.151.4 (Part III), chap. 24. The Declaration of Rio also notes that "women have a vital role to play in environmental management and development. Their full participation is therefore essential to achieve sustainable development" (Principle 20).

139. The decisive role of women in promoting development and preserving the environment is now firmly established. It is recognized that women's organizations have promoted environmental awareness, See "Women and the environment", Report of the Secretary-General of the United Nations to the thirty-sixth session of the Commission on the Status of Women (E/CN.6/1992/9), and that women play a critical role in the management, use and protection of natural resources and the environment, Ibid., p. 7. and in environmental education.

140. Even if, because of their traditional knowledge, skills and experience, women are no longer regarded as victims of environmental degradation, but as agents that possess essential assets for its preservation, it is still true that in practice they are the first to suffer from environmental degradation and among the last to enjoy the right to a satisfactory environment.

141. The Special Rapporteur notes that discrimination against women - regardless of their acknowledged formal rights and the ambitious programmes of action devoted to them, in conjunction with the social inertia and prejudice surrounding the issue of women's emancipation, accounts for the precarious situation of women and the thankless tasks that bring them face to face with the consequences of the deterioration in living, working, housing and other conditions, depriving them of opportunities to enjoy their fundamental rights.

142. In addition, because of delays in the enjoyment of civil, cultural and political rights, it is not possible to ensure effective and genuine participation by women in public life, and they are thereby prevented from influencing decision-making. Even if a favourable trend is discernible among local communities, in which women are increasingly involved in carrying out development projects, such participation needs to be further encouraged, developed and expanded. Moreover, it does nothing to remedy the fundamental imbalance in participation in public life and political office, from which women are virtually excluded, even in the developed countries.

According to UNDP statistics for 1993, women in the developed countries made up 40 per cent of the total labour force, but still held fewer than 10 per cent of parliamentary seats. They held less than 5 per cent of ministerial and other senior posts throughout the world. "Human development report", Economica, 1993, pp. 3 and 27. See also the publications of the Interparliamentary Union, including:


143. The Special Rapporteur cannot fail to note a disturbing discrepancy between recognition of the decisive role played by women in promoting sustainable development and the place they occupy in practice. As was noted in a report by the

"Without their political participation, progress in the other areas may be slow since it is often dependent on resources that come from public sources. There is a close reciprocal relationship between the general advancement of women and the participation of women in decision-making. Women's political participation will be enhanced if social and economic support structures exist, legal discrimination is eliminated and negative stereotypes are banished from education and the media. No country can afford not to utilize all its human resources. Women comprise half the world's pool of potential talent and ability. The importance of their fundamental biological and social roles is clear, and, though their input is often unrecognized, they are major contributors to national economies through their paid and unpaid labour. Excluding women from positions of power and from elected bodies impoverishes public life and inhibits the development of a just society. In short, without the full participation of women in decision-making, the political process will be less effective than it can and should be, to the detriment of society as a whole".

2. Children and young people
144. Children and young people make up approximately 30 per cent of the world's population and virtually half the population of the developing countries. They are a force for the future in which investment is vital. They are extremely vulnerable to the consequences of environmental degradation and are entitled to effective protection. The vitality of these ardent defenders of nature should be channelled in order to transform them into active supporters of the ecological cause.
145. As was underscored by UNICEF in The state of the world's children 1994, "the cause of meeting the most basic needs of all children must now be taken up with a new determination, both for its own sake and as an essential step towards resolving the problems of poverty, population growth and environmental deterioration". However, there is no forgetting the figures that bring us face to face with reality. Fourteen million children die each year from preventable diseases. Over the past 10 years alone, 1.5 million children are estimated to have died during conflicts, while 4 million bear the scars of conflict. There are 5 million refugee children, and another 12 million have been displaced. UNICEF, The state of the world's children 1994. The child victims of rape, ill-treatment and torture, child soldiers, street children, unwilling drug pushers, economically exploited child labourers, sexually abused children, children in debt bondage, hundreds of millions of children are the victims of contemporary forms of slavery. See the reports of the Subcommission's Working Group on Contemporary Forms of Slavery. They are trapped in what UNICEF has rightly described as the "poverty-population-environment" (PPE) spiral. The huge potential of children and youth is jeopardized by "the mutually reinforcing problems of persistent poverty, rapid population growth and environmental degradation". 146. Meeting the essential needs of the poorest for adequate nutrition, safe water, basic health care, basic education and family planning is one of the most powerful ways of breaking into the destructive synergisms of the poverty-population-environment problem.
147. Education and a minimum of prosperity are essential if environmental problems are to be contained and if poor people too are to have a stake in the future. UNICEF, op. cit. See also: UNICEF and UNEP, 1990: Children and the environment, UNEP, Nairobi and UNICEF, New York; UNICEF, 1989: Children and environment: a UNICEF strategy for sustainable development, document for the 1989 Executive
3. Disabled persons

148. The Special Rapporteur wishes to refer to the situation of disabled persons in order to highlight the particular impact of the environment on the enjoyment of their rights as human beings and of their specific rights to enhanced protection which derive from the need to cater for their special requirements.

149. While environmental factors are frequently responsible for disability, the environment in which a disabled person lives is also likely to restrict access to essential care and services, aggravate disabilities, restrict the possibility of enjoying fundamental rights, and even lead to their total denial (right to life, to health, to work, to participation; discrimination, etc.).

150. The Special Rapporteur has discerned a tendency to minimize the problems posed by disabilities, despite the fact that estimates, such as those of WHO, indicate that over 500 million individuals, i.e. 10 per cent of the world's population, suffer from some form of disability. In addition, 300 million of them live in the developing countries, where they are confronted with the inadequacy of assistance and rehabilitation services. Moreover, according to estimates by ILO, one third of disabled people, i.e. 160 million, are women, and 140 million children. These estimates lead to an unavoidable conclusion: the impact of the environment on disabled persons is felt at all stages, at several levels and in varying degrees - upstream as a cause of disability, and downstream by making the possibility of reintegration more difficult. Consequently, throughout their lives, disabled people suffer violations of their rights as individuals, as women or children, as disabled persons - a situation that is exacerbated by poverty.

151. The Special Rapporteur underscores the need for preventive measures to reduce the risk of disability. Non-governmental sources increasingly highlight environmental factors as causes of disability (air and water pollution; armed conflict, chemical weapons and vestiges of war, particularly mines; unhealthy living conditions; inadequate standard of living; natural disasters; technological accidents; nuclear catastrophes; dumping of toxic or hazardous products, etc.).

152. Where natural disasters or man-made accidents are concerned, disabled people are the first victims; they require special assistance which is not always available. This issue deserves special attention, as do the conditions for the reintegration of disabled people into the social, cultural, economic and political life of their country. In this connection, the Special Rapporteur endorses the recommendations contained in the United Nations study Human rights and disabled persons. Study by Mr. Leandro Despouy, Special Rapporteur of the Sub-Commission, United Nations, 1993 (United Nations publication, Sales No. E.92.XIV).

153. As was stressed by a representative of Disabled Peoples' International: "We can look at the effects on people with disabilities from different points of view: (i) when environmental problems occur in the form of a catastrophe, the first victims are disabled peoples. Other people have better possibilities to look for shelter or space; (ii) when environmental problems occur step by step, the first victims are disabled people because they are many times weaker and more sensitive to pollution, for example; (iii) environmental problems make the world less accessible and disabled people are more dependent on others. Life is more complicated and more handicapping. Without these problems disabled people could live more
independently; (iv) the man-made environment has been planned almost everywhere until recently without considering disabled people as a part of the community. People make environmental problems; (v) environmental threats are disabling and make disabilities more serious." Extract from a speech given by the Deputy Chairperson of Disabled Peoples' International, Mr. Kalle Konkkola, at the Symposium on Environment and Disability, Rio de Janeiro, June 1992.

4. Environmental refugees

154. The Special Rapporteur reiterates the concern she has previously expressed for the plight of persons displaced from their homes by adverse environmental conditions. See E/CN.4/Sub.2/1993/7, paras. 101-106. Such persons have a wide range of rights - whether or not they qualify as "refugees" under the restrictive definition provided in the 1951 Convention relating to the Status of Refugees The Convention relating to the Status of Refugees, which entered into force on 22 April 1954, defines a refugee as one who flees his country of origin due to a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion". or its 1967 Protocol; The Protocol relating to the Status of Refugees, which entered into force on 4 October 1967, incorporates the Convention definition of refugee without restrictions as to date or geography, or under the more expansive definitions in the 1969 Organization of African Unity Convention governing the Specific Aspects of Refugee Problems in Africa The OAU Convention governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 states that the term "refugee" includes every person who flees his or her country of origin "owing to external aggression, occupation, foreign domination, or events seriously disturbing public order". or the 1984 Cartagena Declaration on Refugees. The Cartagena Declaration on Refugees of 22 November 1984 defines refugees as "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, international conflicts, massive violations of human rights or other circumstances which have disturbed the public order". At a minimum, such persons have the right to life, the right to health, food and shelter, and the right not to be sent to any location where their lives or security are endangered.

155. For the purposes of this report, the Special Rapporteur uses "environmental refugee" to refer to anyone forced to leave his or her normal habitat because of serious environmental disruption. This includes those who flee their homes temporarily and those forced to flee permanently, internally or across international borders.

156. Environmental refugee flows may arise from purely natural events, such as earthquakes; purely human activities, such as industrial accidents; or combinations of natural and human acts, such as excessive rainfall in a deforested area, which gives an otherwise manageable natural event disastrous consequences. The Special Rapporteur notes with special concern that all three types of environmental catastrophe strike poorer, less developed areas with significantly higher frequency than they do more affluent areas. See The State of the World's Refugees: The Challenge of Protection. UNHCR, Penguin Books, 1993.

157. The types of natural events that contribute to the creation of environmental refugees include drought, famine, tropical storms and earthquakes. Human factors that combine with natural factors to create environmental refugee flows tend to involve matters of environmental management, including land degradation (desertification), deforestation and depletion of the natural resource base. Purely human-generated environmental disasters include the construction of large dams, industrial accidents
such as chemical explosions and nuclear accidents, improper handling of hazardous wastes and, of course, armed conflict and its consequences.

158. The Special Rapporteur is also concerned by the environmental degradation that often results from the sudden influx of refugee populations on already stressed lands. This degradation stems from increased demands for food, fuel and other subsistence resources. The Special Rapporteur notes the General Assembly's increasing attention to this set of problems. In resolutions passed during its forty-eighth session, the General Assembly noted the environmental pressures posed by refugees and displaced persons in Central America (res. 48/117), in Azerbaijan (res. 48/114) and in many parts of Africa (res. 48/118).

159. People who flee their homes for environment-related reasons require humanitarian assistance simply to meet their basic survival needs. They do not necessarily seek political asylum or require the kind of international protection implied by the term "refugee". Many are displaced within their own countries, yet the scope of the problem may exceed the capacity of their Government and may therefore involve the international community. In this regard, the Special Rapporteur has examined the reports E/CN.4/1993/35, annex and E/CN.4/1994/44 and Add.1. of Mr. Francis Deng, the representative of the Secretary-General on internally displaced persons to the Commission on Human Rights. She hopes the international community will implement the concrete suggestions made by the representative.

160. UNHCR is particularly well placed to facilitate the delivery of essential services to displaced persons in emergency situations, on humanitarian grounds. See Sadruddin Aga Khan, Legal Problems relating to Refugees and Displaced Persons, 149 Recueil des Cours 287 (1976-I). The General Assembly affirmed the need to incorporate environmental concerns into the work of the UNHCR. UNHCR has recognized the need to improve understanding of the relationship between migration refugee flows and development and environmental issues. UNHCR, Note on International Protection submitted to the Executive Committee of the High Commissioner's Programme (A/AC.96/199), 1992; see also statement by the United Nations High Commissioner for Refugees at the United Nations Conference on Environment and Development, Rio de Janeiro, 10 June 1992.

CHAPTER V. ANALYSIS OF THE EFFECTS OF THE ENVIRONMENT ON THE ENJOYMENT OF FUNDAMENTAL RIGHTS

161. Recent sources observe that as from the beginning of the twenty-first century more than half the world's population will be living in urban areas. In 2025 this figure will have reached 65 per cent, or 5 billion persons. More than 850 million people live in regions affected by desertification. The destruction of the tropical forests is advancing at a rate of approximately one football pitch per second. The inhabitants of the industrialized countries still consume 10 times as much commercial energy as those of the developing countries and produce 71 per cent of the world's carbon dioxide emissions and 68 per cent of its industrial waste. Poverty particularly affects children, 13 million of whom die annually before their fifth birthday. Women are still barred from posts of responsibility and hold fewer than 10 per cent of parliamentary seats throughout the world. More than 2 million deaths and billions of cases of disease can be attributed to pollution. Between 400 million and 700 million people, mainly women and children from poor rural areas, are affected by the smoke-filled atmosphere of their homes. Between 300,000 and 700,000 premature deaths annually can be attributed to pollution in cities. The thinning of the ozone layer may cause annually 300,000 additional cases of skin cancer worldwide and 1.7 million cases of

162. The Special Rapporteur has deliberately, without arranging them in any order, presented observations concerning the deterioration of the environment and figures concerning the standard of living, death rate, health, participation, etc. in order to stress the close interaction between the assaults made on the environment and the enjoyment of human rights, which she has already had occasion to mention in the introduction to her earlier reports. The analysis which follows, while endeavouring to supplement the data contained in the earlier reports, is based on examples which, though illustrative, should not be regarded as exhaustive.

A. Right to self-determination and permanent sovereignty over natural resources

163. Denial of the right of peoples to self-determination and to dispose of their natural wealth and resources has been and remains one of the deep-seated causes of underdevelopment and of the serious damage inflicted on the environment in formerly colonized countries and countries still under occupation.

164. The denial of the right of peoples to self-determination and practices in the occupied territories, characterized by massive and systematic violations of human rights, lie at the origin of the degradation suffered by the environment in those territories and of the damage done to the cultural heritage and living conditions of the population, who are reduced to living in camps, precarious housing and areas bereft of basic sanitation.

165. Population transfer, including the implantation of settlers and settlements, directly violates the cardinal principle of the right of peoples to self-determination and at the same time generates further violations of the principles of international law and human rights. The implantation of settlers and settlements, particularly in countries under foreign domination and in occupied territories, is generally part of a deliberate policy with the aim of changing the demographic structure and the political, cultural, religious and other characteristics of the countries and peoples in question, with the intent to destroy, in whole or in part, a national, ethnic, racial, religious or linguistic group as such, to ensure the domination of one group over another, or to distort the results of a planned self-determination referendum. In all cases, these are illegal practices which run counter to fundamental principles of international law. In some situations, these practices may be regarded as amounting to genocide. See Sub-Commission resolution 1991/28 dated 29 August 1991; preliminary report by Mr. Al-Khasawneh and Mr. R. Hatano on "The human rights dimensions of population transfer, including the implantation of settlers" (E/CN.4/Sub.2/1993/17); working paper by Mrs. Mbonu (E/CN.4/Sub.2/1991/47).

166. The right to development implies, as the Declaration on the Right to Development makes clear, the full realization of the right of peoples to self-determination and to full sovereignty over all their natural wealth and resources. The pillage of a country's natural resources favoured by relations of political, economic or other subjection or dependence leads to uncoordinated and extroverted development which, besides keeping the country in a state of chronic underdevelopment, worsens the adverse consequences which that type of development produces on the environment (intensive exploitation of raw materials and products that upsets the ecological balance; wastage of non-renewable energy resources; establishment of polluting and high-risk industries; pauperization of rural areas, etc.).
167. The United Nations General Assembly for its part has regularly reiterated the principle set out in resolution 1803 (XVII) of 14 December 1962 whereby "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned." General Assembly resolution 48/46 of 10 December 1993 is worth noting here in connection with the activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, in which the General Assembly reaffirms "the solemn obligation of the administering Powers under the Charter of the United Nations to promote the political, economic, social and educational advancement of the inhabitants of the Territories under their administration and to protect the human and natural resources of those Territories against abuses" and emphasizes that "the natural resources are the heritage of the indigenous populations of the colonial and Non-Self-Governing Territories". At the same time, the General Assembly expresses its concern about "the activities of those foreign, economic, financial and other interests that exploit" the resources of those Territories. In resolution 48/47 of 10 December 1993, the General Assembly "Urges the specialized agencies and other organizations of the United Nations system to formulate programmes that will support the sustainable development of small island Non-Self-Governing Territories and adopt measures that will enable those Territories to cope effectively, creatively and sustainably with environmental changes and to mitigate impacts and reduce the threats posed to marine and coastal resources."

168. It may also be noted that Principle 23 of the Declaration of Rio states that "The environment and natural resources of people under oppression, domination and occupation shall be protected."

169. On the question of the occupied Arab territories, the Commission on Human Rights inter alia adopted resolution 1994/1 on 18 February 1994, in which it welcomed "the positive development which originated with the International Peace Conference on the Middle East, convened at Madrid on 30 October 1991, including in particular the Declaration of Principles on Interim Self-Government Arrangements signed by the Government of Israel and the Palestine Liberation Organization on 13 September 1993, as well as all the efforts for the creation of a peaceful and stable environment in the Middle East", while declaring itself "Gravely concerned at the establishment by the Israeli Government of settlers in the occupied territories, which may change the physical character and demographic composition of the occupied territories." The Commission took note of the information submitted by its Special Rapporteur referring to "confiscation of land by the Israeli authorities before and after the signing of the Declaration of Principles on 13 September 1993"; it "Urges the Government of Israel to abstain from installing any settlers in the occupied territories."

170. The Special Rapporteur welcomes the results of the first free and democratic elections in South Africa, which led, on 10 May 1994, to the establishment of a united, democratic and non-racial Government. She hopes that effective and decisive measures will be taken to eliminate the effects of the policy of apartheid. She welcomes the fact that the new South African Constitution contains a number of provisions concerning the fundamental rights of the individual and stipulates, in article 29, that "every person shall have the right to an environment which is not detrimental to his or her health or well-being".
171. The Special Rapporteur notes with satisfaction that in President Nelson Mandela's inaugural address to Parliament on 24 May 1994, specific mention was made of the measures to be taken to protect the environment and ensure the participation of society in the decision-making process. In particular, President Mandela said:

"My Government is committed [...] to bring into the decision-making processes organs of civil society [...] The Government will take steps to ensure the provision of clean water on the basis of the principle of water security for all and the introduction of proper sanitation sensitive to the protection of the environment. We are determined to address the dire housing shortage [...] Health also remains a fundamental block of humane society [...] We must combat such social pathologies as widespread poverty [...] I am especially pleased that we have a ministry dedicated to the issue of environment. Its work must impact on many aspects of national activity and address the question of well-being of society as a whole and the preservation of a healthy environmental future even for generations not yet born."

B. Right to life

172. The right to life is unanimously considered to be a fundamental right of a suprapositive character in that it is a norm erga omnes enforceable in respect of all persons, even where there is no treaty obligation. The right to life is included among the peremptory norms (jus cogens) from which "no derogation is permitted". See article 52 of the Vienna Convention on the Law of Treaties. It is therefore part of the list of the fundamental rights of the individual from which, under the International Covenant on Civil and Political Rights of 1966 (art. 4), the European Convention on Human Rights of 1950 and the American Convention on Human Rights (Pact of San José of 1969), no derogation is permitted.

173. The Human Rights Committee considered in its General Comment 6 that the right to life is "the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation ... It is a right which should not be interpreted narrowly ... the protection of this right requires that States adopt positive measures," such as "measures to reduce infant mortality and to increase life expectancy ... to eliminate malnutrition and epidemics." CCPR/C/21/Rev.1, pp. 4-5.

174. According to Professor Galicki, "The right to life is the most important among all human rights legally guaranteed and protected by contemporary international law. On the other hand, the right to life is the one which is, most of all, connected to and dependent on proper protection of the human environment. It is because this right, like no other, may be directly and dangerously threatened by detrimental environmental measures. The right to life and the quality of life depend directly on positive or negative environmental conditions. Simultaneously, we cannot forget that this is an original right from which all other human rights derive." Taken from the comments transmitted by Mr. Galicki (Poland) to the Special Rapporteur.

175. As has been noted throughout the foregoing discussion, most assaults on the environment lead to a deterioration in living conditions and constitute risks for survival if not actually accompanied by deaths directly or indirectly caused by these assaults. In the words of Mr. R.G. Ramcharan:

"Threats to the environment or serious environmental hazards may threaten the lives of large groups of people directly; the connection between the right to life and the environment is an obvious one ... A discussion of the interrelationship between the two rights should, however, go beyond this ... [and] may be summarized in the following proposition: 1. There is a strict duty upon States, as well as upon the
international community as a whole, to take effective measures to prevent and safeguard against the occurrence of environmental hazards which threaten the lives of human beings. 2. Every State, as well as the United Nations (UNEP), should establish and operate adequate monitoring and early-warning systems to detect hazards or threats before they actually occur. 3. States which obtain information about the possible emergence of an environmental hazard to life in another State should inform the State at risk or at least alert UNEP on an urgent basis. 4. The right to life, as an imperative norm, takes priority above economic considerations and should, in all circumstances, be accorded priority. 5. States and other responsible entities (corporations or individuals) may be criminally or civilly responsible under international law for causing serious environmental hazards posing grave risks to life. This responsibility is a strict one, and should arise irrespective of whether the act or omission in question is deliberate, reckless or negligent. 6. Adequate avenues of recourse should be provided to individuals and groups at national, regional or international levels, to seek protection against serious environmental hazards to life. The establishment of such avenues of recourse is essential for dealing with such risks before they actually materialize." R.G. Ramcharan, The Right to Life, The Hague, 1983, pp. 310-311. As emphasized by A.A. Cançado Trindade, the rights to life and health are "at the basis of the ratio legis of international human rights law and environment law". In "The parallel evolutions of international human rights protection and of environmental protection and the absence of restrictions upon the exercise of recognized human rights", Revista del Instituto Interamericano de Derechos Humanos vol.13, 1991, p.50.

C. Right to health

176. As recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, other human rights instruments and most national constitutions, everyone has a right to the highest attainable standard of health. In the environmental context, the right to health essentially implies feasible protection from natural hazards and freedom from pollution, including the right to adequate sanitation. This right is directly linked to the right to water and food, to safe and healthy working conditions, and to housing.

177. Numerous communications were received pointing to the direct link between adverse environmental conditions and violations of the right to health, and exemplifying the irreversible impacts on health of large-scale industrial accidents as well as the deleterious effects of other less spectacular sources of pollution, such as the continuous discharge of toxic and hazardous substances into air, soil and water. Contaminating substances frequently enter the food chain and lead to respiratory and skin diseases, among others.

178. Natural disasters and climate change conditions are also an increasing reason for widespread health concerns, particularly as a result of massive floods, which, linked to major sanitation problems and unsafe water, result in the rapid spread of contagious diseases. Also to be noted are the catastrophic effects of desertification and drought, particularly in Africa, as they result directly in lack of food and water. Drought and desertification cause massive displacement of peoples, social insecurity and widespread living conditions at a level not commensurate with human dignity. The Special Rapporteur wishes to emphasize the importance of ensuring the availability of safe water in quantities adequate to maintain or improve human health and life.

179. Environmental problems negatively affect human health in both the industrialized and the developing world, but those relatively poorer and disadvantaged minorities are most greatly harmed by adverse environmental conditions. This
situation is particularly exacerbated by lack of information about the environment of local populations, insufficient infrastructure, inadequate social security systems or inadequate access to such services.

180. The link between the environment and human health has repeatedly found reflection in the international and domestic instruments, either explicitly or under a more general expression of a right to adequate conditions of life. Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972), Principle 1. When asserting the right to the environment, current provisions express it in terms of the right to a healthy environment. This qualification of the environment has been generally interpreted to mean that the environment must be healthy in itself - free from "diseases" that hinder its ecological balance and sustainability - and that it must be healthful, that is conducive to healthy living.

181. The International Covenant on Economic, Social and Cultural Rights recognizes that to achieve the full realization of the right to health it is necessary to ensure the improvement of all aspects of environmental and industrial hygiene. As noted by the Special Rapporteur in her 1992 progress report, the implementation of the right to health contained in the 1961 European Social Charter has led the Committee of Independent Experts to take into account measures to prevent, limit or control pollution. See E/CN.4/Sub.2/1992/7, paras. 73-74.

182. Indigenous peoples have alleged in international forums violations of their right to health as a result of environmental destruction. See E/CN.4/Sub.2/1992/7, paras. 94-95. In one key case, the Inter-American Commission on Human Rights found that the right to health and well-being of indigenous peoples had been violated as a result of the negative environmental effects and dissemination of disease that followed from road construction in the rainforest. Case No. 7615 of 5 March 1985, in the annual report of the Inter-American Commission on Human Rights, 1984-1985 (OEA/Ser.L.V/II/66).

183. International environmental law instruments have frequently referred to the negative effects on health of environmental pollution. Many of these instruments define pollution as the introduction by man of substances or energy into the environment resulting in such deleterious effects as hazards to human health or which harm/endanger human health. See Joint IMO/FAO/UNESCO/WMO Group of Experts on the Scientific Aspects of Marine Pollution, GESAMP (A/7750) (1969); Convention for the Prevention of Marine Pollution from Land-based Sources (Paris, 1974); Convention for the Protection of the Mediterranean Sea against Pollution, art. 2 (Barcelona 1976); Recommendation on Equal Right of Access and Non-Discrimination in Relation to Transfrontier Pollution (OECD, 1977); Convention for Cooperation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, art. 2 (Abidjan, 1981); United Nations Convention on the Law of the Sea, art. 1 (4) (1982).

184. The right to health can be constructively viewed from an environmental perspective in the light of the principles of sustainable development. Under these principles, another facet of the right to health reaches full meaning: as stated by the World Health Organization (WHO), "human health is essential for sustainable development since without health, human beings would not be able to engage in development, combat poverty and care for their environment". Thus, there is clear interdependence between health and environmental protection. As WHO points out, "... health status is nearly always the best as well as first indicator of environmental degradation". See background paper on "Health, the Environment and Sustainable

185. Although it was already present in the Stockholm Declaration - and particularly well addressed as a sustainable development issue in the report of the United Nations Conference on Environment and Development - it is important to note the significance of health being part of the first principle of the 1992 Rio Declaration and the multiple references to the protection and promotion of health in Agenda 21, particularly in chapter 6, which deals exclusively with human health.

186. The Special Rapporteur welcomes the increased action taken by Governments and United Nations agencies such as FAO, UNEP and WHO, in preparation for and as a result of UNCED, to address environmental problems and their impact on human health. In particular, she notes the significant amount of documentation provided by WHO and appreciates representatives from this organization meeting with her in a special session to discuss a wide variety of matters regarding the relationship between environmental issues and the right to health. The Special Rapporteur would like to acknowledge some recent initiatives of WHO, such as the report of its Commission on Health and the Environment, Our Planet, Our Health, See E/CN.4/Sub.2/1993/7, para. 98. the comprehensive background paper for the Commission on Sustainable Development (CSD) by the Task Manager on Health, the development of programmes on cities and the environment and on health support systems, and the "Global Strategy for Health and the Environment". She also commends the Political Statement and Action Programme of the March 1994 Ministerial Conference on Drinking Water and Environmental Sanitation, particularly part 2 on "Water, Health and the Environment", Conference held in Noordwijk, The Netherlands, 22-23 March 1994. See E/CN.17/1994/12.

187. As emphasized at this Conference and by CSD and WHO, significant financial resources need to be allocated to ensure adequate protection of health from negative environmental conditions. Indeed, funding of health protection and promotion must be applied in a framework of international and national equity and solidarity, taking into consideration at all times the fact that the right to health echoes fundamental human needs. See WHO background paper cited at note 95 supra. Obviously, there is also a need to ensure that structural adjustment programmes do not cut allocations for health care, education and environmental protection.

D. Right to food

188. International articulations of the right to an adequate standard of living - including those set forth in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights - recognize the right to food as an essential component of the right to health. Food security is inextricably linked to an environment free from degradation and it depends on environmentally sound and socially sustainable development. See Asbjørn Eide, Right to Adequate Food as a Human Right, Study Series No. 1, United Nations publication, Sales No. E.89.XIV.2, 1989.

189. The Special Rapporteur notes with concern the point raised at UNCED and generally recognized that massive numbers of people suffer from lack of food while the world as a whole produces sufficient food to feed everyone. Principle 31 of the Vienna Declaration and Programme of Action of the World Conference on Human Rights also proclaims that food shall not be used as a tool for political pressure.

190. Special attention should be devoted to eliminating the use of food as a weapon, whether in times of armed conflict or as a more general tool of oppression. In either
case, interference with access to, production of and distribution of food often leads to severe environmental stresses and forces people to sacrifice long-term environmental sustainability in order to meet short-term subsistence needs.

191. The right to food is evidently linked to the issues of extreme poverty and underdevelopment (see chap. 2).

E. Right to safe and healthy working conditions

192. The environmental dimension of the right to work needs to be understood in the light of the right to health and in the general context of the right to an adequate standard of living with due regard to the right to safe and healthy working conditions.

193. Realization of this right requires a working environment free from pollution and other hazards, where workers’ health is not threatened by circumstances such as exposure to asbestos, contact with pesticides and fungicides, or inhalation of toxic substances. Fulfilment of this right in turn requires the right to know and to have access to relevant information on environmental and health risks, the right of expression and association to facilitate collective action, and the recognition of the workers' right to refuse to pollute at the workplace.

194. Numerous conventions concluded under the auspices of the International Labour Organisation (ILO) address many different environmental aspects of occupational health and safety. Some of the most significant ones are the Chemicals Convention (No. 170, 1990); the Safety and Health in Construction Convention (No. 167, 1988); the Asbestos Convention (No. 162, 1986); Occupational Safety and Health Convention (No. 155, 1981) the Working Environment (Air Pollution, Noise and Vibration) Convention (No. 148, 1977); the Occupational Cancer Convention (No. 139, 1974); and the Benzene Convention (No. 136, 1971). Vulnerable groups such as children, indigenous peoples, migrant workers and women suffer disproportionately from violations of the right to safe and healthy working conditions. This underlines the necessity of ratifying the international instruments and improving ways and means by which provisions of these instruments can be fully implemented.

F. Right to housing

195. The fundamental right to adequate housing has both a firm basis in international human rights law and a significant environmental dimension. As noted by Mr. Rajindar Sachar, Special Rapporteur on the right to adequate housing, housing rights involve survival, health and environmental conditions in a holistic and interdependent framework and one which transcends the outdated "four walls and a roof" view of housing. See E/CN.4/Sub.2/1993/15, section II.

196. Agenda 21 parallels Mr. Sachar's holistic view of housing rights and sets an objective of achieving adequate shelter, especially for the poor, through an enabling approach to shelter development and improvement that is environmentally sound.

197. The right to adequate housing is enshrined as a basic human right in article 25 (1) of the Universal Declaration of Human Rights, and article 11 (1) of the International Covenant on Economic, Social and Cultural Rights. Both instruments describe the right to housing as an essential component of the right to an adequate standard of living. The right to housing also appears in many other international, regional and national legal instruments. See E/CN.4/Sub.2/1992/15, paras. 62-65.

198. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991) on the right to housing, explains that the right to housing means, among other things, housing not built on polluted sites or in close proximity to
pollution sources that threaten the right to health of inhabitants. E/1992/23-
E/C.12/1991/4, annex III. The Special Rapporteur on the right to adequate housing
shares the Committee's views in this regard. See E/CN.4/Sub.2/1993/15, para. 90. The
Committee requires that States parties to the International Convention on Economic,
Social and Cultural Rights include in their reports to the Committee information on
measures concerning environmental planning and health in housing and human
settlements. Revised guidelines regarding the form and contents of reports to be
submitted by States parties under arts. 16 and 17 of the International Covenant on
Committee's Guidelines on State reporting and its General Comment No. 4 stand as
useful examples of how the United Nations and the international community as a
whole might explicate the meaning of other human rights and enhance compliance
with those rights.

199. The right to adequate housing also includes the obligation to avoid forced
evictions, a practice that constitutes a gross violation of human rights. See
of 10 March 1993; analytical report of the Secretary-General on the practice of forced
evictions (E/CN.4/1994/20). Of particular concern is the fact that States often fail to
comply with their obligation not to carry out or advocate forced or arbitrary evictions
of persons or groups. Forced evictions should take place only when conservation and
rehabilitation are not feasible and suitable relocation measures are undertaken. Where
forced evictions cannot be avoided, the affected persons have a right to just
compensation.

200. In addressing forced evictions, we should not forget the importance of the right
to property which includes the right not to be deprived of land, water resources and
other aspects of one's habitat, and it thus precludes deforestation and other
environmentally destructive acts. See the reports of the independent expert of the
Commission on the right of everyone to own property, Mr. Luis Valencia Rodríguez

201. In carrying out structural adjustment programmes and other activities, the
international financial institutions, development agencies and Governments should
pay particular attention to the possible adverse effects of those programmes and
specifically to the issue of displacing people from their homes. The pressure on
financially strapped Governments to divert their limited financial resources from
dealing with housing, environmental and other problems to making their payments to
funding agencies only exacerbates the problem. The institutions concerned must take
into account the environmental and housing rights consequences of their activities
throughout the project process, from planning to implementation and monitoring. The
Committee on Economic, Social and Cultural Rights has addressed this concern in its

202. The realization of the environmental dimension of the right to adequate housing
requires concurrent attention to the rights to health and food, and to the eradication of
poverty.

G. Right to information

203. The Special Rapporteur considers the right to information highly relevant to
human rights and the environment. Public access to information on request and the
obligation of public authorities to disclose it irrespective of requests are essential for
the protection of the environment and the prevention of environmental human rights
problems.
204. In the Special Rapporteur's view, the right to information relating to the
environment requires that information be relevant and comprehensible; that it be
provided in a timely manner; that the procedures to obtain information, if established,
be simple and brief; that the cost to individuals and groups be reasonable; and that it
be available across State boundaries. The Special Rapporteur also considers that the
right to information includes the right to be informed, even without a specific request,
of any matter having a negative or potentially negative impact on the environment. It
is clear to the Special Rapporteur that the right to information imposes a duty on
Governments. It is also clear to the Special Rapporteur that the right to information
imposes a duty on Governments to collect and disseminate information and to provide
due notice of significant environmental hazards.

205. The main human rights instruments prominently feature the right to information.
This right appears in article 19 of the Universal Declaration of Human Rights and
article 19 of the International Covenant on Civil and Political Rights. Both these texts
protect the rights to freedom of opinion and expression, and to seek, receive and
impair information through any media, regardless of national boundaries. Article 1 of
the draft Declaration on Freedom of Information Economic and Social Council
resolution 756 (XXIX) of 21 April 1960, provides that "the right to know and the
right freely to seek the truth are inalienable and fundamental rights of man". Article 2
of the Declaration sets out governmental duties relating to the free flow of
information. Article 4 provides that those who disseminate information have a duty of
good faith to report accurately on the facts. Other provisions of international
instruments stress that information must be accurate and relevant. For example, in the
Convention on the International Right of Correction (General Assembly resolution
630 (VII) OF 16 December 1952, annex), Governments in countries where incorrect,
distorted or damaging information about other Governments has been disseminated
are required to release a correcting statement (called a "communiqué") provided by
the injured Government.

206. United Nations bodies and specialized agencies frequently have emphasized the
importance of information in the area of environment. The Declaration of the United
Nations Conference on the Human Environment contains reference to the right to
information in Principle 19. The 1972 United Nations Educational, Scientific and
Cultural Organization Convention for the Protection of the World Cultural and
Natural Heritage UNESCO Convention of 16 November 1972. requires States to
provide the public with information on dangers to the environment. The World
Charter for Nature General Assembly resolution 37/7 of 28 October 1982. also
contains provisions relating to information, including paragraph 21 (a). Principle 10
of the 1992 Rio Declaration on Environment and Development indicates the duty of
States to make information "widely available".

207. Several regional organizations have also emphasized the need for information
regarding the environment. The League of Arab States proclaimed the Arab
Declaration on Environment and Development and Future Perspectives United
Nations document A/46/632, 1991. in which the League stresses the right of persons
and groups to relevant information, including technical data. In the European Union
several directives and recommendations stress the right to information. The EC
90/313/EEC of 7 June 1990. covers the issue most comprehensively. For analysis of
environmental information regarding the European system of human rights, see Stefan
Weber, "Environmental Information and the European Convention on Human
also emphasize the right to information, including the affirmative duty to disclose or provide information. For example, the Nordic Convention on the Protection of the Environment The Nordic Convention on the Protection of the Environment of 19 February 1979. requires the States parties to publish relevant information in the newspapers or other forms of public media; the ASEAN Agreement on the Conservation of Nature and Natural Resources Association of South-East Asian Nations Agreement on the Conservation of Nature and Natural Resources of 9 July 1985. requires the States parties to disclose and disseminate relevant information. Certain international treaties, such as the Antarctic Protocol on Environmental Protection, Antarctic Protocol on Environmental Protection [signed?] 4 October 1991, [int'l cite]. require States to provide environmental information upon request. Other international treaties impose a duty to warn other States of environmental dangers. See, for example, article 198 of the United Nations Convention on the Law of the Sea of 10 December 1982 and art. 2 (a) of the Convention on Early Notification of a Nuclear Accident, Vienna, 26 September 1986.

208. Within the United Nations system, reporting requirements and increased dissemination of environmental issues can enhance the right to information. Within the United Nations Environment Programme, for instance, performance reports are requested of Governments and organizations. These reports are available to the public. Other branches of the United Nations system are carrying out initiatives to provide relevant and timely information and education regarding the environment. For example, the Department of Public Information has released Status of World Environment in Mexico, Italy and Japan in the local languages, thereby greatly enhancing international dissemination of this important work. Report of the Committee on Information, Official Records of the General Assembly, Supplement No. 21 (A/45/21) p. 35. The General Assembly, in its 11 December 1990 resolution 45/76 entitled "Questions relating to information", directed the Department of Public Information to pay particular attention to both human rights and the environment in its information activities.

209. The right to information is frequently presented as an individual and group right which constitutes an essential attribute of the democratic processes and the principle of popular participation. Indeed, the concept of democratic government as stated in article 21 of the Universal Declaration of Human Rights becomes meaningless unless individuals and groups have access to relevant information on which to base the exercise of the vote or otherwise express the will of the people.

210. Violations of the right to information in the environmental context arise in various ways. The Special Rapporteur cannot discuss all the situations brought to her attention, but wishes to present a few examples by way of illustration. First, violations occur when development projects or other activities with great potential impact on the environment and people's rights involve a Government, government contractors, and perhaps international funding sources. Relevant information may be in many locations and with many entities, making access by the public difficult. International funding sources or transnational corporations may not allow private access to information under their control.

211. Violations can also occur when Governments invoke national security or other reasons as justification for withholding of information from the public. Violations may be compounded where it is not possible to obtain judicial review of the Government's non-disclosure. The Special Rapporteur has received reports of serious human rights violations suffered by people as a result of efforts to obtain information about environmental situations. Problems affecting the realization of the right to
information can also arise when Governments appear to cooperate but instead provide limited information, or provide it either piece by piece or in vast, unmanageable quantities with no apparent order or relevancy. Individuals or groups seeking to monitor activities having an impact on the environment or to assess environmental harm already done may not be able to use the information in a timely, effective manner.

212. Problems also occur when people or groups are prevented from disseminating information regarding ecological problems by a court. For example, the use of the sub judice rule has been effective in many areas in suppressing vital environmental information. Under the sub judice rule once a legal action has been filed, it may not be commented on or reported on in the public media at the risk of being cited for contempt of court.

213. The Special Rapporteur is aware that national security, "trade secrets", sub judice or other defences against reasonable requests for information will surely continue to arise. However, the Special Rapporteur must stress that Governments may only use national security defences in conformity with the relevant derogation or limitation clauses of international human rights instruments. "Trade secrets", sub judice and other defences must be reviewable to ensure that the public's right to information is not unduly restricted.

214. Even if a plausible national security defence could be presented, the Special Rapporteur considers that there are circumstances where it is not acceptable. For example, individuals, communities and neighbouring countries must have information regarding specific hazardous materials and conditions at industrial facilities located in their vicinity in order to undertake disaster planning and response wherever there is a danger of large-scale industrial accidents like Chernobyl and Bhopal. Individuals, communities and neighbouring countries must have information regarding the full range of environmental consequences of proposed development projects in their regions in order to participate meaningfully in decisions that could adversely affect them due to increased pollution, loss of land base, dislocation and other impacts. Individuals, communities and neighbouring countries must have information regarding pollutants and wastes associated with industrial and agricultural processes. In these circumstances there is a clear duty to disclose.

215. The right to information not only protects individuals and groups, but also Governments themselves. In this light, the Special Rapporteur is aware that in the context of human rights and the environment, the right to information may also be considered a right of States vis-à-vis other States or of States vis-à-vis transnational corporations. In this context a State's access to information would enable it to transmit the information to its residents and to otherwise protect the human rights of those residents. The Special Rapporteur stresses that the right of States aspect of the right to information is particularly important regarding the issue of toxic waste disposal, the use of nuclear power and disposal of nuclear wastes, and the production or use of toxics because of the human hazards these matters pose.

216. The Special Rapporteur has reviewed information showing that many conflicts have arisen between Governments because Governments of developed countries, transnational enterprises operating from the developed countries or international development banks do not provide full disclosure of potential dangers to human beings or to the environment for contemplated activities. Under these circumstances, individuals and groups have limited recourses because their own Governments may not have the relevant information.
H. Popular participation

217. The right of popular participation in its various forms ranks high in importance for promoting and protecting human rights and the environment. The basic right to popular participation is provided for in article 21 of the Universal Declaration of Human Rights and a number of international instruments. The United Nations system has long recognized the importance of popular participation in the protection of the environment, especially evident in the 1972 Stockholm Declaration, the 1975 United Nations work on popular participation in development See Popular Participation in Decision Making for Development, United Nations publication, Sales No. E.75.IV.10 (1975), the 1992 Rio Declaration and Agenda 21, and 1993 Vienna Declaration and Programme of Action.

218. The Special Rapporteur stresses that popular participation is closely related to the rights to education and information: without education about the environment and without access to relevant information on issues of concern, popular participation is meaningless.


220. It is important that participation in the environmental context be meaningful - a question of quality of the participation and whether it is timely. Environmental destruction is not easily undone. People must be able to prevent environmental harm. As a minimum, people have the right to receive notice of and to participate in any significant decision-making regarding the environment, especially during the process of environmental impact assessments and before potential damage is done. Participation must include the right to oral and written commentary. People must also be able to participate in follow-up projects and in ongoing monitoring of environmental situations. To prevent damage or to provide relief if damage has already been done, people must also have the right to seek effective remedy in courts, tribunals or other forums for violations, including violations arising from a failure to allow effective participation.

221. Although many people are prevented from participating in decisions, there is a growing national and international trend, including at the international funding institutions, to allow the participation of individuals and groups in all stages of activities involving the environment. The environmental impact assessment process has been effective in providing for meaningful public participation. The United Nations Environment Programme has prepared a set of goals and principles on environmental impact assessment with a heavy emphasis on public participation. UNEP/Z/Ser.A/9 (1989).
222. The Special Rapporteur has been presented with a variety of means by which participation in environmental decision-making is unduly restricted. A denial of standing in the process of environmental impact assessments and in judicial action has been a particularly effective means to prevent meaningful public participation in environmental concerns, first, because it denies the ability to prevent harm and second because it denies the possibility of reparations, compensation or other remedies. Groups or individuals may be denied standing because they are not considered to be sufficiently affected or injured by actual or proposed activities. Persons and groups from one country may not have standing in another country where the environmental problem arises that affects them. International forums have interpreted standing broadly. For example, in cases with environmental concerns, the Inter-American Commission on Human Rights has allowed "interest group" or "interested citizen" actions; the Council of Europe has required actual victims or relatives of actual victims, although the victim may be a group or non-governmental organization. The United Nations Human Rights Committee allows collective communications but has implied that each of the individuals of the group must be able to allege essentially the same injury. The Special Rapporteur has analysed many cases brought before national courts, European human rights bodies, the Inter-American Commission on Human Rights and United Nations human rights bodies. See E/CN.4/Sub.2/1992/7 and E/CN.4/Sub.2/1993/7. In the view of the Special Rapporteur, standing must always be broadly granted to foster public participation and to better protect all human rights in an environmental context.

223. The question of popular participation and the environment has special relevance in conditions of extreme poverty. The extremely poor suffer most from environmental hazard, yet they are rarely included in decision-making processes, monitoring or follow-up. They usually have no means to carry out judicial actions. States and the international community should ensure that all affected persons, regardless of their economic status, are included in decision-making and related activities and that they have the means to take legal recourses.

I. Freedom of association

224. The right to freedom of association forms a crucial element of effective popular participation in matters that relate to the environment and in general. Article 20 of the Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights establish freedom of association and assembly as fundamental human rights. In the environmental context these rights encompass the freedom to associate freely and peacefully with others to protect the environment, to protect the rights of others affected by environmental harm, and to take collective action in support of environmental causes.

225. As noted in chapter 29 of Agenda 21, freedom of association has particular relevance in the case of workers. The right to organize plays a critical role in workers' ability to protect and enforce their right to environmental health and safety on the job. Outside of the trade union context, the right to association, in conjunction with the right to freedom of expression, is possible for groups of individuals, such as non-governmental organizations, to mobilize the human and financial resources necessary to effectively address environmental problems (see chap. 27 of Agenda 21).

J. Cultural rights

226. The relationship between the deterioration of the environment and the enjoyment of cultural rights has several dimensions, indissolubly linked to the fundamental rights
to education, information, freedom of expression, assembly and association, and the right to take part in public life and in decision-making. Cultural rights may equally well be considered from the standpoint of the right to leisure, provided for in a number of international human rights instruments, which leads to the right to the conservation of unique sites constituting the universal heritage.

227. Nearly 20 years ago, the Director-General of UNESCO made the following reflection on the relationship between culture and man's environment:
Report of the Secretary-General: "The balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural and moral advancement of humanity" (E/CN.4/1199), thirty-second session of the Commission on Human Rights, 1976, p. 37.
"... The deterioration of the natural environment and, even more, the alienation from this environment of an increasingly large number of people in the industrialized countries are direct and potentially very serious blows to culture itself. What idea can man form of purity unless he initially receives a spontaneous impression of purity from the air he breathes, the river where he bathes, the sky on which he gazes or from all that goes to make up his life at its most instinctive? What secrets can he hear murmured within him if silence without is denied to him? How can he meditate amid tumult? How can he find himself in a continual flux of movement without pattern? And to what discoveries can he direct his steps outside himself, what marvels can he look for in a world where so many animal species are vanishing, where plant life is retreating further and further from our dwellings, and where man is increasingly confronted with the products and the signs of his oppressive presence?"

228. The importance of protecting cultural property and the specific role of UNESCO in this sphere may be recalled at this point. The Constitution of UNESCO states that "since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed" and that peace must be founded upon the intellectual and moral solidarity of mankind.

229. On 14 November 1970, the General Conference of UNESCO at its sixteenth session adopted the "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property." According to this Convention, the term "cultural property" means "property, which on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science". Article 1 of this instrument lists the categories of cultural property protected.

230. On 16 November 1972, another convention saw the light of day under the auspices of UNESCO; it relates to the "protection of the world cultural and natural heritage". It came into force on 17 December 1975; it codifies UNESCO's practice in this area and describes methods of cooperation for safeguarding the natural heritage which is increasingly threatened by the deterioration of the environment.

231. The Convention covers the cultural and natural heritage of outstanding universal value from the point of view of history, art, science or aesthetics. It establishes two fundamental principles: each State party undertakes to ensure the conservation of the world heritage situated on its territory; and States parties recognize that the international community must cooperate to protect and conserve this heritage. For this purpose, each State party is required to draw up an inventory of property forming part of the cultural and natural heritage situated on its territory and suitable for protection. A World Heritage Committee, set up under the Convention, is responsible for designating the property which is part of the world heritage and disseminating, when circumstances demand, a "List of World Heritage in Danger", so as to protect that
property against disappearance, deterioration, destruction, abandonment, natural catastrophes or the outbreak or threat of an armed conflict (art. 11).

232. According to the Convention, "deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world". The States parties, out of respect for the sovereignty of the States in whose territory the cultural and natural heritage is situated, recognize that it constitutes a universal heritage, and undertake to protect, conserve and preserve it and not to take any deliberate measures which might damage this heritage directly or indirectly (see art. 6).

233. The right to culture and the other related rights recognized in a number of international instruments entail the right of everyone "freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and benefits" (Universal Declaration of Human Rights, art. 27), and "the right and the duty" of every people "to develop its culture," since each culture has "a dignity and value which must be respected and preserved" (Declaration of the Principles of International Cultural Cooperation, art. 1). Proclaimed by the General Conference of UNESCO at its fortieth session, on 4 November 1966. See "A Compilation of International Instruments", United Nations, Sales No. E.93.XIV.1, pp. 591-594.

234. In this context, development models which are extroverted or exclusively growth-oriented, carry the risk of acculturation, or even endangering cultures closely linked to a form of existence of national, ethnic, religious or linguistic minorities or of indigenous peoples. While the Special Rapporteur is aware of the fact that traditional practices which run counter to progress and affect human rights should be eradicated, she also considers that sustainable development only has a real sense in so far as it takes account of the aspirations of the individuals, groups and peoples concerned, and preserves their cultural identity and their means of existence.

CHAPTER VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

235. The problems of the environment are no longer being viewed exclusively from the angle of the pollution affecting the industrialized countries but seen rather as a worldwide hazard threatening the planet and the whole of mankind, as well as future generations. There is now a universal awareness of the widespread, serious and complex character of environmental problems, which call for adequate action at the national, regional and international levels.

236. The realization of the global character of environmental problems is attested to by the progress made in understanding the phenomena that create hazards for the planet, threaten the living conditions of human beings and impair their fundamental rights. These phenomena concern not only the natural environment (the pollution of water, air and atmosphere, seas, oceans and rivers; depletion of the ozone layer; climatic changes) and natural resources (desertification, deforestation, soil erosion, disappearance of certain animal species; deterioration of flora and fauna; exhaustion of non-renewable resources, etc.) but also populations and human settlements (housing, town planning, demography, etc.) and the rights of human beings (the human environment, living, working and health conditions; conditions for the exercise and enjoyment of fundamental rights).

237. By means of a global approach to these phenomena that takes in their multidimensional aspects, including their human aspects, it has become possible to move from environmental law to environmental rights, proclaimed by the 1972
Stockholm Declaration which states in its Principle 1 that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations".

238. Since then, a large number of national, regional and international instruments have been drawn up which have strengthened the legal bases of environmental rights and stressed the intrinsic link that exists between the preservation of the environment, development and the promotion of human rights.

239. The Special Rapporteur has endeavoured, within the limits of the means at her disposal, to collect the basic legal instruments underpinning environmental rights and to clarify the relationship existing between the preservation of the environment and human rights. She has received from governments, the United Nations bodies concerned, specialized agencies and intergovernmental and non-governmental organizations, studies, communications, information and comments that have proved very useful for her report.

240. This research has revealed universal acceptance of the environmental rights recognized at the national, regional and international levels.

241. At the national level, over 60 constitutions brought to the attention of the Special Rapporteur contain specific provisions relating to the protection of the environment; some of them recognize explicitly the right to a satisfactory environment, entailing corresponding duties towards the State and its institutions and rights and/or obligations for individuals and organs of society. An increasing number of national legislations have developed the framework of laws and regulations needed to ensure the right to a satisfactory environment and have spelt out the substantive content of that right and the ways and means whereby it may be exercised, including remedies to safeguard its effective enjoyment and afford guarantees for its implementation. A few constitutions provide, in the section dealing with human rights and fundamental freedoms, for the right to a healthy environment and the guarantees attaching thereto, including in some cases the right of recourse and petition. Some countries have provided for the punishment of offences against the environment and have introduced into national legislation the principle of compensation for the victims as well as reparation of the damage. There is moreover a trend towards developing and strengthening the means of preventing damage to the environment.

242. At the regional and universal level, recognition of the right to a satisfactory environment as a human right is reflected both in the related normative developments and in the "environmental" concern that informs the activities of human rights bodies. Although only a few instruments of a binding legal character have established a direct link between the environment and human rights, the regional and international human rights bodies are developing a practice whereby the procedural bases for enforcing the right to a satisfactory environment are becoming more firmly established and the validity of complaints of human rights violations based on ecological considerations is being recognized. These bodies do not dismiss out of hand the idea that ecological factors may hinder the enjoyment of the human rights enshrined in the instruments in their care. On the other hand, those same bodies and more particularly the European Court of Human Rights have, in certain cases, legitimated restrictions on the use of private property in the public interest based on concern for the need to preserve the environment.

243. This review of the activities of human rights bodies and other fields relevant for the study has made it possible to outline the scope of environmental rights. Many
human rights are suited to being applied from an ecological perspective, whether those rights are political, civil, social, economic or cultural, and whether they are exercised individually or collectively. The Special Rapporteur has drawn up a list of those rights, albeit a non-exhaustive one and has attempted to assess the effects of the environment or enjoyment of those rights.

244. Her analysis of the ways in which the right to a satisfactory environment relates to other human rights gave the Special Rapporteur occasion to stress the close link existing between that right and the right to development. The fact is that the affirmation of "ecological rights" attaching to recognition of the right to a satisfactory environment cannot be understood if we disregard the problems bound up with development both nationally and internationally. It also rests on the indivisibility and interdependence of all human rights.

245. In this context, it is important to bear in mind the consensual aspects which form the basis of the world partnership for sustainable development and serve to reaffirm the principle of the right of peoples to self-determination, the duty to protect the environment and natural resources of peoples suffering oppression, domination and occupation, and the sovereign right of States to exploit their own resources in accordance with their environmental policy, while ensuring that the activities conducted by them or under their supervision do not damage the environment.

246. The world partnership establishes a responsibility which, while shared is differentiated on the basis of the "polluter pays" principle, the special responsibility of industrialized countries, and the problems and needs of developing countries. It also calls for the channelling of new and additional resources to the developing countries and the equitable settlement of those countries' foreign debt. The United Nations General Assembly has called for innovative measures in this respect, such as the conversion of debt into shareholdings and into ecological investment. It has also been generally recognized that the examination of national and international strategies for sustainable and ecologically sound development should not be used as a pretext for imposing new conditions on the granting of funding or development aid or to create unjustified trade barriers.

247. At the same time, the worldwide partnership creates solemnly acknowledged obligations towards present and future generations which involve corresponding rights for the recipients - individuals, groups and peoples. The State and other parties to development, including the international agencies, have the duty, among others, to refrain from activities damaging to the environment and to take positive measures for preserving it. It is recognized in particular that there is a need for studies of the impact of development projects on the environment and on the fundamental rights of the populations concerned, who are entitled to be duly informed of, and closely associated with, the decision-making process, either directly or through their freely elected representatives. Finally, it is acknowledged that vulnerable groups should be protected from the negative consequences of the application of structural adjustment programmes and of economic reforms undertaken by many countries. The Special Rapporteur notes with interest the significant changes beginning to occur within the international financing agencies, with a view to assuming responsibility for these questions.

248. Environmental damage has direct effects on the enjoyment of a series of human rights, such as the right to life, to health, to a satisfactory standard of living, to sufficient food, to housing, to education, to work, to culture, to non-discrimination, to dignity and the harmonious development of one's personality, to security of person and family, to development, to peace, etc.
249. In this context, it should be stressed how vulnerable certain peoples, populations, groups or categories of persons are to ecological hazards and natural disasters whether caused by man or generated by a state of war and conflict. The Special Rapporteur has pointed out that the poor and disadvantaged, minority groups, women, children, migrant workers and their families, refugees and displaced persons are generally those most affected and least protected. The transfer of toxic substances and waste to the developing countries also gives cause for serious concern.

250. The Special Rapporteur noted indigenous peoples’ special ties with the land and the environment, and their particular vulnerability to ecological hazards. She stresses the need for effective protection of their rights and calls for the rapid adoption of the draft declaration finalized by the Working Group on Indigenous Populations.

251. Conversely, human rights violations in their turn damage the environment. This is true of the right of peoples to self-determination and their right to dispose of their wealth and natural resources, the right to development, to participation, to work and to information, the right of peaceful assembly, freedom of association, freedom of expression, etc.

252. In the light of the foregoing, the Special Rapporteur is of the view that effective implementation of the right to a satisfactory environment cannot be dissociated from the twinned efforts to preserve the environment and ensure the right to development. Nor can it be achieved without resolute action to ensure the enjoyment of all human rights.

253. In order to give practical expression to the right to a satisfactory environment, there is a need for development strategies that are directed towards the implementation of a substantive part of that right (the right to development, to life, to health, to work, etc.). These must go hand in hand with the promotion of the related procedural aspects (due process, right of association and of assembly, freedom of expression, right of recourse, etc.).

254. Implementation of the right to a satisfactory environment calls for commitment and participation on the part of everyone at all levels, beginning with the family unit, where environmental education starts. It depends on the existence of effective national legal remedies; local administrative or other courts, national institutions and ombudsmen provide guarantees of the protection of this right. The Special Rapporteur notes with satisfaction the development of such recourse guarantees in many countries.

255. The right to a satisfactory environment is also a right to prevention which gives a new dimension to the right to information, education and participation in decision-making. The right to restitution, indemnification, compensation and rehabilitation for victims must also be seen from the angle of the special responsibility that would follow from the absence of preventive measures.

256. The right to a satisfactory environment is also a right to the "conservation" of nature for the benefit of future generations. This "futuristic" dimension restores to human rights their original purpose, as embodied in the Charter of the United Nations and the Universal Declaration of Human Rights of 1948. It foreshadows a "new public order" of human rights which would set acceptable limitations on those rights in the general interest while entailing corresponding duties on the part both of the public authorities and of individuals, associations and other components of civil society.

257. To conclude her study, the Special Rapporteur wishes to cite the argument of Mr. A. Kiss that international law must be based on values, the fundamental values of this century being human rights and the environment. She shares this view and notes that
these values are intrinsically bound up with development seen as a worldwide phenomenon resting on various pillars such as peace, equity, progress, social justice and participatory democracy at all levels, including the international level. As recalled by the Secretary-General in May 1994 when he presented his agenda for development which covers the five dimensions of peace, the economy, the environment, social justice and democracy, "without peace, human energies cannot be productively employed; without economic growth, there can be no sustained, broad-based improvement in material well-being; without protection of the environment, the basis of human survival will be eroded, without societal justice, mounting inequalities will threaten social cohesion; without political participation in freedom, development will remain fragile and perpetually at risk".

B. Recommendations

258. The "human rights" component of the right to a satisfactory environment lends itself, however, to immediate implementation by various bodies, under existing mechanisms for following up regional and international human rights instruments. The practice being developed within those bodies is decisive and should bring into sharper focus the content of the right to a satisfactory environment, the ways and means of implementing it, and the related procedural aspects.

259. The Special Rapporteur recommends that the various human rights bodies should examine, in the various fields of concern to them, the environmental dimension of the human rights under their responsibility. She suggests in particular that the following themes should be regularly examined by the bodies, committees, working groups and special rapporteurs concerned:

(a) Commission on the Status of Women and Committee on the Elimination of Discrimination against Women: rights of women and the environment, with emphasis on factors giving rise to de facto discrimination and impeding participation in the decision-making process;

(b) Committee on the Rights of the Child: vulnerability of children in the face of ecological hazards; protection of children against environmental degradation with particular reference to the phenomenon of street children; education of children with a view to the preservation of the environment;

(c) Committee on the Elimination of Racial Discrimination - CERD: racial discrimination and the environment and, more particularly, the tendency for disadvantaged and marginalized groups to be more exposed to environmental hazards. In addition, the Committee could establish appropriate case law for the treatment of complaints addressed to it in conformity with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination;

(d) Committee on Economic, Social and Cultural Rights. The Committee could frame general comments with a view to defining the interaction of the environment with the human rights under its responsibility. It could moreover examine, in the context of ongoing studies, the possibility of including communications on ecological matters in any procedure established by means of a protocol for the treatment of complaints by individuals or States;

(e) Human Rights Committee. The Committee could expand its general comment on the right to life in order to include environmental concerns or formulate a general comment defining the links existing between civil and political rights and the environment. Moreover, it should be able, through dealing with complaints, to establish case law that will accommodate environmental concerns;
(f) Working Group on the right to development: environment, debt and development; development, environment and the funding institutions; participation by the people in activities for development and the environment, structural adjustment programmes, impact on the environment and underprivileged populations and groups;

(g) Working Group entrusted with the preparation of a declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms. The group could contemplate the inclusion of specific provisions relating to rights and duties in respect of the preservation of the environment;

(h) The working groups, special rapporteurs on thematic questions and country rapporteurs could also, within the areas covered by their mandates, consider the impact of the environment on the enjoyment of human rights and possible measures for correcting situations where rights violations have been observed and help the victims to incorporate them into their rights, particularly with regard to restitution, compensation or rehabilitation.

260. The interest shown in the impact of the environment on the enjoyment of human rights means that human rights bodies are already in demand and are increasingly being called on to pronounce on the question. In order to avoid disparate practices and to promote the development of an overall, integrated and coordinated view in the approach to the various phenomena which will be dealt with in an inevitably sectoral way by existing bodies, given their respective areas of competence, it is suggested that:
   A coordination centre should be set up to deal with the question within the United Nations Centre for Human Rights;
   A special rapporteur of the Commission on Human Rights should be appointed with a mandate similar to that generally given to special rapporteurs on thematic questions;
   A seminar should be held under the auspices of the Centre for Human Rights to help formulate practical recommendations on the way in which the right to a satisfactory environment could be rationally incorporated into the activities of human rights bodies.

261. In submitting the draft declaration of principles on human rights and the environment contained in the annex to this report to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, the Special Rapporteur expresses the hope that the draft will help the United Nations to adopt, in the course of the present United Nations Decade of International Law, a set of norms consolidating the right to a satisfactory environment - defined as an integral part of the world partnership for peace, development and progress for all.

Annex I

DRAFT PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

Preamble
Guided by the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Programme of Action of the World Conference of Human Rights, and other relevant international human rights instruments,
Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law, Guided further by the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development, Guided by fundamental principles of international humanitarian law, Reaffirming the universality, indivisibility and interdependence of all human rights, Recognizing that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment, Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development, Deeply concerned by the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes, Convinced that the potential irreversibility of environmental harm gives special responsibility to prevent such harm, Concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations, Declare the following principles:

Part I
1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.
3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.
4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Part II
5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.
6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.
7. All persons have the right to the highest attainable standard of health free from environmental harm.
8. All persons have the right to safe and healthy food and water adequate to their well-being.
9. All persons have the right to a safe and healthy working environment.
10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.
11. (a) All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means.
(b) All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.
12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.
13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual and other purposes. This includes ecologically sound access to nature.
Everyone has the right to preservation of unique sites consistent with the fundamental rights of persons or groups living in the area.
14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.
Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

Part III
15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions or courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.
16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.
17. All persons have the right to environmental and human rights education.
18. All persons have the right to active, free and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.
19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.
20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV
21. All persons, individually and in association with others, have the duty to protect and preserve the environment.
22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.
These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, inter alia.
- Collection and dissemination of information concerning the environment;
- Prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;
- Public participation in environmental decision-making;
- Effective administrative and judicial remedies and redress for environmental harm or the threat of such harm;
- Monitoring, management and equitable sharing of natural resources;
- Measures to reduce wasteful processes of production and patterns of consumption;
- Measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and
- Measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.

23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

24. All international organizations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realized.

Annex II

MEETINGS WITH, AND CONTRIBUTIONS OF, EXPERTS AND NON-GOVERNMENTAL ORGANIZATIONS

1. The Special Rapporteur appreciates the strong interest of non-governmental organizations in her work and recognizes their many valuable contributions. Since the beginning of her mandate, representatives of many non-governmental organizations have met the Special Rapporteur, both individually and in groups, to express their views and to submit information.

2. The first group meeting with representatives of non-governmental organizations took place in August 1990 in Geneva when the Special Rapporteur met with representatives of more than 20 non-governmental organizations. At that session, facilitated by the Association des Consultants Internationaux en Droits de l'Homme in conjunction with the Sierra Club Legal Defense Fund, the Special Rapporteur was presented with situations that clearly illustrated to her the scope and depth of human rights violations arising from environmental problems and the human rights violations that cause environmental degradation.

3. A second major consultation took place in the spring of 1991 in two parts - the first in New York and the second in San Francisco. These sessions were funded by the Sierra Club Legal Defense Fund and assisted by the United Nations Centre for Human Rights Liaison Office in New York. At both these sessions the Special Rapporteur
was accompanied by a staff member of the Centre for Human Rights. At the session in New York, the Special Rapporteur met with representatives of a number of non-governmental organizations and scholars in the field invited by the Natural Heritage Institute and the Four Directions Council.

4. In San Francisco, the Sierra Club Legal Defense Fund hosted a series of meetings from 28 April to 4 May 1991. During that period, the Special Rapporteur met with representatives of a number of organizations, and was also provided with documentation.

5. During the United Nations Conference on Environment and Development in Rio de Janeiro (1992), the Sierra Club Legal Defense Fund hosted a special session for the Special Rapporteur to enable her to meet with representatives of non-governmental organizations and individuals concerned with human rights and the environment from all parts of the world, to exchange views and to receive information.

6. During the World Conference on Human Rights in Vienna (1993), the Special Rapporteur met informally with a number of representatives from non-governmental organizations and experts.

7. In the course of these consultations with non-governmental organizations and experts, a number of substantive and structural concerns were expressed, including:
   (a) Self-determination and the environment, especially with respect to the relationship between indigenous peoples and the massive export of natural resources and related ecological destruction;
   (b) The lack of timely and relevant information about projects with severe environmental impacts;
   (c) The imbalance between the resources available to groups interested in protecting human rights and the environment and the resources available to Governments and/or multinational enterprises;
   (d) The human rights and environmental implications of large-scale disasters;
   (e) The forced relocation of indigenous peoples and the subsequent ecological ruin of their traditional lands and sacred sites;
   (f) The insufficient attention paid by international financial institutions to the special environmental needs of indigenous peoples and other vulnerable groups.

8. Following the Special Rapporteur's recommendation, contained in her 1993 report, that the Centre for Human Rights should convene an expert meeting on human rights and the environment, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in its resolution 1993/32 of 25 August 1993, invited the Secretary-General to organize such a meeting. Due to serious budgetary problems, the Secretary-General was unable to do so. However, the Sierra Club Legal Defense Fund, in association with the Société suisse pour la protection de l'environnement and the Association mondiale pour l'école instrument de paix, did sponsor the meeting, with the Centre for Human Rights providing the facilities and staff.

9. The expert meeting on human rights and the environment was held from 15 to 19 May 1994 at Geneva, and attended by the following experts:
   - David Goldberg University of Glasgow; International Federation of Human Rights
   - Mario Ibarra International Indian Treaty Council
   - Alexandre Kiss Centre for Environmental Law; University of Strasbourg; European Council for Environmental Law; International Institute of Human Rights
   - Miloon Kothari Centre for Housing Rights and Evictions; Habitat International Coalition
10. The following persons were also present: Mr. Philip Alston, Chairperson of the Committee on Economic, Social and Cultural Rights; Mr. Francis Deng, Representative of the Secretary-General on internally displaced persons; Mrs. Erica-Irene Daes, Chairperson of the Working Group on Indigenous Populations; Mr. Rajindar Sachar, Special Rapporteur on the right to adequate housing.

11. The following non-governmental organizations contributed to the meeting through representation, comments and/or recommendations: International Commission of Jurists, Disabled People's International, International Educational Development, Human Rights and Natural Heritage Institute.

12. As part of the Geneva expert session, the Special Rapporteur also met representatives of the World Health Organization, the International Committee of the Red Cross and the Geneva Liaison Office of the United Nations Environment Programme for an exchange of views regarding the draft declaration and other issues of common concern.

13. The Special Rapporteur also received information on human rights and the environment from non-governmental organizations during the course of debates on human rights and the environment in both the Sub-Commission and the Commission on Human Rights.

Annex III

DEVELOPMENTS IN NATIONAL LEGISLATION AND PRACTICES

A. Summary of constitutional provisions

In her two progress reports in 1992 (E/CN.4/Sub.2/1992/7 and Add.1) and in her report of 1993 (E/CN.4/Sub.2/1993/7), the Special Rapporteur noted that many countries had devoted constitutional provisions to the environment. The information reproduced below comprises the data included in the previous reports and those recently communicated to the Special Rapporteur.

1. Afghanistan

The 1990 Constitution proclaims that "the State shall adopt and implement the necessary measures for the protection of nature, natural wealth and reasonable utilization of natural resources, improvement of the living environment, prevention of pollution of water and air, and the conservation and survival of animals and plants (chap. II, art. 32).

2. South Africa
The Constitution of South Africa, which came into force on 27 April 1994, stipulates that "Every person shall have the right to an environment which is not detrimental to his or her health or well-being" (sect. 29).

3. Albania
The 1976 Constitution stipulates that "protection of the land, natural riches, waters and the atmosphere from damage and pollution is a duty of the State, of economic and social organizations and of all citizens" (chap. 1B, art. 20).

4. Algeria
The revised Constitution of 1989 stipulates, in essence, that every citizen has a duty to protect public property and the interests of the national community and to respect the property of others. Under article 17, public property encompasses the various components of the ecosystem (title I, chap. III, art. 63).

5. Germany
It is the responsibility of the legislature to protect the natural bases of man's existence, with due regard for prevention, the "polluter-pays" principle and cooperation, and to promote uniform ecological conditions of a high standard (text of 1990 supplementing the Basic Law, chap. VII, art. 34).

6. Angola
The 1992 Constitution stipulates that "the Government of Angola ... shall seek to protect and preserve the unique environmental heritage of Angola in order to ensure the quality of the human environment for all" (art. IX).

7. Bahrain
The 1973 Constitution proclaims that the State shall ensure the preservation and proper utilization of natural resources, which are its property (art. 11, second part).

8. Bolivia
The 1967 Constitution provides that "assets in the patrimony of the nation constitute inviolable public property, and it is the duty of every inhabitant ... to respect and protect that property" (art. 137).

9. Brazil
The 1988 Constitution attaches particular importance to protecting the environment and combating pollution in all its forms. Effective enjoyment of the rights listed in article 225 is accompanied by certain obligations on the part of the authorities, such as the imposition of criminal and administrative penalties for activities considered detrimental to the environment. Article 225 (1) provides that "in order to ensure that this right is effectively available, it is incumbent on the Government to:
I. Preserve and restore essential ecological processes and arrange for the ecological management of species and ecosystems;
II. Preserve the diversity and integrity of the genetic patrimony of Brazil and oversee the activities of entities engaged in research and manipulation of genetic material;
III. Define, in all units of the Federation, the geographical areas and components thereof that are to be specially protected (these decisions may be amended or repealed only by the legislature and any use that compromises the integrity of the features which justify protection of such areas shall be prohibited);
IV. Require, pursuant to the law, an environmental impact study to be made prior to the installation of a project or activity liable to cause significant harm to the environment, and the results of such study to be made public.

V. Monitor the development, marketing and use of techniques, methods and substances that present a risk to life, the quality of life or the environment;

VI. Promote environmental education at all levels of instruction, and help to increase public awareness of the need to preserve the environment;

VII. Protect the flora and fauna; practices which put their ecological function at risk, lead to the extinction of species or subject animals to cruel treatment are hereby prohibited."

Certain areas are specially protected and the rights of indigenous populations, particularly their rights over the lands they traditionally occupy, are recognized by the Constitution (art. 23).

10. Bulgaria
The 1991 Constitution provides that "Bulgaria shall ensure the protection and conservation of the environment, the sustenance of animals and the maintenance of their diversity, and the rational use of ... natural ... resources", and that while "citizens have the right to a healthy and favourable environment ... they [also] have an obligation to protect the environment" (chap. II, art. 31).

11. Burkina Faso
The 1991 Constitution provides for "the right to a healthy environment" and stipulates that "the protection, defence and promotion of the environment shall be the duty of all" (title I, arts. 30 and 31).

12. Chile
The 1980 Constitution guarantees everyone "the right to live in an environment free from contamination. It is the duty of the State to watch over the protection of this right and the preservation of the environment" (art. 19 (8)). An appeal may be lodged to ensure observance of these provisions.

13. China
The 1982 Constitution stipulates that "the State shall protect and improve the living environment and the ecological environment, and prevent and remedy pollution and other public hazards". It also ensures the rational use of natural resources and protects rare animals and plants (chap. I, arts. 9 and 26).

14. Colombia
The 1991 Constitution obliges the government authorities and the people to protect the cultural and natural assets of the nation. It establishes a link between public health and protection of the environment (arts. 8, 49, 79, 80, 86 and 88).

15. Korea
The 1987 Constitution proclaims that "All citizens have the right to a healthy and pleasant environment. The State and all citizens shall endeavour to protect the environment" (chap. II, art. 35).

16. Cuba
The amended 1992 Constitution provides, in essence, that the State shall protect the environment and the country's natural resources, over which it shall exercise sovereignty. The State also recognizes the close link between the environment and sustainable economic and social development, which ensures the survival, well-being and security of present and future generations. Citizens also have a duty to contribute to the protection of nature's rich potential (arts. 11 (b) and 27).

17. El Salvador
The 1983 Constitution stipulates that "The State shall maintain permanent control over the quality of pharmaceutical, chemical and food products and over ... atmospheric conditions which may affect health and well-being" (chap. 1, art. 69).

18. United Arab Emirates
The 1971 Constitution proclaims that "The natural resources and wealth of each Emirate shall be considered the public property of that Emirate. Society shall be responsible for the protection and proper exploitation of such natural resources and wealth for the benefit of the national economy" (chap. 2, art. 23).

19. Ecuador
The 1983 Constitution guarantees the right to live in an environment free of contamination (title II, sect. 1, art. 19 (2)).

20. Spain
The 1978 Constitution accords everyone "the right to enjoy an environment suitable for the development of the person" and imposes on them "the duty to preserve it". In addition "The public authorities shall concern themselves with the rational use of all natural resources". Any one violating these provisions is liable to criminal or administrative sanctions (chap. III, art. 45).

21. Ethiopia
The 1987 Constitution guarantees maintenance of the ecological balance and rational distribution of human settlements "in order to create favourable conditions for development" (part II, arts. 10 and 55).

22. Russian Federation
The 1993 Constitution stipulates that "Every person has an obligation to protect nature, preserve its wealth and improve the environment" (art. 58). Damage to the environment is punishable by law and may be subject to compensation. The protection and rational use of natural resources constitute a further established principle (art. 49).

23. Greece
The 1975 Constitution provides that the protection of the natural and cultural environment is a duty of the State (art. 24).

24. Guatemala
The 1985 Constitution promotes social, economic and technological development which will prevent pollution of the environment and maintain the ecological balance (chap. II, sect. IV, art. 97).
25. Equatorial Guinea
The 1982 Constitution stipulates that the State recognizes the right to the protection of health (title VI, chap. II, art. 60).

26. Guyana
The 1980 Constitution obliges every citizen to participate in activities to improve the environment and protect the health of the nation. In addition, the interests of present and future generations are taken into account, and the use of natural resources must be rational (arts. 25 and 36).

27. Haiti
The 1987 Constitution imposes on citizens the civic duty "to respect and protect the environment". "Practices that are liable to disturb the ecological balance are strictly prohibited", as is the importation of "wastes or residues ... from foreign sources" (title XI, chap. II, arts. 253 and 258).

28. Honduras
The 1982 Constitution stipulates that "the State shall maintain a satisfactory environment for the protection of the health of all" (chap. VII, art. 145).

29. Hungary
The revised Constitution of 1990 "recognizes and enforces the right of everyone to a healthy environment". Physical and mental health, safety in the workplace and the provision of medical care are further rights recognized by the Constitution (chap. I, sect. 18, and chap. XII, sect. 70/D).

30. India
The 1977 Constitution, as amended in 1985, provides that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife" and makes it the duty of every citizen "to protect and improve the natural environment" (part IV, arts. 48 A and 51 A).

31. Islamic Republic of Iran
The 1980 Constitution institutes the protection of the environment in which the present and future generations must live as a public responsibility. Economic or other activities which pollute the environment are prohibited (chap. IV, art. 50).

32. Malta
The 1964 Constitution stipulates that "The State shall safeguard the landscape and the historical and artistic patrimony of the Nation" (chap. II, art. 9).

33. Mexico
The 1917 Constitution, as amended in 1987, provides that the State shall have the right to regulate the use of natural resources which are susceptible of appropriation, in order to ensure a more equitable distribution of public wealth, to achieve well-balanced development and to improve the living conditions of the urban and rural population. A link is established between the preservation of the ecological balance, human settlements and the protection of natural resources (art. 27).
34. Mongolia
The 1992 Constitution recognizes the various components of the ecosystem as subject to national sovereignty and hence State protection (chap. I, art. 6). It also recognizes the right of citizens to a healthy and safe environment, the right to be protected against environmental pollution and ecological imbalances, and the right to seek legal redress for violations of those rights. It also imposes on citizens the duty to protect nature and the environment (chap. II, arts. 16 and 17).

35. Mozambique
The 1990 Constitution provides that "The State shall promote efforts to guarantee the ecological balance and the preservation of the environment for the betterment of the quality of life of its citizens" (chap. IV, art. 37).

36. Namibia
The 1990 Constitution, with a view to promoting the welfare of the people, stipulates that the State shall maintain ecosystems, essential ecological processes and biological diversity. Protection of the interests of present and future generations and measures against dumping or recycling of foreign nuclear and toxic waste are other responsibilities of the State (chap. II, art. 95).

37. Nepal
The 1990 Constitution defines as State priorities the protection of the environment throughout the country, the prevention of damage to the environment and enhancing the consciousness of the public regarding environmental cleanliness (art. 26).

38. Nicaragua
Under the 1987 Constitution, Nicaraguans have the right to live in a healthy environment, which the State has the duty to preserve, develop and restore. The same is true of natural resources, which form part of the national heritage and must be exploited in a rational way (title IV, chap. III, art. 60 and title VI, chap. I, art. 102).

39. Nigeria
The 1979 Constitution stipulates that "exploitation of human or natural resources for reasons other than the good of the community shall be prohibited" (chap. II, art. 18).

40. Panama
The 1980 Constitution provides that "It is a fundamental duty of the State to see to the preservation of ecological conditions and to prevent pollution of the environment and imbalance in ecosystems, with a view to ensuring economic and social development" (chap. VI, art. 110).

41. Papua New Guinea
The 1984 Constitution defines the fourth goal of the State as the conservation of the environment and the rational use of natural resources "for the benefit of future generations". In this respect, all persons have the basic obligation to "protect [the country] and to safeguard the national wealth, resources and environment" (chap. IV).

42. Paraguay
The 1967 Constitution provides that "The State shall conserve the forestry resources of the country, as well as other renewable natural resources" (chap. VI, art. 132).

43. Netherlands
The 1989 Constitution accords priority to any action by the State to promote the "distribution of wealth", regional planning, and the protection and improvement of the environment (art. 20).

44. Peru
The 1979 Constitution provides that "Everyone has the right to live in a healthy environment" and that "It is the obligation of the State to prevent and control environmental pollution". It also recognizes that natural resources are the patrimony of the nation (chap. II, arts. 118 and 123).

45. Philippines
The 1986 Constitution protects exclusively the country's marine wealth and the rights of its fishermen (art. XII, sects. 2 and 7).

46. Poland
The 1989 Constitution provides that citizens have the right to a natural environment and the duty to protect it (chap. VIII, art. 71).

47. Portugal
The 1982 Constitution provides that "Everyone shall have the right to a healthy and ecologically balanced human environment and the duty to defend it". The State also has the duty to protect the environment, and the Constitution identifies the measures to be taken to that end (part I, title III, chap. II, art. 66).

48. Lao People's Democratic Republic
The 1991 Constitution imposes on all organizations and all citizens the duty to protect the environment and natural resources (chap. II, art. 17).

49. Romania
Article 22 of the 1991 Constitution (see E/CN.4/Sub.2/1992/7), which was contained in the draft constitution, does not appear in the Constitution in the form in which it was adopted.

50. Seychelles
The 1992 Constitution (Preparation and Promulgation) Act states that "The State pledges itself to protect, preserve and improve the environment and natural resources", and that it is the duty of every citizen to do likewise (chap. IV, arts. 40 and 41).

51. Slovakia
The 1992 Constitution accords everyone the right to a favourable environment and imposes the obligation to protect and promote the environment and cultural heritage. It also recognizes the right of everyone to "timely and complete information about the state of the living environment and about the causes and effects of this state" (chap. II, arts. 44 and 45).
52. Slovenia
The 1991 Constitution provides that "All persons have the right to a healthy living environment in accordance with the law" and that "The State shall ensure a healthy living environment". It further provides that "All persons are required ... to protect natural points of interest and cultural monuments" (title III, arts. 72 and 73).

53. Sri Lanka
The 1977 Constitution stipulates that "The State shall protect, preserve and improve the environment for the benefit of the community" and makes it the duty of every person "to protect nature and conserve its riches" (chap. VI, arts. 27 and 28).

54. Sweden
The 1975 Constitution, as amended in 1978, provides that "it shall be incumbent on the community to guarantee the right to work, housing and education, and to promote social care and security, as well as a favourable living environment" (chap. I, art. 2, para. 2).

55. Taiwan
The 1947 Constitution provides that the State shall foster, inter alia, the development of "water conservancy" and "public health", and "protect the land and ... assist in its development" (chap. XIII, sect. 6, art. 169).

56. Tanzania
The 1984 Constitution calls for guarantees that natural resources will be preserved, developed and used for the benefit of all citizens. It also provides that "everyone has the responsibility of conserving natural resources" (sect. 2, paras. 9.1 and 27.1).

57. Chad
Under the 1989 Constitution, one of the fundamental responsibilities of the State is "to preserve the environment and natural resources" (art. 1).

58. Thailand
The 1978 Constitution stipulates that "The State shall preserve the environmental balance and eliminate pollution, which jeopardizes the health and hygiene of the people", and "shall have an appropriate demographic policy" (chap. V, arts. 65 and 69).

59. Turkey
The 1982 Constitution stipulates that "Every person has the right to live in a healthy, balanced environment." It is the duty of the State to protect the environment (chap. VIII, sect. A, art. 56).

60. Vanuatu
The 1980 Constitution stipulates that every person has the duty "to protect (Vanuatu) and to safeguard the national wealth, resources and the environment in the interests of the present generation and future generations" (title II, chap. II, art. 7).

61. Viet Nam
The 1980 Constitution provides that all the wealth and natural resources of the State are the property of the people and that everyone has the duty to protect and improve the environment (chap. 2, arts. 19, 20 and 36).

B. National legislation
In her earlier progress reports, the Special Rapporteur cited provisions of national legislation on the environment. Other examples received after publication of those reports are set out below.

1. Germany
A joint Bundestag-Bundesrat Committee on the Constitution has recommended that environmental protection be incorporated in the Basic Law as a national objective. The new clause reads as follows: "For the sake of present and future generations, the State shall protect the natural sources of life within the framework of the constitutional order through the Legislature and, in accordance with the law and the principles of justice, the executive and the judiciary".

2. Egypt
The Government of Egypt has informed the Special Rapporteur of the promulgation of Act No. 4/1994, on the environment, as part of the national effort to ensure exercise of the right to a healthy environment. The Act establishes the rules for protection of the atmosphere and marine and land environments, governs the operation of environment monitoring bodies and defines their functions in the context of coordination. It also embodies the principle of compensation of individuals and corporate entities for damage caused by pollution.

3. United States of America
In a communication addressed to the Special Rapporteur, the Government of the United States of America states that: "the U.S. considers human rights and environmental preservation to be two of the highest priorities of this Government. On 11 February 1994, President Clinton issued an Executive Order to the heads of all departments and agencies of the U.S. Government on the subject: 'Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'. The purpose of this Executive Order was to underscore certain provisions of existing U.S. laws that can help ensure that all communities in the United States of America live in a safe and healthful environment".

4. Greenland
Greenland has embarked on a national and regional process for the protection of indigenous populations in the Arctic with a view to ensuring sustainable development for them.

5. Islamic Republic of Iran
Section 1 of the Environment Protection and Enhancement Act of 1974 stipulates that "None of the restrictions and regulations to be established in respect of the areas and regions mentioned in section 5 (a) hereof shall conflict with the ownership right and usufruct exercised legally by individuals within such areas and regions". Section 11 also provides that "Considering the requirements and criteria established under the regulations referred to in section 10 hereof, the Department shall distinguish such factories and workshops that contribute to the pollution of the environment, and shall give the owners or managers thereof notice either to do away with the causes of the
pollution within a definite period of time or to discontinue operation [...]. In the event that any person concerned should object to such notice he may lodge a complaint with the local court of first instance [...].”

7. Nepal
Following the United Nations Conference on Environment and Development, the Government of Nepal implemented numerous measures for the protection of the environment. In 1993, the Government adopted the "National Environmental Impact Assessment Guidelines" as part of a general policy to promote an integrated approach to the environment and development.

8. Romania
Draft legislation on the protection of the environment provides that the State recognizes the right of everyone to a healthy environment. It sets out a list of measures to be taken by the State to ensure the effective enjoyment of this right.

C. Summary of new domestic cases
For those previously analysed by the Special Rapporteur, please see documents E/CN.4/Sub.2/1992/7 and E/CN.4/Sub.2/1993/7.

1. Canada
In Regina v. Sparrow, the Canadian Supreme Court recognized the existence of aboriginal rights and delineated a test to determine whether there had been a prima facie infringement of those rights. The appellant, a member of the Musqueam Band, was charged with fishing with a drift net longer than that permitted by his Band's food fishing licence. The Court held that the Constitution Act, 1982 § 35 (1), which recognizes and affirms existing aboriginal rights, requires that any regulation infringing upon indigenous rights must be justified by a valid objective consistent with the Government's fiduciary duty toward the aboriginal peoples. Parties challenging legislation as a prima facie infringement of indigenous rights must show: (i) that the limitation is unreasonable; (ii) that the regulation imposes an undue burden; and (iii) that it denies the holders their preferred means of exercising that right. The Court found the Government's public interest objective to be so vague as to provide no meaningful guidance and so broad as to be unworkable. It allowed the objective of conservation and resource management, however, as consistent with aboriginal beliefs, practices and rights. If on remand it was found that there had been an infringement, indigenous groups would enjoy priority allocation over other commercial and consumer groups after legitimate conservation needs had been met.

2. Costa Rica
The Supreme Court of Costa Rica affirmed the right to a healthy environment (Constitutional Chamber of the Supreme Court Vote No. 3705, 30 July 1993). The plaintiff brought the action on the grounds that his and his neighbours' rights to life and a healthy environment had been violated because a cliff in their neighbourhood had been used as a dump. The Ministry of Health submitted that he had issued an order to buy lots for an alternative dump site within three months. The Court ordered that the dump be closed immediately and held that the authorities had not been effective or diligent enough in carrying out their obligation to protect life, health and the environment. To this effect, the Court quoted the decision of the lower court which asserted that life "is only possible when it exists in solidarity with nature, which nourishes and sustains us - not only with regard to physical food, but also with
physical well-being. It constitutes a right which all citizens possess to live in an environment free from contamination. This is the basis of a just and productive society."

3. Mexico
Decision 12/91 of the Council of the National Commission for Human Rights assigns to the Commission responsibility for dealing with complaints on ecological matters. In this connection, the Commission has drawn up a programme on human rights, ecology and health. In 1991 and 1992, the Commission made six recommendations on the environment. Recommendation 110/91 of 8 November 1991, for example, was in response to a complaint lodged by individuals that the authorities responsible for controlling and eliminating pollution had failed to keep the public informed. The Commission recommended that the authorities concerned should publicize widely through the media the harmful effects of environmental degradation on health and the specific measures which the public should take. Recommendation 101/92 of 22 May 1992 was in response to a complaint by the residents of the Nicolás Bravo and Guadalupe Hidalgo de Tehuacón housing developments regarding irregularities in the operation of enterprises in the area. The Commission recommended that an investigation should be conducted into the standing of those enterprises with regard to the law. The Government of Mexico has also informed the Special Rapporteur of the establishment of the National Ecological Institute and the Office of the Federal Advocate for Protection of the Environment under Decision 4/92 of the Council of the National Commission for Human Rights.

4. Philippines
The Philippines Supreme Court recently affirmed the right of this and future generations to a balanced and healthy ecology (Minors Oposas v. Secretary of the Department of Environment and Natural Resources (DENR), 33 ILM 173 (1994)). The plaintiffs in that case, a group of minors representing their generation as well as generations unborn, sought to have all existing timber licences cancelled due to the advanced rate of deforestation in the Philippines and its destructive effects on the environment, indigenous cultures and "inter-generational equity". The Supreme Court reversed the dismissal of the case, ruling that they not only had standing to represent future generations, but had adequately asserted a right to a balanced and healthful ecology based on the Constitution, Executive Order No. 192, title XIV, as well as natural law. "Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation ... the advancement of which may even be said to predate all Governments and constitutions." The Court further ruled that if the State did not carry out its "correlative duty to refrain from impairing the environment," the repercussions would not only be felt by this generation, but also those to come - "generations which stand to inherit nothing but parched earth incapable of sustaining life".