

ENVIRONMENTAL IDENTITY AND ITS PROTECTION

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The term *environmental identity* has great potential as a tool to strengthen awareness of the linkages between human rights and the environment. Environmental identity may also provide further justification for the protection of culturally relevant natural landscapes and resources. The following report explores the definition and use of the term, and provides an analysis of threats to environmental identities, international efforts to defend environmental identities, and possible areas of further study to both promote the protection of environmental identities and the use of the term.

I. WHAT IS “ENVIRONMENTAL IDENTITY”?

An October 2002 internet search for “environmental identity” demonstrated that the term has different meanings in different contexts. For example, many web sites discuss the environmental identity of companies: by formulating an environmental identity, businesses and groups market their “green” image to environmentally conscious consumers.¹

In addition, several web sites outline programs and strategies for individuals, schools, communities, etc. to cultivate environmental identities.² In this context, the term environmental identity is used to

refer to an individual's developmental relationship with nature. Identity represents the complex interplay between bodily, psychological, and social processes...[that] may be synthesized through symbolic experiences with nature. Such themes as wilderness experiences, relationships to other species, relationship to material life, and sense of

¹ See, e.g., Enspire, *Enspire*, www.enspirepaa.com/ (claiming to be a “leading provider of project management services for retail branding and environmental identity implementation services”); Apple, *Apple*, www.apple.com/mediaarts/0301/imaginary/index2.html (discussing an environmental identity campaign for the Baltimore Ravens football team); Hewlett-Packard Company, *Environmental Policy*, www.hp.com/hpinfo/community/environment/envprogram/envpolicy.htm (providing information about HP’s environmental policies); International Cycling Union, The UCI’s Environmental Identity, www.uci.ch/english/news/news_pre2000/w14_98.htm (discussing the UCI’s Environmental Identity, Role, and Initiative).

² See, e.g., Mitchell Thomashow, *Towards Mindful Environmental Practice*, *Trumpeter*: 8, 3 (1991), available at <http://www.icaap.org/iuicode?6.8.3.10> (describing the choice to become an environmental practitioner, and stating that many environmental professionals choose their this work because “they are searching to link their personal identity to an environmental way of life.” Thomashow also describes his educational strategy for fostering an environmental identity in students); Humanscapes, *Humanscapes: The Communication of Human Image*, www.humanscapes.com/ (career image design consultants including environmental identity services); *Aeolia’s Book, Chapter 11: Reclaiming Your True Identity*, www.aeolia.com/catalog/book-pages-2.html (on reclaiming social-environmental identities, which include “influences of environment, society and early childhood development, conditioned by social beliefs, role-playing, performance- oriented, competitive, sees material structure of world as reality”); OISE / UT, *Graduate Studies in Education, Bulletin, 2002/2003*, <http://ro.oise.utoronto.ca/BulPage44.htm> (describing adult education course “intended to extend students’ previous explorations of both ‘practitioner and ecological identity’ through extensive readings, discussions and writing opportunities”).

place might be the stage through which an individual develops changing concepts of self and works out critical lifecycle decisions.³

In this way, the development of environmental identities seeks to raise consciousness about human impacts on their environments, and seeks to promote more sustainable, environmentally aware living.⁴

In the international human rights and environmental arena, though also interactions between bodily, psychological, and social processes involving an individual's developmental relationship with nature, environmental identities generally involve a more powerful relationship and symbolic connection with the environment than those discussed above. While all human cultural systems—and indeed, human identities—are shaped to some extent by the natural world, the link between the environment and culture is particularly strong for indigenous and other local communities that have a direct relationship with the land and the resources found upon it. For example, indigenous and local communities have developed and maintained some of the world's most diverse and unique cultural practices, including many that involve the use of species of particular sacred, ritual and ceremonial significance, the

³ Thomashow, *supra* note 3. Dr Tim Flannery, an Australian museum scientist, author, and palaeontologist, has made the following observations about the Australian environmental identity: “Our history and our ecology reveal...that most of us still live as people from somewhere else, who just happen to inhabit—sometimes unsustainably, ignorantly and destructively—this marvellous continent...For most of the past two centuries we have believed that we could remake the continent in the image of Europe—turn the rivers inland and force the truculent soils to yield. We even knowingly introduced pests—from starlings to foxes and rabbits—in our efforts to transform this vast Austral realm into a second England. Much of this terrible history reads as a rush towards ‘development’, which was then—and often still is—just a soft word for the destruction of Australia's resource base. That arrogant colonial vision left a fearful legacy, for it actually made people feel virtuous while they dealt the land the most terrible blows. Already one of every 10 of Australia's unique mammals is extinct, and almost everywhere—even in our national parks—biodiversity is declining. Australia's soils are still being mined—salination will destroy most of Western Australia's wheat belt in our lifetime if nothing is done—while our rivers are in great peril and sustainable fisheries everywhere have collapsed. It is the bitter harvest of all of this that we are reaping so abundantly today...Three human lifetimes—about 214 years—is simply not long enough for a people to become truly adapted to Australia's unique conditions, for the process of learning, of co-evolving with the land, is slow and uncertain. Yet it has begun, and the transformation must be completed, for if we continue to live as strangers in this land—failing to understand it or live by its ecological dictums—we will forfeit our long-term future here. This environmental view of culture is not what most people think of when it comes to defining themselves as Australian. Instead, things like meat pies, Holdens and Aussie Rules have tended to loom large. Holding such things dear makes some people feel more Australian than others—the citizen eating a souvlaki, or wearing a turban, or following the soccer, for instance...Whether we like it or not, all of us are in the process of a slow convergence on a yet-to-be-formed Australian culture that is suited to Australia's conditions. Australia still has so much to offer, and so much can be done to ensure that the country provides the very best of life to its people. This, however, cannot happen while we imagine that we are people from another place. A series of changes needs to occur both in government policy and in the hearts and minds of all Australians before we have a secure future here. The single most important change is the need for all Australians to achieve true environmental sustainability.” Tim Flannery, *Our Environmental Identity* (Jan. 24, 2002), www.knowledgeservices.com.au/Summit/240102.htm.

⁴ For example, according to one commentator, “Environmental identity is formed not only on the basis of our aesthetic and spiritual connection to the natural world, but also out of our understanding of the processes of natural resource transformation. Our participation in material production, our relationship to technology, and our awareness of environmental pollution, all of these have cognitive, affective, and symbolic connotations. To describe a natural resource is to consider a potential. The eastern White Pine is a ship's mast, the floor of a house, an ornament, a shrine, or a weed. It all depends on who you are, when and where you lived, and to what culture you belong.” Thomashow, *supra* note 3.

creation of foods and functional, ceremonial, and ornamental products from plants and animals; the spiritual and healing use of plants; environmentally sustainable subsistence innovations; communal and resource-based social, economic and political relationships; the creation and use of sacred sites and other sites of significance such as burial grounds or art sites; and oral histories, belief systems, stories, songs, artwork, languages and other intangible, resource-based cultural traditions.

Thus, in this context, environmental identity can be used to refer to the complex symbolic relationship that links the individual's sense of self to the lands and resources that their ancestors have inhabited and used for generations. Such relationships with the environment have "traditionally incorporated a holistic view of nature, and placed humans within that nature, not separate from it."⁵ As eloquently explained by the Convention on Biological Diversity's Ad Hoc Open-ended Inter-sessional Working Group on Article 8(j) and Related Provisions of the Convention on Biological Diversity,

Many indigenous and local communities embodying traditional lifestyles have an holistic view of the world to the extent that their values, customs and traditions are tightly focused on and connected to the natural world which they inhabit. For many such communities, all life is interconnected... Their cultures and societies are very much tuned to the local environments they inhabit, and their association with particular species, for example, is such that these species have significance far beyond economic considerations. Certain species may be the focus of spiritual relationships, or a species may be identified with a particular individual or group through a totemic relationship. The maintenance and well-being of particular species are core responsibilities of the community, or of some of its particular members.⁶

⁵ Annecoos Wiersema, *Sharing Common Ground: A Cautionary Tale on the Rights of Indigenous Peoples and the Protection of Biological Diversity*, in Romina Picolotti & Jorge Daniel Taillant, Eds., *Linking Human Rights and Environment* (2003).

⁶ Ad Hoc Open-Ended Inter-sessional Working Group on Article 8 (j) and Related Provisions of the Convention on Biological Diversity, *Background to the Draft Guidelines or Recommendations for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on Sacred Sites and on Lands and Waters Occupied or Used by Indigenous and Local Communities*, UNEP/CBD/WG8J/2/6/Add.1 (27 November 2001), available at www.biodiv.org/doc/meeting.asp?wg=WG8J-02. See ALSO MANUEL RUIZ M., *PROTECCIÓN SUI GENERIS DE CONOCIMIENTOS INDÍGENAS EN LA AMAZONÍA* 23 (2002) (discussing the role of the environment in the lives of indigenous communities in the Amazon).

The distinctive nature of indigenous peoples' relationships with their ancestral homelands is also expressed in the Proposed Inter-American Declaration on the Rights of Indigenous Peoples, which explicitly acknowledges "the special relationship" between indigenous peoples and the environment, lands, resources and territories on which they live. Draft of the Inter-American Declaration on the Rights of Indigenous Peoples, Approved by the Inter-American Commission on Human Rights, O.A.S. Doc. OEA/Ser/L/V/II.90, Doc. 9 rev. 1, September 18, 1995. The preamble to the Draft Declaration states "that in many indigenous cultures, traditional collective systems for control and use of land and territory and resources... are a necessary condition for their survival, social organization, development and their individual and collective well-being," and recognizes "the respect for the environment accorded by the cultures of indigenous peoples of the Americas." *Id.* at para. 3; para. 5.

While the environmentally-based cultures of the indigenous peoples of the America's has been well documented, individuals and communities with environmental identities can be found throughout the world. One example of environmental identity can be seen in the traditional relationship of New Zealand's Maori peoples to water resources: fisheries have always been a key resource in the both the economic and cultural lives of the Maori. Benjamin A. Kahn, *The Legal Framework Surrounding Maori Claims to Water Resources in New Zealand: In Contrast to the American Indian Experience*, STANFORD

Understanding environmental identities and the contextual complexities of indigenous peoples and their symbiotic relationships to their land and other natural resources is essential for defending the human rights of environmental identity-holders.⁷ In addition, further information about the important—and disappearing—human-ecological relationships that form the basis of environmental identities may provide further justification for the protection of increasingly threatened culturally relevant natural landscapes and resources

II. GLOBAL THREATS TO AND LOSS OF ENVIRONMENTAL IDENTITY

Because the environmental identities of indigenous and other local peoples are connected to specific landscapes and depend on particular plants or animals, the survival of their environmental identities depend upon the maintenance of these critical natural resources. Nevertheless, throughout the world, large-scale development projects cause irreparable damage to lands and resources historically used, occupied, and claimed by indigenous and local communities.⁸ Such environmentally harmful “development” most often results in the destruction of the environments that are at the heart of environmental identities, severe injury to the health and way of life of the affected communities, and the wholesale violations of human rights: “whenever environmental degradation occurs, be it clear-cutting, burning of forests, or extractive exploitation of indigenous lands, there is an immediate and accompanying unraveling of the social fabric of the indigenous people, deterioration, followed by irreparable social collapse.”⁹ In spite of such profound impacts on communities, these development projects are typically undertaken without any prior assessment of their environmental, social, or cultural effects, without precautionary measures, and without consulting with or providing adequate and timely information to the parties affected.¹⁰

The following four examples from Brazil, Ecuador, the South Pacific, and the United States demonstrate how the environments, cultures, and identities of indigenous and local people are increasingly threatened by detrimental development efforts.

A. Development in Brazil

JOURNAL OF INTERNATIONAL LAW at 57 (Winter 1999). For countless generations, Maori tribes have relied on the sea for subsistence harvests of fish, mollusks, crustaceans, echinoderms, whales and seals, as well as seaweed for making bags and jelly. *Id.* at 58. The Maori also use fresh water resources, particularly freshwater eel harvests; the significance of eel species in Maori cognition is evident in the over one hundred Maori names used to describe varieties of eels or states of eel growth. *Id.* In addition to bringing tremendous economic value to the Maori, fishing has traditionally formed one of the cornerstones of Maori culture: marine deities were and are prominent in Maori religion and folklore, water plays an important role in Maori ritual and traditional healing practices, and the Maori have developed fishing techniques and tools to facilitate the harvesting of water resources. *Id.* at 58-9.

⁷ The Center for Human Rights and Environment (CEDHA) & The Center for International Environmental Law (CIEL), *Amici Curiae, Association of Lhaka Honhat Aboriginal Communities (Nuestra Tierra/Our Land) v. The State of Argentina, Inter-American Commission on Human Rights, available at www.cedha.org.ar/curiae2.htm* [hereinafter *Lhaka Honhat Aboriginal Communities Amici Brief*].

⁸ *Id.*

⁹ Wiersema, *supra* note 5; *Lhaka Honhat Aboriginal Communities Amici Brief, supra* note 7.

¹⁰ *Lhaka Honhat Aboriginal Communities Amici Brief, supra* note 7 (stating that “[t]here are numerous examples worldwide of irreparable environmental and human rights damage occurring in the absence of precautionary measures in large scale-development projects: The Bhopal Case, The Yanomami Case, The Huaroani Case, The Yacyreta Case, The Ache Case, etc.”).

One example of the devastating impact of development imposed on the lands, resources, human rights, and environmental identities of indigenous peoples began in Brazil in the 1960's, as the government put in motion plans to develop the Amazon and exploit the region's natural resources.¹¹ The government's efforts failed to include effective measures for the demarcation or protection of the traditional territories of the Yanomani Indians living in the region, and the projects therefore resulted in the penetration of their ancestral lands by outsiders.¹² The Yanomani were not only forced to abandon their homelands and seek refuge elsewhere, but also suffered human rights violations involving ““devastating physical and psychological consequences for the [I]ndians,’ including disease, break-up of their social organization, disruption of their culture, displacement from their traditional lands, compulsory transfer to agricultural communities that did not correspond to their customs and traditions, prostitution, and death.”¹³

The Inter-American Commission on Human Rights re-visited the situation of Yanomani as part of its 1996 “Report on the Situation of Human Rights in Brazil” and concluded that

Their cultural and physical integrity, as well as the integrity of their lands are...under constant threat and attack by both individuals and private groups who disrupt their lives and usurp their possessions...[their] integrity as a people and as individuals is under constant attack by both invading prospectors and the environmental pollution they create. State protection against these constant pressures and invasions is irregular and feeble, so that they are constantly in danger and their environment is suffering constant deterioration.¹⁴

B. Oil in Ecuador

An oil boom initiated in the Ecuadorian interior in the late 1960's continues to threaten both the physical and cultural survival of the indigenous peoples of Ecuador's Amazon region.¹⁵ In its 1997 Report on Ecuador, the Inter-American Commission on

¹¹ *Id.*, citing Case No. 7615 (Brazil), March 5, 1985, printed in Annual Report of the IACHR 1984-85, OEA/Ser.L/V/II.66, doc. 10 rev. 1, Oct. 1, 1985, “Background” para. 2(e). “The Amazon Rainforest is the world's largest remaining humid tropical forest. It contains the greatest biological diversity of any known ecosystem, is a natural carbon reservoir, and is believed to contain 20-25% of the world's flowing fresh water. It is generally regarded as an environmentally sensitive region, and is home to hundreds of ethnolinguistic groups of indigenous peoples, many of whom still live in sustainable societies, and whose health, well-being and cultural survival are closely linked with environmental quality.” Judith Kimerling, *Rio + 10: Indigenous Peoples, Transnational Corporations and Sustainable Development in Amazonia*, COLUMBIA JOURNAL OF ENVIRONMENTAL LAW 523, 534 (2002).

¹² *Lhaka Honhat Aboriginal Communities Amici Brief*, supra note 7, citing Case No. 7615 (Brazil), March 5, 1985, printed in Annual Report of the IACHR 1984-85, OEA/Ser.L/V/II.66, doc. 10 rev. 1, Oct. 1, 1985, “Background” para. 2(e).

¹³ *Id.* at paras. 2,10.

¹⁴ *Lhaka Honhat Aboriginal Communities Amici Brief*, supra note 7, quoting “Report on the Situation of Human Rights in Brazil,” Chapter VI, OAS Country Report (1996), Chapter VI (J), para. 82.

¹⁵ *Lhaka Honhat Aboriginal Communities Amici Brief*, supra note 7, citing “Report on the Situation of Human Rights in Ecuador,” Chapter IX, Human Rights Issues of Special Relevance to the Indigenous Inhabitants of the Country, OAS Country Report (1997). “At the time of the Earth Summit, the tragic legacy of the international oil industry in Ecuador's Amazon region was well-known—a legacy that includes broken communities, pollution, colonization, deforestation, impoverished natural resources, and

Human Rights stated that “[t]he situation of indigenous peoples in the Oriente [region of Ecuador] illustrates, on the one hand, the essential connection they maintain to their traditional territories, and on the other hand, the human rights violations which threaten when these lands are invaded and when the land itself is degraded.”¹⁶ First, oil exploration and development activities have led to the construction of a network of roads into what has traditionally been indigenous territory.¹⁷ These roads opened and exposed the homelands of the region’s indigenous peoples to resource exploitation and an influx of outsiders.¹⁸ In addition to the non-native workers brought in to build roads and construct and operate oil production facilities, the roads have funneled colonists, land speculators, and loggers into previously isolated indigenous territories.¹⁹ Many of the Amazon’s indigenous inhabitants have responded to these oil-related activities by leaving some of their traditional areas and retreating further into their territories to escape the development and the settlers.²⁰ Violence has been another tragic result of resource degradation and pressure indigenous peoples and their lands.²¹

outstanding claims and grievances. Halting the destruction of the Amazon Rainforest had reached the top of the international environmental agenda, and recognition of the threat posed by oil development to indigenous peoples and tropical forests around the world was growing. At the same time, governments of developing nations with oil and mineral resources were eager for revenues from those resources, and needed foreign investment and corporations to locate and exploit them. In response, a number of transnational corporations (TNCs) acknowledged the need to reform their operations. As with governments at the Earth Summit, these companies vowed to change course in order to reconcile industrial natural resource development with sustainable development.” Kimerling, *supra* note 11, at 525.

¹⁶ *Lhaka Honhat Aboriginal Communities Amici Brief, supra* note 7, citing 1997 Ecuador Report, *supra* at n. 9, at Chapter IX, Conclusions. The report later stated that “[t]hese themes are of equal importance for the indigenous peoples of the Sierra and coastal regions” of Ecuador as well. *Id.*

¹⁷ *Lhaka Honhat Aboriginal Communities Amici Brief, supra* note 7, citing “Report on the Situation of Human Rights in Ecuador,” Chapter IX, Human Rights Issues of Special Relevance to the Indigenous Inhabitants of the Country, OAS Country Report (1997).

¹⁸ *Id.*

¹⁹ *Id.* In Ecuador’s Oriente region, such colonization was encouraged by the State, and was deemed a national priority. *Id.*

²⁰ *Id.* It has been reported the initial introduction of oil exploitation activities in an area now called Lago Agrio drove out the last of the indigenous Tetetes, perhaps hastening their extinction as a people. *Id.* Likewise, the Cofan were displaced from their traditional homelands and forced to occupy a handful of non-contiguous communities in a portion of their former territory; although the Cofan had been granted title to some 9000 acres, demarcated accordingly, a road was constructed right through their titled lands. *Id.*

²¹ Five oil “blocks” have been created on approximately eighty percent of Huaorani territory—without consultation with the Huaorani or implementation of credible environmental or social controls or monitoring. Kimerling, *supra* note 11, at 588-9. Frustration with this situation has erupted in anger and violence: a Huaorani man speared and wounded an oil worker after his infant son died and the oil company failed to use its medical facilities and transportation to save the child’s life. *Id.* In a press communication, ONHAE, a Huaorani organization, explained that the incident was a reflection of “the extreme conditions in which our people live because of the petroleum companies in the territory, [prompting] the return to old Huaorani traditions for defense and vengeance...[The spearing is] a product of processes of social inequalities, the absence of human rights, desperation, and the extreme conditions that the Huaorani face because of the acoso petrolero, [oil company harassment]. In the Huaorani cosmo vision, death by spears means having arrived at a situación limite [unbearable situation]. . . .[The incident] reflects the deterioration of the quality of life of our people, our soledad [loneliness] before a society that does not have the time or desire to see its surroundings, to help the most basic needs of the human being in these days, [or] to refrain from exploiting the resources of the land, of home, without considering those who live in her, and have protected and guarded her for centuries...As a general matter, oil development has thrust rapid change on the Huaorani; they are clearly not at the center of concerns for development in their territory. The spearing reflects how difficult it remains for the Huaorani to adapt and guide their own destiny in the changing world that accompanies oil

In addition, oil development and the resulting pollution further threatens the territories, lives, cultures—and environmental identities—of Ecuador’s indigenous peoples. According to Judith Kimerling, “[a]mong other environmental impacts, [oil and gas exploration and production] typically generates large quantities of wastes with toxic constituents, presents risks of spills, and destroys and degrades ecosystems that people depend on for their sustenance and well-being.”²² Oil development has prevented residents from access to the wealth of renewable natural resources that have traditionally provided them with food, water, shelter, medicine, and environmental identities. In addition, “subsistence activities not only are fundamental to the health, nutrition and well-being of indigenous peoples, but also are important factors in the maintenance of their cultures and economic self-reliance.”²³ The destruction, degradation, and contamination of natural resources by unchecked and reckless oil production activities has disrupted this social, cultural, and economic balance, and prevented many of the Amazon’s indigenous people from meeting their basic needs: local subsistence economies have been destroyed in some communities, and people now depend on more food ‘from outside’ and a cash and wage-based economy—in a region where jobs are scarce.²⁴ Some residents are eating less meat, and have increased fishing activities to provide needed protein—which may stress some fisheries, create conflict between communities, and create health problems when fish is taken from heavily polluted waters.²⁵

When the Inter-American Human Rights Commission revisited these issues in a 1997 Follow-Up Report on Compliance, it found “that actions causing environmental deterioration continue to occur in the Ecuadorian interior, affecting the full enjoyment of the rights of different sectors of the population,” that “indigenous peoples...land claims have not yet been settled, and that they are still affected by development activities, chiefly through pollution on cultivated land.”²⁶

C. Road Building and Development in Palau

Palau is a small Pacific island nation of less than 20,000 residents that is known for its stunning scenery and its abundant fish.²⁷ There are forty-eight villages in Palau

development.” *Id.* at 588-90.

²² Kimerling, *supra* note 11, at 534-5. She continued, “...Around 1990, documentation of irresponsible oil field practices in Ecuador’s Amazon Region by the U.S.-based TNC, Texaco, and other companies, added a new issue to the rainforest agenda. The revelations spawned a surge in national and international concern about the impact of oil development on the environment and human rights in tropical forests, and buttressed local grievances. In response, a number of TNCs acknowledged that national governments have not implemented meaningful environmental regulation, and that local communities bear the costs of irresponsible development without sharing in the benefits.” *Id.*

²³ *Id.* at 553; 560.

²⁴ *Id.* at 553-4; 561; 564. For example, oil production sites have been located in community hunting areas, and oil companies often discharge effluents directly into rivers used by communities for fishing, bathing, and drinking. *Id.*

²⁵ *Id.* at 561-564.

²⁶ *Lhaka Honhat Aboriginal Communities Amici Brief, supra* note 7, quoting “Follow-up of the Recommendations formulated by the Inter-American Commission on Human Rights in its Reports on the Situation of Human Rights in Member States,” Section I (Ecuador), at paras. 109,118; in 1998 Annual Report of the Inter-American Commission on Human Rights.

²⁷ Scott Radway, *Palau Seeks Environmental Identity*, Pacific Daily News (March 25, 2002), <http://www.sidsnet.org/latestarc/coastal-newswire/msg00054.html>.

with populations of less than five hundred, where subsistence fishermen use traditional fishing methods to feed their families. In places like Palau's Airai Bay, once home to a healthy coral reef, fishing was a way of life, and has forged the environmental identities of its fishermen. However, in less than fifty years, development has turned the aqua blue Airai Bay into a mud-red "home to almost nothing but algae."²⁸ Airai Bay borders Palau's pristine Babeldaob island,²⁹ where a multimillion-dollar U.S. fifty-three mile road project is underway and has already spurred the development of hotels, golf courses and new homes.³⁰ Runoff from these projects is burying the reef, suffocating Airai Bay, killing coral and fish, and destroying a way of life.³¹ Subsistence fishermen are finding it difficult to survive the loss fishing resources: it is too expensive for many to purchase motorboats and gas to fish elsewhere and still earn a profit, and alternate jobs are scarce for the often poorly educated fishermen.³²

According to Noah Idechong, a Palau Delegate and world-renowned environmentalist,

At stake is Palauan culture and the identity of its people who have so long lived in harmony with the sea and land...Palauans are a proud and ambitious people. They are proud of their culture, their heritage, their traditions. And they are eager to compete in the modern world, eager to keep pace with technology, medicine and wealth. Palauans will openly tell you that the mix presents a conflict. To compete in the modern world an economy must grow and when that happens a traditional society is put at risk...Palauans often look to Guam when they consider their potential for development. Guam had a huge boom in the late 1980s and early 1990s. Hotels went up, infrastructure was expanded and the environment was devastated.... Just 20 years ago, Guam's coral reefs had 70 percent more fish. With the reefs' demise Guam also has seen much of its traditional culture diluted. The sea, which was an invaluable bond for Chamorro families, was lost as the reefs were degraded and Guam became more like a slice of America, dotted with strip malls, multi-screen theaters and numerous fast-food restaurants...Because the reality is a tropical island can only bear so much before the environment is severely harmed and culture lost, people also need to put a price tag on the worth of subsistence fishing and the value of Palauan culture.³³

²⁸ *Id.*

²⁹ *Id.* Though Babeldaob is the second largest island in Micronesia and comprises 70% of Palau's land, the center of the government and population has been Koror, a much smaller island where modern infrastructure exists. "Since the colonial days, when the Germans, the Japanese and the United States controlled Palau, the center of activity has been Koror where the best harbors are and the modern infrastructure was developed. But the state of Koror is only 36 square miles compared to Babeldaob's 127 square miles. The long lines of cars up and down the main two-lane roads during rush hour are clear proof of its limited size and infrastructure." *Id.*

³⁰ *Id.*

³¹ *Id.* Palau's development is also placing the Ngermeskang River at risk. *Id.* The Ngermeskang is the largest river in Micronesia, and runs into Ngaremeduu Bay, creating the largest and most biological diverse estuary in Micronesia. *Id.* Though some 30,000 acres in the region have been designated as a conservation area, land clearing in upland areas is washing runoff into the river, overburdening natural vegetation filters and threatening the reef. *Id.*

³² *Id.*

³³ *Id.*

D. Dam-building and Salmon in the United States

In the Pacific Northwest region of the United States, indigenous peoples have always relied on salmon for subsistence, trade, ceremonial use, and identity.³⁴ Long before the area was settled by Europeans, “the rivers met the needs of the salmon and the salmon met the needs of the Indian. The tribes and the salmon had benefited from this partnership, secure in their adaptation to the environment and to each other. The Indians knew they had to protect the quality of the rivers. Under conditions of abundance, their religious and technological precautions ensured perpetuation of the fish.”³⁵ Each season, the region’s tribes performed elaborate religious ceremonies intended to ensure the salmon would return, and the traditional movements of the largely nomadic tribes were determined by seasonal and geographic variations in the runs of the different salmon species.³⁶

Today, “salmon and Indian life in the Pacific Northwest continue to be inseparable,” and the region’s indigenous people continue to rely on the fish for subsistence, commercial livelihood, and religious rituals.³⁷ The Indian people of the Pacific Northwest celebrate the fish in First Salmon Feasts, maintain a dietary preference for salmon, and the fish remains “important and necessary for physical health and for spiritual well-being.”³⁸ “In the Indian imagination there is no division between the animal and human spheres; each takes the other’s clothing, shifting appearances at will. . . . Even though animals were essentially sacred, they still provided an important food source Thus animals and humans find themselves bound together in a living web of mutual aid and respect.”³⁹

The tribes “take great care” to ensure the survival of this invaluable resource: they fish responsibly, do not pollute the rivers, and continue to carry out religious ceremonies in tribal churches and long houses to guarantee the return of the salmon.⁴⁰ However, settlement of the region by European colonists during the late nineteenth century caused a drastic decline in salmon populations, as increased human populations pressured limited fish stocks, technological advances in fishing increased catches, canning process expanded the salmon market, and timber harvesting and dam building depleted the habitat available for salmon spawning.⁴¹ Threats to salmon continued into the twentieth century. At least twenty-seven hydroelectric dams were been constructed along the Pacific Northwest’s Columbia and Snake Rivers between 1901 and 1983, decimating salmon populations.⁴² “The bottom line is that Indians are no longer able to catch the fish that they secured by treaty. Less than one million salmon now return to the Columbia River Basin, which is a fraction of what returns once were, and in some

³⁴ Starla Kay Roels, *Borrowing Instead of Taking: How the Seemingly Opposite Threads of Indian Treaty Rights and Property Rights Activism Could Intertwine to Restore Salmon to the Rivers*, Environmental Law 375, 375 (Summer 1998).

³⁵ James T. Johnson, *Treaty Fishing Rights and Indian Participation in International Fisheries Management*, Denver University Law Review 403 (1999).

³⁶ Roels, *supra* note 34, at 375-6; 405-6.

³⁷ *Id.* at 405-6.

³⁸ *Id.* at 378.

³⁹ *Id.* 375.

⁴⁰ *Id.* at 376-8.

⁴¹ Johnson, *supra* note 35, at 405-6.

⁴² Roels, *supra* note 34, at 376-7.

areas, no fish return.”⁴³ As a result, the region’s Indian peoples are no longer able to support themselves through fishing, and must rely on other tribal enterprises and the federal government for economic and social programs.⁴⁴ Tribes have lost estimated billions of dollars in revenues from commercial fisheries, and fear the collapse of their cultures.⁴⁵ “The tribes believe that ‘[w]ithout salmon returning to our rivers and streams, we would cease to be Indian people.’”⁴⁶

III. UNDERSTANDING AND PROTECTING ENVIRONMENTAL IDENTITIES: POSSIBLE AREAS FOR FURTHER EXPLORATION

The following section will present some of the existing legal instruments and forums that may be used and should be created to protect the environments and cultures—and, in turn, the environmental identities—of indigenous and local peoples. This section also provides some possible additional legal tools for the protection of environmental identities and that warrant further exploration.

A. The Protection of Environmental Identities: Existing Legal Frameworks

Some international legal instruments have been created to expressly provide for the protection of environmental identities. For example, the Draft United Nations Declaration on the Rights of Indigenous Peoples provides that “Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.”⁴⁷ In addition, Principle 22 of the Rio Declaration recognizes that “[i]ndigenous peoples and their communities...have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”⁴⁸

Other legal frameworks that protect the environment, environmentally based cultures, or indigenous peoples may indirectly protect environmental identities. For example, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the cultural rights of indigenous peoples by stating that “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”⁴⁹ The U.N. Human Rights Committee, which monitors States’

⁴³ *Id.* at 377.

⁴⁴ *Id.*

⁴⁵ *Id.* at 375; 378 (stating that “Modern society has therefore made many Columbia River tribes much less self-sufficient and has created a terrific threat to the tribes’ cultural identities”).

⁴⁶ *Id.* at 408.

⁴⁷ Draft United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add.1, at Article 25.

⁴⁸ *Lhaka Honhat Aboriginal Communities Amici Brief*, *supra* note 7, quoting U.N. Conference on Environment and Development Rio de Janeiro, June 13, 1992, U.N. Doc. A/CONF.151/26.

⁴⁹ *Lhaka Honhat Aboriginal Communities Amici Brief*, *supra* note 7, at n.43, quoting U.N.G.A. Res. 2200A (XXI) (Dec. 16, 1966), 21 U.N.G.A.O.R. Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 99 U.N.T.S. 171. In July 2000, the Human Rights Committee commented upon the failure of the Australian

performance under ICCPR, further explained in its General Comments to Article 27 that

With regard to the exercise of the cultural rights protected under Article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.⁵⁰

The Committee has also considered the level of protection that Article 27 gives to indigenous cultures under threat from development and economic activity, and has “indicated that States are under an obligation to ensure that such activity has, at most, only a limited impact on the way of life of persons belonging to a minority.”⁵¹

In addition, one of the most far-reaching international instruments to provide protections for indigenous peoples and their environments is ILO Convention No. 169, Concerning Indigenous and Tribal Peoples in Indigenous Countries. Articles 4(1) and 7(4) of ILO No. 169 states that “[s]pecial measures shall be adopted as appropriate for safeguarding the persons, institutions, property, labour, cultures and environment of the peoples concerned....Governments shall take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.”

government to provide adequate protection to the heritage and culture of Australia’s indigenous peoples under Article 27. Human Rights and Equal Opportunity Comisión, *Human Rights Based Approach to Mining on Aboriginal Land*, www.hreoc.gov.au/social_justice/corporateresponsibility/hr_approach.html. In addition, *Kayano et al. v. Hokkaido Expropriation Committee*, 38 I.L.M. 394 (1997), upheld indigenous rights under the ICCPR. The American Society of International Law, *Japan: Kayano et al. v. Hokkaido Expropriation Committee (The Nibutani Dam Decision)*, www.asil.org/ilm/malevin.htm. In *Kayano*, a decision over 150 pages long, the Sapporo District Court recognized Japan’s duties to the country’s indigenous Ainu people under Article 13 of the Constitution of Japan and its responsibility to give due consideration to the cultural interests of the minority Ainu people in carrying out its affairs arising under the ICCPR. *Id.* Though Japan’s Nibutani River is an important cultural center for the Ainu people, the Japanese government had expropriated land in the Nibutani River valley for the construction of a large-scale dam, the construction of which would impair the Ainu people’s lifestyle and religious practices, destroy historical ruins, and desecrate holy sites. *Id.* Though the court declared the government’s expropriation of the land to be illegal because the issuance of the project authorization exceeded the government’s administrative discretion, the court also applied provisions of Japan’s Administrative Litigation Law, Tochi Shuyo Ho, Law No. 219 of 1951, art. 20(3), to deny the relief sought by the Ainu plaintiffs because the dam construction was substantially completed during the pendency of the case and it would be against the public interest to order revocation of the expropriation orders. *Id.* Completion of the dam was thus ultimately permitted. *Id.*

It is important to note that there “has been significant resistance from indigenous groups to their rights being equated with the rights of cultural minorities within a particular State. Indigenous people, as the first peoples of a territory, with a specific history and relationship to that territory including one of forced colonization, have distinct rights in the context of cultural, social, economic and political protection. While minority group rights include indigenous peoples they do not exhaust their rights.” Human Rights and Equal Opportunity Comisión, *supra* note 49.

⁵⁰ *Lhaka Honhat Aboriginal Communities Amici Brief*, *supra* note 7, at n.43, quoting U.N.G.A. Res. 2200A (XXI) (Dec. 16, 1966), 21 U.N.G.A.O.R. Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 99 U.N.T.S. 171, at General Comment 23, para. 7.

⁵¹ Human Rights and Equal Opportunity Comisión, *supra* note 49.

Finally, in August 2001, the Inter-American Court of Human Rights upheld the rights of the Mayagna (Sumo) Community of Awas Tingni of the Atlantic Coast of Nicaragua to its ancestral lands in a challenge to Nicaragua's grant of a logging concession to Community land.⁵² The Court held that under Nicaraguan law, the Awas Tingni have a communal property right over the lands they currently inhabit, and that the State's grant of the logging concession violated the Community's rights to property and judicial protection (articulated in Articles 21 and 25 of the American Convention on Human Rights⁵³), the obligation to provide equal protection, and the duty to conform its domestic laws to "give effect to the rights and duties agreed upon in the American Convention on Human Rights."⁵⁴ The Court therefore ordered the State to adopt culturally appropriate measures to demarcate and grant official title to the property of its indigenous peoples, and recognized the importance of the customary law of indigenous peoples: "As a product of custom, possession of land should suffice to entitle indigenous communities without title to their land to obtain official recognition and registration of their rights of ownership."⁵⁵ This decision sets an important precedent that affirms indigenous land rights throughout the hemisphere. In addition, while not explicitly addressing environmental identity, the decision protects the relationship of the Awas Tingni people—who subsist from their ancestral lands and use forest resources for hunting, fishing, farming, religious ceremonies, and burial grounds—from state-sponsored destruction at the hands of a foreign timber company.⁵⁶ However, this decision would not have been possible without Nicaragua's constitutional and statutory recognition of the land rights of its indigenous peoples.

B. Special Protections for Environmental Identities and Indigenous Peoples

While the legal frameworks mentioned above provide some tools for the protection of environmental identities, stronger and more explicit protections for

⁵² Indian Law Resource Center, *Awas Tingni Decision Excerpt, Unofficial English Translation of the Judgment of the Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Indigenous Community of Awas Tingni v. The Republic of Nicaragua*, at www.indianlaw.org/body_awas_tingni_decision-exerpt.htm.

⁵³ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, available at University of Minnesota Human Rights Library, *American Convention on Human Rights*, <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm> (entered into force July 18, 1978). Article 21 of the American Convention on Human Rights establishes that (1) "Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society"; (2) "No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law"; and (3) "Usury and any other form of exploitation of man by man shall be prohibited by law." *Id.* In addition to Article 21's property rights protections, Article 25 requires states to adjudicate claims of human rights violations promptly and to enforce their courts' decisions; Article 2 requires states to adopt measures (legislative or other) to protect the rights articulated in the convention; and Article 1 requires states to respect and guarantee the rights articulated in the Convention on a non-discriminatory basis. *Id.*

⁵⁴ Theodore Macdonald, *Internationalizing Indigenous Community Land Rights: Nicaraguan Indians and the Inter-American Court of Human Rights, Program on Nonviolent Sanctions and Cultural Survival*, www.wcfia.harvard.edu/ponsacs/DOCS/nicaragua.htm; Indian Law Resource Center, *Hearing of Awas Tingni Indigenous Land Rights Case Takes Place Before the Inter-American Human Rights Court, Update November, 2000*, www.indianlaw.org/body_at_update.htm; Indian Law Resource Center, *Awas Tingni Summary*, indianlaw.org/body_awas_tingni_summary.htm.

⁵⁵ Indian Law Resource Center, *Awas Tingni Decision Excerpt, Unofficial English Translation of the Judgment of the Inter-American Court of Human Rights in the Case of the Mayagna (Sumo) Indigenous Community of Awas Tingni v. The Republic of Nicaragua*, www.indianlaw.org/body_awas_tingni_decision-exerpt.htm.

⁵⁶ *Lhaka Honhat Aboriginal Communities Amici Brief*, *supra* note 7.

environmental identities is necessary. For example, the Center for Human Rights and Environment (CEDHA) and the Center for International Environmental Law (CIEL) have prepared Draft Legislation on Human Rights and Environment that includes provisions for safeguarding environmental identities.⁵⁷ Article 17 BIS of the Draft Legislation outlines the right to environmental identity and states: “Every person has the right have his or her environmental identity respected and preserved. No community shall have their right to the preservation of their environmental identity denied, be it due to restrictions, modifications, or environmental degradation, committed by public or private acts.”⁵⁸

While it is clear that the survival the environmental identities of indigenous and local peoples requires continued access to and protection of the environments on which these identities are based, protecting the environmental identities of indigenous peoples may also require additional, special protections. According to the Inter-American Commission on Human Rights,

For many indigenous cultures, continued utilization of traditional collective systems for the control and use of territory are essential to their survival, as well as to their individual and collective well-being. Control over the land refers both to its capacity for providing the resources which sustain life, and to ‘the geographical space necessary for the cultural and social reproduction of the group.’ Within international law generally, and inter-American law specifically, *special protections for indigenous peoples may be required for them to exercise their rights fully and equally with the rest of the population. Additionally, special protections for indigenous peoples may be required to ensure their physical and cultural survival—a right protected in a range of international instruments and conventions.*⁵⁹

C. Sovereignty and Treaty Rights for Indigenous Peoples

The environmental identities of indigenous peoples can be promoted and protected through the recognition of tribal sovereignty and guaranteed access to the resources on which indigenous economies, cultures, and environmental identities depend. In the United States, the federal government entered into hundreds of treaties with American Indian tribes in the eighteenth and nineteenth centuries that continue to form the basis of tribal sovereignty and control of resources—even when these rights

⁵⁷ The Center for Human Rights and Environment (CEDHA) and the Center for International Environmental Law (CIEL), *Draft International Legislation on Human Rights and Environment* (January 2002), www.cedha.org.ar/docs/declaration-eng-public.doc. The Center for Justice and International Law (CEJIL) and the Centro de Estudios Legales y Sociales (CELS) collaborated in the initial stages of the draft. *Id.* “The draft legislation is inspired from a wide variety of international legal doctrines that include human rights and environment. It is grounded in the belief that the full enjoyment of our human rights are profoundly linked to the state of the environment. While it was conceived with a view to promoting the adoption of such legislation in the American Hemisphere, it’s broader aim is to provide a basis on which to advance discussions on the development of a stronger international legal and institutional framework for the protection of human rights and the environment.” *Id.*

⁵⁸ *Id.*

⁵⁹ *Lhaka Honhat Aboriginal Communities Amici Brief*, *supra* note 7, citing 1997 Ecuador Report, *supra* at n. 9, at Chapter IX, Conclusions (emphasis added).

come into conflict with private property rights.⁶⁰ While far from perfect, these legal protections could provide a model to other nations for officially recognizing the resource rights of the indigenous peoples living within their borders.

For example, in Washington State in the mid-1800s, in what are now known as the Stevens Treaties, salmon-dependent tribes exchanged vast areas of land for express provisions guaranteeing them both the exclusive right to fish within their reservations and “the right of taking fish at all usual and accustomed places in common with citizens of the Territory.”⁶¹ In six decisions issued between 1905 and 1979, the U.S. Supreme Court interpreted the Stevens Treaty language to outline the breadth and scope of Indian fishing rights with respect to state regulation and private property rights, and also provided a foundation and rationale for Indian participation in fisheries management decisions.⁶² In the first case, *United States v. Winans*,⁶³ the United States (in an exercise of its trust responsibility to the tribes) sought to enjoin Winans, a white settler, from excluding Yakima Indians from his property, which bordered one of the Indians “usual and accustomed” fishing grounds. The Court held that Winans could not prevent the Indians from temporarily using his land to fish in the area because the Indians’ non-exclusive, off-reservation fishing treaty right held greater significance than the private property rights asserted by Winans.⁶⁴ According to the Court, the fishing rights reserved in the Stevens Treaty are tantamount to an easement, and preserve the Indians’ rights to cross and occupy private land to access fishing sites and erect temporary shelters to cure their catch.⁶⁵

In 1974, in *United States v. Washington*,⁶⁶ Judge Boldt’s decision interpreted a Steven’s Treaty phrase, “(t)he right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the territory . . . ,” to guarantee the tribes unobstructed access to off-reservation fishing essentially everywhere, subject to only very narrow state regulation.⁶⁷ His decision sought to fulfill the Indian’s reasonable expectations they held when they signed the treaty, and apportioned half of the harvestable salmon in the rivers to them.⁶⁸ The ruling thus also gave indigenous peoples a voice in fisheries management: non-Indians could now increase the size of their catch only by increasing the overall number of salmon available—and since Indians now controlled half of the fish, their participation was

⁶⁰ Kahn, *supra* note 6, at 72-3. These treaties, usually cessions of land and natural resources by a tribe in exchange for a federal trust relationship and a guarantee of tribal control over land and resources in defined reservation and off-reservation areas, officially recognized tribes as holding sovereign status. Though tribal sovereignty was in many ways a tool for the colonial government to recognize a tribal authority capable of ceding vast amounts of valuable land to the U.S. for its white homesteaders, ranchers, loggers, and miners—thereby allowing the government to both obtain land and maintain peace with the tribes, U.S. courts have continued to recognize some degree of retained Indian tribal sovereignty, and have for the most part upheld tribal control over the internal affairs of their reservation, including control over the water resources in their jurisdiction and other vast natural resource bases. *Id.* at 72-3; 80-81.

⁶¹ Roels, *supra* note 34, at 375-6; Kahn, *supra* note 6, at 82.

⁶² Johnson, *supra* note 35, at 408-9 (1999).

⁶³ *United States v. Winans*, 198 U.S. 371 (1905).

⁶⁴ Johnson, *supra* note 35, at 409-10.

⁶⁵ *Id.*

⁶⁶ *United States v. Washington*, 384 F. Supp. 312 (1974).

⁶⁷ Johnson, *supra* note 35, at 413.

⁶⁸ *Id.* at 414-415. The Tribe’s fifty percent did not include fish required for personal subsistence or ceremonial purposes (such purposes are “special” and “distinct” from commercial purposes) or the fish taken by Indians on the reservation. *Id.*

essential.⁶⁹ The Ninth Circuit's and Supreme Court's indirect review left Judge Boldt's decision substantially intact.⁷⁰

Similarly, the walleyed pike that spawn in Northern Wisconsin's 861 lakes—territory that the Chippewa (Ojibwa) ceded to the U.S. government in the 19th century—are a major source of the region's economy and an integral part of the environmental identity of the Ojibwa people. A 1983 federal court decision upheld Ojibwa rights to spearfish for walleye in their traditional fishing grounds before the general sport season opened.⁷¹

In addition to guaranteeing tribal access to and some voice in the management of natural resources, treaty rights to resources can provide indigenous with one other tool to protect their environments and resource-based identities: taking claims. Because the treaties guaranteed the Indians' the right to catch fish, the federal government may be liable to tribes for depriving them of their property rights under of the Fifth Amendment of the U.S. Constitution.⁷² Though the federal government has not expressly abrogated the tribes' right to fish, its operation and construction of federal hydroelectric projects and licensing of non-federal projects have contributed to the elimination of fish and to the destruction of the social and economic foundation of the treaty fishing right. A takings claim based on treaty fishing rights could enhance awareness of economic, cultural, and identity losses that tribes have and continue to suffer as the salmon dwindle.⁷³ “Because ‘financial interests and motives’ often control the salmon's survival, perhaps a threat of great financial cost for compensating tribes for lost treaty rights will awaken the federal government to the seriousness of the situation,” and induce them to finally take steps to restore the salmon.⁷⁴

2. National Historic Preservation Act

In the United States, the National Historic Preservation Act protects culturally significant sites and lands, and can be used a tool to protect the landscapes from which indigenous and local people derives their identities.

3. Social Function / Nuisance

⁶⁹ *Id.*

⁷⁰ Johnson, *supra* note 35, at 403, 4.

⁷¹ Debra McNutt, Andrew Gokee, & Zoltan Grossman, *U.S. Aboriginal Activists Say There are Lessons to be Learned from Their Experience*, *The Globe and Mail* (September 14, 2000), available at www.canadianaboriginal.com/active/active4d.htm. However, this decision created intense conflict over fishing resources throughout the late 1980s and early 1990s. Though the Ojibwa never took more than 3 per cent of the walleye, some non-Natives believed that they would “rape” the fishery industry. Militant anti-treaty groups began to carry signs reading “Spear an Indian – Save a Walleye,” and committed numerous acts of violence—including harassment of Ojibwa spearfishers and their families, rock-throwing, swamping of Ojibwa boats, death threats, and pipe bombings. Riot-clad police and National Guard helicopters were deployed at the lakes, Witnesses for Nonviolence monitored harassment of Ojibwa spearfishers and their families, and a federal court injunction eventually prevented anti-Indian groups from harassing Ojibwa as they were merely exercising their rights. Eventually, the anti-treaty groups began to understand the history of the treaties and the tribal respect for the environment, and joined forced the Ojibwa to the fight against metallic sulfide mineral mining that was a greater threat to the region's fisheries. *Id.*

⁷² Roels, *supra* note 34, at 378; 397.

⁷³ *Id.* at 407-8.

⁷⁴ *Id.*

The value of nuisance and other claims for disruption of the social function of sites important to environmental identity-holders should be further explored.

4. Community-Based Solutions

Building community awareness of and value for their environmentally based identities is also key to their protection. For example, educational systems should incorporate lessons teaching local knowledge to students. Such efforts would both sustain threatened elements of environmental identity in today's youth, and cultivate value and respect for these important systems of knowledge and the environments on which they are based.

One example of a community-based environmental identity project in action is Mexico City's Social Ecological Community Tierra Viva. Tierra Viva is a youth-based, community project working to "create a model of sustainability and to share alternative techniques with communities who seek being self sustaining within the urban zones."⁷⁵ According to Tierra Viva,

In the last decades, our parents and grandparents have had to abandon the fields to work in the city, drastically changing their life style, losing their community and environmental identity. Ancestral knowledge related to nature and the fields has also been lost (such as the properties and the use of many plants). The generations who have been born in the city grow up rejecting rural life and contact with nature, being that a culture which does not value nature has taken charge of making sure it is useless in their eyes. And so, it has come to be that the youth in Mexico has gone from being mostly rural (51% in 1960) to mostly urban (74 % in 1995). These are the same youth who feel that the possibility of survival is not within their hands but rather in the hands of business firm, institutions, industrialists and the same systems that reject them and of which they are not a part of which only deepens their sensation of helplessness, insecurity and uselessness. All too many youth do not even consider the option of taking part in obtaining their own basic well being which every human deserves.

Thus, Tierra Viva works through the active participation of youth collectives committed to nature, to improve their own, distinctly urban habitat through the integration of diverse ecological and social techniques such as permaculture, recycling, consensus, construction with reusable and natural materials, water management and treatment, gender equality, vegetarianism, dry latrines, and the creation of alternative products and services. Tierra Viva is also forming an alternative library, and organizes talks, video-debates, activities, camping and workshops with social and environmental themes. They are in the process of obtaining a plot of land to build (with recycled materials and permaculture techniques) an environmental and community space within Mexico City—a self-sustainable model that can be replicated in other urban zones. Participants seek to solutions to "recover our community strength, our cultural identities, let us be the protagonists of our own lives, changing the future from one of

⁷⁵ Tierra Viva, *What is Tierra Viva?* www.laneta.apc.org/tierraviva/eng%20tierraviva.htm.

emptiness, routine, isolation to solidarity, mutual support and harmony with our surroundings, learning to be sustainable in our relationship to the Earth and with those who inhabit on her” and to “stop the environmental destruction, the abuse and mistreatment of animals, eradicate machismo and sexism, racial discrimination, authoritarianism, dogmatism and promote decision making through the consensus process.” Participants count on “the hope that it is still possible to live in a dignified manner without having to abandon the cities.”⁷⁶

5. Corporate Accountability for Destruction of Culturally Significant Environments

Corporate responsibility for their role in the destruction of culturally significant environments is a growing area of study, and could make significant contributions to the protection of environmental identities.⁷⁷

6. Suggested Further Reading

Anne Statham, *Environmental Identity: Symbols in Cultural Change*, 17 *Studies in Symbolic Interaction* (1995) 207-240.

www.asc.upenn.edu/usr/ogandy/Budapest%20draft.pdf

7. Note: Balancing Protections for Environmental Identity and the Right to Self-Determination

One challenging aspect of efforts to protect the environmental identities of indigenous and other local people comes in the form of the right to self-determination.⁷⁸ If human rights and environmental protections can be improved and expanded to include protections for individuals and communities that possess an environmental identity, quantifying the amount of environmental identity sufficient to warrant protection is a problem. In addition, allowing room for traditional communities with significant cultural and spiritual relationships with the land to determine for themselves how and how much to develop and incorporate “modern” products, systems, beliefs,

⁷⁶ *Id.*

⁷⁷ *See, e.g.* Kimerling, *supra* note 11, at 523, 535-6 (discussing transnational corporations claims to use of “international standards” and “best practices”); CEDHA.

⁷⁸ The right of all peoples to self-determination is guaranteed at international law under Article 1 of ICCPR, article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has been developed in the General Comments of the Human Rights Committee. Human Rights and Equal Opportunity Comisión, *supra* note 49. Article 1 of ICCPR and ICESCR states: “All peoples have a right of self-determination. By virtue that right they freely determine their political status and freely pursue their economic, social and cultural development.” “All peoples may, for their own ends, freely dispose of their natural wealth and resources...In no case may a people be deprived of their own means of subsistence.”

In addition, the Declaration on the Right to Development, adopted by the United Nations (UN) General Assembly in 1986, confirms: “1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. 2. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.” Human Rights and Equal Opportunity Comisión, *supra* note 49.

etc. into their lives can also be a problem if protections are based on a traditional environmental identities. Restricting self-determination and the choice to change cannot be the trade-off for protecting the right to maintain an intimate relationship with the natural world.

One example of the tension between tradition and modern development comes from the Makah Tribe of Washington State, United States. The Makah have an age-old custom—and treaty right—to hunt whales.⁷⁹ During times in Makah history, whales may have provided up to 80% of the subsistence needs for the Makah’s five traditional family tribes.⁸⁰ Makah elders claim whaling plays an integral role in the tribe’s survival, culture, history, and identity: “[whaling] is identity,” said Makah Whaling Commission Chairman Keith Johnson. “In this day and age, it is so important for us as Makahs to maintain our identity.”⁸¹ However, the 2,200-member Makah tribe stopped whaling in the 1920s after Caucasian hunters drove the gray whales almost to extinction.⁸² Under federal protection, the species has rebounded so well that it was removed from the endangered species list in 1994.⁸³ Because the twentieth century had been tough on the Makah (the community that suffers from seasonal unemployment as high as 50%, as well as high levels of crime and drug and alcohol abuse), the Tribe has turned to whaling in an attempt to rebuild their economy and culture.⁸⁴ The Makah gained permission from the International Whaling Commission to harpoon up to five migrating gray whales per year from 1998 through 2002.⁸⁵

Like their ancestors, today, the Makah paddle out and strike with a harpoon.⁸⁶ However, in a departure from tradition, and, they use a .50-caliber rifle to kill the whale as humanely as possible and at least two motorized boats to tow it home.⁸⁷ Further, tribal members admit they don't even know what whale meat tastes or smells like, and since none of the Makah have ever whaled, they had to learn how from Eskimo whalers in Alaska and Russia.⁸⁸ Anti-whaling groups opposing the hunt worry that “the floodgates will be opened to people and nations who have a cultural history of whaling, but no longer have nutritional need to kill whales.”⁸⁹

⁷⁹ CNN, *Indian Tribe to Resume Controversial Whale Hunt* (October 1, 1998), www.cnn.com/US/9810/01/fringe/makah.whaling/.

⁸⁰ Alamut, *The History of the Makah Whale Hunt*, www.alamut.com/subj/the_other/misc/makahWhaling.html.

⁸¹ CNN, *supra* note 79.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Alamut, *supra* note 80.

⁸⁵ CNN, *supra* note 79.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*