

[more p.2]

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

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

153. As was stressed by a representative of Disabled Peoples' International:

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

#### 4. Environmental refugees

154. The Special Rapporteur reiterates the concern she has previously expressed for the plight of persons displaced from their homes by adverse environmental conditions. See E/CN.4/Sub.2/1993/7, paras. 101-106. Such persons have a wide range of rights - whether or not they qualify as "refugees" under the restrictive definition provided in the 1951 Convention relating to the Status of Refugees The Convention relating to the Status of Refugees, which entered into force on 22 April 1954, defines a refugee as one who flees his country of origin due to a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion". or its 1967 Protocol; The Protocol relating to the Status of Refugees, which entered into force on 4 October 1967, incorporates the Convention definition of refugee without restrictions as to date or geography. or under the more expansive definitions in the 1969 Organization of

African Unity Convention governing the Specific Aspects of Refugee Problems in Africa  
The OAU Convention governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 states that the term "refugee" includes every person who flees his or her country of origin "owing to external aggression, occupation, foreign domination, or events seriously disturbing public order". or the 1984 Cartagena Declaration on Refugees. The Cartagena Declaration on Refugees of 22 November 1984 defines refugees as "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, international conflicts, massive violations of human rights or other circumstances which have disturbed the public order". At a minimum, such persons have the right to life, the right to health, food and shelter, and the right not to be sent to any location where their lives or security are endangered.

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

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

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

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

159. People who flee their homes for environment-related reasons require humanitarian assistance simply to meet their basic survival needs. They do not necessarily seek political asylum or require the kind of international protection implied by the term "refugee". Many are displaced within their own countries, yet the scope of the problem may exceed the

capacity of their Government and may therefore involve the international community. In this regard, the Special Rapporteur has examined the reports E/CN.4/1993/35, annex and E/CN.4/1994/44 and Add.1. of Mr. Francis Deng, the representative of the Secretary-General on internally displaced persons to the Commission on Human Rights. She hopes the international community will implement the concrete suggestions made by the representative.

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

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

161. Recent sources observe that as from the beginning of the twenty-first century more than half the world's population will be living in urban areas. In 2025 this figure will have reached 65 per cent, or 5 billion persons. More than 850 million people live in regions affected by desertification. The destruction of the tropical forests is advancing at a rate of approximately one football pitch per second. The inhabitants of the industrialized countries still consume 10 times as much commercial energy as those of the developing countries and produce 71 per cent of the world's carbon dioxide emissions and 68 per cent of its industrial waste. Poverty particularly affects children, 13 million of whom die annually before their fifth birthday. Women are still barred from posts of responsibility and hold fewer than 10 per cent of parliamentary seats throughout the world. More than 2 million deaths and billions of cases of disease can be attributed to pollution. Between 400 million and 700 million people, mainly women and children from poor rural areas, are affected by the smoke-filled atmosphere of their homes. Between 300,000 and 700,000 premature deaths annually can be attributed to pollution in cities. The thinning of the ozone layer may cause annually 300,000 additional cases of skin cancer worldwide and 1.7 million cases of cataracts. See World Development Report, World Bank, and Human Development Report 1993, UNDP, op. cit.

162. The Special Rapporteur has deliberately, without arranging them in any order, presented observations concerning the deterioration of the environment and figures concerning the standard of living, death rate, health, participation, etc. in order to stress the close interaction between the assaults made on the environment and the enjoyment of human rights, which she has already had occasion to mention in the introduction to her earlier reports. The analysis which follows, while endeavouring to supplement the data

contained in the earlier reports, is based on examples which, though illustrative, should not be regarded as exhaustive.

A. Right to self-determination and permanent

sovereignty over natural resources

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

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

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

166. The right to development implies, as the Declaration on the Right to Development makes clear, the full realization of the right of peoples to self-determination and to full sovereignty over all their natural wealth and resources. The pillage of a country's natural resources favoured by relations of political, economic or other subjection or dependence leads to uncoordinated and extroverted development which, besides keeping the country in a state of chronic underdevelopment, worsens the adverse consequences which that type of development produces on the environment (intensive exploitation of raw materials and products that upsets the ecological balance; wastage of non-renewable energy resources; establishment of polluting and high-risk industries; pauperization of rural areas, etc.).

167. The United Nations General Assembly for its part has regularly reiterated the principle set out in resolution 1803 (XVII) of 14 December 1962 whereby "The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned." General Assembly resolution 48/46 of 10 December 1993 is worth noting here in connection with the activities of foreign economic and other interests which impede the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples in Territories under colonial domination, in which the General Assembly reaffirms "the solemn obligation of the administering Powers under the Charter of the United Nations to promote the political, economic, social and educational advancement of the inhabitants of the Territories under their administration and to protect the human and natural resources of those Territories against abuses" and emphasizes that "the natural resources are the heritage of the indigenous populations of the colonial and Non-Self-Governing Territories". At the same time, the General Assembly expresses its concern about "the activities of those foreign, economic, financial and other interests that exploit" the resources of those Territories. In resolution 48/47 of 10 December 1993, the General Assembly "Urges the specialized agencies and other organizations of the United Nations system to formulate programmes that will support the sustainable development of small island Non-Self-Governing Territories and adopt measures that will enable those Territories to cope effectively, creatively and sustainably with environmental changes and to mitigate impacts and reduce the threats posed to marine and coastal resources."

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

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

170. The Special Rapporteur welcomes the results of the first free and democratic elections in South Africa, which led, on 10 May 1994, to the establishment of a united, democratic and non-racial Government. She hopes that effective and decisive measures will be taken to eliminate the effects of the policy of apartheid. She welcomes the fact that the new South African Constitution contains a number of provisions concerning the fundamental rights of

the individual and stipulates, in article 29, that "every person shall have the right to an environment which is not detrimental to his or her health or well-being".

171. The Special Rapporteur notes with satisfaction that in President Nelson Mandela's inaugural address to Parliament on 24 May 1994, specific mention was made of the measures to be taken to protect the environment and ensure the participation of society in the decision-making process. In particular, President Mandela said:

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

#### B. Right to life

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

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

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

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

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

### C. Right to health

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

177. Numerous communications were received pointing to the direct link between adverse environmental conditions and violations of the right to health, and exemplifying the irreversible impacts on health of large-scale industrial accidents as well as the deleterious effects of other less spectacular sources of pollution, such as the continuous discharge of

toxic and hazardous substances into air, soil and water. Contaminating substances frequently enter the food chain and lead to respiratory and skin diseases, among others.

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

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

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

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

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

183. International environmental law instruments have frequently referred to the negative effects on health of environmental pollution. Many of these instruments define pollution as



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

184. The right to health can be constructively viewed from an environmental perspective in the light of the principles of sustainable development. Under these principles, another facet of the right to health reaches full meaning: as stated by the World Health Organization (WHO), "human health is essential for sustainable development since without health, human beings would not be able to engage in development, combat poverty and care for their environment". Thus, there is clear interdependence between health and environmental protection. As WHO points out, "... health status is nearly always the best as well as first indicator of environmental degradation". See background paper on "Health, the Environment and Sustainable Development", prepared for the Commission on Sustainable Development by the World Health Organization, Task Manager on Health, March 1994, p. 1.

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

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

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

#### D. Right to food

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

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

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

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

#### E. Right to safe and healthy working conditions

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

193. Realization of this right requires a working environment free from pollution and other hazards, where workers' health is not threatened by circumstances such as exposure to asbestos, contact with pesticides and fungicides, or inhalation of toxic substances. Fulfilment of this right in turn requires the right to know and to have access to relevant information on

environmental and health risks, the right of expression and association to facilitate collective action, and the recognition of the workers' right to refuse to pollute at the workplace.

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

#### F. Right to housing

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

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

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

198. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 4 (1991) on the right to housing, explains that the right to housing means, among other things, housing not built on polluted sites or in close proximity to pollution sources that threaten the right to health of inhabitants. E/1992/23-E/C.12/1991/4, annex III. The Special Rapporteur on the right to adequate housing shares the Committee's views in this regard. See E/CN.4/Sub.2/1993/15, para. 90. The Committee requires that States parties to the International Convention on Economic, Social and Cultural Rights include in their reports to the Committee information on measures concerning environmental planning and health in housing and human settlements. Revised guidelines regarding the form and contents of

reports to be submitted by States parties under arts. 16 and 17 of the International Covenant on Economic, Social and Cultural Rights (E/1991/23-E/C.12/1990/8, annex IV). The Committee's Guidelines on State reporting and its General Comment No. 4 stand as useful examples of how the United Nations and the international community as a whole might explicate the meaning of other human rights and enhance compliance with those rights.

199. The right to adequate housing also includes the obligation to avoid forced evictions, a practice that constitutes a gross violation of human rights. See E/CN.4/Sub.2/1992/15, para. 41; Commission on Human Rights resolution 1993/77 of 10 March 1993; analytical report of the Secretary-General on the practice of forced evictions (E/CN.4/1994/20). Of particular concern is the fact that States often fail to comply with their obligation not to carry out or advocate forced or arbitrary evictions of persons or groups. Forced evictions should take place only when conservation and rehabilitation are not feasible and suitable relocation measures are undertaken. Where forced evictions cannot be avoided, the affected persons have a right to just compensation.

200. In addressing forced evictions, we should not forget the importance of the right to property which includes the right not to be deprived of land, water resources and other aspects of one's habitat, and it thus precludes deforestation and other environmentally destructive acts. See the reports of the independent expert of the Commission on the right of everyone to own property, Mr. Luis Valencia Rodríguez (E/CN.4/1994/19 and Add.1 and E/CN.4/1993/15).

201. In carrying out structural adjustment programmes and other activities, the international financial institutions, development agencies and Governments should pay particular attention to the possible adverse effects of those programmes and specifically to the issue of displacing people from their homes. The pressure on financially strapped Governments to divert their limited financial resources from dealing with housing, environmental and other problems to making their payments to funding agencies only exacerbates the problem. The institutions concerned must take into account the environmental and housing rights consequences of their activities throughout the project process, from planning to implementation and monitoring. The Committee on Economic, Social and Cultural Rights has addressed this concern in its General Comment No. 2 (1990). E/1990/23-E/C.12/1990/1, annex III.

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

#### G. Right to information

203. The Special Rapporteur considers the right to information highly relevant to human rights and the environment. Public access to information on request and the obligation of public authorities to disclose it irrespective of requests are essential for the protection of the environment and the prevention of environmental human rights problems.

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

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

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

207. Several regional organizations have also emphasized the need for information regarding the environment. The League of Arab States proclaimed the Arab Declaration on Environment and Development and Future Perspectives United Nations document A/46/632, 1991. in which the League stresses the right of persons and groups to relevant information, including technical data. In the European Union several directives and recommendations stress the right to information. The EC Directive on Freedom of Access to Information on the Environment Council Directive 90/313/EEC of 7 June 1990. covers

the issue most comprehensively. For analysis of environmental information regarding the European system of human rights, see Stefan Weber, "Environmental Information and the European Convention on Human Rights", 12 Human Rights Law Journal 177 (1991). Regional environmental treaties also emphasize the right to information, including the affirmative duty to disclose or provide information. For example, the Nordic Convention on the Protection of the Environment The Nordic Convention on the Protection of the Environment of 19 February 1979. requires the States parties to publish relevant information in the newspapers or other forms of public media; the ASEAN Agreement on the Conservation of Nature and Natural Resources Association of South-East Asian Nations Agreement on the Conservation of Nature and Natural Resources of 9 July 1985. requires the States parties to disclose and disseminate relevant information. Certain international treaties, such as the Antarctic Protocol on Environmental Protection, Antarctic Protocol on Environmental Protection [signed?] 4 October 1991, [int'l cite]. require States to provide environmental information upon request. Other international treaties impose a duty to warn other States of environmental dangers. See, for example, article 198 of the United Nations Convention on the Law of the Sea of 10 December 1982 and art. 2 (a) of the Convention on Early Notification of a Nuclear Accident, Vienna, 26 September 1986.

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

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

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

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

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

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

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

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

of nuclear wastes, and the production or use of toxics because of the human hazards these matters pose.

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

#### H. Popular participation

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

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

219. in the United Nations the issue of popular participation became prominent in the context of the right to development See, in particular, the United Nations Declaration on Social Progress and Development, General Assembly resolution 2542 (XXIV) of 11 December 1969, calling for Governments to adopt measures for participation of all elements of society in social and economic development schemes.. After the International Seminar on Popular Participation (Ljubljana, 1982), the issue of popular participation has become an essential feature of a wide range of human rights concerns. The General Assembly asked the Commission on Human Rights to address popular participation in a broader context General Assembly resolution 37/55 of 3 December 1982., reflected in the Commission's work. See, for example, E/CN.4/1985/10 and Add.1 and 2; E/CN.4/1991/11. Popular participation is a prominent feature of the World Charter for Nature and the Rio Declaration on Environment and Development (see supra, chap. II, sect. C).

220. It is important that participation in the environmental context be meaningful - a question of quality of the participation and whether it is timely. Environmental destruction is not easily undone. People must be able to prevent environmental harm. As a minimum, people have the right to receive notice of and to participate in any significant decision-making regarding the environment, especially during the process of environmental impact assessments and before potential damage is done. Participation must include the right to oral and written commentary. People must also be able to participate in follow-up projects



and in ongoing monitoring of environmental situations. To prevent damage or to provide relief if damage has already been done, people must also have the right to seek effective remedy in courts, tribunals or other forums for violations, including violations arising from a failure to allow effective participation.

221. Although many people are prevented from participating in decisions, there is a growing national and international trend, including at the international funding institutions, to allow the participation of individuals and groups in all stages of activities involving the environment. The environmental impact assessment process has been effective in providing for meaningful public participation. The United Nations Environment Programme has prepared a set of goals and principles on environmental impact assessment with a heavy emphasis on public participation. UNEP/Z/Ser.A/9 (1989).

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

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

#### I. Freedom of association

224. The right to freedom of association forms a crucial element of effective popular participation in matters that relate to the environment and in general. Article 20 of the

Universal Declaration of Human Rights and article 21 of the International Covenant on Civil and Political Rights establish freedom of association and assembly as fundamental human rights. In the environmental context these rights encompass the freedom to associate freely and peacefully with others to protect the environment, to protect the rights of others affected by environmental harm, and to take collective action in support of environmental causes.

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

#### J. Cultural rights

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

227. Nearly 20 years ago, the Director-General of UNESCO made the

following reflection on the relationship between culture and man's environment: Report of the Secretary-General: "The balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural and moral advancement of humanity" (E/CN.4/1199), thirty-second session of the Commission on Human Rights, 1976, p. 37.

"... The deterioration of the natural environment and, even more, the alienation from this environment of an increasingly large number of people in the industrialized countries are direct and potentially very serious blows to culture itself. What idea can man form of purity unless he initially receives a spontaneous impression of purity from the air he breathes, the river where he bathes, the sky on which he gazes or from all that goes to make up his life at its most instinctive? What secrets can he hear murmured within him if silence without is denied to him? How can he meditate amid tumult? How can he find himself in a continual flux of movement without pattern? And to what discoveries can he direct his steps outside himself, what marvels can he look for in a world where so many animal species are vanishing, where plant life is retreating further and further from our dwellings, and where man is increasingly confronted with the products and the signs of his oppressive presence?"

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

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

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

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

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

233. The right to culture and the other related rights recognized in a number of international instruments entail the right of everyone "freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and benefits" (Universal Declaration of Human Rights, art. 27), and "the right and the duty" of every people "to develop its culture," since each culture has "a dignity and value which must be respected and preserved" (Declaration of the Principles of International Cultural Cooperation, art. 1). Proclaimed by the General Conference of UNESCO at its fortieth

session, on 4 November 1966. See "A Compilation of International Instruments", United Nations, Sales No. E.93.XIV.1, pp. 591-594.

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

## CHAPTER VI. CONCLUSIONS AND RECOMMENDATIONS

### A. Conclusions

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

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

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

238. Since then, a large number of national, regional and international instruments have been drawn up which have strengthened the legal bases of environmental rights and

stressed the intrinsic link that exists between the preservation of the environment, development and the promotion of human rights.

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

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

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

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

243. This review of the activities of human rights bodies and other fields relevant for the study has made it possible to outline the scope of environmental rights. Many human rights are suited to being applied from an ecological perspective, whether those rights are political, civil, social, economic or cultural, and whether they are exercised individually or

collectively. The Special Rapporteur has drawn up a list of those rights, albeit a non-exhaustive one and has attempted to assess the effects of the environment or enjoyment of those rights.

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

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

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

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

248. Environmental damage has direct effects on the enjoyment of a series of human rights, such as the right to life, to health, to a satisfactory standard of living, to sufficient food, to

housing, to education, to work, to culture, to non-discrimination, to dignity and the harmonious development of one's personality, to security of person and family, to development, to peace, etc.

249. In this context, it should be stressed how vulnerable certain peoples, populations, groups or categories of persons are to ecological hazards and natural disasters whether caused by man or generated by a state of war and conflict. The Special Rapporteur has pointed out that the poor and disadvantaged, minority groups, women, children, migrant workers and their families, refugees and displaced persons are generally those most affected and least protected. The transfer of toxic substances and waste to the developing countries also gives cause for serious concern.

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

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

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

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

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

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

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

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

## B. Recommendations

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

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

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

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



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

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

(e) Human Rights Committee. The Committee could expand its general comment on the right to life in order to include environmental concerns or formulate a general comment defining the links existing between civil and political rights and the environment. Moreover, it should be able, through dealing with complaints, to establish case law that will accommodate environmental concerns;

(f) Working Group on the right to development: environment, debt and development; development, environment and the funding institutions; participation by the people in activities for development and the environment, structural adjustment programmes, impact on the environment and underprivileged populations and groups;

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

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

260. The interest shown in the impact of the environment on the enjoyment of human rights means that human rights bodies are already in demand and are increasingly being called on to pronounce on the question. In order to avoid disparate practices and to promote the development of an overall, integrated and coordinated view in the approach to the various phenomena which will be dealt with in an inevitably sectoral way by existing bodies, given their respective areas of competence, it is suggested that:

A coordination centre should be set up to deal with the question within the United Nations Centre for Human Rights;

A special rapporteur of the Commission on Human Rights should be appointed with a mandate similar to that generally given to special rapporteurs on thematic questions;

A seminar should be held under the auspices of the Centre for Human Rights to help formulate practical recommendations on the way in which the right to a satisfactory environment could be rationally incorporated into the activities of human rights bodies.

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

## Annex I

### DRAFT PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

#### Preamble

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

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

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

Guided by fundamental principles of international humanitarian law,

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

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

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

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

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

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

Declare the following principles:

#### Part I

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

#### Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.
6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.
7. All persons have the right to the highest attainable standard of health free from environmental harm.

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

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

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

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

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

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

13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual and other purposes. This includes ecologically sound access to nature.

Everyone has the right to preservation of unique sites consistent with the fundamental rights of persons or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

### Part III

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

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

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

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

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

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

#### Part IV

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

22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.

These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, inter alia,

- Collection and dissemination of information concerning the environment;
- Prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;
- Public participation in environmental decision-making;
- Effective administrative and judicial remedies and redress for environmental harm or the threat of such harm;
- Monitoring, management and equitable sharing of natural resources;
- Measures to reduce wasteful processes of production and patterns of consumption;
- Measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and

- Measures aimed at ensuring that the international organizations and agencies to which they belong observe the rights and duties in this Declaration.

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

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

#### Part V

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

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

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

#### Annex II

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

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

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

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

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

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

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

7. In the course of these consultations with non-governmental organizations and experts, a number of substantive and structural concerns were expressed, including:

(a) Self-determination and the environment, especially with respect to the relationship between indigenous peoples and the massive export of natural resources and related ecological destruction;

(b) The lack of timely and relevant information about projects with severe environmental impacts;

(c) The imbalance between the resources available to groups interested in protecting human rights and the environment and the resources available to Governments and/or multinational enterprises;

(d) The human rights and environmental implications of large-scale disasters;

(e) The forced relocation of indigenous peoples and the subsequent ecological ruin of their traditional lands and sacred sites;

(f) The insufficient attention paid by international financial institutions to the special environmental needs of indigenous peoples and other vulnerable groups.

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

9. The expert meeting on human rights and the environment was held from 15 to 19 May 1994 at Geneva, and attended by the following experts:

James Cameron Foundation for International Environmental Law and Development,  
London

David Goldberg University of Glasgow; International Federation of Human Rights

Mario Ibarra International Indian Treaty Council

Alexandre Kiss Centre for Environmental Law; University of Strasbourg; European  
Council for Environmental Law; International Institute of Human Rights

Miloon Kothari Centre for Housing Rights and Evictions; Habitat International Coalition

Meenakshi Raman Consumers Association of Penang, Malaysia

Dinah Shelton Santa Clara University

Anthony Simpson Australian Conservation Foundation; International Commission of  
Jurists

Tobheka Thamage Tsoga Environmental Resources Centre, South Africa

Antonio Augusto Judge ad hoc, Inter-American Court of Human

Cancado Trindade Rights; University of Brasilia

Lauri Adams)

David McDonald)

Adriana Fabra Aguilar) Sierra Club Legal Defense Fund

Yves Ladore)



Karen Parker)

Neil Popovic)

10. The following persons were also present: Mr. Philip Alston, Chairperson of the Committee on Economic, Social and Cultural Rights; Mr. Francis Deng, Representative of the Secretary-General on internally displaced persons; Mrs. Erica-Irene Daes, Chairperson of the Working Group on Indigenous Populations; Mr. Rajindar Sachar, Special Rapporteur on the right to adequate housing.

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

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

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

### Annex III

#### DEVELOPMENTS IN NATIONAL LEGISLATION AND PRACTICES

##### A. Summary of constitutional provisions

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

##### 1. Afghanistan

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

## 2. South Africa

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

## 3. Albania

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

## 4. Algeria

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

## 5. Germany

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

## 6. Angola

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

## 7. Bahrain

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

## 8. Bolivia

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

## 9. Brazil

The 1988 Constitution attaches particular importance to protecting the environment and combating pollution in all its forms. Effective enjoyment of the rights listed in article 225 is accompanied by certain obligations on the part of the authorities, such as the imposition of criminal and administrative penalties for activities considered detrimental to the environment. Article 225 (1) provides that "in order to ensure that this right is effectively available, it is incumbent on the Government to:

- I. Preserve and restore essential ecological processes and arrange for the ecological management of species and ecosystems;
- II. Preserve the diversity and integrity of the genetic patrimony of Brazil and oversee the activities of entities engaged in research and manipulation of genetic material;
- III. Define, in all units of the Federation, the geographical areas and components thereof that are to be specially protected (these decisions may be amended or repealed only by the legislature and any use that compromises the integrity of the features which justify protection of such areas shall be prohibited);
- IV. Require, pursuant to the law, an environmental impact study to be made prior to the installation of a project or activity liable to cause significant harm to the environment, and the results of such study to be made public.
- V. Monitor the development, marketing and use of techniques, methods and substances that present a risk to life, the quality of life or the environment;
- VI. Promote environmental education at all levels of instruction, and help to increase public awareness of the need to preserve the environment;
- VII. Protect the flora and fauna; practices which put their ecological function at risk, lead to the extinction of species or subject animals to cruel treatment are hereby prohibited."

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

## 10. Bulgaria

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

#### 11. Burkina Faso

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

#### 12. Chile

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

#### 13. China

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

#### 14. Colombia

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

#### 15. Korea

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

#### 16. Cuba

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

#### 17. El Salvador

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

#### 18. United Arab Emirates

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

#### 19. Ecuador

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

#### 20. Spain

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

#### 21. Ethiopia

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

#### 22. Russian Federation

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

#### 23. Greece

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

#### 24. Guatemala

The 1985 Constitution promotes social, economic and technological development which will prevent pollution of the environment and maintain the ecological balance (chap. II, sect. IV, art. 97).

#### 25. Equatorial Guinea

The 1982 Constitution stipulates that the State recognizes the right to the protection of health (title VI, chap. II, art. 60).

#### 26. Guyana

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

#### 27. Haiti

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

#### 28. Honduras

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

### 29. Hungary

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

### 30. India

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

### 31. Islamic Republic of Iran

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

### 32. Malta

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

### 33. Mexico

The 1917 Constitution, as amended in 1987, provides that the State shall have the right to regulate the use of natural resources which are susceptible of appropriation, in order to ensure a more equitable distribution of public wealth, to achieve well-balanced development and to improve the living conditions of the urban and rural population. A link is established between the preservation of the ecological balance, human settlements and the protection of natural resources (art. 27).

### 34. Mongolia

The 1992 Constitution recognizes the various components of the ecosystem as subject to national sovereignty and hence State protection (chap. I, art. 6). It also recognizes the right of citizens to a healthy and safe environment, the right to be protected against environmental pollution and ecological imbalances, and the right to seek legal redress for

violations of those rights. It also imposes on citizens the duty to protect nature and the environment (chap. II, arts. 16 and 17).

### 35. Mozambique

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

### 36. Namibia

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

### 37. Nepal

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

### 38. Nicaragua

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

### 39. Nigeria

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

### 40. Panama

The 1980 Constitution provides that "It is a fundamental duty of the State to see to the preservation of ecological conditions and to prevent pollution of the environment and



imbalance in ecosystems, with a view to ensuring economic and social development" (chap. VI, art. 110).

#### 41. Papua New Guinea

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

#### 42. Paraguay

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

#### 43. Netherlands

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

#### 44. Peru

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

#### 45. Philippines

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

#### 46. Poland

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

#### 47. Portugal

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

#### 48. Lao People's Democratic Republic

The 1991 Constitution imposes on all organizations and all citizens the duty to protect the environment and natural resources (chap. II, art. 17).

#### 49. Romania

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

#### 50. Seychelles

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

#### 51. Slovakia

The 1992 Constitution accords everyone the right to a favourable environment and imposes the obligation to protect and promote the environment and cultural heritage. It also recognizes the right of everyone to "timely and complete information about the state of the living environment and about the causes and effects of this state" (chap. II, arts. 44 and 45).

#### 52. Slovenia

The 1991 Constitution provides that "All persons have the right to a healthy living environment in accordance with the law" and that "The State shall ensure a healthy living environment". It further provides that "All persons are required ... to protect natural points of interest and cultural monuments" (title III, arts. 72 and 73).

#### 53. Sri Lanka

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

#### 54. Sweden

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

#### 55. Taiwan

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

#### 56. Tanzania

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

#### 57. Chad

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

#### 58. Thailand

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

#### 59. Turkey

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

#### 60. Vanuatu

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

## 61. Viet Nam

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

### B. National legislation

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

#### 1. Germany

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

#### 2. Egypt

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

#### 3. United States of America

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

was to underscore certain provisions of existing U.S. laws that can help ensure that all communities in the United States of America live in a safe and healthful environment".

#### 4. Greenland

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

#### 5. Islamic Republic of Iran

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

#### 7. Nepal

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

#### 8. Romania

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

#### C. Summary of new domestic cases

For those previously analysed by the Special Rapporteur, please see documents E/CN.4/Sub.2/1992/7 and E/CN.4/Sub.2/1993/7.

## 1. Canada

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

## 2. Costa Rica

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

## 3. Mexico

Decision 12/91 of the Council of the National Commission for Human Rights assigns to the Commission responsibility for dealing with complaints on ecological matters. In this connection, the Commission has drawn up a programme on human rights, ecology and health. In 1991 and 1992, the Commission made six recommendations on the environment. Recommendation 110/91 of 8 November 1991, for example, was in response to a complaint lodged by individuals that the authorities responsible for controlling and eliminating pollution had failed to keep the public informed. The Commission recommended that the

authorities concerned should publicize widely through the media the harmful effects of environmental degradation on health and the specific measures which the public should take. Recommendation 101/92 of 22 May 1992 was in response to a complaint by the residents of the Nicolás Bravo and Guadalupe Hidalgo de Tehuacán housing developments regarding irregularities in the operation of enterprises in the area. The Commission recommended that an investigation should be conducted into the standing of those enterprises with regard to the law. The Government of Mexico has also informed the Special Rapporteur of the establishment of the National Ecological Institute and the Office of the Federal Advocate for Protection of the Environment under Decision 4/92 of the Council of the National Commission for Human Rights.

#### 4. Philippines

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

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Please find hereafter corrigendum to this document:

- E/CN.4/Sub.2/1994/9/Corr.1, issued on 13 September 1994

"Annex III, section A

Delete item 55. "