

human rights dialogue

an international forum for debating human rights


Carnegie Council
ON ETHICS AND
INTERNATIONAL AFFAIRS

Spring 2004 Series 2 Number 11 \$5.00



ENVIRONMENTAL RIGHTS

Contributors explore the link between environmental problems and human rights violations

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ISBN: 0-87641-053-0

about

Human Rights Dialogue

Published semiannually, *Human Rights Dialogue* promotes a global discussion of human rights ideas and practices by examining dynamic, firsthand accounts of human rights issues as they arise within specific real-life contexts. In so doing, the publication helps to clarify the significant and ongoing evolution that is taking place within the human rights movement in order to make the human rights framework more relevant and effective in addressing the social, economic, and political challenges of the twenty-first century.

Series One (1993-1998) of *Dialogue* examined all sides of the Asian values debate—the argument that Asian cultural values imply different human rights standards and priorities from those in the West. In Series Two (2000–present), *Dialogue* addresses the problem of “the human rights box”—the constraints that have enabled the human rights framework to gain currency among elites while limiting its advance among the most vulnerable. Specifically, the essays aim to locate the barriers to greater public legitimacy of human rights and to demonstrate how those barriers can be overcome.

Founded in 1914 by Andrew Carnegie, the Carnegie Council is an independent, nonpartisan, nonprofit organization dedicated to research and education at the intersection of ethics and international affairs. The essays published within *Human Rights Dialogue* reflect the opinions of the authors and not necessarily those of the Carnegie Council.

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Cover photo: Deforestation, Thailand. Chiang Mai. Cracked earth, drought in deforested area. The top soil will dry out and be blown or washed away. Photo courtesy of S. Chamnanrith/UNEP/Still Pictures.

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INTRODUCTION

The essays here collectively explore the definition, status, and relevance of the concept of environmental rights in law and politics around the world, and the extent to which a human rights lens is a helpful way in which to view environmental issues.

Although both human rights protection and environmental protection are relatively well-developed areas of public policy, recognition of the linkage between the two has been slow to develop. As activists, scholars, and policy practitioners have increasingly encountered situations at the intersection of these two areas, calls for the protection of environmental rights have intensified. In 1994 the United Nations Sub-commission on the Prevention of Discrimination and Protection of Minorities issued an extensive report on human rights and the environment, prepared by Special Rapporteur Fatma Zohra Ksentini and accompanied by a Draft Declaration of Principles, claiming the interdependence and indivisibility of human rights, an ecologically sound environment, sustainable development, and peace. Since then, the U.N. Human Rights Commission has received a series of reports from Ms. Ksentini on the narrower topic of the impact of toxic and dangerous products and wastes on human rights. In addition, regional and international tribunals have allowed victims to bring cases based on rights violations caused by environmental harm, and some national tribunals have accepted suits claiming violations of a right to a healthy environment.

Despite these developments, no binding international agreement has had environmental rights as its primary focus. In addition, the issue continues to suffer from inattention due to the fact that it fails to fit neatly within the agenda of either the human rights movement or the environmental movement. Few international human rights organizations have programs devoted to this set of rights; likewise, movements focused on protecting the environment do not generally have as their aim the more human-centered goals of environmental rights, which

commonly include social justice issues such as the disproportionate suffering of poor, indigenous, and minority communities from toxic industrial activity. Even the environmental justice movement in the United States predominantly limits its scope to situations occurring within the nation's borders.

For the past four years, *Human Rights Dialogue* has focused on the obstacles to greater popular legitimacy of the international human rights framework—and highlighted innovative ways in which such obstacles have been overcome in specific contexts around the world. We continue this theme in this issue through the exploration of the development of the concept of environmental rights as a response to real-world needs. The essays here collectively explore the definition, status, and relevance of the concept of environmental rights in law and politics around the world, and the extent to which a human rights lens is a helpful way in which to view environmental issues.

We have organized the issue around four sub-themes: the inseparability of human rights and environmentalism; conflicts between human rights and environmental goals; the relationship between the concept and application of environmental justice and of human rights; and the enforceability of environmental rights. While many of the essays fit within the scope of more than one section, it is hoped that such a framework will allow the implications of the various case histories to emerge more clearly. In addition, commentaries by Barbara Rose Johnston, Joanne Bauer, Jeffery Atik, and Betsy Apple are designed to draw out the implications of the essays within each section and suggest ways for improving progress toward the protection both of human beings and the natural world.

— *The Editors*



Photo by Monti Aguirre



Photo by Zeb Hogan, UC Davis



Photo courtesy of JMT African Heart Expeditions



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Sayyed Nadeem Kazmi and Stuart Leiderman have worked in tandem on highlighting the plight of southern Iraq's inhabitants, particularly the Marsh Arabs, since the early 1990s. Their mutual interest in Iraq has, from the beginning, been humanitarian, with Leiderman concentrating on scientific and environmental issues, and Kazmi working on human rights and social development advocacy. Kazmi is the head of international development at Al-Khoei Foundation and a consultant in human rights and humanitarian affairs. He is also an advisor to the Amnesty International UK Ethnic Minorities Working Group and director of the American Islamic Congress. Leiderman directs the Environmental Response research and education consultancy on environmental refugees and the ecological restoration of damaged homelands. Currently, he is helping create a Center for Southern Iraq Restoration Studies at Basrah University.



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Wiwa. www.sierraclub.org/human-rights and www.amnestyusa.org/justearth



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Available in **Dialogue OnLine** for this issue

Exclusive web-only essays:

"Environmental Protection in the United States: A Right, a Privilege, or Politics?" by Aimée Christensen

"A Choice for Indigenous Communities in the Philippines" by Maurizio Farhan Ferrari and Dave de Vera

Interview with Cristóbal Osorio Sánchez, a survivor of massacres perpetrated against the Maya-Achí community of Rio Negro in Guatemala

...and more

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Sheila Watt-Cloutier is chair of the Inuit Circumpolar Conference, the organization that internationally represents the interests of Inuit residents in northern Canada, Greenland, Alaska, and Chukotka. She co-wrote, produced, and co-directed the acclaimed youth awareness video "Capturing Spirit: The Inuit Journey," which helped persuade governments to ban the generation and use of persistent organic pollutants that contaminate the Arctic food web. In recognition of this work, she received the inaugural global environment award from the World Association of NGOs. www.inuit.org

Environmental Rights as A Matter of Survival

Blake D. Ratner

For Cambodia's fishing communities, whose livelihoods depend on access to fishing grounds, human rights and the environment are "related in every way."

When Ning Savat laid down his arms at the end of Cambodia's civil war, he returned to what he hoped would be a simple, peaceful life as a fisherman. What he did not know was that he was stepping into one of the country's most prominent popular struggles of the post-war period. Shocked by the violence, intimidation, and corruption that threatened the livelihoods of his fellow fisherfolk throughout the country, he became a human rights advocate. Working on behalf of the poor to secure access to fishing grounds, to protect them from the abuses of fishing lot owners and their armed guards, and to have their grievances heard before local authorities and the courts has now become his daily battle.

For Ning Savat, it goes without saying that the rights to access, use, and manage natural resources are inextricably linked to the rights of health and economic welfare. Cambodia's population is heavily dependent on its natural resource base for survival. Eighty percent of the population is rural, and per capita income in rural areas is less than a dollar a day. The fortunate have agricultural land and the household labor to grow the rice they need and, in good years, some to sell. The vast majority also rely on the common-pool resources of fisheries and forests. The most vulnerable depend on them exclusively.

What Ning Savat and his fellow activists have learned is that securing the environmental rights so vital to people's survival cannot be achieved without improvement in the political, legal, and judicial rights that rural Cambodians have long been denied. Government policies such as the National Environmental Action Plan represent a commitment to

sustainable development in general and to improving the welfare of the rural poor in particular. Companies that win commercial forest concessions are required to develop and comply with a management plan that ensures environmental stewardship and fair treatment of local residents. Likewise, commercial fishing lots are supposed to be allocated in a manner that does not impinge upon the traditional livelihoods of lakeshore communities. The gap between policy and practice, however, remains to be bridged.

Human rights groups have documented dozens of cases in which the police and military may be complicit in illegal fishing and logging. Even in the courts, according to the U.N. Special Representative for Human Rights in Cambodia, "There is little respect for standards of fair trial, presumption of innocence is ignored, legal assistance is frequently not provided, judges often make arbitrary decisions without taking evidence into account, poor people are often not treated equally before the law, and there is open interference from people in positions of power."

Ning Savat's group, the Cambodian Human Rights and Development Association, known as ADHOC, is one of a number of local human rights organizations that has grown in response to such concerns during the decade since the United Nations intervened to demilitarize and democratize the country. In seeking to uphold the rule of law, human rights activists are frequently targeted for intimidation. One of ADHOC's volunteers was murdered in December 1998 while defending families involved in a land conflict with a local stone-grinding company.

Popular protest against injustices in the fisheries sector reached a climax in 2000, before a surprise announcement by Prime Minister Hun Sen to reduce the area of fishing lots allocated by commercial concession and to "release" the remainder to communities. Ultimately, 56 percent of the lots were released, leadership at the Department of Fisheries was changed and its staff temporarily recalled from the field, and the Prime Minister issued stern warnings to address what he termed "anarchy" in the fisheries sector. While few doubt that the protests helped create pressure for reform, the current Director General of the Department of Fisheries asserts that the changes also reflect the realization in government "that the population is growing, that people need access to environmental resources, and that good governance is important."

Problems remain for fishing communities, however. In a context where community access rights are not yet clearly specified, the reform has effectively opened access to all—spawning new conflicts and a surge in illegal fishing by large and small fishers alike. The Department of Fisheries faces an uphill battle not only to enforce the laws but, with support from the WorldFish Center and other non-governmental organizations (NGOs), to recast its role by enabling communities to implement their own management plans.

When poor villagers risk their safety in demanding that the government protect community access to environmental resources, they demonstrate that the assertion of environmental rights is anything but a luxury of the rich. While the concept may have gained prominence in the context of industrialized countries,

highlighting the rights of individuals and communities to be protected from environmental “bads” such as toxic dumping and industrial pollution, it applies equally to rural communities struggling to maintain access to the environmental “goods” that underpin their livelihoods. Both aspects of the environmental rights agenda are fundamentally concerned with health, whether the threats stem from a polluted environment or from loss of access to the natural resources that families need to sustain themselves. Both are also concerned with equity, as it is those groups already marginalized politically and economically whose rights are most consistently transgressed. Whether focused on issues “green” (natural resources-related) or “brown” (industrial and pollution-related), the assertion of collective environmental rights is most difficult, and most risky, in a country where other elements of the human rights agenda are not firmly established.

“Cambodia had never known human rights,” said Ning Savat, in recounting his organization’s struggle to stake out a place for nonpolitical monitoring and advocacy work in the early 1990s. “There was so much that people didn’t understand.” Human rights advocacy in Cambodia resonates in so far as it connects the abstract principles of universal rights to the very concrete concerns of livelihoods and survival that motivate most people in their daily life. The fisherfolk who mobilized to present their grievances to local authorities and who held vigils in front of the National Assembly did not do so in defense of abstract principles, but because of very concrete needs.

“I fear that by 2010 all the fish will be gone,” explained a village elder as he looked over the expanse of water in Takeo Province that covers his ricefields each flood season. “What will we do? We’ll have to buy canned fish from the city.... How will we pay for it?”

Improving food security and livelihoods in Cambodia depends on improvements in the legal and judicial framework, and on protections of individual and collective rights to participate in environmental decision-making, seek legal recourse, and access justice. But it also depends on the ability of civil society, private sector, and government actors to

reach decisions about resource use that give priority to equity and sustainability. Whereas the most egregious rights violations ought to be clear, making the “right” development decisions—such as setting rules that govern who has access to what fisheries when, or weighing the economic value of new road infrastructure against the potential ecological impact on wetlands—is much less straightforward.

Nonetheless, it makes sense to pursue an environmental rights agenda because it can further broaden the advocacy of human rights principles among those whose mandates focus primarily on such

environmental rights for local livelihoods also provides a basis for better stewardship. From inland lakes and rivers to coastal fisheries to mountain forest reserves, experiences from numerous countries are proving that communities can play an active role in conservation when their own tenure and access rights are secured, when the benefits are equitably shared, and when government provides a supportive legal and institutional framework.

Cambodia has committed conservationists, but they are few. Most people in this still war-torn land care about the environment as it relates to the welfare of

For poor villagers, environmental rights are anything but a luxury of the rich.



Ethnic Vietnamese fishers at Chong Knie, Siem Reap.

issues as poverty, rural welfare, and development. Indeed, because the “core” rights enshrined in the Universal Declaration of Human Rights enjoy such wide legitimacy, they offer a common basis of agreement for entering more difficult debates concerning environment and development decisions.

Does an environmental rights agenda conflict with the goals of environmental conservation? At the extreme it can, when conservation is conceived as excluding human uses. In the developing world, however, most progress is to be made on the common ground—where securing envi-

their families, their children, and their children’s children. When asked about the relationship between human rights and the environment, Ning Savat said simply, “They are related in every way.”

Read how Cambodian workers are collaborating with international groups to establish greater respect for human rights in Cambodia, as discussed by Timothy Ryan in “Building Global Solidarity” in the globalization issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/936.

The Ecological Roots of a Democracy

Movement

Michael Kilburn and Miroslav Vanek

Environmentalism propelled the human rights agenda of a generation of young activists in the former Czechoslovakia.

“It was one of those miserable fall days, when you wake up in the morning with a throbbing headache. Out the window, it looks like a dark sack has been thrown over the whole town, just as it had all week. ‘Back into this shit’ you mutter under your breath as you close the door. ‘God, what a stench! What the hell are they putting in the air? It’s unbelievable: they’re waging chemical warfare against their own people.’

If you say you can’t breathe, there are two meanings. The first is symbolic, that the mental environment is stifling, choked with lies and hypocrisy: there is no breathing room. The second meaning is more immediate, that the air itself is corrupted and you are literally choking to death.

The first is a sigh of despair; the second a cry for help.”

—“Morning in Teplice”
description by electrical engineer
Eduard Vacka, 1987

There were few places in the world where the connection between environmental and human rights was so poignantly demonstrated as in the “black triangle” of northern Bohemia, southern Saxony, and lower Silesia, once considered to be the most polluted and ecologically devastated area in Europe. In this region, the Communist regime conducted an ideologically driven program of rapid industrialization that systematically and ruthlessly degraded the landscape and its inhabitants. For the people living in this ruined land, the humiliation and disenfranchisement of state socialism had an immediate, and often deadly, corollary: low life expectancy, high rates of infant mortality

and birth defects, debilitating chronic illness, and political entrapment. It was here that the abstract principles of civic and political rights outlined in the Universal Declaration of Human Rights and rearticulated by local dissidents came face to face with the daily reality of environmental injustice. As Czechoslovak émigré historian Jan Mlynarik put it, “Nowhere is the destructiveness of the Communist system more evident than in nature. Ecology has literally become the litmus test for the regime.”

In the decades following the Second World War and the 1948 parliamentary coup that brought the Communists to power in Czechoslovakia, the rugged beauty of northern Bohemia was reduced

to smoldering ruin. There, in the foothills of the Krusny Mountains, ancient forests were leveled, strip mining operations destroyed more than a hundred villages, and coal-fired plants and chemical industries fouled the air and water. Soot rained from an ashen sky that the sun only penetrated an average of sixty days a year. On “red days” when the seasonal thermal inversions trapped the smog at ground level, blackened and shriveled leaves and fruit dropped from the trees and the hospitals filled with suffocating children.

The people of the northern Bohemian coal basin suffered the loss of the natural environment with a range of physical and psychic disorders. In addition to respiratory ailments and chronic



A 1989 demonstration in Teplice, northern Bohemia. The demonstrators were beaten by the police.

illness, many residents expressed a deep dread and alienation from a landscape drained of color, texture, and history. By the late 1970s this existential despair, combined with concerns about long-term health effects, led to a mass exodus from the region, especially among young professionals with children. The state retaliated with a mixture of bribery and coercion. Long term residents were paid a 2000 crown living supplement (commonly referred to as “funeral expenses”) and others were legally trapped in the region in a kind of involuntary servitude orchestrated by state control of jobs and housing.

Ironically, by this time the Czech government, along with the Soviet Union and the rest of the Eastern bloc, had participated in the 1972 U.N. Conference on the Human Environment held in Stockholm and had signed and ratified the 1975 Helsinki Final Act, which explicitly laid out a legal framework that combined civil and political rights with environmental responsibilities.

A few Czech dissidents, led by playwright and future president Vaclav Havel, had the audacity to take the provisions of the Helsinki Final Act literally and founded the pioneering human rights group Charter 77. With its critical focus on civil and political rights, the group provoked a harsh backlash by the regime. Effectively isolated by state repressive tactics and its own intellectual elitism, the group would not emerge as a popular forum until the late 1980s. While the regime sought to repress the political implications of the Helsinki agreements, environmental conservation was largely seen as apolitical and thus an acceptably generic form of civic engagement. State commissions and academic institutes were finally permitted to conduct environmental studies, both on a theoretical and practical level, and the official mass media began to popularize environmentalism among the general public. One of the first of these controlled initiatives was Brontosaurus, an environmental group launched in 1974 under the auspices of the Socialist Youth Organization. As long as no ideological conclusions were drawn, ecology effectively became a Communist front.

The government’s priority of politics over substance in its environmental campaign is illustrated by the fate of the old-

est environmental group in the country. Founded in 1958, the Association for the Protection of Nature and the Countryside had grown to more than 16,000 members,

On “red days” when the seasonal thermal inversions trapped the smog at ground level, blackened and shriveled leaves and fruit dropped from the trees.

and outgrown its political oversight. Charged with “insufficient political commitment” (it was, for example, the only association in the Czechoslovak Socialist Republic with a founding charter that did not mention the leading role of the Communist party), it was forced to disband in 1979 and was replaced by the more subordinate Czech Union of Conservationists. Thus, by the end of the 1970s the two major environmental groups in Czechoslovakia, comprising 28,000 members between them, had both been established at the order of government and party organs and functioned under their direct supervision. State sponsorship allowed the regime to follow the letter of its legal obligations pursuant to the Stockholm and Helsinki protocols, while preempting and subordinating any truly spontaneous activism among the nascent environmental initiatives. On the other hand, environmentalists faced the moral dilemma of deciding whether their participation within official environmental organizations was a de facto expression of loyalty to the existing regime, or simply a necessary compromise in order to be able to engage in vital work. Given the regime’s dreadful policies and mismanagement of the ecological crisis, environmental activists often walked a fine line between the rhetoric and the practice of their guarantor.

By the 1980s, however, it was increasingly awkward to keep civil and environmental rights categorically distinct. A young generation of activists, unbowed by the historical trauma of the Warsaw Pact invasion, demanded transparency, accountability, and action. Improvements in technology and unofficial communication networks also made it difficult for the regime, despite heavy-handed repression,

to maintain its blockade on the flow of information. In 1983, a secret government report outlining the critical state of the environment was leaked and published in

samizdat (the unofficial press) by Charter 77 and rebroadcast to the country by Voice of America and Radio Free Europe. The disinformation and negligence surrounding the Chernobyl disaster in 1986, widely disseminated through unofficial channels, only fueled the widespread public cynicism, leading to a loss of faith in the government and an increasing willingness to contest its authority.

A growing coalition of citizens’ groups had begun to make explicit connections between the protection of the natural environment and a broader agenda for social and political change. In the democratic upheaval of the late 1980s, nearly all Czech civic initiatives included concerns about the environment in their mission statements. Environmental concerns topped the agenda of the mass demonstrations that wracked and galvanized the country in 1988 and 1989 as well as the policies of the first post-Communist government.

The first unofficial ecological demonstration in May 1989 illustrates the degree to which the environment had become a priority issue. Already that year dissidents had been rounded up in preventive detention and other protesters had been gassed and clubbed; but the Prague Mothers “parade of prams” and people in the street voicing demands for a healthy environment during an international summit on environmental affairs—left bystanders supportive and security forces completely disarmed. Finally, one week before the November 17 Velvet Revolution that would signal the downfall of the old regime, thousands of protestors in Teplice and other northern Bohemian cities held a series of protests explicitly claiming their right to fresh air as a human right.

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Climate Change and Human Rights

Sheila Watt-Cloutier

The Inuit in the Arctic are seeking to hold governments accountable for the human rights effects of global warming.

For millennia Inuit have lived in northern and western Alaska, northern Canada, Greenland, and Chukotka in the far east of the Russian Federation. Now numbering about 155,000, the Inuit

are experiencing a growing difficulty in predicting weather and environmental conditions. Hunters have even perished by falling through the sea-ice when traveling to hunting territories across formerly safe areas.

most responsible for the problem does constitute a violation of their human rights—specifically the rights to life, health, culture, means of subsistence, and property.

Climate change is already having devastating consequences for Inuit and others inhabiting these regions.

people of today are navigating profound social and economic change as globalization reaches northward. While climate change remains an abstract concept and even myth to some, it is already having devastating consequences for Inuit and others inhabiting these regions.

Much has been written and said about the weak confidence in climate change science. Yet the results of an Arctic Climate Impact Assessment (ACIA), authorized by the ministers of foreign affairs to the Arctic Council—a body comprised of Canada, Denmark, Finland, Iceland, Norway, Russia, Sweden, and the United States—demonstrate that, for Inuit, climate change is very real. The ACIA, to be presented to ministers in November 2004, projects massive thinning and depletion of sea-ice, with the result that ice-inhabiting marine species—seals, walrus, and polar bear—will be “pushed to extinction” by 2070-2090. Inuit hunters are already adapting to environmental changes, particularly to the sea-ice regime and to changes in the distribution and abundance of harvested species. As stated in the report, many Inuit are experiencing

Clearly, global warming is threatening the ability of Inuit to survive as a hunting-based culture. Seals, whales, walrus, caribou, and other species provide highly nutritious food, and provide a deep connection with the natural environment. Hunting lies at the core of Inuit culture, teaching such key values as courage, patience, tenacity, and boldness under pressure—qualities that are required for both the modern and the traditional world in which the Inuit live.

On the basis of the ACIA's findings, which represent a consensus of the scientific community, the Inuit are taking

In order to support this claim, the Inuit Circumpolar Conference (ICC), an organization established in 1977 to defend and promote the Inuit way of life, plans to petition the Inter-American Commission on Human Rights. The petition will seek a declaration in international law that the erosion and potential destruction of the Inuit way of life brought about by climate change resulting from emission of greenhouse gases amounts to a violation of the fundamental human rights of Inuit. It will draw on the compelling combination of official science and traditional knowledge within the Arctic Climate Impact Assessment to focus political attention on the Arctic and Inuit dimensions to this global issue. The ICC's aim is to inform and convince governments (particularly the United States) and NGOs of the need for concerted and coordinated global action to

The Inuit are taking the bold step of seeking accountability for a problem in which it is difficult to pin responsibility on any one actor.

the bold step of seeking accountability for a problem in which it is difficult to pin responsibility on any one actor. However, Inuit believe there is sufficient evidence to demonstrate that the failure to take remedial action by those nations

pre-empt the ACIA's dire projection.

The ICC got the idea of petitioning the Commission from the compelling scientific evidence of the Arctic Climate Impact Assessment. The ACIA, which covers a wide range of social, economic,




Sheenjek River Valley, Arctic National Wildlife Refuge.

health, and ecosystem effects, is the world's most detailed and comprehensive regional study of climate change. It is being prepared by more than 250 authors from 15 countries and includes the input of indigenous peoples, Inuit among them. Based on the Assessment and the work of the Intergovernmental Panel on Climate Change, developed out of the 1992 U.N. Framework Convention on Climate Change, the ICC has drawn five conclusions: First, the culture, economy, and way of life of Inuit is under threat from human-induced climate change; second, emissions of greenhouse gases worldwide are increasing, notwithstanding international agreements to the contrary; third, coordinated action is required by all states pursuant to global agreement(s) to reduce

emissions of greenhouse gases; fourth, states and NGOs are fundamentally ignorant of the human and cultural effects of climate change in the Arctic; and fifth, states largely discount Arctic concerns in their political positions internationally and policy prescriptions domestically.

While Inuit are few in number, the ICC has already demonstrated its ability to affect international negotiations. From 1998 to 2000 the ICC influenced environmental negotiations that resulted in the signing of the Stockholm Convention in 2001 to reduce emissions of persistent organic pollutants that end up in the Arctic. During the process, the ICC drew attention to a 1997 Arctic Council assessment of Arctic contaminants. The convention that resulted, which gained entry

into force in 2004, singles out the Arctic and its indigenous peoples in a specific reference in its preamble

Inuit have an earned reputation for adapting to changing circumstances, and it is generally accepted in northern communities that accommodating some measure of climate change is unavoidable. Nevertheless, the projected magnitude of climate change would stretch this adaptive ability to the breaking point. The destruction of the age-old hunting economy presages destruction of the very culture of Inuit. The seriousness of the issue means that Inuit have to use every available avenue to bring their perspectives to the attention of decision-makers, particularly those in the United States, who have the power to reverse this dangerous course. 

These cases illustrate the synergistic relationship between human rights and environmental quality, and what happens when environmental human rights are abused.

When over the course of human history the peoples of the world confronted an environmental crisis, they engaged in a struggle with the biophysical parameters of nature—that is, changes that involved biological and physical forces and conditions within natural ecosystems. Thus humankind witnessed irrigated agriculture leading to the salinization of fields, desertification, loss of productivity, and, ultimately, the decline of civilizations. Survival required sufficient time to recognize changing environmental conditions, identify causality, and adopt new strategies. Often the strategy of choice was simply to go somewhere else.

By contrast, today's environmental crises often involve or are exacerbated by non-natural forces—notably toxins that introduce degenerative, synergistic, and cumulative changes in species, and which thereby alter local and global ecosystems. Thus, human survival is increasingly threatened by the bio-degenerative consequences of human action: expanding deserts; decreasing forests; declining fisheries; poisoned food, water, and air; and climatic extremes such as floods, hurricanes, and droughts. While environmental degradation in itself is by no means new, the bio-degenerative nature of our current crises presents a number of seemingly insurmountable challenges.

One of these challenges involves the need to address the many crises and potential crises resulting from global warming. As polar ice caps melt and sea levels rise, global warming threatens the fresh water resources of nearly 30,000 Pacific islands, forcing saltwater into island aquifers. Eventually, rising sea lev-

els will completely submerge low lying islands, and even whole nations. As Sheila Watt-Cloutier describes, declining ice caps also threaten arctic ecosystems and the very survival of Inuit culture.

Another significant challenge is coping with the hazardous byproducts of the nuclear age. The world's nuclear hot spots—where nuclear weapons have been (and are being) developed, tested, and their waste stored—will continue to contaminate the environment and affect the life processes for thousands of years. Our ability to contain, reduce, and possibly even remove this threat is not only limited by our knowledge, technology, and money, but, as described in Michael Kilburn and Miroslav Vanek's essay on environmental contamination in the former Czechoslovakia, by the nature and will of political systems, conflicting agendas, and inept and dysfunctional governance.

Human adaptation to changing environmental circumstances requires time, space, and the means to implement change. Today time is an increasingly scarce commodity, especially given the rapid pace of degenerative change. In terms of space, migration is less and less a viable option; there are few unaffected regions in which to relocate. As for means, degenerative environmental conditions challenge survival skills, often rendering customary knowledge and traditions ineffective. Consequently, the traditional rules and tools used to manage natural resources increasingly fail. Efforts to reform resource management systems using modern technologies and supporting national participation in global markets often produce painful

conflicts. We see this in Blake Ratner's examination of the Cambodian struggle to maintain subsistence and regional market production in the face of declining fisheries, deteriorating habitat, and government policies that favor the economic interests of the few over the interests of the community.

At first glance, these three cases are representative examples of environmental problems: global warming, pollution, declining resources. At a more fundamental level, however, these cases illustrate the synergistic relationship between human rights and environmental quality, and what happens when environmental human rights are abused.

Environmental human rights include those basic human rights that pertain to minimum biological requirements, notably of food, water, and shelter; and the civil and political rights that enable individual and group participation in the creation of institutions that ensure social and eco-systemic viability. In past eras, when economies and societies were place-based, these rights were mutually interdependent. In today's world, where cultural identity is fluid and involves membership in multiple communities, and where economies are shaped by global as well as local forces, control over local resources is rarely in local user hands.

Individual and group efforts to secure basic environmental human rights often conflict with broader governmental efforts to control natural resources. Such conflicts can be characterized as environmental human rights abuses when political and economic institutions and

(con't on page 36)

When Parks and People Collide

Peter G. Veit and Catherine Benson

In much of Africa, efforts to safeguard wildlife have violated human rights.

In the nineteenth century, Maasailand—the traditional home of the Maasai people—stretched from northern Kenya to the savannah grasslands of the Serengeti plains in northern Tanzania. Since then governments, other ethnic groups, local elite, and businesses (local, national, and international) have used various legal and extra-legal means to gain control of large swathes of Maasailand. A considerable amount of this land has been set aside, especially in the last fifty years, under various categories of “protected areas,” including such recognized parks as Amboseli and Maasai Mara in Kenya, and Serengeti and Ngorongoro in Tanzania.

While protected areas safeguard wildlife and generate tourist revenue for governments and the private sector—notably, through game viewing and trophy hunting—they have been devastating to the Maasai. More than 100,000 Maasai have been displaced by the establishment of protected areas; the creation of the Serengeti National Park alone was responsible for the expulsion of 50,000 people. The pastoral livelihoods of the Maasai, like most rural Africans, are dependent on the land and natural resources, including water, wildlife, grasses, and trees. For the Maasai, the loss of access to natural goods and services has



The pastoral livelihoods of the Maasai, like most rural Africans, are dependent on the land and natural resources.

led to the degradation of their remaining grasslands, the decline of their life-sustaining herds, and ultimately to hunger and poverty.

The story of the Maasai is not unusual in Africa. Africa’s rural majority—70 percent of the population—has been hurt by the conservation policies of colonial powers and independent governments. In the name of promoting national development and public interest, national governments have created legislation declaring that most land and natural resources are state property or public resources to be held in trust by the government; and they have vested control and management of these properties in the government,

including the authority of eminent domain. Using these powers, governments have appropriated large tracts of land for protected areas.

Most protected areas in Africa were established and are managed under non-democratic political systems. Colonial authorities monopolized important decision-making processes, including issues of land use. Since independence, the continent has been dominated by regimes that have used their monopoly over nature to consolidate power and wealth among a small circle of elite. Even the recent transitions toward political liberalization that have swept Africa have been protracted, with fundamental democratic princi-

ples—such as participation, representation, and accountability—neither codified in law or institutionalized in practice.

Encouraged by a powerful international lobby of conservation-first organizations, governments have made protected areas a major component of national biodiversity strategies. According to the

Estimates of displaced people number in the millions.

United Nations, in 1940 there were fewer than 1,000 protected areas in the world; by 2003 there were 102,102 such areas, covering more than 17 million square kilometers—almost 12 percent of the earth's land. In sub-Saharan Africa, more than 3 million square kilometers are protected. In East and Southern Africa, protected areas represent, on average, almost 15 percent of each nation's total land area; in West and Central Africa almost 9 percent of each nation's land is so classified. Nations vary widely in the amount of land designated as protected, the largest percentages being in Tanzania (almost 40 percent) and Zambia (more than 41 percent).

Many of the world's species-rich areas are located in the tropics, where conservationists encourage governments to establish networks of protected areas that include all major ecosystems. Wildlife often flourishes on land managed by local people as common property, so these areas are particularly attractive. Many governments are taking measures to further restrict land and resource use in existing protected areas, extend park boundaries to encompass complete ecosystems, and establish new protected areas to capture underrepresented ecosystems (closed-canopy forests in West and Central Africa; mangrove forests and marine ecosystems in East and Southern Africa). With little vacant or idle land remaining in Africa, such measures usually increase the number of displaced people.

The number of people displaced by conservation is difficult to determine, but estimates number in the millions. Charles Geisler, who has written on such displacements, suggests that the number may exceed 14 million in Africa alone, and

notes that “the poorer countries in Africa today have on average more land set aside for conservation than the continent's more affluent nations.” All too often the displaced receive no compensation. When the Mkomazi Game Reserve in northern Tanzania was established in 1952, the law preserved preexisting customary land

rights, allowing the Maasai to graze their livestock in the reserve. In 1988 the government evicted several thousand Maasai and did not compensate or offer them alternative residential or grazing lands as the law required. Some affected Maasai sued the government, and in 1998 Tanzania's High Court awarded each plaintiff who testified US\$450 and ordered the government to relocate them. Dissatisfied with the ruling, the Maasai appealed. In 1999 the Court of Appeal, citing “indisputable surrounding circumstances,” ruled that the Maasai had no customary land rights and were not entitled to any compensation.

Hunting and gathering are illegal in many protected areas, and a traditional hunter who violates these laws might pay for it with his life. Although executions are prohibited by the Tanzanian constitution, the local Legal and Human Rights Centre reports that between 1983 and 1998 game rangers in the Serengeti

Poor people pay a disproportionately high cost for conservation, while receiving few of its benefits.

National Park killed at least fifty-seven people. In one incident in 1997, nineteen traditional Kurya hunters were caught hunting in the park. Ten escaped, but the remaining nine were allegedly driven deep into the park, ordered to stand in a line, and shot by the rangers. Eight died and one survived his wounds.


It is clear that poor people pay a disproportionately high cost for conservation, while receiving few of its benefits. To ensure that the rights of citizens are not sidelined in the name of conservation,

democracy proponents and human rights advocates have called for the participation of affected people and their legitimate representatives in decisions regarding the use of wildlife and the establishment of protected areas. National dialogues are needed to reach broad agreement on the values of wildlife, on national responsibilities to global biodiversity instruments, and on how protected areas can support local development, national interests, and conservation. Strengthening Africa's nascent democratic institutions and procedures will help promote wildlife policies that recognize majority positions and local needs.

Advocates maintain that regardless of whether wildlife and wild lands are state property, public resources, or private property, wildlife users must have secure rights over resources to make and benefit from their investments. While protecting against monopolies and excessive land speculation, private property should be titled, the rights of usufruct guaranteed, and eminent domain democratized. In some African nations, certain wildlife user rights have been devolved to rural communities with impressive results in terms of local income and development as well as wildlife populations and ecosystem management.

Finally, when people are alienated from their lands for legitimate public interests, they must be fairly compensated for their loss of land rights and value added. Those who suffer damages from

wildlife and other factors associated with protected areas must also be compensated. The level of compensation should ensure that people adversely affected by a protected area do not experience a decline in their standard of living—which in most cases will need to include resettlement.

Too often, governments have created protected areas at the expense of their own citizens. Measures such as these will go a long way to finding solutions that will both support local populations and protect biodiversity. 

Workers' Rights and Pollution Control in Delhi

Kelly D. Alley and Daniel Meadows

India's judicial efforts to protect the "right to life" by shutting down and relocating polluting industries in Delhi have marginalized, displaced, or dispossessed thousands of the city's working poor.



A man stands in front of his factory that is now closed.

Photo by Daniel Meadows

Within India's judicial interpretation of constitutional rights there exists a close link between environmental values and human rights. Yet in some instances court cases defending the right to a clean environment have actually jeopardized the job security of India's poorest laborers and have led to abuses of human

rights. One such example is the 1995 Supreme Court case *MC Mehta v. Union of India*, which ordered the closure and relocation of polluting industries in Delhi. In this instance the Court responded to middle-class appeals for pollution remediation through a broad reading of the constitution's fundamental right to life principle, at the same time adversely affecting tens, even hundreds, of thousands of the city's poorest workers.

The spotty interest of the government's legislative and executive branches in addressing the environmental problems created by both private and public sector development initiatives has provided the impetus for legal activism in India. Parliament has enacted environmental legislation, but enforcement has been profoundly lax, and governmental pollution control boards have been lenient in regulating industrial and vehicular emissions and industrial and municipal waste treatment facilities. Moreover, projects involving air and water pollution, massive human displacement, and the destruction of natural ecosystems continue to go forward with the imprimatur of for-

mal administrative approval, based on only perfunctory or formalistic compliance with regulatory norms.

In the 1995 case cited above, environmental lawyer M. C. Mehta argued that Delhi industries and government agencies were not abiding by the city's zoning regulations spelled out in the Delhi Master Plan. The Master Plan, published in 1990, had divided the city into functionally segregated zones and prohibited hazardous and small-scale industries from operating in many of these. India's Supreme Court ruled in favor of Mehta, directing hundreds of hazardous and small-scale industries operating in "non-conforming areas" to relocate outside the metropolitan region at the periphery of the larger National Capital Region (NCR). The ruling appeared to be as much about depopulating the city (of its urban poor) as it was about improving air and water quality. As the Court noted:

The city has become a vast and unmanageable conglomeration of commercial, industrial, unauthorized colonies, resettlement colonies and unplanned housing with a total lack of open spaces and green areas. Once a beautiful city, Delhi now presents a chaotic picture. The only way to relieve the capital city from the huge additional burden and pressures is to deconcentrate the population, industries and economic activities in the city and relocate the same in various priority towns in the NCR.

Specifically, the justices ordered the Central Pollution Control Board and the Delhi Pollution Control Committee to

identify all hazardous and non-conforming industries operating in the city. With little supporting data, the control boards drew up a series of lists, ultimately identifying 168 hazardous units targeted for closure. In an attempt to mitigate the negative effects of these closures, the justices included provisions for compensating workers—ordering, for example, that all relocating industries retain their workers at the new location, pay them their full wages, and pay one year’s wages as a “shifting bonus.” Those workers of industries that were closing but not relocating were to be paid one year’s wages. Very soon after this order was issued the media reported that industries were not paying the stipulated wages and compensation. When in late 1996 Birla Textiles

their families) were directly affected by the loss of employment.

Rather than rectifying these problems, in 2001 the Court further exacerbated the situation by calling for the closure of all polluting and non-polluting industries that were located in residential areas but did not conform to the Delhi Master Plan. The Delhi administration and police force sealed 1,976 plants, dramatically increasing the number of laid off workers. This latest wave of closings provoked massive protest in the streets and at political rallies, and the media reported that two factory owners committed suicide. Others were forced into bankruptcy when their plants were sealed or because they could not afford to move or were not provided plots in the new industrial estates.

The case did little for environmental conditions, as it only shifted industrial polluters to new locations.


announced its intention to lay off 2,800 employees, the justices further enhanced the compensation package by ordering that workers of closing but not relocating industries be given six years of wages instead of one. In addition, those workers “refusing” to relocate were entitled to one year’s wages. The court also directed that workers occupying residential quarters could continue to occupy them until “accommodation is provided or made available at the relocation sites” or they could “remain in the quarters for a period of one and a half years.”

Responding to the pleas of those workers left unemployed by the closures, the justices ordered industrialists to find them new work or absorb them in another factory. However, according to a study by Delhi-based sociologist Amita Baviskar, industrialists found it easy to circumvent the order on wages and compensation by laying off casual laborers or transferring only a portion of their permanent workers to the new location. Surveying workers at 100 of the 168 hazardous industries, the Delhi Social Rights Forum, a local NGO, found that 12,668 workers had lost their jobs. Overall, it is estimated that more than 250,000 people in Delhi (workers and

Daniel Meadows’ interviews with former hazardous industry laborers in 2002 and 2003 demonstrate that, despite the Court’s protective measures, the livelihoods of laborers were still being jeopardized. Many workers explained that they were never paid by the industries to move to a new location, nor were they offered work at the new location. For those working in industries that closed without relocating, about half received what they called their “due wages.” But when asked if they were paid as per the court order, they were unable to cite its provisions. Some interviewees claimed that their union representatives were still trying to represent them in court, to obtain their “due wages.” Further, many were informal or casual laborers who were not on official company payrolls. The Court’s protections did not address this class of laborers, so factory owners simply dismissed them without providing any wages at all. Throughout the closure process, the Court and government agencies failed to create a procedure for documenting the claims of all classes of laborers and for ensuring industrial compliance, and kept a large portion of the city labor force invisible on the official record. When

asked, government officials cannot and do not produce records that verify industrialists’ compliance with the Court’s orders on wages and compensation.

Instead of promoting the right to life, this case allowed powerful interests in industry and government to use a pollution prevention policy to their advantage: while pollution control boards produced industry lists without adequate transparency, many industries shaved their labor force, reduced costs, and sold valuable assets in Delhi. Furthermore, the case also did little for environmental conditions, as it only shifted industrial polluters to new locations. In the rapidly growing periphery towns of the National Capital Region, waste management facilities are even less developed than they are in central Delhi, and authorities have so far failed to institute stricter regulations on emissions. Finally, in purporting to promote the right to life, this case ultimately undermined that very right through its negative impact on workers. As Baviskar explains, “Closing down polluting industries in the interests of protecting workers’ health, without providing them with safe alternate livelihoods, merely exchanges one form of vulnerability with another.”

NGOs in India such as the Hazard Center, the Delhi Social Rights Forum, Toxics Link, the Environmental Justice Initiative, and the Environment Support Group are arguing against policies and projects that disproportionately shift the “pollution prevention” burden to the poorest laboring class. Their seminars, protests, and legal interventions also address in an important way the deficiencies in regulating and monitoring industrial practices—practices that affect laborers, the middle class, and the environment. If government regulatory agencies and the Supreme Court continue to allow noncompliance to laborers’ rights and environmental regulations, the health and livelihoods of many will remain in jeopardy. 

For more on issues concerning workers’ rights, see the Workplace Codes of Conduct issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/634.

Environmental Rights vs. Cultural Rights

Alison Dundes Renteln

Protecting cultural rights and endangered species requires a delicate balancing act.

Environmental rights and cultural rights have a complex interrelationship that is reflected in many concrete policy debates. Sometimes these rights are compatible, and there is only minimal controversy. In other cases, however—notably those involving issues of endangered species—there is often conflict, which plays out in legislative and judicial contexts in the United States and elsewhere.

Cultural rights, as guaranteed in Article 27 of the International Covenant on Civil and Political Rights (ICCPR), are crucial for the maintenance of social identities, and are invoked primarily when governments take steps that threaten to undermine the way of life of whole groups. Although some analysts have proposed that the right to culture involves nothing more than noninterference, the Human Rights Committee—the United Nations treaty body that enforces the ICCPR—has explicitly stated that cultural rights are “positive” and not “negative,” meaning that governments must take *affirmative* steps to ensure their protection.

Often, the cultural argument reinforces the demand for environmental protection. For example, indigenous people have challenged the desecration of sacred sites, arguing that harm to the environment will also undermine the way of life of a people. In the *Yanomami* case (1985), the Inter-American Commission on Human Rights held that failure of the Brazilian government to prevent development that destroyed the Yanomami way of life constituted “ethnicide.” In cases such as this, environmental rights and cultural rights coincide, revealing a confluence of rights claims.



Environmentalists warn that widespread illegal trade in tiger parts has placed the Sumatran Tiger on the brink of extinction.

Yet in many other contexts, environmental rights claims conflict with cultural rights claims, as with endangered species policies. At the crux of many of these cases are cultural differences concerning the use of particular endangered species by indigenous peoples or by other communities whose traditions require the use of animal parts. Despite the existence of such international treaties as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), designed to prevent the killing of animals thought to be near extinction, in some countries these animals are considered necessary for cultural and religious practices among some segments of the population. Animal parts may be used for medicinal purposes, as

aphrodisiacs, or they may be regarded as having supernatural powers.

On one side of the debate, animal rights activists and environmentalists contend that the creatures deserve protection for their own sake and to preserve biodiversity. On the other side, some cultures maintain that they are entitled to use the animals for what they regard as legitimate reasons despite international criticism. In such disputes, the affected groups invoke the right to culture and the right to religious freedom to justify their policy position. Although religious liberty may be construed as an aspect of culture, to prevail in court the claims must be framed as an issue of religious freedom rather than the right to culture, given that national

constitutions usually protect the former but not the latter.

For the most part, the international community has not recognized arguments of cultural rights when they have clashed with environmental rights in the context of endangered species policy. For example, when the international community concluded that Taiwan had failed to enforce CITES adequately because it allowed the sale of tiger and rhinoceros parts, the Clinton administration in 1994 imposed economic sanctions that prohibited the American import of Taiwanese products made from wild species—over \$20 million in trade annually.

Nor are such cases restricted to foreign nations. Within the United States there have been prosecutions of individuals engaged in the sale of endangered species parts contrary to domestic and international laws. The federal government has sponsored raids of Asian medicine shops in San Francisco's Chinatown and elsewhere, and has conducted "sting" operations such as Operation Chameleon. In that 1998 operation, the Justice Department and U.S. Fish and Wildlife Service arrested "Anson"—Keng Liang Wong, allegedly the largest illegal reptile dealer in the world.

In one U.S. case, *Kei Tomono v. U.S.*, a Japanese man who ran an import-export business was caught with turtles and snakes in his suitcase as he was entering the United States. Although the defendant agreed to plead guilty, he argued that the court should take his cultural background into account in determining his sentence. It was his contention that reptiles occupy a unique place in Japanese culture, that the creatures are not regarded as endangered in Japan, and that he was unaware that exporting the animals was illegal. The appellate court ultimately rejected the request for a sentence less than that allowed by federal sentencing guidelines. Although the validity of the arguments might not be convincing in Tomono's case, as he was college-educated and had been involved in the reptile business for several years, it is conceivable that these

same claims might have merit in another case. For the most part, however, this attempt at a "cultural defense" has generally not succeeded in cases of this sort.


However, in a different but related case, the International Whaling Commission did see fit to grant an exemption to certain indigenous groups from the international prohibition on whale hunting. The aboriginal subsistence accommodation, which permits certain indigenous groups to take a limited number of whales to ensure the survival of the group, demonstrates the possibility of finding a compromise policy that accommodates both environmental rights and cultural rights. If indigenous groups agree to take only a few whales, then this will not risk endangering the species further.

Native Americans prosecuted for hunting eagles in the United States contend that doing so is vital because the feathers are necessary for use in religious ceremonies.

Despite the favored treatment granted under the exemption, some indigenous people criticize the exemption policy as ethnocentric, in part because they regard the need to request exemptions as paternalistic. The policy has also provoked objections from non-indigenous cultural communities who object to it on the ground that to make an exception for indigenous peoples and not for them violates the norm of equal protection of law. Japanese and Norwegian whaling communities, whose way of life also depends on the taking of whales, have advanced this argument, holding that policies intended to stop whaling constitute a form of "cultural imperialism." It has also been argued that if indigenous groups are to benefit from such an exemption, they should be allowed to take animals only in a "traditional" manner. This line of argument has led to debate over the "authenticity" of the cultural traditions of hunting, but in my view "culture" is not static, and this objection lacks force. Indigenous groups may now prefer to use electric harpoon guns to spears, but cultural rights arguments ought not to depend on the *method* of killing.

While the manner of killing should not matter, hunting itself may be considered a key part of the tradition. Native Americans prosecuted for hunting eagles in the United States sometimes contend that doing so is vital because the feathers are necessary for use in religious ceremonies. In 1994, President Clinton established a National Eagle Repository to gather feathers from eagle carcasses. Although this was a well-intentioned policy to prevent Native Americans from hunting eagles for this purpose, it did not reflect an understanding that *hunting* the eagle was an essential part of the ritual. In any event, there were too few feathers to meet demand, and distribution was inefficient. As a lawyer for the Native Americans explained (quoted in the *New York Times*): "There are initiation rites or death rites where feathers are needed on short notice. Imagine having to order a Bible from a federal bureaucracy—and then waiting three years."

In this context, cultural communities find insulting the assumption that they would hunt or fish any species to the point of extinction. It is, after all, colonial powers that have depleted natural resources to such an extent. Some argue that ethnic minority and indigenous groups should be granted the freedom to choose their own path to sustainability on the grounds that indigenous groups can most effectively achieve the environmental goals of the international community and of national governments. However, this may be yet another form of eco-colonialism inasmuch as there is a pretense of delegating the rights to groups but only if they interpret and enforce policies in a manner consistent with national and international standards.

In the final analysis, minority groups and indigenous people will only have the benefit of diverse species, for whatever purpose, if they are not extinct. This logic would seem to suggest that environmental rights, despite being recognized later in time, trump the claims of cultural rights. 

Research for this essay was done in collaboration with Margaret Scully Granzeier.

Those seeking a balance between human rights and environmental goals must be vigilant about respecting the procedural rights of affected peoples.

As the first set of essays demonstrate, in today's world human rights and environmental protection are inextricably linked. Yet the protection of the rights of people and of the places they inhabit are not always complementary aims. The essays in this section vividly illustrate that efforts to protect the environment from the "bio-degenerative consequences of human action"—specifically, the protection of biodiversity, the implementation of pollution controls, and the protection of endangered species—can run the risk of colliding with human rights norms.

In the first essay, Peter Veit and Catherine Benson describe one of the better known, and all too widespread, types of conflict: between conservation measures and the people (usually indigenous) who inhabit the targeted lands. This conflict pits conservation-first advocates, many of whom are self-avowedly "anti-people," against human rights advocates who are seeking a better alternative to species and habitat protection than coercive conservation. Under the coercive conservation practices of certain African governments (often with the backing and encouragement of international conservation organizations), indigenous people have been tortured, shot, and killed in anti-poaching operations. As Ian Khama, then commandant of the Botswana Defense Force and now Vice President of Botswana, told *National Geographic* writer Douglas Lee, "No country can ignore armed men crossing its borders.... We took on the poachers aggressively—we actually shot a few of them."

Alternatives to coercive conserva-

tion have not always reaped the desired results, largely because the affected peoples are usually denied the procedural rights to participate in conservation decision-making. For example, under ecotourism schemes, affected communities—most often poor indigenous peoples—are often denied income from the initiatives. Compensation and relocation planners—particularly those within the World Bank, which funds many of the conservation projects globally—generally focus attention on loss of residence rather than loss of access to a traditional lifestyle and means of livelihood. Beyond the problem of deviation from the standards intended to alleviate the negative effects upon displaced peoples is the problem of the standards themselves: World Bank guidelines on resettlement mandate merely the restoration, and not the actual *improvement*, of standards of living, which arguably should be part of a human rights agenda. Viet and Benson demonstrate that even the minimal standards are often not enforced and that those seeking a balance between human rights and environmental goals must be vigilant about respecting the procedural rights of affected peoples.

Kelly Alley and Daniel Meadows describe a rarer instance of conflict between rights and environmentalism. In the case of Delhi, India, the conflict between pollution remediation efforts and human rights turns the traditional conception of environmental justice on its head. Whereas we are accustomed to hearing of minority and other politically marginal groups that have been subjected to harm by the presence of nearby

toxic waste, in this instance the poor and disenfranchised are vulnerable to industrial pollution *remediation* efforts supported by the middle class. While the Indian middle class and Western observers hail Delhi's Supreme Court justice Kuldip Singh as the "Green Judge," critics charge that the only "pollution" that is really being moved out of the city is the unsightliness of shanty towns and slums that are home to India's poorest workers. Similar to the cases of protected areas, the path to avoiding the problem is to open up the deliberative process of defining public interest to include workers in a way that takes into account the reality of the informal sector. Even if a more legitimately determined notion of public interest were to rest solely on pollution abatement, addressing these problems might require different solutions, such as requiring industry to install pollution control technologies rather than simply relocating them outside the city limits.

Alison Renteln describes the clash between cultural claims to the right to kill and use endangered species and the legal efforts to protect those species—yet a third type of conflict between environmentalism and human rights. Whereas Veit and Benson suggest that indigenous peoples who engage in traditional practices are often the best protectors of nature, Renteln presents examples where this may not be so. She points to a more thorny rights trade-off between cultural rights and environmental rights that will require greater attention from both theorists and practitioners to resolve. Assessing the hierarchy of rights in any
(*con't on page 36*)

"The Chixoy Dam Destroyed Our Lives"

Monti Aguirre

The Maya-Achí people of Guatemala, victims of a World Bank-funded hydro-electric dam, are making efforts to reclaim their lives.

The words of Carlos Chen, an indigenous Maya-Achí, provoked cries of outrage and horror from the steamy, packed auditorium as he told how 400 members of his community were massacred because of their opposition to the construction of the Chixoy Dam in Guatemala. Among the victims were his wife and children. Carlos Chen delivered his chilling testimony in August 1999 in São Paulo, Brazil, before the World Commission on Dams (WCD)—an independent, non-enforcing commission established by the World Bank and the International Union for the Conservation of Nature in response to the growing opposition to large dams. The WCD had a two-year mandate to revise the past performance of dams and to develop international guidelines for the planning of future dam projects. Chen's message to the WCD was clear: "We want reparations...for what we lost because of the dam."

In 1978 the World Bank and the Inter American Development Bank (IDB) funded the construction of Chixoy, a hydro-dam in Baja Verapaz, Guatemala. "The government took their money to build the dam," said Chen, "and used it to kill my people." This energy development initiative became intertwined with civil war, severe human rights abuses, and continuing problems and instability for the affected communities. The 100 meter high Chixoy Dam that flooded 1,400 hectares of land was built with grossly inadequate attention to the rights, needs, and livelihood of 3,400 affected peoples—mostly Mayan—or to the effect that the loss of fertile agricultural land and the forcible displacement of indigenous families and

communities might have on an already vulnerable population.

The WCD's final report, published in 2000, concluded that dams are responsible for the physical displacement of 40 to 80 million worldwide, and that affected peoples have little or no meaningful participation in the planning or implementation of dam projects, including resettlement and rehabilitation. The WCD recommended that mechanisms be developed to address retroactive compensation and indemnification for peoples affected by existing dams as well as to restore ecosystems.

The Chixoy Dam epitomizes the worst aspects of large, internationally-funded dam projects, from lack of consultation of dam-affected communities to negligence on the part of project funders. In 1976, Guatemala's National Institute of Electrification (INDE), the government agency charged with developing the project, notified communities just one year in advance that the dam would flood their homeland. The communities were therefore left with no choice but to negotiate a resettlement package. Yet the infertile lands and poorly built houses offered by the government failed to meet basic human needs or compensate affected people for the value of lost property.

When communities asserted their opinions and opposed forced relocation, a campaign of terror began. The Guatemalan government and local army officers accused the Rio Negro community of supporting guerrillas, and hundreds of people—mainly women and children—were massacred by government-backed paramilitaries as a result of their resolve to press for just resettlement

terms. In 1982, INDE revoked people's titles to their lands, the only legal documentation that gave them the right to compensation. Two months later, 92 people were machine gunned and burned to death in a village near the dam site, and the filling of the reservoir began. Some 500 people were massacred before the dam was even completed. In the years since, the people of Rio Negro have lived in conditions of poverty, violent repression, and psychological trauma.

The World Bank provided an additional loan to Guatemala for the Chixoy project in 1985, ignoring the murders that had been committed. Despite sending numerous missions to oversee the project, the World Bank remained silent on the massacres until 1996, when human rights groups pressured it to undertake an internal investigation.

When the World Bank carried out its investigation in 1996, it found that the massacres had indeed taken place, but it did not accept responsibility for them. The investigation concluded that massacre survivors were never adequately compensated and urged Guatemalan authorities to provide survivors with more land. However, by this time the power utility that had bought the dam was being privatized and claimed to have no money for land purchase. At that point, the World Bank obtained a commitment from Guatemala's National Fund for Peace to purchase the land. The Bank now publicly states that "almost all relocated communities have reached the level they had in 1976 [when relocations began] or are about to reach it."

To the Rio Negro community, the World Bank's position of no remaining obligation denies the immense suffering



Visitors look at pictures of the massacred at the inauguration of the museum in Rabinal, Guatemala.


of survivors during the years of violence and the subsequent years of deprivation and continuing terror. From the community's point of view, the financial institutions, by funding the dam in partnership with the military, sustained the military presence and tacitly condoned the use of violence. Now that the project is completed, the people of Rio Negro feel that they do not enjoy anything close to their previous standard of living. Housing is substandard; inadequate replacement of land has produced widespread hunger; down-stream villages are flooded by dam releases occurring without warning; and the lack of a bridge or reliable boats has resulted in the loss of access to communal lands. The community still suffers from threats and other violent intimidation associated with the stigmatization of being "guerilla supporters." In addition,

the institution responsible for implementing resettlement and other compensatory agreements—INDE—has been privatized, replaced by new power companies that refuse to recognize prior agreements. Thus, the resettlement village has been threatened with the loss of their electricity for failure to pay utility bills and, with the loss of power, the loss of potable water. In short, people lack the means to enjoy their basic rights to food, water, health, and livelihood.

In its 1999 report, the U.N.-sponsored Commission for Historical Clarification, established through the 1994 Oslo Accords, cited the Rio Negro massacre as an example of genocide perpetrated against Guatemala's indigenous Mayan population. When the case is mentioned in national and international contexts, the Rio Negro massacres are usually described

as an example of genocide—one of the many violent events targeting Mayan communities that occurred with official sanction by the Guatemalan government during the country's long civil war. What is rarely stated is that the Rio Negro massacre occurred in an area and at a time when Maya Achí communities were being forcibly displaced by construction of the World Bank and IDB-funded Chixoy Dam.

Currently, the Chixoy Dam-affected communities are working to document the various problems associated with development projects—environmental degradation, resource alienation, poverty, and malnutrition. Representatives from the communities have formed a coordinating committee to carry out this task, and additional assistance has been provided by an ad-hoc network of local, national, and international NGOs, including Rights Action Guatemala, Reform the World Bank-Italy, the Center for Political Ecology, and International Rivers Network.

Working together, the affected communities and network of NGOs have adopted a consensus to conduct a research plan, which includes an independent audit of development project documents, collaborative participatory field research on community history and socioeconomic conditions, and an assessment of the relative strengths and needs of affected communities. The community hopes that these efforts will encourage financial institutions and governments to take responsibility in the form of reparations and environmental restoration programs. Establishing legal and ethical precedents for reparations liabilities will help ensure that the mistakes made in the past are less likely to be repeated in the future. 

In Dialogue Online

..."We don't have sacred sites to have our ceremonies any more. The only place we do our ceremonies is where our families were massacred up from the reservoir. That is the only sacred site." Read Aguirre's personal interview with **Cristóbal Osorio Sánchez**, a survivor of massacres perpetrated against the Maya-Achí community of Rio Negro in Guatemala, and one of the Chixoy Dam-affected people. Online at www.carnegiecouncil.org.

Photo by Momi Aguirre

Twilight People: Iraq's Marsh Inhabitants

Sayyed Nadeem Kazmi and Stuart M. Leiderman

Saddam Hussein drained Iraq's southern marshlands as part of a deliberate strategy to destroy the lives of the region's indigenous inhabitants. In the new Iraq, restoring this fragile ecosystem should be a fundamental imperative.

The world has known for some time that, over the past three decades, Saddam Hussein systematically violated the rights of the Iraqi people. Much less attention is paid to the concomitant destruction of the environment and natural resources, most notably in the southern marshlands, and its consequences for the region's half-million inhabitants.

The Marsh Inhabitants—often referred to as Marsh Arabs or “Ma’dan”—are an indigenous group of approximately 500,000 people who have inhabited Iraq's southern marshlands for thousands of years. Their livelihood, culture, and way of life have always depended on the wetland ecosystem of Mesopotamia, situated between the Tigris and Euphrates rivers. Even as late as the 1970s the region was home to a recognizable and sustainable culture based on the gifts of the

marshes—including slowly-flowing shallow water, extensive beds of towering reeds, and abundant fish, game, and migratory birds.

Against this background the Iraqi government unleashed a “Plan for the Marshes”—a deliberate strategy of aggression designed to uproot and exterminate the Marsh Inhabitants and any recalcitrant Shi'a seeking refuge among them. This assault occurred within the larger context of the regime's continuing persecution of Shi'a faith and culture. Ba'thist authorities destroyed and desecrated holy sites; demolished libraries, mosques, and *hussainiyas* (places of religious worship); restricted Shi'a religious rites and practices; and banned or censored printed materials and media.

Almost immediately following the 1991 Gulf War, refugees fleeing the

marshlands reported that residents were being subjected to terrorist explosions and the burning of their homes and villages. In addition, the government had embarked on two kinds of engineering attacks—damming and draining—against the region's unique hydrology. New artificial dams and levees prevented the flow of water from the myriad distributaries of the Tigris and Euphrates that normally watered and nourished the marshlands. Consequently, the marshes rapidly began to dry, the fish and reedbeds began to die, and the people and their livestock began to suffer from thirst. The government also excavated large drains or canals across the region, short-circuiting the rivers so they flowed directly to the Gulf.

These attacks accelerated the drying of the marshes and the dying of the people. Although Iraq claimed that the structures were part of dryland agricultural development, the U.N. Human Rights Rapporteur at the time, Max van der Stoep, firmly stated in 1993 that “there's not the slightest indication that [the government is] working on such a program. Every indication points in the same direction: they do this purely for military purposes, they want to subdue these people.”

One of the authors of this essay, Sayyed Nadeem Kazmi, first visited the marshlands region on the Iraq-Iran border as an independent writer in 1991, shortly after the Shi'a uprising against the Iraqi regime. During Kazmi's visit, he saw the effects of Saddam Hussein's policy of extermination. In the temporary refugee camps of southwestern Iran, men, women, and children related tales of torture and execution, of infants being used as shields



A family at the Hammar marsh, near Nasiriyah.

Photo by Carl Maxwell

on tanks to deter rebel snipers, and of the government's scorched-earth policy. To make matters worse, these proud yet humble displaced people seemed to have no one to champion their cause.

Awareness and sympathy for the people of the marshes did not arise until the post-Gulf War period, when British citizens and Iraqi exiles began to visit the Iranian refugee camps in the early 1990s. Among those visiting were Baroness Emma Nicholson and Peter Clark, who created the humanitarian relief organization AMAR (Assisting Marsh Arab Refugees), and the Al-Khoei Foundation, which enabled Michael Wood and Rebecca Dobbs of Maya Vision Films to enter the region and produce the documentary "Saddam's Killing Fields." From that point to the mid-1990s, human rights observers, film-makers, and relief workers worldwide filed stories about the repression in Southern Iraq and the destruction of the marshes. Still, neither the United States nor Britain initiated any remedies despite their daily sorties over the marshlands to enforce the so-called "Southern No-Fly Zone."

The assault on the Marsh Inhabitants clearly violated norms expressed in numerous laws and conventions—from the Universal Declaration of Human Rights, to the Law of the Sea Convention, to the Biodiversity Convention on the Environment and Development, to the Hague Convention for Protection of Cultural Property. In addition, the 1994 "Draft Declaration of Principles on Human Rights and the Environment" expressed the international community's evolving recognition of the environmental dimension of human rights—highlighting, for example, the rights to life, health, and culture, wherein "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." Further, some scholars and activists have argued that Iraq's use of environmental warfare constitutes genocide against the Marsh Inhabitants. Thus, the U.N. Genocide Convention of 1948 could also apply, which condemns "deliberately inflicting on [a] group conditions of life calculated to bring about its physical destruction in whole or in part" with the intent "to destroy, in whole or in part,

a national, ethnic, racial or religious group, as such." The Marsh Inhabitants, whose culture dates back millennia, are a distinct population within that definition.

The Iraqi government's assault on the

The Marsh Inhabitants' livelihood, culture, and way of life have always depended on the wetland ecosystem of Mesopotamia.

Marsh Inhabitants and the draining of the marshes have had an enormous ecological effect that reaches far beyond Iraq's borders. Among respected observers, scholar Joseph Dellapena has written, "An inevitable consequence of such massive destruction is the extinction of species of animals and plants that were endemic to the marshes and are found nowhere else. Because these were the largest wetlands in western Asia and one of the largest in the world, the destruction of these marshes has effects far beyond the region itself." Further, the marsh region is a timeless annual resting place for millions of migratory birds, and an important area for the life cycles of migratory fish and shrimp that move through the Tigris and Euphrates river basins and Persian Gulf.

Restoration of the marshes is therefore important for both humanitarian and ecological reasons. When the United States and Britain led the re-invasion of Iraq in 2003, it was expected that they would also lead the effort to restore the marshlands. Indeed, the U.S. Agency for International Development (USAID) pledged in a press release in early 2003 to "work with other partners to arrest further environmental degradation and begin the restoration of these globally important wetlands." The United States sent a senior specialist from the Army Corps of Engineers to convert Iraq's old Ministry of Irrigation into a Ministry of Water Resources that would become responsible for the fate of the marshes; and under the overall website of the Coalition Provisional Authority, an informative Ministry website appeared. Initially, this Ministry website contained a "Brief Environmental Description of the Marshes," "Notes for Ecorestoration Projects," and a "One-Year Strategic Plan," which included a schedule for "six

marsh restoration, scientific monitoring, and planning projects." Then, without explanation, these documents disappeared, leaving nothing but a "Schematic Diagram for Storage and Control of

Water in Iraq" that bore the Army Corps' logo and retained the offending dams, levees, and great drains. In 2004, even this disappeared, and there is now no evidence of a Ministry website. (The original website contents are available from the authors by request to leidermn@christa.unh.edu.)

After the 2003 U.S.-led invasion, local officials blocked one of Saddam's artificial rivers (the "Mother of All Battles River") that drained the Euphrates, thus re-flooding 10 percent of the marshes near Nasiriyah. However, we know of no comprehensive plan to renew the flow of water through the entire marshes. Furthermore, the U.S. emphasis now appears to be on conserving the very small portion of the former marshes that remains along the Iranian border, rather than restoring the entire region where hundreds of thousands of people once lived. As of this writing, only \$4 million of ad-hoc funds have been allotted, and this only for field trips, modeling, sampling, etc., rather than physical restoration. USAID has not awarded a single public, competitive contract to restore the marshes, although there have been billions of dollars for other Iraq relief and reconstruction contracts. Furthermore, the lack of transparency in the reconstruction process is worrisome: The contracts are not available for public reading, there is no public participation process for evaluating them, and no environmental or social impact statements are required in the manner of those required by the U.S. Environmental Policy Act of 1969.

The destruction of the marshlands and the Marsh Inhabitants' distinctive way of life remains even now both a humanitarian and environmental imperative of global importance. Those who are charged with rebuild-

(con't on page 37)

Mining a Sacred Land

Abigail Abrash Walton

Freeport McMoRan's devastation of the Amungme and Kamoro people in Papua has become one of the best known cases of environmental injustice perpetrated by a multinational extractive industry.



Freeport's Grasberg mine in Papua.

Imagine that a foreign corporation arrived one day with your national government's blessing and seized your home; destroyed your grocery store, local farms and gardens, your church, your favorite park; polluted your drinking and bathing water; created hazardous waste dumps throughout your town; blocked your efforts to seek justice through the courts; and bankrolled the police who threatened, tortured, raped, and killed family and friends for trying to resist this destruction of your way of life.

Meet the Amungme and Kamoro of the Timika area of the Indonesian-con-

trolled territory of Papua. They do not need to imagine this scenario. They have lived it for the past 35 years.

As multinational extraction corporations come in conflict with communities around the globe—from Appalachia to Alaska, from Burma to Nigeria—the experience of the Kamoro and Amungme of Papua with Louisiana-based Freeport McMoRan Copper & Gold provides one of the best-documented examples of the fundamental linkages between the natural environment and basic human rights. It is a classic story of environmental racism and injustice, of abuses across the full

spectrum of economic, political, civil, social and cultural rights, and of the ways in which local people have sought to defend their lands, livelihoods, and cultures.

The experience of the Kamoro and Amungme is also a prime example of what is known as “development aggression.” Specifically, dominant powers—Freeport, the Indonesian central government, and the military—have used coercion and intimidation to exploit land and other natural resources for profit, and have siphoned these profits to foreign stockholders and

national elites, leaving local people dispossessed, displaced, and marginalized.

The Amungme and Kamoro are the original indigenous landowners of the areas of Papua that are now occupied by Freeport's massive copper and gold mining operations. At the time of Freeport's arrival in 1967, the two communities numbered several thousand people. With lands spanning tropical rainforest, coastal lowlands, glacial mountains, and river valleys, the Kamoro (lowlanders) and Amungme (highlanders) practiced a subsistence economy based on sustainable agriculture, forest products, fishing, and

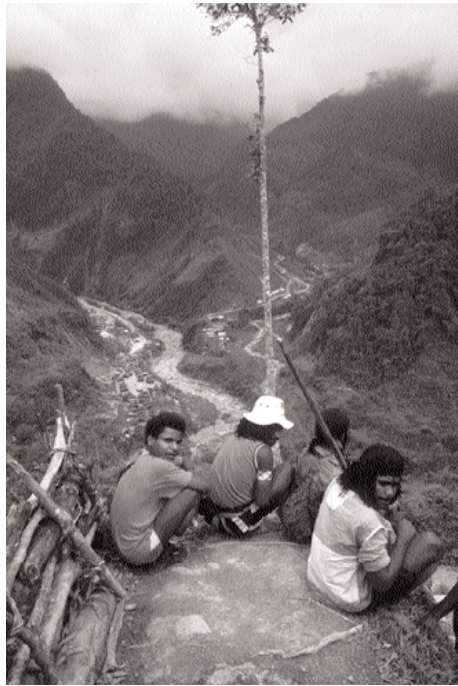
Photo by Chris Bellard

hunting—their cultures intimately entwined with the surrounding landscape.

Today, Freeport's Papua mining operations are among the largest in the world. The company has decapitated one of Papua's mountains, held sacred by the Amungme, and dumped millions of tons of mining waste into local river systems. Freeport's despoliation of Kamoro and Amungme lands and natural resources have brought serious harm to the economies and livelihoods of local communities. Compounding the problem are the hordes of outsiders who have swarmed to the economic "boom town" created by the mine. The area's population has exploded to some 120,000 people, making Timika the fastest-growing "economic zone" in the entire Indonesian archipelago.

For the Amungme and Kamoro the conflict with Freeport began with the company's confiscation of their territory. Freeport's 1967 Contract of Work with the Indonesian government gave Freeport broad powers over the local population and resources, including the right to take land, timber, water, and other natural resources, and to resettle indigenous inhabitants while providing "reasonable compensation" only for dwellings and permanent improvements. Freeport was not required to compensate local communities for the loss of their food gardens, hunting and fishing grounds, drinking water, forest products, sacred sites, and other elements of the natural environment.

This usurpation of indigenous land is particularly harsh in view of Amungme cosmology, which regards the most significant of its female earth spirits, Tu Ni Me Ni, as embodied in the surrounding landscape. Her head is in the mountains, her breasts and womb in the valleys, and the rivers are her milk. To the Amungme, Freeport's mining activities are killing their mother and polluting the milk on which they depend for sustenance—literally and spiritually. In addition, mountains are the home to which the spirits of Amungme ancestors go following death. In a disturbing echo of this analogy, Freeport CEO Jim Bob Moffett told shareholders at the company's 1997 annual general meeting that the company's operations were like taking "a volcano that's been decapitated by nature,



Moni immigrants sitting on a ridgeline above the Amungme resettlement of Banti, just below the mining town of Tembagapura.

By taking a determined stand in defense of their rights, the Kamoro and the Amungme have focused the eyes of the world on the nexus of environmental and human rights concerns.

and we're mining the esophagus."

Indonesia's national laws have enabled Freeport's free reign. The laws do not comply with international human rights standards; they offer no adequate respect for community land rights, no rights of refusal or of informed consent, and no effective protection for traditional livelihoods and cultures. The legal regime governing natural resources grants near-total control to the government. In fact, Indonesian authorities have treated opposition to economic "development" as a crime of subversion, often acting with


aggression against indigenous communities seeking to retain their customary lands or to participate in decision-making regarding use or management of natural resources. As the company constructed its mining base camp, port site, milling operations, roads, and other infrastructure, Kamoro and Amungme villages were forced to relocate and were barred access to land now under the company's control. Meanwhile, Indonesian soldiers and police—provisioned by Freeport and operating with a mandate to protect the company—have cracked down ruthlessly on those who have protested the invasion.

The United Nations, Indonesia's National Commission on Human Rights, and international and local NGOs have independently identified the following human rights abuses associated with Freeport's mining operations:

- Torture, rape, indiscriminate and extrajudicial killings, disappearances, arbitrary detention, racial and employment discrimination, interference with access to legal representation, and severe restrictions on freedom of movement;
- Violation of subsistence rights resulting from seizure and destruction of thousands of acres of rainforest, including community hunting grounds and forest gardens, and contamination of water supplies and fishing grounds;
- Violation of cultural rights, including destruction of a mountain and other sites held sacred by the Amungme; and
- Forced resettlement of communities and destruction of housing, churches, and other shelters.

In their public statements, the Amungme consistently speak about the loss of human dignity and the mistreatment—physical, psychological, spiritual, and economic—they have experienced since Freeport, its agents, and its by-products (subcontractors, military protectors, economic migrants, and others) arrived. As one Amungme community leader was cited in the Indonesian newspaper, *Kompas*, in 1995, "What do they think the Amungme are? Human? Half-human? Or not human at all? If we were seen as human . . . they would not take the most valued property of the Amungme, just as we have never wanted to take the property of others.... I sometimes wonder, whose actions are more primitive?"

Throughout their struggle, local communities have appealed to the Indonesian government and military, the United Nations, United States courts and policymakers, and directly to Freeport and Rio Tinto (a major investor in Freeport's Papua operation) management and shareholders in an effort to be heard. These appeals have come in the form of public community resolutions, interventions before the U.N. Commission on Human Rights, U.S. congressional briefings, numerous direct meetings with Freeport management, and two court cases, filed on behalf of Amungme plaintiffs in U.S. federal and Louisiana state court, respectively. More than three decades after Freeport arrived, the Kamoro and Amungme are still pursuing their rights and restitution.

Freeport continues to operate in Papua today. The future is uncertain. Yet by taking a determined stand in defense of their rights, the Kamoro and the Amungme have focused the eyes of the world on the nexus of environmental and human rights concerns. Their struggle underscores the urgent need for more successful mechanisms for safeguarding the environmental rights of communities and for governments and corporations to adopt international human rights instruments and "best practice standards." These include the International Labor Organization's Convention Concerning Indigenous and Tribal Peoples in Independent Countries, the U.N. Draft Declaration on the Rights of Indigenous Peoples, and the Inter-American Commission on Human Rights' "Proposed American Declaration on the Rights of Indigenous Peoples." In short, the Amungme and Kamoro's experience has changed the rules of the game, making it increasingly unacceptable for corporations and governments to devastate communities and the natural environment in the name of corporate profits and "trickle-down development." 

For more on extractive industries in Papua, see Stuart Kirsch's articles in the litigation issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/614.

These various framings of environmental issues help us to formulate possible political, legal, and technical solutions appropriate to each. By shifting our perspective on these problems, unexpected solutions may emerge.

The issues addressed in this section could be approached through three different types of environmental claims: (1) environmental justice, (2) environmental human rights, and (3) "strong environmental rights," by which I mean the rights of the natural environment itself. These various framings of environmental issues help us to formulate possible political, legal, and technical solutions appropriate to each. By shifting our perspective on these problems, unexpected solutions may emerge.

Environmental justice issues typically involve the disproportionate exposure of the low-income and minority or indigenous communities to high levels of pollution (e.g., industrial and hazardous waste) or their involuntary displacement due to large-scale projects of economic development. It is hardly surprising that in most political systems the welfare of indigenous and minority groups is undervalued in making environmental use decisions. Claims of environmental justice are derived from the principle of equality—that people deserve equal treatment regardless of race or social status. Demanding equality in this context means redistributing (though perhaps not eliminating) environmental burdens.

In contrast, the focus of an environmental human rights analysis is not on the distribution of environmental harms and benefits, but rather whether the environmental harm exceeds a minimum acceptable threshold that is deemed to violate the rights of the affected people. Environmental human rights include the right to clean air and water, or more generally the right to a safe environment.

These rights may be invoked to promote direct environmental action, since rights discourse elevates the status of the problem to a higher level of urgency.

Other human rights may—in a particular context—be asserted to preserve environmental quality. For example, indigenous groups might assert cultural human rights, such as access to religious sites; or economic human rights, such as hunting or fishing rights, in order to effectively gain control of ancestral land use. An affected group might also claim violations of the right to life or health to eliminate the presence of particular environmental harms.

Environmental rights, however, may also be conceptually liberated from an anthropocentric anchor. Thus, we could speak of a river's right to a flow of clean water or a rain forest's right to survive. When invoking these strong environmental rights, humans intervene as stewards of the environment as opposed to victims of environmental harm.

The concept of environmental justice originated in the United States, where it arose out of the claims of poor and minority groups—groups that traditionally have limited influence upon environmental policy. In their stories of the negative effects of policy measures on specific subgroups found within a particular national context, each of the three case studies presented here can be read as a call for environmental justice. Each of these subgroups—the Maya-Achí in Guatemala, the Marsh Arabs in Iraq, and the Amungme and Kamoro peoples in Papua—is described as "indigenous" in the sense that they all have, according to the U.N.

definition, “a historical continuity with pre-invasion and pre-colonial societies that developed on their territories” and “consider themselves distinct from other sectors of the societies now prevailing in those territories.” Further, each group possesses insufficient political power to avoid devastating changes to its way-of-life through environmental destruction.

Yet equality arguments—such as calls for environmental justice—have important limitations. The essence of the environmental justice claim is that a particular group is bearing a disproportionate burden. The asserted injustice may in turn be remedied by redistributing the burden. But redistribution alone may do little to rectify environmental havoc. For example, the environmental justice movement took root in the United States, where poor and minority communities are disproportionately housed near environmental hazards. Toxic exposure is but another kind of discrimination suffered by these groups, and relocation is rarely a complete solution. While some would gladly move to a cleaner area, U.S. history—like the history of so many places around the world—is rife with examples of minority and indigenous communities being displaced against their will in the name of development and progress. Indigenous peoples are even more rooted to place than other disadvantaged groups are. Relocation is a particularly inadequate solution, for example, to the Amungme and Kamoro people; indeed, their forced relocation is the essence of the harm they suffer.

An environmental justice claim is inadequate to demand the full range of reparations sought by the Amungme and Kamoro. Many of their claims against Indonesia and Freeport McMoRan better fit traditional human rights paradigms. Similarly, when advanced as an environmental justice claim, the Maya-Achí displaced by the Chixoy Dam are reduced to demanding adequate compensation, thus shifting the burdens from one part of Guatemalan society to another. But compensation will not restore the flooded lands or permit Don Cristóbal’s grandchildren to escape a future life in a crowded new city. In and of itself, environmental justice does not demand any reduction in environmental harm—only that this harm be fairly distributed.

A human rights approach may promise more redress. For example, in their advocacy the Maya-Achí have asserted their cultural rights—such as access to their now immersed traditional sacred places. And they have asserted their economic rights to livelihood, and in doing so make the compelling argument that their traditional practices are more sustainable. Asserting human rights claims may require the more satisfactory remedy of environmental restoration (in this case, decommissioning the Chixoy Dam) as opposed to mere compensation.

The ecocentric version of environmental rights—though perhaps fanciful—promises the greatest possible avoidance of environmental harm. Imagine a claim advanced on behalf of the land flooded by the Chixoy Dam or on behalf of the decapitated mountain revered by the Amungme. Here the legal claim would not depend on harm to—or even the presence of—the Maya-Achí or the Amungme. Yet the absence of identifiable human victims undermines the appeal of such an argument, and it is difficult to imagine such a claim holding up in court.

The case of the Marsh Arabs appears even more sinister and problematic from both environmental justice and human rights perspectives. Here the displaced people were targeted on political grounds, as opposed to being accidental victims of unjust development. The lives of the Marsh Arabs were destroyed—as were those of the Maya-Achí and the Amungme and Kamoro—but in the case of the Marsh Arabs, to pose an environmental justice claim would understate the reprehensiveness of the offense. If draining the marshes has no defensible purpose, the characterizations by Nadeem Kazmi and Stuart Leiderman of “environmental warfare” and “genocide” appear warranted. The avoidance of genocide is a core human rights value—and there is well-developed law on this point. A tragic problem arises when the Marsh Arabs pass into being a “lost people” (like Don Cristóbal’s fear for his grandchildren); when the Marsh Arabs no longer exist, there is no human rights-based argument for restoration of the marshes.

In the United States, where there is a robust tradition of minority rights, the advancement of environmental justice

claims might effectively serve the broader collective. Environmental justice advocacy might reduce the “gap” in environmental quality between favored and disfavored group, and in the process improve the overall environment. As demonstrated in an essay by Aimée Christensen (available on Dialogue Online), under the current Bush administration the national environmental strategy is dominated by politics, not rights. Given that politics has failed to reflect the nation’s broad popular support for environmental protection, the courts may be the best, last hope.

Yet much of the judicial heroics Christensen applauds are based on environmental legislation that can be repealed, and not on durable rights. Environmental justice claims (anchored to the equal protection clause of the U.S. Constitution) might be effective in particular contexts where there is a “convenient” disadvantaged group sited nearby. Yet the Bush policies extend beyond such circumstances, and have undermined the protections for disproportionately affected groups. The recognition of environmental human rights in U.S. law would permit a defense against policies that adversely affect the wider population, but here too there is a problem of underinclusiveness: Where, for example, are the human rights holders affected by drilling in the Arctic Wilderness? Not all environmental claims may be translated into human rights terms. Ultimately, to resist the Bush administration’s anti-environmental juggernaut, strong environmental rights that are triggered by the simple instance of environmental degradation are needed. Such rights would not depend on the identification of affected groups (as would environmental justice claims), nor even on generalized harm to the population (as would environmental human

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In Dialogue Online

Read **Aimée Christensen’s** essay, “Environmental Protection in the United States: A Right, a Privilege, or Politics?,” which argues that the Bush administration’s environmental policies are exacerbating injustice for America’s poor and undermining the rights of all Americans. Online at www.carnegiecouncil.org.

A Nascent Agenda for the Americas

Jorge Daniel Taillant

In Latin America, the enforcement of human rights and environmental legislation has been making headway.

In 1998 a North American indigenous leader and attorney of the Indian Law Resource Center, James Anaya, was representing the Awas Tingni people of Nicaragua, seeking international support for a case going before the Inter-American Commission on Human Rights. The Commission was poised to reject admissibility of the case, which sought to halt publicly sponsored illegal lumbering in indigenous territories of Nicaragua, on the grounds that a human rights tribunal was not the appropriate forum to resolve what was seen as an “environmental” case. Undaunted, Anaya found an experienced human rights attorney and a seasoned environmentalist—Romina Picolotti and Durwood Zaelke—to write an *amicus* brief that has helped revolutionize environmental litigation in the Americas.

Based on the evidence brought by Anaya, and influenced by the innovative legal reasoning argued in the brief, the Commission ordered an injunction against the illegal lumbering, bringing it to a halt. *Awas Tingni*, which eventually went on to the Inter-American Court and won, has become a landmark in the relatively new field of human rights and environment litigation. The case firmly established human rights and environmental linkages in Inter-American jurisprudence, and it has opened up a new “environmental” rubric of human rights tribunal competency. It has also spawned interest in legal advocacy from indigenous communities across the hemisphere that have come to see the human rights tribunals of the Inter-American Human Rights System as fertile ground for defending their environment.

Although *Awas Tingni* was not the first case to recognize the linkage

between human rights and the environment (several years earlier *Yanomami* and *Huarani* established precedents regarding claims of environmental harms), *Awas Tingni* is novel for two reasons. First, it occurred at a juncture when human rights issues were gaining important ground in the sustainable development debate, and at a time when human rights and environmental linkages were being formally recognized throughout the world—specifically and most importantly, through the San Salvador Protocol, in hemispheric legislation. Second, for the first time the Inter-American Human Rights Commission and the Inter-American Court on Human Rights based their decisions in favor of the indigenous community largely on legal argumentation linking the enjoyment of human rights to the state of the environment.

Following the collapse of dictatorships during the 1970s and 1980s, Latin American nations found themselves amidst a broad body of international human rights law and new concepts of sustainable development. The 1972 Stockholm Conference on the Human Environment and subsequent international conferences had placed people at the center of discussion of environmental sustainability. The Earth Summit of 1992 further strengthened the emphasis on the economic and social factors of sustainability and brought to an apex an era of global environmental conferences where human rights and environment were implicitly and explicitly center stage. This was the beginning of the construction of a human rights/environment normative framework. During this period many Latin American nations rewrote their constitutions and incorporated environ-

mental provisions, such as the explicit “right to a healthy environment.” The San Salvador Protocol to the American Convention established the right to a healthy environment at a hemispheric level.

Harnessing a disjointed but fortuitous local, national, and hemispheric rapprochement during the 1990s of human rights and environmental agendas, the Argentina-based Center for Human Rights and Environment (CEDHA) approached the Organization of American States (OAS) in 2001 with a “draft resolution on human rights and environment,” placing before governments the opportunity to show political support for the further harmonization of these complimentary development agendas. Several member states were uniformly resistant to the idea that human rights had anything to do with the environment, suggesting that a union of the two, in practical and operative terms, was not feasible considering the already meager budgets of the OAS and its human rights and environmental agencies. Some, although from a less vociferous platform, went as far as to suggest that the human rights and environmental agendas were entirely unrelated. Yet it is more likely that the true reason these governments resisted the draft was that member states, fearful of losing sovereignty, were reluctant to be brought before the Inter-American Commission on Human Rights for poor environmental records. Nevertheless, with strong lobbying by CEDHA and support from a handful of committed states, the resolution passed.

Since that time, governments have moved from a position of cautious resistance to acceptance of three consecutive

annual OAS resolutions—in 2001, 2002, and 2003. This success might be due in part to the growing global awareness and social awakening to the effects of environmental degradation on human populations, but more likely it has more to do with (1) the continued advocacy of civil society before the OAS, (2) the alignment with this advocacy of a handful of states, and particularly Caribbean states, which represent a strong voting block at the OAS and which have a particular interest in the human rights and environment linkage (largely due to the impact of global warming on coastal communities), and (3) perhaps also because cases concerning human rights and the environment did not flood the Inter-American Commission on Human Rights as was once feared. Despite ongoing resistance from a few individual states, the resolutions leave no question within those OAS agencies that must carry out this new mandate that the linkage of human rights and the environment is of utmost importance to the Americas. Today, the governments of Latin America are fostering institutional cooperation, particularly between the Inter-American Commission on Human Rights and the OAS Unit for Sustainable Development. Such promotion has even been extended to include inter-agency collaboration with the global environmental agencies, U.N. agencies, and civil society organizations.

In terms of the Inter-American Commission on Human Rights, today—less than five years following its near rejection of the *Awas Tingni* case—the Commission has not only embraced the concept and linkage, but has unofficially assigned an attorney to oversee human rights and environment cases. In addition, it has officially participated in advocacy of the human rights and environment linkage agenda, publishing articles on issues such as the right to water; and it has participated in educational training on human rights and environment in NGO capacity building workshops.

The developments in the Americas stemming from *Awas Tingni* have rekindled advocacy efforts among NGOs to promote a greater linkage between human rights and environmental protection. However, it is important to note that in the Americas the human rights and environment advocacy agenda is not defined in terms of “environmental




Young girl in Brazil.

Governments have moved from a position of cautious resistance to acceptance of three consecutive annual resolutions on human rights and the environment.

rights.” While it may seem logical, when linking human rights and environmental issues, to speak of “environmental rights,” many advocates have avoided doing so. The term itself carries much ambiguity: Are we speaking of rights of individuals or communities to “environmental quality”? Or are we speaking of human rights more generally, affected by the quality of the environment? The distinction may seem trivial, but in the courtroom it may decide the outcome of a case. “Environmental rights” and, more specifically, the “right to a healthy environment”—which suggest the right to a specified environmental quality—while existing in legislation are still new to the courtrooms, which have little to show in terms of jurisprudence. Such rights have remained largely unaddressed by legal actors, and are not a high priority for judges, who often shy away from handing down verdicts in a legal realm in which they have little or no past experience. Sadly, much of the environmental degradation caused by corporate interests, for example, is still viewed as generating much needed employment, investment,

and economic development; making verdicts against corporations for environmental harm politically unpopular.

It is far more effective to approach environmental protection (and “environmental rights”) through the defense of more traditionally accepted “human rights” affected by environment quality, such as the right to health, the right to life, and the right to property. Increasing poverty and environmental collapse offer fertile ground for human rights advocacy, if we are able to identify the many human rights affected by such conditions. What we are really talking about is applying the human rights lens not to *environmental* problems per se, but more generally to *development* problems, what some call the “rights based approach to development.” This approach places the protection of people and communities—a stronger priority for judges—at the heart of the legal debate. Through this approach, human rights and environmental protection have the best chance of being advanced at a quicker pace and, hopefully, with more victories in the courtroom. 

Environmental Rights Enforcement in U.S. Courts

Hari M. Osofsky

Difficulties in characterizing environmental rights problems have posed barriers to redress for victims of severe environmental harm.

Since 1980, when a U.S. federal court allowed a Paraguayan mother to sue the former Paraguayan official who tortured her son to death (*Filartiga v. Pena-Irala*), victims of severe human rights violations have used the Alien Tort Statute as a vehicle to gain redress in U.S. courts. This statute allows non-citizens to sue in U.S. federal courts for violations of the law of nations—which is generally equated with customary international law—or a U.S. treaty. Thus far, all of the cases have been brought in the lower courts, but the Supreme Court is poised to hear an Alien Tort Statute case for the first time in spring 2004 (*U.S. v. Alvarez-Machain*), and many advocates fear the Court may invalidate *Filartiga* and its progeny.

Beginning with *Aguinda v. Texaco*, which started winding its way through the courts in 1994, representatives of indigenous peoples who have suffered severely from the environmental irresponsibility of

multinational corporations have attempted to gain redress under the Alien Tort Statute. The circumstances surrounding these claims are remarkably consistent. Each addresses environmental abuses by a corporation, such as Texaco, Freeport-McMoRan, Rio Tinto, and Southern Peru Copper Corporation—generally in the context of other massive human rights violations—that have a devastating impact on the local indigenous community. Despite a variety of legal strategies, however, to date every Alien Tort Statute case arguing that environmental damage violates human rights has failed on substantive or procedural grounds.

The facts in the above-mentioned *Aguinda* case are representative of the types of problems that these cases have tried to address. According to the plaintiffs, Texaco spilled over 3,000 gallons of oil per day during its operations in the Oriente region of Ecuador between 1972

and 1992. The Ecuadorian government estimated that nearly 17 million gallons of oil spilled from Texaco's primary pipeline, which is approximately 6 million gallons more than was released in the *Exxon Valdez* spill. Texaco's practice of discharging oil and disposing of waste directly onto roads and into streams and rivers exposed plaintiffs to hydrocarbons and carcinogens at levels many times higher than what the U.S. Environmental Protection Agency considers safe. Even the rain water became contaminated, leaving plaintiffs with no safe source of water for drinking, cooking, or bathing. As a result of long-term exposure to these toxic substances, plaintiffs suffered from a variety of ailments, including rashes and other skin irritations, cancer, and emotional distress.

Although the environmental harms in this and other suits brought under the Alien Tort Statute are extreme, they do not fit neatly into existing categories of international law. Given the deeply embedded principle of a state's sovereignty over its natural resources, international environmental law rarely would allow a claim based on environmental harm occurring within a nation's borders. And while international human rights law does provide a basis for impinging upon state sovereignty, few human rights instruments address the environment directly. Moreover, only two of the human rights instruments explicitly acknowledging the environment are binding. Similarly, binding international treaties against discrimination do not directly address environmental injustice.

This problem of characterizing these situations within existing categories of



Oiled birds, Venezuela.

Photo by Julio Erchart www.julioerchart.com

international law manifests in both advocacy strategies and judicial hesitancy. Advocates of environmental rights have struggled with the sovereignty problem in international environmental law, either making a general claim about international environmental law violations or trying to argue for an intra-national rule against environmental pollution. Human rights claims also diverge, ranging from claims of violations to the right to life and health, to the claim of cultural genocide such as in the Freeport McMoRan case (for more on this case, see the essay in this issue by Abigail Abrash Walton). The claim of cultural genocide is particularly problematic because the U.N. Genocide Convention covers only “acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.” In order to prevail, plaintiffs would have to prove a customary international law protection broader than that in the Convention. Thus far, no case has claimed that environmental harm violates the international law prohibitions against discrimination.

U.S. courts have consistently rejected each of these characterizations of the environmental harm as an international law violation actionable under the Alien Tort Statute, establishing ever more daunting barriers of precedent for those who hope to bring future claims under the Statute. The district court decision in *Sarei v. Rio Tinto* is the only instance in which a court substantively accepted an environmental claim under the Statute. It did so with respect to the narrow claim that dumping tailings (mining waste) into a bay violated the customary international law norms established by the U.N. Convention on the Law of the Sea. This substantive acceptance of the claim was not enough, however, for the plaintiffs to gain redress; the opinion barred adjudication of the environmental claim on the basis of three doctrines: (1) the issue represented a political question that the executive rather than judicial branches should resolve; (2) the court will not invalidate the official acts of foreign sovereigns; and (3) the recognition that nations give to one another’s executive and judicial decisions.

In these defeats, the characterization problem has been compounded by the tremendous discretion courts exercise in

accepting the evidence presented by advocates for the existence of an international norm. *Filartiga v. Pena-Irala*, the groundbreaking case involving the Paraguayan torturer, set a very low threshold for the

Indigenous peoples have attempted to gain redress under the Alien Tort Statute.


evidence needed to prove a law of nations violation. *Filartiga* relied on the general prohibitions on torture found in the U.N. Charter, numerous mentions in international treaties and nonbinding General Assembly resolutions, prohibition in fifty-five national constitutions, writings of scholars, and a general statement by the U.S. Department of State. The court thus found that customary international law prohibits official torture despite a lack of any binding international instrument specifically prohibiting it. Many of the human rights cases that followed supplemented the general approach in *Filartiga* by relying upon a standard that the claimed customary international law violation had to be able to be defined, universally accepted, and viewed by states as obligatory. These cases rarely provided analysis, however, as to why the standard was met with respect to a particular human rights violation, and so did little to clarify what additional violations might be actionable under the Alien Tort Statute.

The evidence for a norm against environmental rights violations is at least as strong as that accepted by the court in *Filartiga*. Yet the 2003 decision by the Second Circuit Court of Appeals in *Flores v. Southern Peru Copper Corporation*—in which plaintiffs claimed that the mining operations caused severe lung disease in violation of the rights to life, health, and sustainable development—illustrates how judicial discretion can make the mustering of such evidence irrelevant. The plaintiffs presented proof of a norm—including binding treaties, General Assembly resolutions, decisions by international tribunals, and statements by international law experts—that arguably exceeded that which was relied upon in *Filartiga*. The Court found each type of evidence presented inadequate, however, at times relying upon very narrow grounds to distinguish its rejection of international developments

in this case from its acceptance of similar documentation in *Filartiga*. In particular, the court found the binding treaties to be insufficiently specific to environmental rights, the General Assembly resolutions to

be nonbinding (given insufficient evidence of national prohibitions against violations of environmental rights), and the decisions by international tribunals and statements of experts not primary sources of international law.

Thoughtful commentators could disagree as to whether the court’s treatment of the international law evidence in *Flores* was appropriate. Regardless of one’s view, however, the lack of standards is troubling. The *Filartiga* decision and those that followed left tremendous ambiguity about the threshold that must be reached for U.S. courts to recognize an international law norm. The *Flores* court had so much discretion because international law standards for what constitutes a violation of customary international law—and U.S. judicial interpretation of them—are unclear.

The U.S. Alien Tort Statute jurisprudence thus provides a sobering example of the barriers to effective enforcement of environmental rights norms. Unless advocates can convince courts to accept a characterization of these problems as violations of international law—a feat that has been accomplished only a few times in Inter-American, European, and U.N. tribunals—victims will be limited to domestic law and non-legal strategies for obtaining redress. 

For more on the Alien Tort Statute, see “Beyond Reports and Promises” by Terry Collingsworth in the globalization issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/947.

Read more about *Aguinda v. Texaco* in “The Story from the Oil Patch” by Judith Kimerling in the litigation issue of *Human Rights Dialogue*, available online at www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/612.

Defending Environmental Defenders

Folabi K. Olagbaju and Stephen Mills

Two leading American grassroots organizations—Amnesty International USA and Sierra Club—recently joined hands to protect those who advocate for the environment.

In 1990, Ken Saro-Wiwa, an internationally acclaimed poet, author, and activist from the Niger Delta, began mobilizing his people, the indigenous Ogonis, for nonviolent protest against the Shell Oil Corporation. For more than 20 years oil spills and gas flares from the multinational's oil explorations had destroyed the environment and the health of the indigenous Ogonis, causing thousands of lost lives. Five years after the start of his campaign, Saro-Wiwa and eight other indigenous Ogoni activists were brutally hanged for their peaceful protest on the orders of General Sani Abacha, then military dictator of Nigeria.

The tragic death of Saro-Wiwa shocked the world. It drew international attention to the human rights of indigenous peoples and the need to hold corporations accountable for complicity in environmental and human rights abuses. It also set the stage for a unique collaborative campaign between Amnesty International and the Sierra Club to protect the human rights of environmentalists and communities-at-risk.

The roots of the campaign go back to early 1994, when Amnesty International and the Sierra Club were part of a broad coalition of human, environmental, and labor rights groups that organized a global grassroots campaign on behalf of the Nigerian activists, who were then on trial before a quasi-military tribunal on trumped up charges of treason. In October 1995, Amnesty International USA, Sierra Club, and another U.S.-based NGO, TransAfrica, issued their first joint letters to President Bill Clinton, British Prime Minister John Major, and Phillip Carroll, CEO of Shell USA, expressing



Grigory Pasko after his release from labor camp.

their deep concerns about the deteriorating human rights situation in Nigeria. The three organizations urged world leaders as well as other NGOs to join the campaign to pressure the Nigerian government to respect the human and environmental rights of the Nigerian people. While the effort failed to prevent the tragic executions, the cooperative campaign taught the organizations some important lessons.

A key lesson was the need to take proactive measures in defending the rights of environmentalists and to hold multinational corporations accountable for complicity in human rights abuses. Oil provides nearly 80 percent of Nigeria's national revenues. Shell, which still operates in the Niger Delta today, is the largest producer of Nigerian oil, accounting for more than 50 percent of the country's oil output. Thus, the company's claim that it

could not interfere in the internal politics of the country to prevent the killings rang hollow to many NGOs and activists in both the human rights and the environmental movements. Rather than address legitimate issues raised by the Ogoni people, Shell sought protection from the Nigerian military government—notorious for human rights abuses. The company was also implicated in arming the Nigerian security forces from 1993 to 1995, which later engaged in a vicious campaign of terror in Ogoniland. Amnesty International USA and the Sierra Club concluded that the most effective way to end Shell's acquiescence in the armed repression in Ogoniland was to enlist the support of the American public—Shell's largest export market.

While both organizations have an impressive history of holding governments accountable, they recognized that economic globalization is increasingly shifting power from governments to a handful of global corporations and financial institutions. Shell's total annual revenue, for example, is far greater than that of many African countries combined. What this means from the standpoint of grassroots campaigning is that to be effective in social justice activism it is also necessary to develop strategies around corporate social responsibility and accountability.

These lessons informed the strategic partnership between Amnesty and the Sierra Club—the United States' largest grassroots human rights and environment advocacy organizations. Known as "Defending the Defenders," this three-year collaboration (December 1999 to October 2002) sought to raise public awareness within the United States of the

link between human rights and the environment, and to generate grassroots actions in defense of environmental defenders around the world.

With a combined U.S. membership of more than 1.2 million, the Sierra Club and Amnesty International USA effectively mobilized their activist networks to respond to reports of abuses against environmental activists throughout the world. Responses took a variety of forms, including public demonstrations, letter-writing campaigns, shareholder activism, and—for the Sierra Club—advocating a boycott of Shell Oil. Throughout the campaign, both organizations educated their respective memberships about the nexus of human rights and the environment. Members quickly came to see that environmental protection is a precondition for the enjoyment of human rights, and that the human rights framework can be a useful tool for environmental defenders advocating their cause.

Defending human rights was not entirely new territory for the Sierra Club. Since its founding, the Club has been organizing its members to speak out, to engage the public in community organizing, and to participate in democratic decision-making. Sierra Club members therefore embraced the campaign to defend the human rights of environmentalists as the promotion of the same fundamental civil liberties that had allowed the organization to flourish in the United States. As former Sierra Club Chairman Mike McCloskey explained to Club leaders at the inception of the program,

Foreign environmentalists cannot rally public opinion in their countries if there is no freedom of speech or of assembly. Public opinion matters less if people cannot vote. Their protests will be muffled if they are jailed or put under house arrest. They cannot continue to resist if they are assassinated or executed. And it is hard to be effective if you are living under threats for your life.

For Amnesty's part, campaigning on the nexus of human rights and the environment allowed the organization to actively campaign for the first time on the social and economic roots of human rights violations. The campaign also gave

Amnesty the new opportunity to work with powerful coalition partners in the fields of human, environmental, and labor rights as well as with faith-based groups while piloting new and exciting organizing strategies at the grassroots level, particularly among youth activists. Speaking

Teodoro Cabrera Garcia, two Mexican campesinos arrested, tortured, and imprisoned on false charges for protesting the illegal clear-cut logging of old-growth forest in Mexico. Beyond these accomplishments, the two groups published a joint report entitled "Environmentalists Under Fire:



Valentine's Day action in Boston, Massachusetts, by Amnesty activists imploring ExxonMobil to "have a heart."

in an education video developed for the campaign, Bill Schulz, Executive Director of Amnesty International USA, underscored the scope of the problem:

Environmental problems are global problems. In order to defend those who give the earth a voice, it is critically important that those global problems be met with global standards, global standards of protection for human rights.

Broadening their campaigning in this way, the Defending the Defenders program had a significant influence on Amnesty's work.

Jointly the two organizations helped secure the release of four jailed environmental defenders—Aleksandr Nikitin, a retired Russian nuclear submarine engineer arrested for writing a report on the problems of radioactive pollution from mothballed nuclear submarines in Russia's Northern Fleet; Grigory Pasko, a Russian journalist jailed for reporting on illegal radioactive waste dumping by the Russian Navy; and Rodolfo Montiel Flores and

Ten Urgent Cases of Human Rights Abuses," documenting human rights abuses against environmental advocates by their own governments and, in some cases, by multinational corporations. They are also working with a broad coalition to develop the International Right to Know Initiative to press the U.S. Congress and the Bush administration for disclosure mechanisms to ensure greater corporate accountability.

Finally, the two organizations jointly played a leading role in pushing multinational corporations and international financial institutions to acknowledge the need to consult with local communities regarding project plans, to consider the potential impact on the local environment, and to mitigate any adverse effects. Multinational corporations now devote much more attention to these issues on their web sites and in paid advertising. Since the launch of this collaborative campaign, for instance, Shell has incorporated both environmental protection and respect for human rights into the company's business operating

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Once environmental rights are well-defined, our strongest tool for their enforcement is the judicial system, given that the courts alone have the power not only to render judgments but also to execute those judgments through financial or other means.

In order to enforce any right, it must be articulated with sufficient specificity to permit a tailored remedy. In the case of “environmental rights,” for which there is no unanimous definition, the lack of clarity regarding meaning and content leads to difficulties of enforcement. Once environmental rights are well-defined, our strongest tool for their enforcement is the judicial system, given that the courts alone have the power not only to render judgments but also to execute those judgments through financial or other means.

Before one can take legal enforcement action, however, one must first understand the content of these rights, which are complex and hybrid in nature, given that they combine aspects of human rights and environmentalism, substantive, and procedural rights. Therein lies the initial challenge to the enforcement of environmental rights: the multiple interpretations as to their scope and content. The term “environmental rights” manages to be both elusive and controversial: elusive because there is no universal definition, controversial because many from the environmental sector define it from an ecocentric perspective (environment first) while the human rights constituency is predominantly anthropocentric (humans first).

The subsequent difficulties of enforcement—judicial confusion, no specific international treaties, economic pressures—flow from the failure thus far to establish a global consensus on the nexus of human rights and the environment. Courts view the invocation of customary international law, with its lack

of fixed parameters and the absence of a written code, as a risky proposition for anything other than the most well-accepted human rights violations (for example, can anyone really argue that torture and extrajudicial murder are not universally condemned?). Given the hybrid nature of environmental rights and the dearth of specific binding international instruments, the concept has yet to attain the status of international law.

The most complete definition of environmental rights is the broadest one, encompassing both procedural (e.g., right to know) and substantive (e.g., right to life) rights. While some of these rights are separately enshrined in international treaties or jurisprudence, there is no one place where they are all delineated and contextualized as environmental rights. Furthermore, a comprehensive definition of environmental rights includes “new” rights as well, such as the right to a healthy environment. Even though this third-generation right is derived from existing first- or second-generation rights (such as the right to life and the right to health), it is more problematic, less easily defined, and more controversial. These third-generation rights—which also include the right to development and the right to peace—are “collective,” meaning that they vest in the group rather than an individual, which flies in the face of the traditional understanding of human rights. These are also hybrid rights, combining aspects of both substantive and procedural rights, and this lack of clarity breeds confusion and suspicion. Finally, they seek to give equal status to both

humans and the environment, turning the traditional hierarchy of people over nature on its side.

The enforcement of environmental rights claims in U.S. courts—or, more accurately, the failure of enforcement—illustrates the problem of definition, as Hari Osofsky describes in her article. A number of plaintiffs have sued multinational corporations, including Texaco and Freeport-McMoRan, for environmental rights abuses under a federal statute, the Alien Tort Claims Act (ATCA, also called the Alien Tort Statute). While ATCA has been used successfully to prosecute civil suits against individuals for violations of well-established, first-generation human rights (e.g., torture, summary execution), it has failed to provide a legitimate basis for environmental rights claims. ATCA allows suits brought by foreigners alleging violations of customary international law, which U.S. courts have yet to interpret to include environmental rights abuses. Because of what Osofsky describes as a characterization problem, U.S. courts fail to recognize that environmental wrongs resulting in human harms constitute violations of international law. This suggests that enforcement of environmental rights is unlikely until such rights are perceived as not only mainstream, but as rights that are sufficiently “specific, universal, and obligatory” (in the words of U.S. courts) to be actionable as violations of customary international law.

How to accomplish this task? Jorge Daniel Taillant, in his article about human rights and the environment in the Americas, suggests a strategy that has

led to some success in the Inter-American Commission. In detailing the burgeoning awareness that human rights and the environment are connected and the increased advocacy to promote such linkages in the Organization of American States, Taillant notes that a conceptual framework focused on development rather than environmental rights has been, and continues to be, critical. The term environmental rights, he correctly notes, is inherently ambiguous: Are we talking about the rights of people with respect to their environmental surroundings, or the human obligation to protect nature for its own sake, or some other formulation? Furthermore, some of those interpretations, particularly those that prioritize environmental protection over human profit, are objectionable to powerful interests. Articulating human rights and the environment through a development lens, which posits a people-centered approach to protecting well-accepted rights such as the right to life and the right to health, may be less daunting to some judges. It is unclear that this strategy would be as effective in U.S. courts, however, since development issues are less a part of the national or judicial consciousness. Nonetheless, the strategy is instructive for its recognition that U.S. courts are likelier to oppose corporate interests in the name of protection of people as opposed to preservation of the environment.


Identifying shared goals is critical to the successful implementation of rights at the intersection of environmental and human rights concerns. Viewing these rights from the development perspective is one way; another is to examine the places where popular notions about human rights principles and environmental protection meet. The process of discovering common concerns varies according to cultural context; strategies that work in the developing world may fall flat, for example, in some European countries or the United States. The term “human rights” in the United States readily conjures up images of civil and political rights, while in other countries social and economic rights may take precedence. Environmental defenders—those who exercise (or try to exercise)

fundamental human rights such as the rights to speech, association, information, and due process—are the physical embodiment of the human rights/environment intersection for some constituencies. Their work on behalf of the environment presents traditional, well-settled human rights concerns, those first-generation human rights issues that get articulated in a domestic context as civil liberties. As Folabi Olagbaju and Stephen Mills suggest, by focusing on popular, established civil and political rights such as freedom of speech and the right to vote, NGOs are able to put forth a broader agenda that addresses environmental problems as well.

On a practical level, defending environmental defenders has been an excellent first step in the enforcement of human rights and the environment; it provides concrete results (saving environmentalists) and paves the way for a broader understanding of the nexus of human rights and the environment. However, while this kind of campaign does allow organizations such as Amnesty International, Sierra Club, and others (including my own, EarthRights International) to address the root causes of second- and third-generation (social, economic, cultural, and environmental) rights to some extent, it only begins to address the larger issues.

Systematic and effective enforcement of human rights and environmental concerns requires not only the protection of individuals; it necessitates a reexamination of the structural conditions leading to what EarthRights International calls “earth rights” abuses. Olagbaju, Mills, and Taillant are clearly aware of the role that transnational corporations play as both perpetrators of earth rights abuses and impediments to the enforceability of earth rights. The human rights and environmental communities must unite around a complex, multifaceted definition of earth rights, one that, in the words of Taillant, includes both “the rights of individuals or communities to environmental quality” as well as “human rights more generally, affected by the quality of the environment.”

Environmental rights comprise a hybrid new idea of rights; they cannot

easily be labeled as procedural or substantive, first- or second-generation, anthropocentric or ecocentric. As such, they reflect the complexity of a world in which globalization erases borders and old categories no longer apply. However, that they are “new” does not mean they are infinite and undefinable. It is up to the NGO community to identify common concerns around human rights and the environment, and to posit a definition of environmental rights that is both broad enough to account for varying cultural contexts and specific enough to be comprehensible. Once we reach some consensus on what Osofsky terms the “characterization” problem, we can then push for a global enforcement strategy that has pieces addressing the need for both injunctive relief (stopping the abuses before they happen) and damages (holding corporations accountable by making them pay) as well as the need for international norms and standards (international treaties). Absent a comprehensive understanding and approach that seeks to promote and protect earth rights in their many incarnations, our efforts to enforce these rights—that is, to make them real—for all peoples will be unavailing. 


For an alternative perspective on enforcing environmental rights, visit **Dialogue Online** to read how the Calamian Tagbanwa people in the Philippines are striving to protect their natural resources. In “A Choice for Indigenous Communities in the Philippines,” **Maurizio Farhan Ferrari** and **Dave de Vera** explain why the Tagbanwa chose a rights-based approach over a participatory approach to securing their environmental rights. Online at www.carnegiecouncil.org.



Illustration by Doug McGrady

Kilburn (con't from page 9)

It had taken ten years for environmental rights activism to achieve the global cachet of Havel's coterie of political prisoners, but it was instrumental in transforming the discourse of civil rights in Czechoslovakia. The abstract notions of "living in truth" and appeals to the "order of Being" of the Chartists made for poor slogans at the nascent public demonstrations, but demands for clean air and water and the health of the nations' children were basic and universal enough to cut across class and regional divisions and through the rhetoric of the regime.

The story of the region in the years since the fall of communism is one of mixed success. While an embrace of Western style consumerism and market driven public policy quickly displaced the popular environmental agenda, the strict guidelines for human and environmental rights spelled out in the European Union accession agreement have spearheaded a remarkable recovery in the region. The Bohemian experience under both communism and capitalism indicates the interdependent and symbiotic nature—indeed, the necessity—of environmental and other human rights. 

Bauer (con't from page 19)

given situation requires first an analysis of the empirical validity of the tradeoff argument and, second, an ethical analysis of the moral basis for making the decision to prioritize rights. Renteln ultimately takes the bold step of coming down in favor of environmental rights—not as animal rights but as supporting the survival of species upon which the cultures depend. While her solution points to a framework for engaging these types of problems, each individual situation that arises will again raise questions, such as: How should policymakers strike an appropriate balance between environmental protection and cultural survival? Can some practices be accommodated within environmental protection schemes? Are some practices simply so environmentally harmful that in all cases they need to be curtailed, regardless of who engages in them?

Johnston (con't from page 12)


processes: (1) wrest control over traditionally-held resources without negotiation or compensation, or when such institutions continue actions that knowingly harm the critical resources that sustain a cultural way of life (the Inuit); (2) degrade the environment, and place individuals and populations at risk on the basis of national security, national energy, and national debt (the former Czechoslovakia); and (3) co-opt the implementation of legal structures (Cambodia's fisherfolk).

In their review of environmental and human rights politics in northern Bohemia, Kilburn and Vanek remind us that the social conflicts emerging from abuses of environmental human rights involve questions of agency, moral duty, and participatory processes. Who has the authority to define resource use—the state or the affected communities? Who participates in shaping development and other decision-making agendas? Who is responsible for remediation—that is, restoring damaged environments and providing meaningful redress to people and communities harmed by degradation? How do we respond to human environmental crises that are the legacy of past governments? What is the basis for determining socially just measures of compensation? All these questions reflect a "responsibility gap" stemming from our current system of state and international governance, which is characterized by social, political, economic, and geographic distance between those who

As these essays make clear, the instances of human rights infringements in the course of conservation and pollution control efforts stem from the *implementation* of environmental measures. They involve a mixture of procedural and substantive rights violations. Procedurally, inadequate inclusion of affected peoples in policy processes that both define and implement "public interest" results in undermining the right to livelihood and corresponding subsistence rights. The type of conflict that Renteln describes is more fundamentally one of substantive (cultural)

decide and those who pay the price of short-sighted policy decisions.

The organizing and networking of civil society can be seen as an effort to bridge the responsibility gap by actively confronting and engaging responsible parties. As happened in the former Czechoslovakia, life-threatening situations prompt people to ask questions, confront authority, and demand accountability. Increasingly, affected communities and their advocates are using international and regional human rights instruments, as well as national laws, to force acknowledgement of culpability, halt impending environmental human rights abuses, and renegotiate existing human and environmental conditions. The Inuit's initiative in filing a petition with the Inter-American Commission on Human Rights seeking remedy for the consequential damages of global warming is representative of this trend.

All three cases remind us that as the exploitation of world resources and the degradation of the biosphere intensify, social movements to reshape priorities and ways of life are assuming an increasingly significant role. Whether political action produces short-sighted or sustaining change depends largely upon the structural arrangement of power and whether, within this arrangement, individuals and groups have the opportunity to voice opinions and seek redress in forums that respects the inseparable nature of human rights and the environment. 



rights and environmental preservation, which is perhaps why the resolution of each situation is a difficult balancing act. In all three types of situations, a fair resolution demands a recognition that both sets of values matter and must be incorporated into the policy solutions better than they have in the past. 




Photo courtesy of JMT African Heart Expeditions

Kazmi (con't from page 23)

ing Iraq and with redressing the violations of human rights within that beleaguered nation need to recognize that re-flooding the marshes is a fundamental imperative. Remnants of the Marsh culture should not be abandoned as a lost people, nor should their homeland be left as desiccated wastes for oil, agribusiness, and other business interests to develop at will. The international community ought to ensure that the Shi'a Marsh Inhabitants have what they need to restore and inhabit their homeland and to again shape the region in a sustainable manner. Not to do so prolongs the human and environmental injustice begun by Saddam Hussein's regime. 


Atik (con't from page 27)

rights); rather the mere fact of environmental destruction would be sufficient.

There are situations where human and environmental goals can be coherently pursued, and in these cases alliances are attractive. But there are also tensions between and among environmental justice, human rights, and environmental rights claims; and differences among the ultimate moral good to be advanced (equality, human dignity, or the environment) assure rivalry and at times direct conflict. For those who hold a more nuanced, if less coherent, set of values (respecting both human and environmental concerns), an eclectic, à la carte choice of the most effective category of legal claims may be most promising. 

Olagbaju (con't from page 33)

principles—albeit not into its on-the-ground activities.

The power of corporations in the world economy means that NGOs need to rethink their strategies for addressing sustainable development, economic disparity, and the related security issues of our time. This requires that organizations combine resources and play to their strengths in order to build the capacity necessary to rein in the excesses of corporate globalization. 

READERS RESPOND



VIOLENCE AGAINST WOMEN

Women in Afghanistan

I appreciate Christopher Harper's approach to addressing violence against women ("Rights for All in the New South Africa," Fall 2003), and in particular the idea of working with men—both perpetrators and supporters. Much can be learned from Harper's experience and efforts, especially for those of us addressing violence against women in post-conflict contexts. In many cases, gender biases of post-conflict reconstruction and development programs are exacerbating violence against women. My previous work experience in Afghanistan and my research interests in gender-focused international aid are leading me to explore ways to prevent violence against women in post-conflict contexts, particularly by engaging men.

Almost two years into the reconstruction process, conditions for women in Afghanistan remain challenging: an illiteracy rate of 85 percent, female-headed households living in dire poverty, and an inability to access training and economic opportunities. Despite improvements (largely confined to Kabul), women's human rights are still being violated across Afghanistan. Rates of self-immolation and violence against women at home and on the street have increased in the so-called post-conflict period. Women are struggling to be heard and to find alternatives to lives of despair. Only a small fraction of women—and only those in Afghan-

istan's cities—are accessing economic opportunities and are able to support themselves and their families.

Although Afghanistan's new constitution—approved in January 2004—secures women's rights and ensures equality before the law, many Afghan women fear that these words may not reach the right ears. Human rights and women's rights organizations have begun to identify fissures in the document through which women's rights may vanish. Afghanistan is also a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), signed without reservation in March 2003. Afghan women are using both CEDAW and the new constitution to guarantee their rights, but the battle is just beginning.

Women's rights and development are not luxuries; they are fundamental to the success of Afghan society. With increased support, we can strive to offer women the tools with which they can achieve self-sufficiency, a choice, and a voice.

Lina Abirafeh

Former Country Director
Women for Women International—
Afghanistan

More Readers' Responses are available in Dialogue OnLine.

WHAT DO YOU THINK?

Do you have a response to "Environmental Rights"? Share it with thousands of other *Human Rights Dialogue* readers. Send your comments to Morgan Stoffregen, Human Rights Initiative, Carnegie Council on Ethics and International Affairs, 170 East 64th Street, New York, NY 10021-7496, USA, fax: (212) 752-2432, e-mail: mstoffregen@cceia.org. We regret that we will not be able to print every response. Please limit your response to 300 words, and be sure to include your name and contact information. We reserve the right to edit text as necessary.

in this issue

A growing coalition of citizens' groups had begun to make explicit connections between the protection of the natural environment and a broader agenda for social and political change. . . . Environmental concerns topped the agenda of the mass demonstrations that wracked and galvanized the country in 1988 and 1989 as well as the policies of the first post-Communist government.

—Michael Kilburn and Miroslav Vanek,
“The Ecological Roots of a Democracy Movement”



Photo by Monti Aguirre, 2002

From the community's point of view, the financial institutions, by funding the dam in partnership with the military, sustained the military presence and tacitly condoned the use of violence. Now that the project is completed, the people of Rio Negro feel that they do not enjoy anything close to their previous standard of living.

—Monti Aguirre,
“The Chixoy Dam Destroyed Our Lives”

next issue

Cultural Rights

If “second generation” social, economic, and cultural rights have been neglected historically, “cultural rights” in particular have been poorly understood. But today, the international relevance of cultural rights is on the rise, and their potential range of application more diverse. Cultural rights are currently invoked to describe and defend a widening range of issues by a growing set of subjects. Why, then, do cultural rights remain highly controversial as legal instruments?

The next issue of *Human Rights Dialogue* will explore cultural rights, including their historically marginal position within human rights theory and practice, their challenges to more established individual-based and state-based rights regimes, and the strategies of advocates aligning “culture” with “rights” in new and potentially fruitful ways.

Visit **Dialogue OnLine**, the expanded online version of *Human Rights Dialogue*, featuring exclusive web-only articles that continue the discussion on environmental rights. *Dialogue OnLine* also includes suggested reading, related links, and discussion questions. Online at www.carnegiecouncil.org.

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