

Amici Curiae

Teodoro Cabrera Garcia and Rodolfo Montiel Flores

v.

The State of Mexico

presented by

The Center for Human Rights and Environment (CEDHA)

&

The Center for International Environmental Law (CIEL)

Honorable Inter-American Commission on Human Rights:

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¹ The undersigned attorneys also wish to extend their thanks to Mr. John Cheverie of EarthRights International, for assistance in the preparation of this amicus brief.

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REQUEST TO BE CONSIDERED AMICI CURIAE

Consistent with the custom of the Inter-American Commission on Human Rights of accepting amicus briefs, CEDHA and CIEL request that the Commission admit this Amici Curiae in support of the human rights of Rodolfo Montiel and Teodoro Cabrera.

STATEMENT OF INTEREST

The Center for Human Rights and the Environment (CEDHA), located in Córdoba, Argentina, is a public interest organization dedicated to the defense and promotion of the environment and human rights, serving as a bridge between these two areas of international law. CEDHA has a novel approach to promoting international environmental and human rights legislation, combining the efforts of two increasingly interdependent areas of law. CEDHA works with civil society, governments, and academic institutions to raise awareness, increase capacity, and provide resources to address the linkages between environment and human rights, at the national, regional, and international level.

The Center for International Environmental Law (CIEL), located in Washington, D.C. and Geneva, Switzerland, is a public interest environmental law organization founded in 1989 to focus the energy and experience of the public interest environmental law movement on reforming international environmental law and institutions, and on forging stronger and more meaningful connections between the top-down diplomatic approach of international law and the bottom-up participatory approach that has been the hallmark of the public interest environmental law movement. CIEL is part of a growing network of civil society institutions from various parts of the world that are committed to promoting public interest law and sustainable development.

As non-governmental organizations dedicated to the promotion and protection of human rights and environmental protection, CEDHA and CIEL have closely followed the legal proceedings and discussion concerning the violations of the human rights of the internationally recognized environmental advocates Rodolfo Montiel and Teodoro Cabrera. The particular issue addressed in this brief is the importance of recognizing the critical role played by environmental defenders such as these – especially in the face of a global pattern of abuse of the human rights of such defenders – and the resulting need for this Honorable Commission to both protect them and to require States Parties to respond in a proactive manner to the increasing and disturbing pattern of assault on the rights of environmental defenders.

PETITUM

With the anticipation that this contribution might assist the Commission to reach a just decision for the parties involved in this case, CEDHA and CIEL respectfully request that the Honorable Commission:

- 1) admit The Center for Human Rights and the Environment (CEDHA) and the Center for International Environmental Law (CIEL), as Amici Curiae for this case;
- 2) attach this Amicus to the case file; and,
- 3) adopt the views set forth in this brief.

SUMMARY OF THE ARGUMENT

For years, the Organization of American States (OAS) and this Honorable Inter-American Commission on Human Rights (IACHR) have expressly and repeatedly recognized the important role played by human rights defenders in civil society. In recent years, both organizations have expressed growing concern over the increasing level of danger to which these individuals are regularly exposed.

At the same time, the international community has recognized the importance of the protection of the environment on the enjoyment of human rights under the Inter-American Human Rights system, and in national and international law.² Environmental abuses and their consequent human rights violations are increasingly coming to world (and Commission) attention, most often in the context of disputes involving indigenous peoples and lands.

As a result, there has similarly emerged a subset of human rights defenders entitled to and in need of protection: namely, “environmental defenders”, those who defend the Planet Earth and advocate for the human rights of the victims of environmental degradation. Rodolfo Montiel and Teodoro Cabrera are leading examples of this subset. As will be demonstrated in this brief (*infra* at part III), there is a pervasive global pattern of these environmental defenders being subjected to abuses of their own human rights as a penalty for their advocacy.

When environmental defenders advocate on behalf of powerless and disenfranchised people against an environmentally destructive project, all too often the defenders will have their own human rights violated. This pattern is a widespread as the one brought to the Commission's attention by the undersigned *amici* in the recent *Awas Tingni*³ and *Lhaka Honhat*⁴ cases: the

² Judge Weeramantry of the International Court of Justice reflects this view:

The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments. Gabcikovo-Nagymaros Case (Hungary-Slovakia), ICJ, Judgment of Sept. 25, 1997 (Sep. Op. Judge Weeramantry) at 4.

³ *Awas Tingni Mayagna (Sumo) Indigenous Community v. The Republic of Nicaragua* Case No. 23/01.

⁴ *Association of Lhaka Honhat Aboriginal Communities v. The State of Argentina* Case No. 12094.

violations of the human rights of indigenous people involved in conflicts over large-scale development projects that threaten their lands.

There is a troubling additional dimension to the violation of the human rights of the individual environmental defender. Not only are his or her rights to express opinions, associate with like-minded individuals, seek judicial redress, and participate in government decision-making violated, but the rights of those they represent are violated as well. This Commission has spoken in the past of the "chilling effect" on society at large of violations of the human rights of journalists and human rights defenders. When leaders such as Montiel and Cabrera have their individual rights violated, the intent and effect of these violations is to violate collective rights by silencing and intimidating others as well. This makes the individual human rights violations all the more egregious, and all the more deserving of a strong response from the Commission.

STRUCTURE OF BRIEF

Part I of this brief details the entirely lawful human rights activities of Rodolfo Montiel and Teodoro Cabrera, who advocated for a healthy environment for themselves and their fellow campesinos (peasant farmers) in their home state of Guerrero, Mexico.

These lawful activities were met by the repressive actions of the government of Mexico and its agents described in Part II of this brief. These actions violated Montiel and Cabrera's exercise of their fundamental rights of freedom of expression, assembly, association, petition, and participation in government. All of these rights are protected by the American Convention on Human Rights and by other international agreements to which Mexico is a party.

Part III catalogs in detail the similar plight of other environmental advocates around the world. In this way, the violations of the human rights of Montiel and Cabrera by the state of Mexico can be seen as part of a pervasive, global pattern, which is particularly acute in the Americas. It is a pattern in which those who speak as leaders of the disenfranchised and powerless segments of society in defense of their right to a healthy environment are systematically singled out for persecution as part of an effort to silence and intimidate them along with those they represent.

Part IV describes the international legal framework that has recognized the urgent need for protection of human rights defenders. Under this framework, those who advocate for the right to a healthy environment are certainly to be considered human rights defenders.

Part V examines the state of Mexico's specific violations of Montiel and Cabrera's rights under several different articles of the American Convention on Human rights, and under international human rights treaties and related documents as well.

In Part VI, we suggest an appropriate remedy for these violations.

ARGUMENT

I. THE ENVIRONMENTAL ACTIVITIES OF MONTIEL AND CABRERA

The forest resources of the state of Guerrero are among the most important natural resources in Mexico. Several years ago, campesinos from the mountainous Costa Grande region of Guerrero state began to notice that their local rivers had become mere threads of water, and that the rivers' fish and crayfish were dying. The farmers' fields no longer yielded adequate harvests.

The farmers believed that these problems were due to massive logging operations that had started in 1995, when then-Guerrero Governor Figueroa had given Boise Cascade, U.S.-based transnational lumber company, exclusive rights to the region's rich forest resources. For decades, Guerrero's peasants had lived on *ejidos* (communal farms), and Article 27 of the Mexican Constitution guaranteed their collective rights to these inalienable lands. To facilitate the North American Free Trade Agreement (NAFTA), Article 27 was amended to allow *ejidos* to be privatized, while NAFTA itself allowed timber companies to buy from local forestry *ejidos*.

Many believed that Governor Figueroa's contract with Boise Cascade was set up to benefit the Ruben Figueroa Ejido Union ("the Union"), a group of twenty-four *ejidos* led by Bernardo Bautista, a powerful local land-owner. In response to this, Mexican-owned mills pushed up production in order to compete. These mills would often run two lumber shipments – though they only paid for one – by illegally transporting lumber at night. Neither Mexican nor foreign companies reforested the land as required by law.

In 1997 and 1998, farmers decided to form the Organization of Peasant Environmentalists from the Mountains of Petatlán and Coyuca de Catalán (OCESP) to protect the Costa Grande's natural resources. Among the most active members and organizers of the organisation were two local campesinos, Rodolfo Montiel Flores and Teodoro Cabrera Garcia.

With the tradition of repression and impunity in the state of Guerrero, it was not surprising that powerful *caciques* from the Ruben Figueroa Ejido Union, who were frequently seen in the company of soldiers, began to lash out against the peasant farmers, even before they were formally organized into the OCESP. August 1997, marked the first of many times soldiers came to Rodolfo Montiel's home, threatening him and his family.

Through peaceful protests and legal channels, Montiel and Cabrera and their fellow OCESP members promoted environmental awareness and the reforestation of exploited lands, and challenged excessive logging. They filed complaints before various local, state, and federal governmental officials, denouncing environmental destruction and illegal logging practices. They repeatedly requested financial and material assistance in reforestation and sustainable development efforts from the state congress, the Secretary of the Environment (SEMARNAT), and even the army stationed in Petatlán. Their complaints and appeals were met with absolute silence.

In February 1998, the farmers organized their first action. More than one hundred farmers gathered to block the roads to prevent the transport of lumber. Several such actions were staged in following months. OCESP also filed complaints opposing the damage caused to their land by the logging companies with the acquiescence of state authorities and in violation of norms established under Mexican forestry laws.

The actions and other mobilizations carried out by OCESP had mixed results. In the first half of 1998, logging of the forests in the area was briefly suspended, and Boise Cascade withdrew, citing “difficult business conditions,” owed in part to OCESP’s anti-logging campaign. Boise Cascade’s withdrawal did not halt logging, however. Other Mexican and transnational companies continued to exploit the forests at a rapid rate without any attempt to reforest the land.

Moreover, after the OCESP’s formal organization and several successful actions challenging the destructive exploitation of the region’s forests, repression of its members intensified. The Banco Nuevo *ejido*, near Montiel’s home in Mameyal *ejido*, was successful in driving the Union away from its forest. The Union struck back by sending thugs to burn Banco Nuevo’s forests. In fact, *caciques* often order forests to be burned, whether to drive inhabitants off the lands and therefore use them for other purposes, take revenge on anti-logging activities, or incriminate peasant organizations. Like Banco Nuevo, Mameyal was also burned in revenge for the actions OCESP was carrying out.

Even more significant was the increasing presence of the Mexican Army in the region. According to witnesses, a strong wave of repression ensued for members of the OCESP, through arbitrary detention, torture, murders, and forced disappearance:

- on May 31, 1998, gunmen were sent to Mameyal *ejido* to kill Celso Figueroa, one of the OCESP’s founders. Instead, they mistakenly killed Aniceto Martínez, who was also an OCESP member.
- on July 2, 1998, in Jilguero *ejido*, Elena Barajas was killed by a soldier.
- on July 10, 1998, Romualdo Gómez García, a young OCESP member, was killed by gunmen.
- on July 11, 1998, soldiers tortured Jesús Cervantes Luviano of Banco Nuevo *ejido*, accusing him of being a guerrilla.

II. THE RESULTING VIOLATIONS BY THE STATE OF MEXICO OF MONTIEL AND CABRERA'S HUMAN RIGHTS

The attempts to suppress OCESP's efforts to halt the damaging consequences of logging culminated in the events of May 2, 1999.⁵ On that day, approximately forty military officers from the 40th Infantry Battalion of the Mexican Army entered the community of Pizotla, in the municipality of Ajuchitlán del Progreso, Guerrero. As the soldiers arrived, they fired against a group of people who were gathered near the outside of Teodoro Cabrera's house. Among the people present were Rodolfo Montiel, Teodoro Cabrera and Salomé Sánchez Ortiz. Prior to the attack and the gunshots, the military officers had addressed the three, and Salomé Sánchez, Teodoro Cabrera and Rodolfo Montiel, ran away. One of the shots hit Salomé Sánchez, killing him.

Rodolfo Montiel and Teodoro Cabrera managed to hide in a ditch, among shrubs and stones, and the military officers were unable to find them. The officers did not manage to find them until later the same day, after firing at the mountainside. They detained them without an arrest warrant. From the moment in which they were detained, Montiel and Cabrera were beaten by the military officers, who threw them to the ground and threatened to execute them on the spot. Afterwards, they were both dragged by the hair for five meters, to a place where they were detained at an improvised checkpoint that the army had put up by the banks of the Pizotla River. They were both tied by their hands and feet and made to lie face down by the riverbank.

That night, Rodolfo Montiel and Teodoro Cabrera were transferred to the mountains, where they were interrogated and subjected to further violence. Rodolfo Montiel was interrogated while being subjected to the following acts of torture and cruel treatment: one officer pulled him by the jaw, holding his head back, while the other lay across his shoulders; soldiers beat him in the stomach using their knees and kicks; soldiers pulled him by the testicles repeatedly, causing him intense pain to the point where he lost consciousness; soldiers administered electric shocks to his right thigh after wetting him; and soldiers threatened him with death and told him that they knew how to reach his family members. During the torture, he was questioned about his activities with the Organización de Campesinos Ecologistas de la Sierra de Petatlán (OCESP) and was pressured to confess that he was part of an armed group, which he consistently denied, as he is not.

Similarly, Teodoro Cabrera was taken to the mountainside, where he was interrogated and subjected to different forms of torture: he was beaten with fists to his stomach; the military officers simulated his execution, putting a firearm in his mouth and telling him that he was going to die as they pushed it further in; his shoulders were pushed to the floor by someone standing on them; and he was kicked in the stomach. When it looked as if the soldiers were going to leave him alone and he was writhing in pain, the soldiers began to hit him in the left lumbar region with what he thinks was the butt of a rifle; kicked him in his left buttocks; applied electric shocks; threatened both his and his family members' lives; and pulled his testicles repeatedly, causing him to lose consciousness.

⁵ The following facts concerning the violations of Montiel and Cabrera's human rights are derived from the petition filed with this Commission on their behalf on October 25, 2001.

The soldiers returned both men to the riverbank, where they remained until May 4, when they were transferred by helicopter to the facilities of the 40th Battalion, located in Ciudad Altamirano, Guerrero. Once there, they were moved onto a vehicle, and forced to lie face down with someone's foot on them, so as to prevent them from moving. In the buildings of the 40th Battalion, one of the military officers continued to beat them on several parts of their body in front of a number of soldiers. When Rodolfo Montiel saw that Teodoro Cabrera was being severely beaten, he tried to intervene, but this led to him also being beaten in the back with a stick. Afterwards, both men were taken to a room where they were blindfolded and constantly threatened. They were told that they would be thrown into a mass grave.

As a result of the pain and threats that they had been subjected to, Montiel and Cabrera were forced to sign false confessions that had been prepared by the military officers, in which both accepted that they had committed the crimes of "sowing marijuana" and "carrying firearms," each one incriminating the other. They remained incommunicado and at the disposal of the 40th Battalion of the Mexican Army for a period of five days, during which time the torture, interrogation and threats did not stop for a moment. It was not until the night of May 6 that they were presented before an agent with the Federal Public Ministry of Coyuca de Catalán (Federal Public Prosecutions Office, Ministerio Público Federal), and subsequently transferred to the prison of Coyuca de Catalán. They were finally transferred to the prison of Iguala in June.

The victims were not given any opportunity to exercise their right to adequate defense counsel, either when the Army held them in incommunicado detention, or when they were at the Public Ministry. Based on the self-incriminating statements they signed under torture, Rodolfo Montiel was presented as a probable suspect in the crimes of sowing marijuana and carrying firearms, and Teodoro Cabrera was accused of carrying firearms. They were formally detained and processed, first by the First Instance Criminal Court of Mina under criminal case 13/99 (even though the body is not competent to take on the case, as it deals with alleged federal crimes), and subsequently by the Fifth District Court of the 21st Circuit under case file 61/99.

On August 26, 1999, following the questioning of the military personnel who had participated in the illegal and incommunicado detention, torture, and extraction of self-incriminatory statements under coercion, the victims' defense team asked the presiding judge to denounce the events before the Public Ministry so that investigations could be initiated. In response, the Fifth District Judge ordered the Federal Public Prosecutions Office to open the initial investigation (Averiguación Previa) into the alleged participation of military officers Artemio Nazario Carballo, Calixto Rodríguez Salmerón, José C. Calderón Flabiano and others in the crime of torture. On September 30, 1999, the Federal Public Ministry of Coyuca de Catalán, Guerrero state, began the initial investigation as ordered.

In November, 1999, the Federal Attorney-General's Office (Procuraduría General de la República, PGR) declared itself incompetent to continue investigating the torture and abdicated responsibility to the Military Attorney General of Justice (Procuraduría General de Justicia Militar, PGJM), on the basis that the officers allegedly responsible for the crime were military officers in active service.

The initial investigation was transferred to the Military Public Ministry of the 35th Military Zone in Chilpancingo, Guerrero towards the end of November 1999. The military investigator resolved and shelved the investigation on June 13, 2000, concluding that there was no evidence to support the torture charge. It is important to note that up until this time, the case file consisted of the three statements of officers Artemio Nazario Carballo, Calixto Rodríguez Salmerón, and José C. Calderón Flabiano, who ratified the information previously given and denied that they had practiced torture. The investigator failed to carry out basic tasks, such as taking statements from the victims and from witnesses who saw the military operatives, and undertaking medical examinations of the victims.

The victims' defense team filed a complaint with the National Human Rights Commission (CNDH). On July 14, 2000, the CNDH issued recommendation 8/2000, addressed to the national defense ministry, but omitted to state its position over the unconstitutionality of the competence of the Military Attorney-General for the torture investigation.

As a consequence of the recommendation issued by the CNDH, the PGJM re-opened the initial investigation on September 29, 2000. Yet it was not until February 10, 2001, seventeen months after the investigation was initiated, that the military public ministry went for the first time to the Iguala de la Independencia prison, in Guerrero, for the victims to ratify their complaint against torture. This explains why, to date, the investigation has not been completed, and why the crimes against the personal integrity of the victims have yet to be clarified and those responsible identified and punished. The public ministry has not even carried out the corresponding criminal actions, nor has it handed back authority to the PGR to duly investigate the events.

Since the ratification procedure of February 10, 2001, the victims' defense counsel has presented the Public Ministry with a communiqué containing evidence, and has requested that the Ministry abdicate responsibly for the case to the PGR on the basis of article 13 of the Mexican Political Constitution, because the victims of the crime are civilians, and because torture does not constitute a crime against military discipline. The request has yet to meet with any response from the Eighth Official of the Military Public Ministry of the Central Sector of the military Attorney General's Office.

On August 28, 2000, the Fifth District Judge of the 21st Circuit Court, based in Iguala, Guerrero, sentenced Rodolfo Montiel to six years and eight months of imprisonment, and Teodoro Cabrera to ten years of imprisonment. The sentence was based on the confession extracted from the victims under torture, incommunicado detention, and without access to a lawyer.

Both the appeal against the sentence that was presented before the First Unitary Tribunal of the 21st Circuit, which gave rise to criminal case TOCA No 406/2000, and the Amparo No. 117/2001 processed before the Second Collegiate Tribunal of the 21st Circuit Court, complain that the confession used by the judge to condemn the victims was extracted under torture. On May 9, 2001, the Amparo Appeals Court ordered that the medical examination relating to the torture suffered by the victims be admitted as evidence. The defense offered as proof before the First Unitary Circuit Court, in the "re-run" of the hearing, a medical report issued by forensic

experts Morris Tidball and Christian Thramsén. However, on July 16, 2001, the Unitary Court once again confirmed the guilty sentence against the victims.

On October 19, 2001, Digna Ochoa, formerly a member of Montiel and Cabrera's defense team, was assassinated. Five days later, on October 24, 2001, the victims' defense counsel presented the amparo, challenging the sentence issued by the Unitary Circuit Court on July 16, 2001. On November 8, 2001, Mexican President Vicente Fox freed Rodolfo Montiel and Teodoro Cabrera.

The State of Mexico, through members of the Army and other agents, effected a horrible reprisal on the two campesino ecologists for the "crime" that they had committed: of having an environmental conscience, participating in and steering an independent organization of campesinos from the region, and defending the forests and those who depended on it against ignorance, abuse, and the appropriation of its natural resources. The harm to the environment and the livelihoods of the campesinos of Guerrero that Montiel and Cabrera fought to expose was finally recognized by the Mexican government nineteen months after the detention and torture of the two leaders: on December 6, 2000, the federal Attorney General for the Protection of the Environment (PROFEPA) acknowledged the grave damage caused to the ecosystem of the Sierra de Petatlán and cancelled seven of the main logging permits that had earlier been granted, among them El Mameyal, Montiel's native community and the origin of his environmental struggle.⁶

Fortunately, the crucial work performed by Rodolfo Montiel and Teodoro Cabrera has been widely recognised by important organizations that work in defense of the environment and human rights, including Amnesty International and the Sierra Club. This recognition culminated in Mr. Montiel's receiving (while incarcerated) the prestigious Goldman Environmental Prize⁷,

⁶ The deforestation that was denounced by environmental organizations has been conclusively proven. According to a study by the National Commission for Knowledge and Use of Biodiversity (CONABIO), which answers to the federal executive, in just eight years, from 1992 to 2000, forty percent of the forest (86,000 hectares) of the Sierra de Petatlán y Coyuca de Catalán, was lost. But this did not take place before another member of OCESP suffered a similar fate: on March 13, 2000, gunmen in Coyuca de Catalán abducted Maximino Marcial Jaimes, an OCESP member from Pizotla.

⁷ The *Goldman Environmental Prize* was created to honor people who have stood out because of their efforts in defense of the ecosystem and is given to representatives of the six global regions. This important prize was created in 1990 with the aim of demonstrating the international nature of environmental problems, of attracting public attention to critical world issues, and as recompense to people who have pushed for the creation of exceptional environment projects. Environmental organizations consider it the Nobel Prize of the environmental world.

the Sierra Club's "Chico Mendes prize"⁸, the "Don Sergio Méndez Arceo" human rights prize⁹ and the "Roque Dalton prize."¹⁰

III. THE NEED TO "DEFEND THE DEFENDERS": THE WORLDWIDE PATTERN OF ABUSE OF THE RIGHTS OF ENVIRONMENTAL DEFENDERS

In early 1999, the human rights organization Amnesty International and the American environmental organization Sierra Club announced a joint campaign to highlight attacks on environmental defenders and mobilize pressure on governments that abused the rights of those defenders. In a subsequent report entitled "Environmentalists Under Fire: Ten Urgent Cases of Human Rights Abuses," the two groups underscored the severity of the human rights abuses of environmental defenders:

Today, in too many countries, it is dangerous business to be an environmentalist. In democracies and dictatorships, in developed and developing economies, the basic human rights of environmental activists are being abused... We believe the human rights and environmental challenge of the next decade will be to defend the people who defend the environment- to fight for the rights of citizens worldwide who risk their lives by speaking out to protect our planet. The goal of this joint endeavor is to shine a bright light on nations where human rights abuses are being committed against environmental activists and to take action immediately to stop the abuses suffered by environmentalists who are being beaten, harassed, detained, raped, tortured, and murdered.¹¹

CIEL and CEDHA have compiled their own "report" of cases from around the world in which environmental advocates have had their fundamental rights abused. Sadly, the report that follows in this section of our brief, while containing far more cases than the ten urgent cases described in the Amnesty/ Sierra Club report, is certainly not exhaustive. It does, however, establish the existence of a pervasive world-wide pattern - particularly acute in the Americas- in which those who speak out on behalf of the disenfranchised and powerless segments of society in defense of their right to a healthy environment are systematically singled out for persecution as part of a deliberate attempt to silence and intimidate them and those on whose behalf they speak. The violation of the human rights of Rodolfo Montiel and Teodoro Cabrera by the state of Mexico is internationally recognized as one of the prime examples of this global pattern.

⁸ This prize is given by the Sierra Club, a U.S. environmental organization founded in 1892 with more than 600,000 members, whose mission is to promote the responsible use of ecosystems and natural resources, to educate and stimulate humanity to protect and restore the quality of the environment. The *Chico Mendes* prize is given in recognition to the person or non-governmental organization outside of the United States that has demonstrated extraordinary valor in its efforts to protect the environment.

⁹ The *Don Sergio Méndez Arceo* national human rights prize is given to acknowledge, stimulate, and support organizations, groups and persons who have stood out for their bravery in defending and promoting a culture of respect for human rights in Mexico. It is given in honour of Don Sergio Méndez Arceo VII Bishop of Cuernavaca, Morelos, who was recognized for his work in defense of the human rights of underprivileged people.

¹⁰ The *Roque Dalton Medal* has been awarded since 1985 by the Council of Cooperation with Culture and Science in El Salvador, to praise and stimulate different contributions towards peace, independence, sovereignty, self-determination, solidarity, conservation and promotion of a Latin American culture and in particular a Salvadorean culture.

¹¹ "Environmentalists Under Fire: Ten Urgent Cases of Human Rights Abuses," Introduction to the 2nd edition (January, 2000) at 3.

As one reviews the cases that follow, organized country by country, it is crucial to note that the underlying environmental issue which led to the violation of the human rights of the advocate almost invariably concerns the environmental degradation of land used or owned by indigenous and/or poor and politically powerless local peoples.

This is basically the same pattern noted by the Special Rapporteur in her review of cases brought to the Human Rights Committee and to the Inter-American Commission on Human Rights by or on behalf of indigenous peoples. The Special Rapporteur stated that she was impressed by the fact that *“the human rights violations at issue almost always arise as a consequence of land rights violations and environmental degradation and indeed are inseparable from these factors.”* (Emphasis added).¹²

The fact that violations of the human rights of environmental advocates typically arise against the backdrop of disputes over land and the environmental degradation of land has two equally disastrous ramifications.

First, it means that the abuses of individual human rights of environmental advocates are occurring as an additional consequence of the violation of other human rights – typically the rights to life, property, culture, health, and a healthy environment – of the affected peoples they represent.

Second, it means that the abuses of human rights of environmental advocates will, in turn, result in additional violations of the affected people's rights. This occurs by virtue of the “chilling effect” that these individual violations have on the larger group, deterring the group from exercising its own rights to challenge the initial human rights violations that have been visited upon them. It is a vicious circle that must be broken.

Brazil

1. Chico Mendes and the Amazon rainforest

The destruction of the Amazonian rainforest achieved worldwide prominence with the assassination of rubber tapper Chico Mendes on December 22, 1988. The struggle of the rubber tappers to protect the rainforest and create “extractive reserves” in which they could continue to practice their livelihoods at sustainable levels brought them into sharp conflict with landowners extracting timber and replacing it with cattle pasture.¹³

¹² “Human Rights and the Environment: Final Report prepared by Mrs. Fatma Ksentini, Special Rapporteur,” E/CN.4/Sub.2/1994/9, July 6, 1994 at para.88.

¹³ “Defending the Earth: Abuses of Human Rights and the Environment,” report prepared by Human Rights Watch and the Natural Resources Defense Council, June 1992 (hereinafter “NRDC”), at 1.

Yet the killing of Chico Mendes was only one of 1,681 murders of rural workers and others involved in the struggle over land in rural Brazil between 1964 and 1992. Most of the murders were committed with impunity.¹⁴ In the past twenty-five years, 714 rural workers have been executed in the state of Pará alone.¹⁵

2. Ademir Federicci and the Damming of Amazon rivers

In the late 1980's, the Kayapo indigenous people forced the Brazilian government to abandon plans to build six huge dams on the Xingu River. The international uproar over environmental and human rights concerns was enough to persuade the World Bank to suspend financing for all dams in the Amazon Basin. Eletronorte, the state-owned electrical utilities company, is back on the Xingu River with plans to build the "Belo Monte" dam. The government's \$40 billion top-down plans include building 6,000 miles of highway, mines, power lines, gas and oil fields, and logging concessions throughout the Amazon.

Critics feel certain that more dams will be built upstream to increase efficiency, with huge reservoirs that will double the amount of submerged rainforest in Brazil. Dams on the Xingu River would flood parts of the Xingu Indigenous Park, threatening the survival and cultural integrity of at least fifteen indigenous tribes, including the Kayapo. The Transamazonian and Xingu Development Movement (MDTX), a coalition of 113 organizations representing farmers, women, indigenous peoples, youth, scientists and religious groups, argues against the dam and for sustainable development, land reform, indigenous rights and environmental protection.

The battle has turned bitter and bloody. Since June 2001, five grassroots activists have been murdered and hundreds jailed. The coordinator of MDTX and the Belo Monte dam's most prominent critic, Ademir Alfeu Federicci, known to his neighbors as Dema, was murdered on August 25, 2001. In addition to voicing environmental and human rights concerns, and co-authoring the report "SOS Xingu: A Calling for Good Sense concerning the Damming of Amazon Rivers," Dema denounced the misuse of public monies on projects financed by the Sudam (Amazon Development Superintendence) in the Transamazonian region, and the corruption among Xingu government officials who stood to gain from Eletronorte's compensation payments.

Instead of opening serious democratic debate about the project, Eletronorte has intimidated opposition groups. In a letter to the president, Dema had written, "All public meetings against the dam have been filmed by police and intelligence forces. This is unacceptable in a debate over the future of the Amazon."¹⁶

¹⁴ *Id.* at 2.

¹⁵ Environmental Defense's website at <http://www.environmentaldefense.org/article.cfm?contentid=1548>.

¹⁶ Larry Rohter, "Amazon Populist's Killing Exposes Bitter Conflicts," Oct. 12, 2001, *The New York Times*, at <http://forests.org/archive/brazil/ampokill.htm>; "Protect Amazon Rivers, Forests and Activists/Brazil," Nov. 19, 2001, *Global Response* at <http://forests.org/archive/brazil/pramrive.htm>.

3. Threats Arising out of Continued Logging of the Amazon Rainforest

In early October 2001, while working to stop illegal logging of the Amazon forest, Paulo Adario, Greenpeace activist, received death threats.

The links between this incident and the preceding one revolve around conflicts over land and development in the region. Regional government officials have been receiving large funds to promote development projects, including dam, agriculture, and logging projects. Most of the land in the region is owned by a few large landowners, leaving poor and landless farmers without the land they need for their survival. Landowners have responded by putting out “hits” on leaders of the movement, and government officials have not actively pursued prosecuting the landowners suspected of harassment, threats, and murders for hire.¹⁷

Burma

In 1988, when he was just eighteen years old, Ka Hsaw Wa joined a massive student demonstration, demanding human rights, democracy and an end to military rule. He was arrested and tortured for three days. The nation-wide, peaceful protests ended in violence when the military dictatorship killed an estimated ten thousand people in one of the most ruthless and bloody crackdowns in recent history. Ka Hsaw Wa was forced to flee his home and go into hiding in the deep forests near the Thai border, where he discovered that human rights abuses in the regions inhabited by Burmese ethnic people were extensive. Soon he realized how intimately these abuses were connected to the exploitation of natural resources.

In order to acquire the foreign currency needed to maintain its illegitimate hold on power, the military junta sold huge logging, fishing and gem concessions, as well as a major natural gas concession with its related overland pipeline. In pursuing these projects, the military has committed a variety of severe and pervasive human rights violations. Ka Hsaw Wa traveled to militarized areas, often at great risk to his life, in order to document the destruction and abuse. In 1995, he co-founded Earth Rights International (ERI) with the express purpose of exposing and raising awareness of the inextricable links between human rights and the environment in Burma and beyond.

Much of his work has focused on documenting human rights and environmental abuses associated with the Yadana Gas Pipeline Project - the largest foreign investment in Burma. The pipeline project involves a consortium, including transnational corporations UNOCAL (US) and Total (France), who have contracted with the Burmese army to provide security for the project. It traverses the Tenasserim rainforest, inhabited by diverse ethnic peoples and home to countless rare and endangered species. Many of the ethnic peoples have reported being forced by Burmese military to work as porters for troops or to work on infrastructure construction. Thousands of others have been forced to abandon their villages and relocate. Protests of the project have not been allowed.¹⁸

¹⁷ “Death Threat Will Not Deter Greenpeace Campaign to Protect the Amazon,” Oct. 10, 2001, Greenpeace at <http://forests.org/archive/brazil/dethwill.htm>.

¹⁸ Ellen Alcorn, “The Unlikely Activist,” Nov. 1999, Conde Nast Traveler at <http://www.earthrights.org/news/conde.html>; The Goldman Prize’s website at

Chad

An international oil consortium led by US-based Exxon Mobil is developing the Doba oil fields in the southern region of Chad and building a 1,050-kilometer pipeline from Doba to Cameroon's Atlantic coast. The \$3.5 billion project – one of the largest construction projects in Africa – raises serious concerns about the treatment of local and indigenous people in both countries, as well as its environmental consequences. Efforts to intimidate and silence environmentalists and human rights activists in both countries continue.

Ngarléjy Yorongar le Moïban, the only opposition member of the Chadian parliament, was jailed after he spoke out against the project. Yorongar accused a colleague of taking money from one of the oil companies to finance his re-election campaign. After months of being trailed by members of the National Security Agency, and receiving anonymous threats, he was arrested and sentenced to three years in prison for making "defamatory statements."

On May 28, 2001 shortly after the Chadian presidential elections in which President Idris Deby was declared the winner, Chadian security forces seized all six oppositional leaders who had contested the election results, including Yorongar. Yorongar was detained and reportedly tortured, and had to seek medical attention in Paris after his release. A month earlier, in April, 2001, Yorongar had filed a request with the World Bank's Independent Inspection Panel to investigate claims that people and the environment in the project area have or are likely to suffer harm as a result of failures and omissions in the design, appraisal, and supervision of the project by the Bank. Thanks to international pressure from governments and NGOs, Yorongar was released 10 months after his arrest.

The efforts to silence Yorongar were not an isolated incident. Chad's overall human rights record is abysmal. Chadian security forces have reportedly killed more than 200 unarmed civilians in the Doba oil region, but no investigations into the massacres have taken place.¹⁹

China

China is currently undertaking an ambitious plan to build the world's largest hydro-electric dam. At a cost of \$77 billion, the Three Gorges Dam will stretch for nearly a mile over the Yangtze River, creating a 400-mile-long reservoir flooding hundreds of miles of China's most fertile farmland. It will also flood eight hundred villages and displace nearly two million residents. But despite the potentially catastrophic consequences of the project, dissension continues to be silenced and ignored.

In 1989, after challenging the Three Gorges project in China's press, Chinese environmental journalist Dai Qing edited and published the book "Yangtze! Yangtze!" in which she and other authors criticized the Three Gorges project. Her work contributed to the Chinese government's decision to temporarily postpone construction in 1989. Then, in the wake of the military

<http://www.goldmanprize.org/recipients/recipients.html>; *see generally* EarthRights International's website at <http://www.earthrights.org>.

¹⁹ Amnesty International's Just Earth Campaign's website at <http://www.amnesty-usa.org/justearth/countries/chad-cameroon2.html>; The International Right to Know Campaign's website at <http://www.irtk.org/chad.html>.

crackdown in Beijing in June of that year, the book was banned in China and Dai Oing was imprisoned for 10 months on the grounds that her work had "abetted the turmoil" of the pro-democracy movement. Despite national and international opposition to the project and a decided lack of international investors, the Chinese government began work on the Three Gorges Dam in 1994. Construction is expected to take twenty years. Believing they still have a chance to stop construction, Dai Qing and international environmental groups continue to challenge the dam.²⁰

Colombia

1. Advocates for the U'Wa People's Struggle Against Oil Exploration on their Lands

The indigenous U'Wa people have been actively trying to stop oil drilling on their ancestral lands since Occidental Petroleum was granted oil exploration rights in 1992. The U'Wa's belief system dictates that they preserve the environment around them, and they believe oil to be the blood of Mother Earth. Their ancestral lands are located in Andean cloud forests that house many endangered species. Oil exploration is threatening these forests by opening them up for access to hunters and the general dangers associated with oil exploration, extraction, and transportation. With the intense conflicts in Colombia, government security forces have been brought into the drilling area. A number of human rights violations have been committed against U'Wa who have protested the drilling, including shootings and disappearances, as was the case in March 2000, when Amnesty International condemned the excessive use of force by police and army.

Berito Kuwaru'wa has been designated by the U'wa as their spokesperson to the outside world. He has waged an international campaign against drilling in the U'wa homeland, and has garnered the support of environmental and human rights groups around the world. In 1995, he successfully appealed to the Colombian courts to change the decision allowing Occidental to explore for oil. The government, however, exerted pressure on the courts to revoke the ruling, and the license was reauthorized. The U'wa have also taken their case to this honorable Commission, where they have argued that their right to a clean environment and the basic right to life will be denied if the government continues on its present path of oil development.²¹

In July 1997, Kuwaru'wa was pulled from his bed by a group of hooded men with rifles. The assailants demanded that the tribal leader sign an authorization agreement, signing away his tribe's heritage, or else be killed. After refusing, he was beaten and pushed off an embankment into a river where he nearly drowned.

Just last year, this honorable Commission received reports of the murders of Ingrid Washinawatok, a member of the indigenous community of the Menominee Nation who was known for her work on behalf of humanitarian causes; Lahe'ena'e Gay, Director of Pacific Cultural Conservancy International in Hawaii; and Terence Freitas, environmentalist and

²⁰ "The Three Gorges Dam in China: Forced Resettlement, Suppression of Dissent and Labor Rights Concerns," Human Rights Watch Report (1995); Sierra Club's website at <http://www.sierraclub.org/human-rights/china/dragon.asp>.

²¹ IACHR Case No. 11.754.

supporters of protection for the U'wa's environment.²² The victims were kidnapped on February 25, 2001, as they were traveling from Saravena (Arauca) to the town of Cubará (Boyacá), where the headquarters of the Association of Town Councils and Traditional Authorities of the U'wa indigenous community of Colombia is located. The bodies were found in the locality of La Victoria, Venezuela, by the judicial police of that country, with multiple gunshot wounds and signs of having been bound and blindfolded.

Given these facts, the Commission expressed its most vigorous condemnation of the criminal abduction and subsequent murder of these three defenders of the rights of indigenous peoples. The Commission also called upon the Colombian State to take firm steps to investigate, identify and punish those responsible for these atrocious crimes.²³

2. The Embera-Katio People and the Urra dam

The Embera-Katio people of Colombia have been protesting the construction of the Urra dam because they fear it will flood and destroy their ancestral lands, forcing the relocation of thousands of people, and likely destroying their fishing grounds. Nor have they been consulted during the planning process. In a 1998 decision, the Constitutional Court of Colombia held that the government has issued the permit to construct the dam in violation of a host of fundamental human rights of the Embera- Katio people.²⁴

This past June, one of their leaders, Kimy Domico, was reportedly abducted by paramilitary troops.²⁵ In the past, other leaders within the community have been killed or disappeared:

As is publicly known, the Embera-Katío community has been hard hit by paramilitary violence during the period under study. Alejandro Domicó Domicó was executed on February 1, 1999, in the municipality of Tierralta, by the Autodefensas Campesinas de Córdoba y Urabá, and Lucindo Domicó Cabrera, a member of the Cabildo Mayor del Río Sinú y Río Verde, and spokesperson in the negotiations with the Urrá S.A. company, was assassinated on April 24, 1999, in the municipality of Tierralta, department of Córdoba, allegedly by paramilitaries.

With respect to this question, as is public knowledge, in 1999 several incidents have affected the U'wa and Embera Katío indigenous groups in which lives have been lost. These incidents display the discontent in these communities, or at least of a large part of their members, with the allocation of territories for the exploitation of natural resources, the issuance of environmental licenses to private companies, and the transparency of the consultation processes.²⁶

²² IACHR Press Release no. 5/99, March 8, 1999.

²³ *Id.*

²⁴ IACHR Annual Report (1999), Chapter X, fn. 110.

²⁵ Amnesty International (AI) Urgent Action (UA) 138/01, AMR 23/058/2001.

²⁶ IACHR Annual Report (1999), Chapter X, paras. 146 and 150; *see also* AI UA 21/99, UA 178/98, and UA 236/98.

3. Carlos Vargas, Environmental regulator

A paramilitary death squad in Eastern Colombia, where oil company British Petroleum (BP) operates a massive oil field, assassinated Carlos Vargas on December 2, 1998. Vargas had been elected director of the environmental regulator, Corporinoquia, in January, 1998. He was not the establishment candidate, and won by just one vote. Vargas was forty-nine and married with a daughter.

The death squad has been linked to the local army brigade set up to protect BP's sprawling installations. Vargas was responsible for a huge area of south-east Colombia dominated by BP and other oil companies. He awarded environmental licenses, monitored compliance and, when necessary, imposed fines and shut down oil wells.

A report by the Colombian secret police, DAS, one week after Vargas's murder, said Vargas was due to meet government officials in Bogota on December 4 to discuss non-payment of reparations for environmental damage caused by the oil companies. Court documents also reveal Vargas was about to go public with a dossier on corruption between local officials and oil companies, including BP, over the awarding of environmental licenses.

The DAS report further said that Vargas's enforcement of environmental regulation had cost oil companies millions of dollars, and claimed "the oil industry was interested in removing [the regulator] from his post." Vargas' wife, Nelly, later testified to the Attorney General's human rights unit that her husband had always refused to do "deals under the table" with the oil companies.

Four months before his murder, Vargas organised a filmed public meeting to oppose BP's application to the Environment Ministry for one all-encompassing exploration license which would bypass Corporinoquia's oversight.²⁷

El Salvador

Ricardo Navarro founded the Salvadoran Center for Appropriate Technology (CESTA) to address his country's critical environmental and social needs. El Salvador's protracted civil war hurt the environment to such an extent that it became one of the most degraded countries in the Western Hemisphere.

As president of CESTA - El Salvador's largest environmental NGO - Navarro has worked in partnership with urban and rural communities to provide technical assistance for an array of appropriate technologies.

Navarro has been outspoken on a number of national issues including waste trafficking. On national television in 1993, he successfully condemned a proposal to transfer old tires from New Orleans to El Salvador, where they were to be burned. Navarro has led an initiative to save El Espino, one of the few-forested areas left near the capital, San Salvador, and an important source

²⁷ London Sunday Times, April 21, 2002; "Bulletin of the Colombia Solidarity Campaign, No. 7, July - September 2002," Columbia Solidarity.

of the city's water. He has asked the legislative assembly to declare the forest, which local politicians want to turn into a housing development, a protected zone.

Navarro has received numerous death threats because of his work.²⁸

Guatemala

In the past, indigenous communities have been especially susceptible to the impacts of environmentally destructive development projects in Guatemala. When the Chixoy Dam was being constructed in the early 1980's, the entire indigenous Mayan community of Rio Negro was forcibly displaced, and more than 440 members were killed as a result of their peaceful opposition to the project. There is an ongoing trial to provide compensation and reparations.²⁹

The problem continues to this day. In the municipality of El Estor, around Lake Izabal, mining and logging interests in collaboration with local landowners, military personnel, and local officials have threatened the local Mayan population. In the 1960's, the Guatemalan government granted a forty-year strip mining concession to the International Nickel Company (INCO) for a tract of land north of Lake Izabal. INCO formed a Guatemalan company (EXMIBA), which has close relations with the military and local landowners, and has violently evicted Mayans from the land without any government response. EXMIBA has allowed local landowners to illegally log on the company's leased grounds and the lands of the indigenous peoples.

The Association for the Development of the Maya Q'eqchi People of El Estor has denounced the logging. On April 21, 1999, one of the organization's leaders, Carlos Coc Rax, disappeared from Guatemala City, where he had been negotiating land agreements for indigenous communities.³⁰ This is not the first instance of indigenous community members being harassed and killed. In 1997, Rosa Pec Chub was killed, most likely by a local landowner who was later acquitted of any charges. There is a history of environmental activists in Guatemala being harassed, threatened, and murdered because of their activism.

Two members of the Consejo Nacional de Areas Protegidas (CONAP), Erwin Haroldo Ochoa Lopez, a lawyer, and Julio Armando Vasquez Ramirez, an administrative assistant, were assassinated on February 29, 2000 in Puerto Barrios, Izabal. They are believed to have been murdered as a result of their activities and that of their organization, which promotes the protection of the ecosystem and the environment in the region of Izabal. In particular, they fought against illegal deforestation, dredging, and loss of sediment in the region of La Graciosa, and against the destruction of swamps in the Chocon Machacas.³¹ Towards the end of March 2001, a member of the National Forestry Institute (INAB), Helmut Rolando Ramirez was murdered. In May 2001, Gustavo Augusto Suchite, an environmentalist with the Ecology

²⁸ The Goldman Prize's website at <http://www.goldmanprize.org>.

²⁹ AI AMR 34/001/2002 and AMR 34/003/2002.

³⁰ AI UA 97/99.

³¹ Report of the Observatory for the Protection of Human Rights Defenders, a joint program of the FIDH and the OMCT, GTM 001 / 0003 / OBS 011, March 6, 2000 *cited in* IACHR Guatemala Report, Chapter VI, para. 33, fn. 29.

Foundation (FUNDAECO), was shot and killed in the protected area of Sierra Caral, Morales, Izabal. All of these cases remain unresolved.³²

Honduras

Especially during the past ten years, Honduras has been the scene of numerous violations of the rights of environmental human rights advocates:

-On February 6, 1995, environmental activist Blanca Janeth Kawas Fernandez was murdered. Kawas was the president of PROLANSTATE, an environmental organization fighting illegal logging and government-backed development (the expansive advance of African palm plantations in Leán by Cressida Corporation) in Punta Sal National Park. Honduran activists suspected that her murderer received government protection. The murder remains unpunished.³³

-The feverish proliferation of industrial shrimp aquaculture since 1986 led to extensive clearing of coastal mangroves, irresponsible fisheries management and the destruction of estuaries, and resulted in tremendous pressure on the once rich fisheries of the Gulf of Fonseca. The shrimp were being raised primarily for export, and local fishermen were increasingly restricted from common fishing grounds as the coast was privatized.

Jorge Varela, a Honduran conservationist, became recognized internationally as an important figure in the global struggle to contain this unsustainable model of development. Varela co-founded an organization (CODDEFFAGOLF) in 1988 as part of an emerging grassroots movement challenging the appropriation of natural resources. Representing ten thousand subsistence fishermen, farmers, and local men and women, Varela helped limit the expansion of shrimp farming in the Gulf's coastal wetlands. He successfully pressured the Honduran government to establish protected wildlife and fishing refuges, and to enact a moratorium on the construction of new shrimp farms.

These accomplishments did not come easily. Two of CODDEFFAGOLF members have been killed, and Varela has had his life threatened repeatedly.³⁴

-On October 18, 1997, Carlos Escalares was murdered in Tocoa, Colón department. Escaleras had led a struggle against the construction of an African palm processing plant near the town that would have destroyed local water sources and threatened the health of its inhabitants.³⁵

-On May 18, 1998, Carlos Antonio Luna Lopez, an environmental activist in Olancho department, was murdered. He headed a struggle against the exploitation of forests in Catacamas by powerful business on the region, and protested as well a controversial hydroelectric project known as Patuca II, which threatened indigenous peoples.³⁶

³² See generally Amnesty International's website at <http://www.amnesty.org>.

³³ "Eco-Justice: Linking Human Rights and the Environment," Sachs, Worldwatch Paper 127, December 1995, at 19, and fn. 6, 32.

³⁴ The Goldman Prize's website at <http://www.goldmanprize.org>.

³⁵ See Amnesty International's website at <http://www.amnesty.org>.

³⁶ See "Ahuas Declaration," May 24, 1998 at <http://www.geocities.com/RainForest/Canopy/7525/declarations.html>

- In October, 1998, Father Pedro Marchetti first received death threats because of his commitment to bring to justice the killers of Carlos Escaleras. In May, 2001, Father Marchetti and another human rights defender, Santos Figueroa, learned of a plot to kill them because their continuing efforts to punish Escaleras' killers. Father Marchetti has also worked to normalize land rights and to prevent owners from using that land to grow environmentally destructive crops in the region of Aguan.³⁷

-The executive power granted the company Energisa a permit for the construction of a four megawatt dam known as "El Tigre" along the Babilonia river in Olancho department in the Sierra de Agalta National Park. This was done without consulting the affected communities and without fully evaluating the possible environmental impact of the project. The implementation of the hydroelectric project could displace 20,000 people and leave eleven communities without access to water.

In May, 2000, two indigenous human rights defenders, Salvador Zuniga and Berta Caceres, were harassed and intimidated because of their campaigning against the construction of the dam.³⁸ Since January 2001, members of the local population protesting the project have been facing harassment and regular death threats.

On June 30, 2001, the community leader Carlos Roberto Flores, who was deeply involved in the struggle to stop the project, was shot in front of his family by six security guards from the company.³⁹

- Amnesty International has documented numerous cases in recent years where local communities, many of them indigenous, have been threatened and their leaders killed in apparent reprisal for highlighting environmental damage and campaigning in favor of community rights. The Honduran authorities have done little to bring those responsible to justice. At least twenty-five indigenous leaders have been reported murdered in the last ten years. Numerous people involved in the protection of the environment have been threatened or killed.⁴⁰

India

1. Mahesh Chandra Mehta

Mahesh Chandra Mehta, General Secretary of the Indian Council for Enviro-Legal Action, is an environmental lawyer whose petitions have shut down some 2,000 dirty industrial operations in India. He has faced death threats regularly and has at times been pressured by large gangs of hired thugs to drop his cases.⁴¹

³⁷ AI UA 126/01.

³⁸ AI UA 166/00.

³⁹ AI UA 169/01; OMCT Appeals 23/7/2001, "Honduras: use of violence against opponents to the construction of two dams."

⁴⁰ AI UA 169/01.

⁴¹ Sachs, *supra* note 33, at 20, and fn. 32.

2. Medha Patkar

Medha Patkar has been a central organizer and strategist of Narmada Achaon Andolan (NAA), a people's movement organized to stop the construction of a series of 3,000 dams planned for India's largest westward flowing river, the Narmada. Upon completion, the largest dam in the project, Sardar Sarovar, would submerge more than 370 square kilometers of forest and agricultural land. The dam and its associated canal system would also displace some 320,000 villagers, mostly from tribal communities, whose livelihoods depend on these natural resources.

Patkar has been arrested, detained, and beaten for her leadership and advocacy. She is also far from alone in being subjected to violations of her human rights. Leading anti-dam activists have been subjected to short-term detention, protesters have been beaten at demonstrations, and wide spread use of excessive force to intimidate activists and break up legitimate protest gatherings.⁴²

3. The Enron power plant in Maharashtra

In 1992, the government of India announced that it was privatizing its energy sector. The government of Maharashtra state next announced that the Enron Corporation would build the largest electricity generating plant in the world for Maharashtra at a cost of approximately \$3 billion. The operating company would be known as the Dabhol Power Corporation—a joint venture of three U.S. companies: the Enron Corporation, General Electric, and the Bechtel Corporation.

Leading Indian environmental activists and representatives of villagers' organizations in the affected area organized to oppose the project and, as a direct result of their opposition, were subjected to beatings and repeated short-term detention. In many cases, they were detained for periods ranging from several days to two weeks without being produced before a magistrate as required under Indian law. Leaders of the opposition groups were singled out in particular. The government failed to investigate or prosecute those who attacked the demonstrators.⁴³

Indonesia

1. Loir Botor Dingit

The Bentian people, a Dayak group from East Kalimantan in Indonesian Borneo, have a unique traditional system of rattan cultivation for export. Not only does it provide a source of income, the system also conserves forest biodiversity. In July 1996, Loir Botor Dingit, who had spent most of his life as a rattan farmer, was selected by the Bentian Tribal Council to be Paramount Chief. Dingit then organized forest dwellers and brought national and international attention to the plight of these communities whose territories were being seized by timber corporations.

⁴² Arundhati Roy, "Before the Flood" at <http://www.nrdc.org/amicus/p12s1.htm>; NRDC, *supra* note 13, at pp.24-38; Amnesty International, <http://www.amnesty-usa.org/justearth/countries/india2.html>.

⁴³ "The Enron Corporation: Corporate Complicity in Human Rights Violations," Human Rights Watch Report (1999) at §§ I, V.

Starting in 1986, Dingit and the Bentian people petitioned the Indonesian government for the issuance of land ownership certificates for their forested territories. In 1993, an Indonesian logging company owned by a close associate of former President Suharto, bulldozed a number of Bentian rattan forest gardens and grave sites. Dingit visited the affected families and helped make lists of the crops damaged. When Dingit attempted to report the damage to the company and the government, he became a target of reprisals, including criminal charges.⁴⁴

2. Yosepha Alomang

The Indonesian province of Irian Jaya, known locally as West Papua, is among the most biologically diverse places on the planet. It is home to severely at-risk virgin tropical rainforests and the world's largest gold and copper mine owned by Freeport McMoRan Copper & Gold, Inc., of Louisiana. For 30,000 years, West Papua's indigenous peoples, including the Amungme, lived a sustainable existence, but three decades of mining practices permitted by the Indonesian government have destroyed rainforests, polluted rivers, and displaced communities. Freeport dumps at least 200,000 tons of tailings into local rivers every day, spreading deadly pollutants over vast areas. Meanwhile, Indonesian soldiers repeatedly, often brutally, have suppressed peaceful protests against the mine.

In 1994, soldiers held the Amungme community leader Yosepha Alomang for a week in a room knee-deep with water and human waste, without food or drink. For six weeks, she was tortured and interrogated for allegedly giving food to Papuan fighters resisting Indonesian sovereignty and Freeport's land seizures.⁴⁵

Kenya

1. Wangari Maathai

Professor Wangari Maathai has served as the coordinator of Kenya's Greenbelt Movement, the most successful tree planting and women's empowerment program in Africa. Over the years, Dr. Maathai has been repeatedly beaten and imprisoned for her efforts to preserve Kenya's lands. President Moi labelled her and the Greenbelt Movement as "subversive" when she protested the construction of a skyscraper that would destroy a city park.

For two days in January of 1992, police surrounded her home in Nairobi. On the afternoon of the second day, officers ripped the bars off of a bedroom window, forcibly extracted Dr. Maathai, and took her into custody.

On January 8, 1999, Dr. Maathai and approximately twenty of her supporters (including Members of Parliament and journalists) were attacked by private security guards as they attempted to plant trees in the Karura Forest. Police at the scene did nothing to stop the violence, suggesting that the security guards acted with the support of the government.

⁴⁴ The Goldman Prize's website, <http://www.goldmanprize.org/recipients/recipients.html>.

⁴⁵ *Id.*

The Kenyan Attorney General later apologized for the beating of Dr. Maathai. The Attorney General also promised police protection for Dr. Maathai at any future demonstrations at Karura Forest. However, in February 1999, police violently broke up a peaceful public protest against the land allocation, hurting students and political opposition leaders as they.

On March 7, 2001, Maathai was arrested by police in the Kirinyaga District after travelling with activists to Mutithi to plant trees, erect a billboard criticizing the sale of public forest lands, and collect signatures from those opposed to deforestation in the region. After spending the night in the Wang'uru police station, she was released without charges the next day.⁴⁶

2. Argwings Odera

The abuse of environmental defenders in Kenya continues today. Environmental activist and investigative journalist Argwings Odera was forced to flee Kenya in June, 2001 out of fear for his life. Working together with other environmental organizations in the Coalition on Sondu-Miriu Hydroelectric Power Project, Argwings Odera has actively opposed construction of the Sondu-Miriu Dam on the Sondu-Miriu River in Nyakach in western Kenya.

At a December 26, 2000 protest, Odera was shot in the arm by police, dragged out of his car and beaten while trying to leave the protest, then arrested and held incommunicado for seven days before he appeared in court on January 2, 2001. According to reports, one of the police officers that fired on Odera admitted that they had been aiming at his head so as to "silence him."

Argwings Odera represents a number of environmental organizations and local groups who are opposed to the Sondu-Miriu Dam project. This coalition is concerned about the lack of compensation for the households affected by the project, potential health risks associated with water pollution and clouds of dust resulting from dam construction, nepotism and corruption in the employment of local people for the dam project, and environmental concerns. The project, which is in early stages of construction, has already had serious environmental consequences: Kenyan and international environmental groups report that the project has disrupted the water table of the Kasaye Hills and caused streams to dry up, while the drainage systems are causing soil erosion. The diversion of river water threatens to destroy the habitat of indigenous wildlife.

Citing in part "a response to criticism from environmental campaigners," the Japanese government withdrew its funding of the project in June, 2001. Nonetheless, President Moi, angered by opposition to the project, described local resistance as "sabotage" and promised that the project would proceed even without foreign funding. As of June 2002, the project was 80% completed.⁴⁷

Korea

Yul Choi was a student leader in college, and was later imprisoned for his activism during the late 1970's. During the six years he spent in prison, he read extensively about environmental issues. After he was released, he established the first environmental non-governmental

⁴⁶ *Id.*; Amnesty International's website at <http://www.amnestyusa.org/justearth/countries/kenya2.html>.

⁴⁷ Sierra Club's website at <http://www.sierraclub.org/human-rights/Kenya/.htm>.

organization in South Korea in response to widespread pollution caused by the nation's rapid industrialization.

The government often opposed his movement. He succeeded in evacuating communities affected by a toxic waste-related illness in the coastal city of Onsan. In 1988, Choi became the first chairman of the Korean Anti-Pollution Movement (KAPMA). Because South Korea is highly dependent upon nuclear power, he resolved to inform the Korean public about the problems with nuclear waste disposal. He was put under house arrest for these activities.⁴⁸

Malaysia

The few hundred Dayak Penan tribesmen in the state of Sarawak in Malaysia are the last hunting and gathering peoples in Southeast Asia. The tropical forests they have inhabited for 50,000 years were being extinguished by logging operations until Harrison Ngau Laing, a Dayak Kayan tribe member, took a stand. In the late 1980's, the Malaysian logging industry was clearing five square miles per day, the fastest rate of deforestation in the world. Sarawak, Ngau's community, accounted for 40 percent of Malaysia's total logging production.

While serving as a representative of Sahabat Alam (Friends of the Earth) Malaysia, Ngau sent letters and petitions to government departments and led a blockade by indigenous people of logging camps and access roads. Not surprisingly, the Minister of the Environment, owner of one of the country's biggest lumber companies, showed little sympathy for their cause. In October 1987, Ngau was put under house arrest for almost two years and spent sixty days in jail under the Internal Security Act. For part of this time, he was placed in solitary confinement and interrogated twice daily. After being released, Ngau was forbidden to make press statements, hold a post in any organization, or attend any political or worker gatherings.

Many logging blockade participants who were jailed as a result of their protests were subjected to inhuman and degrading punishment, held incommunicado, and denied counsel until immediately before trial. Unofficial "warnings" by local police were used to intimidate protesters from participating in further actions.⁴⁹

Mexico

On July 14, 2001 members of the 19th Infantry Battalion arrived in the community of Banco Nuevo, Petetlán municipality, Guerrero state. They arrested Gerardo Cabrera González, and took him to Petetlán Barracks. He was reportedly transferred to Acapulco civil prison and charged with illegal possession of arms. Gerardo Cabrera González is a member of the OCESP, the same group in which Montiel and Cabrera have been active. The violation of his human rights represents a continuation of the Mexican government's efforts to intimidate anti-logging advocates in the state of Guerrero.⁵⁰

⁴⁸ The Goldman Prize's website at <http://www.goldmanprize.org>.

⁴⁹ *Id.*; NRDC, *supra* note 13, at pp.56-63.

⁵⁰ Amnesty International's website at <http://www.stoptorture.org/urgent/ua1body.php?viewingua=15&viewingactive=1.htm>

Other Mexican environmental advocates have had their human rights violated by the government of Mexico over the years:

-In 1988, after local officials failed to respond to his complaints, Juventino Gonzalez of Periban, Michoacan, organized a group of citizens to protect a park from illegal logging and to promote a healthy environment. He claimed that he was twice beaten by thugs as a result, that he was threatened repeatedly as well (including by people working closely with the local administration), and that two fellow activists were jailed after denouncing the logging activities.⁵¹

-Fidencio Lopez, mayor of the Oaxaca town of San Mateo Rio Hondo, was shot to death in early 1992 in response to his speaking out against logging interests and powerful landowners who were destroying nearby forestlands. His family complained that officials did very little to investigate the murder.⁵²

-Also in 1992, Dr. Javier Mojica, the leader of an environmental campaign protesting the construction of a shopping mall in Acapulco's only park, was beaten severely in his own home. Local police, who activists believe committed the crime, passed off the assailants as common thieves and neglected to conduct a thorough investigation.⁵³

-Edwin Bustillos, an agricultural engineer, was determined to create a 1.3 million acre biosphere reserve in the Sierra Madre Occidental in Northern Mexico, an area that extends for over one thousand miles and is the most biologically diverse ecosystem in North America, yet where only two percent of the region's old growth forest remains. Bustillo's goal was to protect both the highly endangered ecosystems and the twelve native Tarahumara and Tepehuan communities that have lived in the mountains for two thousand years.

To accomplish this, Bustillos, a native of the Sierra Madre, founded a human rights and environmental organization called CASMAC (Advisory Council of the Sierra Madre) in 1992. As a result of these efforts, two indigenous old growth forest reserves were officially declared by surrounding communities, and CASMAC has developed proposals from ten other communities to integrate all or part of their forests into the Biosphere reserve.

Bustillos has paid a high price for his commitment to the Sierra. Since 1994, he has survived three attempts on his life, and suffers from severe back and head injuries incurred in the attacks.⁵⁴

Nigeria

Human rights and environmental concerns in Nigeria have primarily revolved around the business practices of the major oil companies operating in the Niger Delta. Oil provides eighty percent of Nigeria's revenue.

⁵¹ NRDC, *supra* note 13, at p. 73.

⁵² *Id.* at p.72.

⁵³ Sachs, *supra* note 33, at p.21 and fn. 33, citing NRDC, *supra* note 13, at pp. 73-74.

⁵⁴ The Goldman Prize's website at <http://www.goldmanprize.org>.

Since Royal Dutch Shell struck oil on Ogoni lands in 1958, an estimated \$30 billion worth of oil has been extracted. In return, the Ogoni people, a group of 550,000 farmers and fishermen inhabiting this coastal land, have received little except a ravaged environment. Once fertile farmland has been laid waste by oil spills and acid rain. Uncontrolled oil spills have dotted the landscape with puddles of ooze the size of football fields. Virtually all fish and wildlife have vanished. Meanwhile, out of Shell's Nigerian workforce of 5,000, less than one hundred are Ogoni. For years, the majority of the proceeds from oil sales in Nigeria went directly into the pockets of a few brutal and corrupt military generals, leaving the oil-producing communities to cope with the pollution. Oil companies requested government intervention when faced with peaceful community protest- interventions that resulted in beatings, detentions, killings, and destruction of entire villages.

The residents of Nigeria's delta have suffered greatly for demanding freedom from pollution. Ken Saro-Wiwa, a well-known Nigerian author and television producer, was president of the Movement for the Survival of Ogoni People (MOSOP), an organization set up to defend the environmental and human rights of the Ogoni people who live in the Niger Delta. In May 1994, Saro-Wiwa, who had been briefly imprisoned several times before, was abducted from his home and jailed along with other MOSOP leaders in connection with the murder of four Ogoni leaders. Amnesty International adopted Saro-Wiwa, a staunch advocate of non-violence, as a prisoner of conscience. Meanwhile, the Nigerian military took control of Ogoni land, subjecting its people to mass arrest, rape, execution and the burning and looting of their villages.

In November of 1995, Ken Saro-Wiwa and eight other Ogoni leaders were arrested on trumped-up charges and accused of murder by the Nigerian military. The "Ogoni Nine," as they came to be known, were tried by a military tribunal and found guilty. Governments and citizens' organizations worldwide condemned the trial as fraudulent, and urged the Nigerian dictator to spare Saro-Wiwa's life. They also called upon Shell to intervene. On November 10, 1995, Ken Saro-Wiwa and his eight co-defendants were hanged. The only crime he and his colleagues had committed was to demand sound environmental practices and to ask for compensation for the devastation of Ogoni territories.

Shell failed to use its substantial influence with the Nigerian government to stop the executions. Indeed, the company publicly admitted that it had invited the Nigerian army to Ogoni land, and provided them with ammunition, logistical and financial support for a military operation that left scores dead and destroyed many villages. All told, more than two thousand Ogoni men, women and children have died in the struggle against Shell's pollution in Nigeria.⁵⁵

In 1996, following the hanging of Ken Saro-Wiwa and his eight co-defendants, a claim was filed with the African Commission on Human and Peoples' Rights, seeking to hold the former military government of Nigeria responsible for its human rights violations against the Ogoni people. In a landmark decision announced May 27, 2002, the Commission agreed with the claimants, finding that Nigeria violated the right to health and the right to clean environment (among other rights) and failed to protect the Ogoni population from the harm caused by the NNPC Shell Consortium. The Commission further found that Nigeria had a responsibility to

⁵⁵ *Id.*; Amnesty International's webpage at <http://www.amnestyusa.org/justearth/countries/nigeria.html>.]

prosecute those responsible for human rights violations and pay compensation to Ogoni's many victims.⁵⁶

Since 1995, there has been continuing protest of oil development in the Niger Delta. Moreover, leading opponents of the harmful effects of such development continue to be singled out and have their human rights violated.⁵⁷

Peru

- Barbara d'Achille, Peru's leading environmental journalist, was murdered on May 31, 1989 by Shining Path guerillas in retaliation for her expose of the impact of coca cultivation on the rainforest.⁵⁸

-In the lush northern region where Peru borders Ecuador, where farmers grow papayas and mangos, lie large deposits of gold and other precious metals. Local farmers have been waging a fight to prevent Vancouver-based Manhattan Minerals from excavating the fertile farmland of the San Lorenzo Valley for a huge open-pit mine. They fear pollution from the mine will destroy their agricultural livelihoods. Roughly 1,600 families would be displaced from the Tambogrande area by the mining operation.

On March 31, 2001 the leading voice against the mine, Godofredo Garcia, was shot to death while travelling along a dirt road near his farm. Garcia was an agronomist, president of the Peruvian Mango Growers Association, and headed the Tambogrande Defense Front, a local organization opposed to the mines. His slaying has generated even more protest and a "Godofredo Lives" campaign in his honor.

Local businessman Francisco Ojeda, who took charge of the Tambogrande Defense Front, said that on May 7, 2001, eight men briefly kidnapped his seventeen year old daughter, Ana, in the city of Piura and threatened her at knifepoint. They told her to relay the message, "Tell your father we are going to give it to him where it hurts most."⁵⁹

Philippines

In the early 1990's, there were several cases of murder and intimidation of anti-logging advocates in the Philippines:

-In Bukindon province, where logging had been banned since 1989, Father Nery Lito Satur, who had been deputized as an official forest guard, was murdered on October 14, 1991. Witnesses identified the perpetrators as an army intelligence officer and members of the local militia, who

⁵⁶ ACHPR/COMM/A044/1, May 27, 2002; *see also* EarthRights International's website at <http://www.earthrights.org/shell/>.

⁵⁷ *Id.* at p.72; "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities," Human Rights Watch Report (1999) at Section VIII.

⁵⁸ Sachs, *supra* note 33, at p. 20 and fn. 32 and 5.

⁵⁹ Hall, "Peruvian Farmers Battle Canadian Mining Giant Over Future of Their Lands," Common Dreams News Center (2001), at <http://www.commondreams.org/headlines01/0713-04.htm>.

had been involved in illegal logging activities that Satur had publicly challenged. Two other priests received death threats.⁶⁰

- On June 26, 1991, members of the Philippine Army and a paramilitary group murdered Henry Domoldol, Isneg tribal leader and head of a community association involved in the struggle to keep the forest under tribal management. He had publicized military involvement in illegal logging of local tribal lands.⁶¹

-On the remote island of Palawan, members of Haribon, the largest environmental NGO in the Philippines, began a campaign to save the remaining rainforests on the once heavily forested island. On February 12, 1991, nine members were arrested at their homes and interrogated by the national police. Five others were later arrested after returning from an investigation of a report by tribal leaders that they had found a large cache of illegal logs next to a military encampment.⁶²

Russia

The most famous examples of the Russian government's repeated attempts to silence critics of its environmental practices include:

-Piotr Kozhevnikov, a government water inspector in the former Soviet Union, who was arrested and placed in a psychiatric ward as punishment for trying to publicize illegal government dumping of oil and sludge into the Gulf of Finland in 1986.⁶³

-Aleksandr Nikitin, a former Soviet submarine captain, who was charged on July 2, 1999, for the eighth time, with espionage for blowing the whistle on illegal nuclear waste dumping. In a report he co-authored with the Bellona Foundation, Norway's leading environmental organization, Nikitin helped document the problems of radioactive pollution from mothballed Soviet nuclear submarines. Because he wrote two chapters in the report that contained information easily garnered from public sources, Nikitin was persistently intimidated, his home and office were bugged, his car was routinely followed and vandalized, and his lawyers harassed by the Russian secret police.

After being acquitted numerous times on the same charges, at a trial in 1999 which attracted international attention, Nikitin was acquitted on charges of high treason, in part thanks to Russian and international human rights and environmental activists who had been working on his behalf. The judge ruled that there was no legal basis for the government's charges, and criticized the manner in which the investigations had been carried out. Nikitin's case was finally closed in September 2000 when a higher court dismissed the government's appeal.⁶⁴

-Grigory Pasko worked as the environmental journalist and reporter for the Russian Pacific Fleet newspaper. He exposed the dumping of radioactive waste by the Russian fleet in the Sea of

⁶⁰ "Philippines: Violations Against Environmentalists" (Nov. 18, 1991) at <http://forests.org/archive/asia/philhr.htm>.

⁶¹ Sachs, *supra* note 33, at p. 20 and fn. 32, citing NRDC, *supra* note 13, at p.81.

⁶² NRDC, *supra* note 13, at pp.82-83.

⁶³ Sachs, *supra* note 33, at p.20 and n.32; NRDC, *supra* note 13, at p. 92.

⁶⁴ Amnesty International's website at <http://www.amnestyusa.org/justearth/countries/russia2.html>.

Japan, and passed on public information concerning the same to Japanese journalists. As a result, he was charged with treason by the Russian government. On December 25, 2001, after a six month closed trial, the Military Court of the Pacific Fleet found Pasko guilty of treason and sentenced him to four years' imprisonment in a labor camp for intent to pass on information to a foreign correspondent. The Russian Supreme Court upheld the conviction on June 25, 2002.⁶⁵

- Professor Yury Bandazhevsky was sentenced to eight years of imprisonment on June 18, 2001, in Minsk, Belarus. The real reason behind his arrest and conviction appears to be his scientific work examining the effects of the radioactive fallout of the Chernobyl nuclear reactor disaster of 1986 on people living in the region of Gomel. He has been an outspoken critic the government's failure to address the disasters's impact on the population's health. Prior to his arrest, he had written a report criticizing the research being conducted on the Chernobyl catastrophe by an institute within the Belarusian Ministry of Health, and proposing an immediate revision of scientific programs related to the alleviation of the accident's consequences. When he was arrested, the authorities confiscated his research materials. The conditions of his arrest and trial raise a number of concerns. After his arrest, he was held for four weeks before being officially charged, and was not given immediate access to a lawyer. International and domestic trial observers concluded that Professor Bandazhevsky's right to a fair trial was repeatedly violated.⁶⁶

Venezuela

In 1997, construction began on the Guri electricity supply network across Venezuela's Canaima National Park (home to the world famous Angel Falls), Imataca Forest Reserve and the Gran Sabana region. The powerline was designed to deliver cheap electricity to Brazil and to Venezuelan gold mines and logging mills located in the biologically diverse Imataca Forest Reserve. The Pemon community, along with other indigenous groups in the Gran Sabana municipality in Bolivar state, protested the construction of the powerline, believing it would seriously impact their health, land, and way of life of the Pemon and other indigenous groups. The local peoples also demanded that a socio-cultural impact study of the power line be performed. Pemon indigenous people protesting against the construction of the network were subjected to acts of intimidation, including being harassed by soldiers, and one person was severely ill-treated. In October 2000, Amnesty International issued an urgent action request concerning the Pemon indigenous community, Santa Cruz de Maupari, after inhabitants there received death threats.⁶⁷

On December 29, 2000, two soldiers beat Juan Ramon Lezama, a member of the community, until he fell unconscious. The incident took place after the army reportedly began keeping the Pemon indigenous community of San Rafael de Kaimoran under routine surveillance in late December 2000. Troops also surrounded the home of Silviano Castro, the head (cacique) of the community.⁶⁸

⁶⁵ Amnesty International's website at <http://news.amnesty.org/ai.nsf/viewalldocs/EUR4600102ENGLISH?opendocument>.

⁶⁶ See Amnesty International's website at <http://www.amnestyusa.org/action/tubshvat.html>.

⁶⁷ AI UA 332/00, October 30, 2000.

⁶⁸ AI UA 03/01.

IV. THE INTERNATIONAL FRAMEWORK FOR PROTECTION OF ENVIRONMENTAL DEFENDERS

A. Article 29 of the American Convention Requires the Commission to Take into Account Contemporary Development of International Laws

In order to fully understand the scope of the obligation of the state of Mexico to protect the rights of the environmental defenders Rodolfo Montiel and Teodoro Cabrera, the critical role of Article 29 of the American Convention must first be examined.⁶⁹ Article 29 provides as follows:

No provision of the Convention may be interpreted as:

- a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein;
- b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party;
- c. precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or
- d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature have.

Article 29 of the American Convention wisely articulates a mechanism that enables the American Convention to adapt itself to the evolution of international law, including the adoption of new concepts and trends. On this matter, the Inter-American Court of Human Rights has stated:

A certain tendency to integrate the regional and universal systems for the protection of human rights can be perceived in the Convention. ... Special mention should be made in this connection of Article 29, which contains rules governing the interpretation of the Convention, and which clearly indicates an intention not to restrict the protection of human rights to determinations that depend on the source of the obligations.⁷⁰

⁶⁹ American Convention on Human Rights, Nov. 22, 1969, OAS Treaty Ser. No. 36, 1144 U.N.T.S. 123 (entered into force July 18, 1978), hereinafter "American Convention."

⁷⁰ IACHR, "Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82 of September 24, 1982, Inter-Am.Ct.H.R. (Ser. A) No.1 (1982), para. 41, footnotes omitted.

Judge Rodolfo E. Piza Escalante of the Inter-American Court of Human Rights as has described this integrative role of Article 29:

... the need to interpret and integrate each standard of the Convention by utilizing the adjacent, underlying or overlying *principles in other international instruments, in the country's own internal regulations and in the trends in effect in the matter of human rights*, all of which are to some degree included in the Convention itself by virtue of the aforementioned Article 29, whose innovating breadth is unmatched in any other international document. (Emphasis added.)⁷¹

In Advisory Opinion No. 5, the Inter-American Court held:

51.... We think rather that with respect to the interpretation of treaties, the criterion can be established that the rules of a treaty or a convention must be interpreted in relation with the provisions that appear in other treaties that cover the same subject. It can also be contended that the provisions of a regional treaty must be interpreted in the light of the concepts and provisions of instruments of a universal character.

It is true, of course, that it is frequently useful, -and the Court has just done it- to compare the American Convention with the provisions of other international instruments in order to stress certain aspects concerning the manner in which a certain right has been formulated, but that approach should never be used to read into the Convention restrictions that are not grounded in its text. This is true even if these restrictions exist in another international treaty.

52. The foregoing conclusion clearly follows from the language of Article 29 which sets out the relevant rules for the interpretation of the Convention. Subparagraph (b) of Article 29 indicates that no provision of the Convention may be interpreted as restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party.

Hence, if in the same situation both the American Convention and another international treaty are applicable, the rule most favorable to the individual must prevail. Considering that the Convention itself establishes that its provisions should not have a restrictive effect on the enjoyment of the rights guaranteed in other international instruments, it makes even less sense to invoke restrictions contained in those other international instruments, but which are not found in the Convention, to limit the exercise of the rights and freedoms that the latter recognizes.

As a criterion to resolve potential conflicts between two or more human rights provisions, the *pro homine* criterion forces the application of the provision that establishes a human right in a manner that is most comprehensive and most favorable to the individual, while the provision that establishes restrictions must be applied in the narrowest manner.

⁷¹ IACHR, Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, Advisory Opinion OC-4/84 of January 19, 1984 (Ser. A), No. 4 (1984), at para. 2, 3, and 6.

Article 29 serves at the same time as both a criterion to resolve potential conflict between international human rights provisions, and as a rule for the interpretation of the rights established in the American Convention.

Since the adoption of the American Convention, specific rights in international human rights law pertaining to human rights defenders – and environmental defenders in particular – have been developed. All of these rights have been furthered at the international levels by the development of various legal principles. Article 29 requires the adoption of the trends in effect in international law concerning the violation of these rights.

Thus, to more fully delineate Mexico’s responsibilities to guarantee Montiel and Cabrera’s human rights, resort must be had to the body of international law which collectively requires governments to protect human rights defenders, including environmental defenders, and allows them to exercise their rights to freedom of expression concerning environmental matters, freedom of participation in public affairs concerning such matters, freedom of petition concerning such matters, and freedom of association concerning such matters.

The specific human rights violations perpetrated by the state of Mexico in this case will be discussed in greater detail *infra*, at part V. The international framework for the protection of human rights defenders under the United Nations human rights system and the Inter-American human rights system will next be considered.

B. International Protection of Environmental Defenders under the United Nations Human Rights System

1. The 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 right to defend human rights is protected by a variety of international standards and principles. On December 9, 1998, on the eve of the fiftieth anniversary of the Universal Declaration of Human Rights, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.⁷² The Declaration has become commonly known as the “Declaration on Human Rights Defenders.”

The adoption of this Declaration was the culmination of more than twelve years of negotiations and lobbying by human rights organizations and governments to ensure international recognition for the crucial role those human rights defenders are playing across the world in advancing the promotion and protection of human rights. By establishing a set of principles to safeguard this important work and those who carry it out, the Declaration highlights the increasing significance of the role of individuals and groups from civil society in independently scrutinizing and criticizing official policy and practice on human rights.

⁷² U.N.Doc.A/RES/53/144, March 8, 1999.

The Declaration sets out the rights of human rights defenders, identifying specific freedoms and activities which are fundamental to their work, including the right to know, seek, and receive information about human rights and fundamental freedoms, the right to participate in peaceful activities against violations of human rights, the right to criticize and protest governments' failures to enforce human rights standards, and the right to make proposals for improvement. By referring to the right to act collectively, the Declaration pays special attention to freedom of association and the right to act in collaboration with others for the protection of human rights. The Declaration requires that states address these rights and freedoms to ensure human rights defenders may carry out their work freely, without interference or fear of threats, retaliation or discrimination.

The Declaration specifically requires governments to protect human rights defenders in the performance of their valuable role:

Article 12

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.⁷³

The Declaration on Human Rights Defenders is a set of principles, based on legal standards enshrined in international human rights law adopted by every member of the United Nations, including Mexico, through their participation in the U.N. General Assembly. To encourage implementation of the Declaration, the 1999 session of the U.N. Commission on Human Rights called on all states to provide and give effect to the Declaration and to report on their efforts. The Commission urged all UN human rights bodies and mechanisms to look at specific types of human rights violations wherever they occur and to take the provisions of the Declaration into account in their work. The IACHR has discussed the Declaration with approval.⁷⁴

⁷³ *Id.*

⁷⁴ *Infra* at part IV.C.

2. The Special Representative on Human Rights Defenders

In addition, the U.N. Secretary-General appointed a Special Representative on Human Rights Defenders with a mandate to monitor, document and intervene on behalf of human rights defenders under threat. In accordance with Commission Resolution 2000/61 of April 26, 2000, Ms. Hina Jilani, Special Representative of the Secretary-General on human rights defenders, in her first annual report, specifically included advocates for a healthy environment as among the group of human rights defenders requiring protection:

In my view the term ‘human rights defenders’ is not restricted only to those seeking protection and promotion of civil and political rights. The Declaration... recognizes those striving for the promotion, protection and realization of social, economic and cultural rights as human rights defenders. *Therefore, those defending the right to a healthy environment, or promoting the rights of indigenous peoples would, by no means, fall outside the ambit of any definition of a human rights defender.* (Emphasis added).⁷⁵

3. Expert Assessment of the need for Protection of Environmental Human Rights Defenders

Even more recently, a United Nations joint expert seminar on the connections between human rights and the environment included in its study the importance of protecting both “traditional” human rights advocates and environmental advocates.⁷⁶ The seminar was centered on an expert assessment made two days prior to the seminar that concluded that the “normative links between the fields of human rights and the environment need to be reinforced” and that there is a need to “ensure that persons promoting the protection of human rights and the environment are not penalized, persecuted or harassed for their activities.”⁷⁷ The experts further “noted with concern that in certain jurisdictions individuals and groups associated with the protection and promotion of human rights and the environment are being prevented from carrying out their legitimate activities.”⁷⁸

⁷⁵ U.N. Doc.E/CN.4/2001/94, at Cuba letter.

⁷⁶ The seminar took place in Geneva on January 16, 2002 as a collaboration of the Office of the High Commissioner for Human Rights and the United Nations Environment Programme. It was organized at the invitation of the United Nations Commission on Human Rights, pursuant to Sub-Commission on Human Rights Decision 2001/111. E/CN.4/SUB.2/DEC/2001/111. The seminar’s report will be on the agenda at the Commission on Human Rights 58th Session.

⁷⁷ Final text (January 16, 2002), Meeting of Experts on Human Rights and the Environment, January 14-15, 2002, Conclusions at para. 18 at <http://www.unhchr.ch/environment/conclusions.html>.

⁷⁸ *Id.* at para. 13.

C. Protection of Environmental Defenders under the Inter-American Human Rights System

1. OAS General Assembly Resolutions and Country Reports

As early as 1990, the OAS General Assembly spoke of the importance of protecting human rights defenders and organizations, resolving:

To reiterate the recommendation made in previous years to governments of member states that they provide the guarantees and facilities needed to non-governmental human rights organizations so that they may continue their efforts to promote and defend human rights, and that they respect the freedom and integrity of the members of those organizations.⁷⁹

In its 1998 Country Report on Mexico, the IACHR noted the crucial role played by human rights defenders in a democratic society:

The work performed by human rights defenders and other community organizations is of key importance to the effective exercise of human rights and to peaceful democratic coexistence. In fact, these groups help strengthen democracy through their work to promote and protect human rights, and by reporting violations of those rights.⁸⁰

The governments of the Americas gave particular recognition to the importance of human rights defenders in June 1999, when a resolution entitled “Human Rights Defenders in the Americas,” was adopted by the General Assembly of the OAS.⁸¹ In the resolution, governments stated their intention to implement the Declaration on Human Rights Defenders passed by the United Nations. In particular, they agreed to recognize and support the “important work [carried out by human rights defenders] and their valuable contribution to the promotion, observance, and protection of fundamental rights” in the Americas. The resolution calls on state members to provide “Human Rights Defenders with the necessary guarantees and facilities to continue freely carrying out their work of promoting and protecting human rights,” as well as to adopt “the necessary steps to guarantee their life, liberty, and integrity.”⁸²

In June 2000, the OAS General Assembly adopted another resolution regarding human rights defenders, reiterating its support for their valuable work and urging, “member states to intensify their efforts to adopt the necessary measures... to guarantee the life, personal well-being, and freedom of expression of human rights defenders, in keeping with internationally accepted principles and standards.”⁸³

In June, 2001, an OAS General Assembly resolution “urge[d] member states to step up their efforts to adopt the necessary measures, in keeping with their domestic law and with

⁷⁹ AG/RES. 1044, June 8, 1990, operative paragraph 4.

⁸⁰ Chapter X at para. 658.

⁸¹ AG/RES. 1671 (XXIX-O/99).

⁸² *Id.*

⁸³ AG/RES.1711 (XXX-O/00).

internationally accepted principles and standards, to guarantee the life, personal safety, and freedom of expression of human rights defenders.”⁸⁴ In the Executive Secretary’s view, “when defenders of human rights themselves become victims, democratic society as a whole is under attack.”⁸⁵

Most recently, on June 4, 2002, the OAS General Assembly “condemn[ed] actions that directly or indirectly prevent or hamper the work of human rights defenders in the Americas;” urged member states to “step up their efforts to...safeguard the lives, personal safety, and freedom of expression of human rights defenders;” invited member states to “publicize and enforce the instruments of the inter-American system and the decisions of its bodies on this matter” as well as the United Nations Declaration on Human Rights Defenders; invited the Inter-American Commission on Human Rights to “continue to pay due attention to the situation of human rights defenders in the Americas and to consider, *inter alia*, preparing a comprehensive study on the matter and to give due consideration to this situation at the level it may judge appropriate and continue the dialogue and cooperation with the United Nations, in particular with the office of the Special Representative of the UN Secretary-General to Report on the Situation of Human Rights Defenders, through the Inter-American Commission on Human Rights and the Permanent Council.”⁸⁶

2. Recognition of A Right to a Healthy Environment in the Inter-American System

Mexico has signed the “Protocol of San Salvador” to the American Convention on Human Rights, which gives express recognition to the right to a healthy environment:

Article 11

Right to a Healthy Environment

1. Everyone shall have the right to live in a healthy environment and have access to basic public services.
2. The States Parties shall promote the protection, preservation, and improvement of the environment.⁸⁷

⁸⁴ AG/RES. 1818 (XXXI-O/01).

⁸⁵ Press Release No. 27/01, Oct. 22, 2001.

⁸⁶ AG/RES. 1842 (XXXII-O/02); On March 19, 2002, several weeks before the OAS GA, an Experts Seminar on Human Rights and the Environment met and a) reviewed and assessed the existing linkages between human rights and environment as is manifest in the hemisphere and at a global level; b) assessed the effects of environmental degradation on the full enjoyment of human rights in the Americas; c) drafted recommendations to the OAS on how to move beyond Resolution 1819. For more information on the seminar sponsored by the Center for International Environmental Law (CIEL), the Center for Human Rights and Environment (CEDHA) and the American University, visit http://ciel.org/Announce/cedha_seminar_details.html or see www.cedha.org/hr-env-meeting-au.htm.

⁸⁷ O.A.S. Additional Protocol to the American Convention on Human Rights in the Areas of Economic, Social and Cultural Rights, "Protocol of San Salvador," 28 ILM 156, 161 (1988).

As discussed earlier, *infra* at part IV.A., by virtue of Article 29 of the American Convention, Mexico is bound to enforce this right.

This express recognition of the right to a healthy environment in the Inter-American system reflects the general trend in human rights and environmental law to recognize the right to a healthy environment.⁸⁸

In fact, the constitutions of eighteen Central American and South American nations recognize the importance of a healthy environment.⁸⁹ In 1998, a key paragraph was added to Article 4 of the Mexican Constitution, which now contains the words "all persons have the right to an environment appropriate for their development and well-being."

Despite stylistic variations, each articulation of the right to a healthy environment contains the same identifiable core: the right to an environment that supports physical and spiritual well-being and development.

D. The Responsibility of the State of Mexico to Protect Human Rights Defenders and to take steps to ensure they can carry out their work freely

As a member of the United Nations since 1945, Mexico has been a party to numerous international and regional human rights treaties, undertaking a legal commitment to uphold their provisions. Moreover, even Mexico's Supreme Court has ruled that international treaties hold supremacy and prevalence over Mexico's federal law.⁹⁰ This is consistent with the IACHR's

⁸⁸ The right to a healthy environment has been included in many national constitutions and statutory schemes around the world, and has been recognized in a growing number of national judicial decisions. *See* Annex III to the 1994 Ksentini Report, *supra* note 12. The Ksentini Report itself supports the right to a healthy environment. *Id.* (discussing the legal foundations of a right to a "satisfactory" environment); Article 24 of the African Charter on Human and Peoples Rights, 21 I.L.M. 58 (1982) (providing that "[a]ll peoples shall have the right to a general satisfactory environment favorable to their development."); Article 28 of the draft United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. E/CN.4/Sub.2/1994/2/Add. 1 (recognizing the right of indigenous peoples to "protection of the total environment... of their lands...as well as to assistance for this purpose from States and through international cooperation"); Article XIII(1) of the 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 (recognizing "the right to a safe and healthy environment, which is an essential condition for the enjoyment of the right to life and collective well-being."); Title I, Article 2, para. 9, Proposal for a Basic Law on Environmental Protection and the Promotion of Sustainable Development, Document Series on Environmental Law No. 1, UNEP Regional Office for Latin America and the Caribbean, Mexico, D.F., 1st. Ed., 1993 (providing within its Governing Principles the "right of present and future generations to enjoy a healthy environment and decent quality of life...").

⁸⁹ Bolivia de 1967 (artículo 137), Brasil de 1988 (artículo 225), Chile de 1980 (artículo 19), Colombia de 1991 (artículos 8,49, 79,80,86 y 88), Costa Rica (artículos 46 y 55) (Reforma Constitucional 7607 de 29 de mayo de 1996; Reforma Constitucional 7412 de 3 de junio de 1994), Cuba de 1992 (artículos 11 y 27), El Salvador de 1983 (artículo 69), Ecuador de 1983 (artículo 19), Guatemala de 1985 (artículo 97), Guyana de 1980 (artículos 25 y 36), Haití de 1987 (artículos 253 y 258), Honduras de 1982 (artículo 145), México de 1917 (artículo 4, para. 5), Reformada en 1998, Nicaragua de 1987 (artículos 60 y 102), Panamá de 1980 (artículo 110), Paraguay de 1967 (artículo 132), Perú de 1993 (artículo 2 inc. 22), and Uruguay de 1997 (artículo 47).

⁹⁰ Supreme Court, Tesis No. P.LXXVII.

interpretation of Article 29 of the American Convention, discussed *supra* at part IV.A, to the effect that domestic law that contradicts international human rights law is not applicable.

Under international human rights treaties, the state of Mexico is under a duty to protect the rights of human rights defenders and to prevent violations of those rights, especially those carried out by agents of the state. The government has a further duty to prevent abuses, investigate and bring those implicated in human rights violations to justice, and award reparation to their victims.

International concern for the specific difficulties faced by Mexican human rights defenders and the need for Mexico to address this issue was highlighted in the resolution of the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, which asked the Mexican Government to “ensure full respect for international instruments to which Mexico is party and... attach the highest priority ... to promoting the action of human rights defenders and guaranteeing their safety”.⁹¹

Similarly, in its 1998 Country Report on Mexico, this Honorable Commission stated that:

The situation with regard to the right to freedom of expression has been a source of concern on the part of various sectors in Mexico. Despite international rules and domestic laws in force in Mexico which protect the right considered here, the IACHR has received reports and complaints involving attacks and other serious acts of violence against journalists, human rights defenders, and members of community organizations.

* * *

The IACHR has received various complaints regarding acts of intimidation committed in Mexico against members of human rights organizations and community groups. The report of the national network of human rights NGOs refers to a campaign under way to curb and restrict legal activities on the part of numerous institutions and individuals:

From 1995 to May 1997, 113 human rights defenders belonging to 29 non-governmental organizations were victims of telephone calls threatening them with death, personal intimidation, persecution, warnings, kidnappings or disappearance, rape, surveillance of their private homes and offices, and theft of materials and information. The fact that the acts of harassment and persecution are targeting members of organizations working in defense of human rights is a dangerous precedent. These institutions are the most sensitive gauge for measuring the illegal deployment of force and the use of government resources to perpetrate acts of repression against the emerging civil society...⁹²

Amnesty International’s 2001 report on human rights defenders in Mexico echoes the same concerns:

⁹¹ Res. 1998/4, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

⁹² Ch. 10 at paras. 646 and 662.

The activities of the diverse Mexican human rights movement have not been well received by many federal and state authorities in Mexico. Harassment of human rights defenders...has been widely used by past and current authorities to deflect attention from human rights violations reported by defenders and to undermine the moral authority of the human rights movement, and standards in international human rights law which past and current governments of Mexico have committed themselves to uphold. State agents of all levels have been implicated in a wide range of abuses against human rights defenders, from the misuse of the legal system to torture and ill-treatment, attempted killings and threats. They have also been directly implicated, connived in or acquiesced in attacks carried out by armed civilians, paramilitaries, or local political bosses.

High-ranking government officials have tolerated these attacks, taking limited or insufficient action to deter or condemn them or ensure the punishment of those responsible in keeping with the law. In so doing, the authorities have acquiesced in covering up human rights violations. It is clear that in many cases the aim of the attacks against human rights defenders is to silence or obstruct their complaints so that the perpetrators of human rights violations are not exposed and may evade criminal prosecution.

* * *

Digna Ochoa's killing on October 2001 was a clear demonstration of the confidence of those responsible that they will never be brought to justice.. ..The authorities have repeatedly failed to protect defenders from abuses by failing to uphold standards of due process and due diligence in investigations. Worse still, members of the Offices of the Attorney General have themselves acquiesced with other authorities to file politically motivated charges against human rights workers and procure their detention. The failure of both past and current authorities to effectively respond to harassment of human rights defenders and the misuse of the judicial apparatus to persecute them has resulted in attacks against defenders from all levels of the state institutions.

The majority of cases of harassment of human rights defenders outlined in this report remain unresolved. Responsibility for ensuring the offenders are brought to justice and reparation awarded to the victims rests with the current government. By failing to halt the harassment of human rights defenders and by maintaining impunity for human rights violations, past and current governments violate international obligations and compromise international responsibilities. With regard to the government's duty to ensure proper investigations, the Inter-American Court of Human Rights has stated that:

If the apparatus of the State acts in such a way that the violation remains unpunished and does not restore the victim, as far as possible, to the full enjoyment of his rights, it may be affirmed that the State has not fulfilled its duty to guarantee the free and full exercise of such rights by the persons subject to its jurisdiction. Inter-American Court of Human Rights, Series C: Decisions and Judgments, No.4, Caso Velázquez Rodríguez, Judgment of July 29, 1988, par. 176.⁹³

⁹³ "Mexico: Daring to Raise Their Voices," Amnesty International, AMR 41/040/2001 at 34-35.

Whether the human rights situation is improving under the current administration is the critical question that remains to be answered:

Amnesty International welcomes the apparent openness of the Government of Vicente Fox Quesada on issues of international collaboration on human rights... However, the abuses examined by Amnesty International during 2001 indicate that patterns of widespread harassment of human rights defenders in Mexico continue, and will remain unchanged until the authorities adopt immediate measures and reforms that filter down to all levels of the state. This report shows that political willingness in the top echelons of the government has not filtered down to all levels of the state, and has so far proved insufficient to overcome the pattern of harassment of human rights defenders. The organization notes with serious concern the continued failure by the authorities to resolve past cases of harassment of human rights defenders. It also notes with serious concern cases of harassment against human rights defenders occurred in 2001, the number of unclarified pending criminal charges against defenders, and the killing of human rights lawyer Digna Ochoa.⁹⁴

V. MONTIEL AND CABRERA'S RIGHTS GUARANTEED BY THE AMERICAN CONVENTION ON HUMAN RIGHTS WERE VIOLATED

The entirely lawful activities of Rodolfo Montiel and Teodoro Cabrera that nonetheless led the state of Mexico to arrest them, torture them, hold them incommunicado, and deprive them of due process in their trial have already been described.⁹⁵ In essence, these two environmental defenders did three things that caused the state of Mexico to deprive them of their human rights:

-they spoke out against environmentally destructive logging and organized anti-logging meetings and actions in local communities on behalf of OCESP, a lawful exercise of their right to freedom of expression guaranteed under Article 13 of the American Convention;

-through OCESP, they repeatedly communicated their concerns to the government, and petitioned the government on numerous occasions to halt destructive logging in the forests of Guerrero, a lawful exercise of their right to participate in government guaranteed under Article 23 of the American Convention, and of their right to petition the government under Article XXIV of the American Declaration of the Rights and Duties of Man; and

- they were organizers of, and among the most active members of, the anti-logging group OCESP, a lawful exercise of their right to association guaranteed under Article 16 of the American Convention and Article XXII of the American Declaration .

This Honorable Commission has noted the particular relevance of these articles to the situation of human rights defenders:

⁹⁴ *Id.* at 37.]

⁹⁵ *Infra* at section I.

2. Several other articles of the Convention may have particular relevance for human rights workers. Among others, Article 13 of the Convention, providing for the right to freedom of thought and expression, plays an important role in the analysis of attacks against human rights workers. Article 15, establishing the right of assembly, and Article 16, establishing the right to freedom of association, also provide protections relevant to human rights workers.

3. The new [Draft Declaration on Human Rights Defenders] approved by the United Nations Commission on Human Rights also establishes certain principles which provide guidance in analyzing the rights of human rights defenders. This instrument provides that, '[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.' For the purpose of promoting and protecting human rights, all persons have the right to meet and assemble peacefully and to form, join and participate in non-governmental organizations or to communicate with such organizations. The Draft Declaration also provides that all persons have the right to make complaints regarding the policies and actions of individual officials or governmental bodies regarding human rights violations. (Citations omitted.)⁹⁶

Moreover, in performing all of the actions described in this brief, Montiel and Cabrera were also exercising their right to advocate for a healthy environment, a right that is itself guaranteed under Article 11 to the San Salvador Protocol.⁹⁷ Twice in the past two years, the OAS General Assembly has taken note of the link between human rights and the environment, and of how protection of the one may well enhance protection of the other.⁹⁸

The largely procedural individual human rights just discussed, when exercised in the context of advocating for a healthy environment, have come to be commonly known as “environmental due process” rights:

Procedural rights are a necessary complement to the substantive environmental human rights... These procedural rights provide an essential link to substantive rights because they enable the enforcement of those substantive rights. The procedural rights to be informed of and participate in decisions that affect the environment have come to be known as ‘environmental due process.’

The Universal Declaration of Human Rights recognizes that environmental due process rights are as important to the full realization of human rights as substantive protections. Denial of these fundamental rights of freedom of association, of opinion and of expression, and of the right to take part in government, endangers the protection of substantive human rights. The Universal Declaration of Human Rights codifies these procedural rights in Article 8 (effective remedy); Article 19 (freedom of opinion and expression); Article 20 (freedom of association); Article 21 (right to take part in government); and Article 26 (right to education). Articles 2(3), 19, 21, 22, and 25 of the

⁹⁶ 1999 Colombia Report, chapter VII at paras 3 and 4.

⁹⁷ *Supra* note 87.

⁹⁸ AG/RES. 1819 (XXXI-O/01) and AG/RES. 1896 (XXXII-O/02).

International Covenant on Civil and Political Rights set forth these same procedural guarantees as fundamental human rights. Similarly, Part III of the Draft Declaration [of Principles on Human Rights and the Environment] sets out the procedural aspects of human rights necessary for the full realization of environmental rights. These rights are enabling rights; they make it possible for people to contribute actively to the protection of their environment. Likewise, the absence of respect for these rights not only increases the likelihood of environmental degradation, but also increases the chances that such damage will be irreversible.

Three of the major rights embodied in environmental due process are the right to receive information, the right to impart information (freedom of expression), and the right to participate in environmental decision-making. The right to participate in decision-making is a basic human right that applies to all substantive areas, including the environment. Meaningful participation in environmental decision-making also requires being informed of actions with environmental effects, having a basic understanding of environmental issues, and having the right to express one's opinion regarding environmental affairs. It also requires that an effective means of redress be available to the victims of both environmental harm and violations of procedural rights.

Access to impart and receive environmental information, as well as the right to participate in environmental decision-making, have increasingly been regarded as international and national legal norms.... Only when procedural rights are honored is collective action in support of environmental protection possible...

The environmental dimension of these procedural human rights constitutes the foundation of environmental protection because without these procedural protections, no protection of substantive environmental rights is possible.⁹⁹

In order to exercise these or any other substantive human rights, an individual must be afforded the whole panoply of rights guaranteed by the American Convention. The U.N. Declaration on Human Rights Defenders has specifically recognized and protected this corollary right:

Article 2

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.¹⁰⁰

⁹⁹ Ziemer, "Application in Tibet of the Principles on Human Rights and the Environment," 14 Harv. Hum. Rts. J. 233 (Spring 2001) at 263-65.]

¹⁰⁰ U.N.Doc.A/RES/53/144, March 8, 1999.

The American Convention provides to the same effect in Article 1.1 when it obligates the States Parties to “undertake to respect the rights and freedoms recognized herein and to ensure to all persons ...the free and full exercise of those rights and freedoms...,” and in Article 2, when it further obligates the States Parties to “adopt...such legislative or other measures as may be necessary to give effect to those rights or freedoms[referred to in Article 1].” The State of Mexico violated both of these articles.

The State of Mexico violated Article 1.1 by failing to respect and protect Montiel and Cabrera’s rights and freedoms guaranteed by the American Convention. The violations of these specific rights will be considered below.¹⁰¹ In addition, the State of Mexico violated Article 2 because it was already on notice as to the need to adopt additional measures to give effect to human rights and freedoms, yet failed to take the recommended measures.

The 1998 resolution of the United Nations Sub-Commission on the Prevention of Discrimination and the Protection of Minorities,¹⁰² the 2001 Amnesty International Report concerning human rights violations in Mexico,¹⁰³ and most importantly, this Commission’s earlier findings and recommendations concerning violations of human rights (and the right of freedom of expression in particular) in Mexico,¹⁰⁴ all concluded that a serious pattern of human rights abuses existed in Mexico, and that strong measures were needed to remedy the situation. This Commission’s 1998 Mexico Country Report contained a host of specific recommendations aimed at eliminating exactly the type of human rights abuses later perpetrated against Montiel and Cabrera. In fact, as one reads the following excerpts from those recommendations, it becomes apparent that had Mexico adopted those recommendations, the human rights violations that are the subject of the instant petition would never have even occurred:

717. To adopt the measures toward ensuring that acts of torture are characterized and punished as such by jurisdictional organs, in accordance with the international definition of this violation of the right to personal integrity.

718. To take the necessary measures to exercise effective judicial supervision over the arrest and the agencies entrusted with making the arrest, since detention and arrest are among the most critical phases in any criminal proceeding during which the detainee is under the exclusive control of the police.

720. To implement specific programs to educate and train public officials responsible for enforcing the law about the absolute prohibition of acts of torture and of all cruel, inhuman or degrading treatment or punishment.

721. To guarantee the right of those arrested to communicate immediately with an attorney of their choice.

¹⁰¹ The *amici curiae* strongly concur with the position earlier taken by the petitioners that Montiel and Cabrera’s rights under Articles 5, 7, 8, and 25 of the American Convention on Human Rights were violated as well. Because the petitioners have already addressed the specific violations of these additional rights, further discussion here is not necessary.

¹⁰² *Supra* note 91.

¹⁰³ *Supra* note 93.

¹⁰⁴ *Supra* note 92.

723. To adopt the necessary measures, legislative or of other nature, to ensure that the statement which the accused makes before the competent judge in the case is deemed to be the only valid confession, eliminating expressly the incriminating value of confessions made to the judicial police.

724. To provide specific guidelines for the competent authorities requesting them to reject any statement or testimony in which there are presumptions or good reason for believing that such statement or testimony was obtained by coercion or physical or moral torture.

725. To investigate and punish, with the severity required by each specific case, those responsible for acts of torture.

726. To take all necessary steps to ensure that victims of torture are rehabilitated and provided with fair and adequate compensation.

759. To adopt the measures needed to punish perpetrators of crimes committed against persons exercising their right to freedom of expression, including a speedy, effective, and impartial investigation of complaints related to harassment of journalists, human rights defenders, and members of community organizations.

760. To offer all guarantees so that both Mexican and foreign human rights defenders can perform their important work in promoting and defending those rights, without any abusive interference on the part of the authorities; especially, to review claims of arbitrary expulsion of foreigners who reside legally in Mexican territory, so as to strictly conform such decisions to rules of due process set forth in internal and international law.¹⁰⁵

A. Violation of the Right of Freedom of Expression under Article 13 of the American Convention

Under Article 13 of the American Convention:

Freedom of Thought and Expression

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

Because of the important role Montiel and Cabrera played as leading advocates for environmental protection, they were singled out by the state of Mexico for suppression of their human rights. The specific acts violating Montiel and Cabrera's human rights have been

¹⁰⁵ OEA/Ser.L/V/II.100, Doc. 7, rev. 1, Chapter IX, September 24, 1998.

discussed at length.¹⁰⁶ These violations were particularly insidious because they represented an attempt to suppress not only the freedom of expression of these two men, but that of others who expressed similar views or who might consider expressing similar views. In other words, the violation went far beyond the rights of these two individuals, and was particularly egregious as a result.

The IACHR has identified a number of aspects of the right to freedom of expression, three of which are of particular relevance to this case because of the political nature of the expression that took place in this case. First, the Special Rapporteur for Freedom of Expression has commented on the critical role that the right of freedom of expression plays in a democratic society, particularly in regard to political expression:

Principle 1

Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.

*[F]reedom of expression is a cornerstone upon which the very existence of a democratic society rests. . . . It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free. Freedom of expression, therefore, is not just the right of individuals, but of society as a whole. (Emphasis added).*¹⁰⁷

The second important aspect of the right to freedom of expression is that it is a collective right, or as stated above, it is “not just the right of individuals, but of society as a whole.” The Special Rapporteur’s earlier report amplified on the collective nature of this right:

Article 13 indicates that freedom of thought and expression ‘includes freedom to seek, receive, and impart information and ideas of all kinds...’ This language established that those to whom the Convention applies not only have the right and freedom to express their own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds. Hence, when an individual’s freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to “receive” information and ideas. *The right protected by Article 13 consequently has a special scope and character, which are evidenced by the dual aspect of freedom of expression. It requires, on the one hand, that no one be arbitrarily limited or impeded in expressing his own thoughts. In that sense, it is a right that belongs to each individual. Its second aspect, on the other hand, implies a collective right to receive any information whatsoever and to have access to the thoughts expressed by others. (Emphasis added).*¹⁰⁸

¹⁰⁶ *Infra* at section II.

¹⁰⁷ Special Rapporteur’s Report (2000), Declaration of Principles of Freedom of Expression, Principle 1 and para. 7.]

¹⁰⁸ Special Rapporteur’s Report (1998), ch. II *as part of* 1998 IACHR Annual Report.]

Finally, the IACHR has identified the “chilling effect” on all of society when an individual’s right to freedom of expression is violated:

5. The third issue involves a different type of concern, namely the steady increase in threats and attacks perpetrated against members of organizations involved in the promotion and protection of the rights of the populace. This type of persecution is worrying not only insofar as it places individuals at serious risk, but also as it has a broader effect of sowing fear and ‘chilling’ the freedom of expression and action of such groups. This represents a concern for all Guatemalans working in favor of the consolidation of participatory democracy.¹⁰⁹

Finally, while the right to freedom of expression is certainly broad enough to protect Montiel and Cabrera’s activities in expressing their views in opposition to destructive logging practices and in support of their right to enjoy their livelihoods and the right to healthy environment, human rights documents have even proposed expressly protecting speech relating to environmental issues:

All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.¹¹⁰

B. Violation of the Right to Participate in Government Under Article 23 of the American Convention, and under Article XXIV of the American Declaration.

Under Article 23 of the American Convention:

Article 23. Right to Participate in Government

1. Every citizen shall enjoy the following rights and opportunities:

to take part in the conduct of public affairs, directly or through freely chosen representatives.

Under Article XXIV of the American Declaration of the Rights and Duties of Man:

Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

Both of these rights were violated by the state of Mexico through the actions taken in retaliation for the anti-logging activities of Montiel and Cabrera. As described above, OCESP filed numerous complaints with the government in an attempt to halt destructive logging

¹⁰⁹ 2001 Guatemala Country Report, OEA/Ser.L/V/II.111, doc. 21, April 6, 2001.]

¹¹⁰ Special Rapporteur on Human Rights and the Environment, “Draft Declaration Principles on Human Rights and the Environment” (1994), at para. 16.

practices. These complaints decried the damage caused to the campesinos' land by the logging companies with the acquiescence of state authorities and in violation of norms established under Mexican forestry laws, and sought direct government action to halt the logging. In these ways, Montiel and Cabrera and their fellow OCESP members were exercising their guaranteed rights to participate directly in public affairs and to petition their government.

The IACHR's 1997 "Report on Ecuador" found that the right of participation was violated when oil development on the lands of the Huaorani people was undertaken without allowing their participation in decision-making concerning the project:

In the context of the situation under study, protection of the right to life and physical integrity may best be advanced through measures to support and enhance the ability of individuals to safeguard and vindicate those rights. The quest to guard against environmental conditions which threaten human health requires that individuals have access to information, participation in relevant decision-making processes, and judicial recourse.

* * *

Public participation in decision-making allows those whose interests are at stake to have a say in the processes which affect them. Public participation is linked to Article 23 of the American Convention, which provides that every citizen shall enjoy the right 'to take part in the conduct of public affairs, directly or through freely chosen representatives,' as well as to the right to receive and impart information.... Affected individuals should be able to be informed about and have input into the decisions which affect them.

* * *

The Commission recommends that the State implement the measures to ensure that all persons have the right to participate, individually and jointly, in the formulation of decisions which directly concern their environment. The Commission encourages the State to enhance its efforts to promote the inclusion of all social sectors in the decision-making processes which affect them.¹¹¹

Article 29 of the American Convention again requires resort to other international law instruments to help delineate the full extent of these participatory rights. These other instruments, which show a clear evolution of the law recognizing these rights in the environmental context, will now be considered.

In her final report, the U.N. Rapporteur for Human Rights and the Environment described the critical nature of public participation in the environmental decision-making process:

219. 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

¹¹¹ "Report on the Situation of Human Rights in Ecuador," OAS Country Report (1997), Chapters VIII and IX.

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.

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.¹¹²

One of the first major international environmental documents to make public participation a central objective of environmental decision-making was the 1982 World Charter for Nature, which states:

All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation.¹¹³

Most recent international environmental instruments uniformly mandate that affected persons be included in the planning process.¹¹⁴

The historic 1992 Rio Declaration recognizes a right to participation:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including...the opportunity to participate in decision-making processes.¹¹⁵

Paragraph 18 of the 1994 “Draft Declaration of Principles on Human Rights and the Environment” similarly provides:

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...¹¹⁶

¹¹² E/CN.4/Sub.2/1994/9, July 6, 1994.

¹¹³ Adopted by 111 countries in U.N.G.A. RES 37/7, U.N. Doc. A/RES/37/51, 22 I.L.M. 455, at Principle 23.

¹¹⁴ See Shelton, “Human Rights and Environmental Issues in Multilateral Treaties Adopted between 1991 and 2001,” Background Paper No. 1, Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, January 14-16, 2002 (Geneva).

¹¹⁵ Rio Declaration on Environment and Development (U.N. Conference on Environment and Development, Rio de Janeiro, June 13, 1992, U.N. Doc. A/CONF. 151/26), at Principle 10.

¹¹⁶ Special Rapporteur on Human Rights and the Environment, “Draft Declaration Principles on Human Rights and the Environment” (1994).

Chapter 8 of Agenda 21, a comprehensive and detailed blueprint for the future implementation of sustainable development, is largely devoted to ways to ensure participation by affected individuals in development projects.¹¹⁷ The Beijing Declaration,¹¹⁸ Articles 2(6) and 3(8) of the 1991 ECE Convention on Environmental Impact Assessment¹¹⁹; the 1992 Convention on Biological Diversity¹²⁰; the 1993 Council of Europe Convention on Damage Resulting from Activities Dangerous to the Environment¹²¹; the 1994 Desertification Convention United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa,¹²² and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (UNECE Convention)¹²³, all reflect the same goals of facilitating participation in the decision-making process by affected persons.¹²⁴

¹¹⁷ U.N. Conference on Environment and Development, Rio de Janeiro, June 13, 1992 at Principle 10, U.N. Doc. A/Conf. 151/26.

¹¹⁸ A/Conf.177/L.5/Add.15, 14 September 1995.

¹¹⁹ 30 I.L.M. 802 (1991)

¹²⁰ 31 I.L.M. 818 (1992) at Article 14

¹²¹ 150 European Treaty Series (1993)

¹²² UN G.A.D. A/AC.241/15/Rev.7, 33 I.L.M. 1328 (1994) at Article 5

¹²³ UN Doc. ECE/CEP/43 (April 21, 1998)

¹²⁴ International instruments dealing with the right to development have also recognized the critical role of citizen participation. For example, Article 1 of the 1986 United Nations General Assembly "Declaration on the Right to Development," which defines the "right to development," recognizes universal public participation as essential for the expression of the right:

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 social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

G.A. Res. 41/128, Dec. 4, 1986, reprinted in *Human Rights: A Compilation of International Instruments*, Vol. I (Second Part), Universal Instruments, United Nations, New York, Geneva, 1994 at 548.

Similarly, the preamble to the Declaration states:

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom ...

The role of public participation as a necessary means for achieving sustainable development was first clearly identified the following year by the World Commission on Environment and Development in *Our Common Future*, also known as the Brundtland Commission Report. It found that:

In the specific context of the development and environment crisis of the 1980s, which current national and international political and economic institutions have not and perhaps cannot overcome, the pursuit of sustainable development requires... a political system that secures effective citizen participation in decision making.

The World Commission on Environment and Development, Oxford University Press, Oxford, New York, 1987 at 65.

The Brundtland Commission identified "effective participation" as a necessity for achieving sustainable development. It referred particularly to the significance of participation in promoting sustainable development by

The most recent international human rights instrument specifically dealing with human rights defenders similarly protects the right to participate in public affairs and to petition the government:

Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels...

(b) To form, join and participate in non-governmental organizations, associations or groups;

(c) To communicate with non-governmental or intergovernmental organizations.

Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.¹²⁵

In light of the application of Article 29 of the American Convention to this case, the right to participate in public affairs (already consecrated in Articles 13 and 23 of the Convention) and the right to petition (similarly guaranteed by Article XXIV of the American Declaration) should be integrated with the evolution of international human rights and international environmental law in this matter. Montiel and Cabrera's rights to participate directly in public affairs and environmental decision-making, and to petition their government concerning the exploitation of natural resources in the area in which they lived, were violated by the state of Mexico.

specific groups of the public, including NGOs. Id. at 12, and at 328 (“In many countries, governments need to recognize and extend NGOs’ right to know and have access to information on the environment and natural resources; their right to be consulted and to participate in decision making on activities likely to have a significant effect on their environment; and their right to legal remedies and redress when their health or environment has or may be seriously affected”).

¹²⁵ Declaration on Human Rights Defenders, *supra* note 72.

C. Violation of the Right to Freedom of Association Under Article 16 of the American Convention and Under Article XXII of the American Declaration.

The state of Mexico violated Montiel and Cabrera's lawful exercise of their right to freedom of association by punishing them for organizing and being among the most active members of the anti-logging group OCESP.

Montiel and Cabrera's right to freedom of association is guaranteed under Article 16 of the American Convention:

Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes;

Under Article XXII of the American Declaration:

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

This Honorable Commission has held that "when individual members [of an association] are forced to abandon their activities, they also suffer violations of their right to freedom of association."¹²⁶ The state of Mexico's reprisals against Montiel and Cabrera, as well as reprisals against other OCESP members described above, were designed to force OCESP members to abandon their individual and organizational anti-logging activities.

Montiel and Cabrera's right to freedom of association is protected under and defined to a greater extent by other international law instruments, pursuant to Article 29 of the American Convention, and is protected generally as an accepted norm of customary international law.¹²⁷

More recently, the right to freedom of association has been enumerated in the context of environmental issues in paragraph 19 of the 1994 "Draft Declaration of Principles on Human Rights and the Environment":

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.¹²⁸

The right to freedom of association must also be protected because without it, various other human rights cannot be fully exercised. The Declaration on Human Rights Defenders speaks

¹²⁶ Colombia Country Report (1999), Chapter VII, para. 73.

¹²⁷ Article 20 of the Universal Declaration of Human Rights of 1948; Article 22 of the ICCPR; Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 11 of the African Charter on Human and Peoples' Rights.

¹²⁸ Special Rapporteur on Human Rights and the Environment, *supra* note 13.

throughout in terms of rights to be exercised “individually and in association with others.” The Mexican government’s violation of Montiel and Cabrera’s right to freedom of association is inextricably tied to its violations of Montiel and Cabrera’s other enabling rights.

For example, this case perfectly illustrates how the right to freedom of association is necessary to the enjoyment of the right to freedom of expression and the right to petition and participate in government. The Special Rapporteur for Freedom of Expression has described the right to freedom of expression as having a dual aspect (both receiving and imparting information), and a “collective” aspect.¹²⁹ These aspects cannot be preserved in the absence of the exercise of the right to freedom of association. OCESP’s activities, and its very effectiveness, depended on the ability of its members to communicate information to each other, and to communicate its members’ concerns collectively to the government. By deterring OCESP’s members in their exercise of their rights to freedom of association, the government hoped to stop those members from expressing their ideas, and from petitioning and participating in government.¹³⁰

The Mexican government violated Montiel and Cabrera’s protected rights by blocking their ability to freely associate with others, including their fellow OCESP members, and by making it impossible for them to carry on their activities as members of OCESP to promote and protect legitimate environmental interests.

VI. THE APPROPRIATE REMEDY UNDER ARTICLE 63.1 OF THE AMERICAN CONVENTION

The Inter-American Court of Human Rights has defined the scope of the Commission’s duty under Article 63.1 of the American Convention to remedy violations of rights or freedoms protected by the Convention:

The remedy for the damage caused by the infraction of an international obligation requires, when possible, full restitution (*restitutio in integrum*), which consists in the re-establishment of the prior situation. If this is not possible, the international tribunal can order the adoption of measures that ensure the infringed rights, remedy the consequences that the infractions produced, as well as establish the payment of compensation for the damages caused.¹³¹

Rodolfo Montiel and Teodoro Cabrera have suffered permanent damage to their health resulting from acts of torture, as well as having been arbitrarily accused and imprisoned. Both

¹²⁹ *Supra* note 101.

¹³⁰ The Commission, in its 1997 “Report on Ecuador,” recommended that states “implement the measures to ensure that all persons have the right to participate, *individually and jointly*, in the formulation of decisions which directly concern their environment.” (emphasis added). *Supra* note 111. The 1982 World Charter for Nature states that persons ought to “have the opportunity to participate, *individually or with others*, in the formulation of decisions of direct concern to their environment . . .” (emphasis added). *Supra* note 113

¹³¹ “Barrios Altos” Case (*Chumbipuma Aguirre et. al. v. Peru*), Reparations (Art.63.1 American Convention on Human Rights), Sentence of November 30 of 2001; *Cfr Cesti Hurtado Case*, para. 33; “Niños de la Calle” Case (*Vinagran Morales et. al*), Reparations, para. 60; and “Panel Blanca” Case (*Paniagua Morales et. al.*), Reparations, para. 76.

they and their families have been uprooted. It is not possible to return things to their previous state. Because of the impossibility of a *restitutio in integrum*, and observing the criteria established by the Court, the remedy must consist of:

- A. The adoption of measures that ensure the infringed rights.
- B. Remedying the consequences produced by the infractions.
- C. The establishment of compensation be paid to the injured party for the damages caused.

A. The Adoption of Measures that Ensure the Infringed Rights.

Pursuant to Article 1.1 of the American Convention, the State of Mexico is obligated to adopt administrative, legislative, and judicial measures to ensure the free and full exercise of rights protected by the Convention. As a corollary to this obligation, the State of Mexico has the obligation to investigate and sanction those responsible for the violation of Montiel and Cabrera's human rights, and the duty to prevent future violations.

1. Duty to Investigate and Sanction those Responsible.

The first part of the remedy in this case should be the prompt, effective, and impartial investigation of complaints relating to the violation of the human rights of Rodolfo Montiel and Teodoro Cabrera, and the sanction of all material instigators, actors, accomplices and obstructors of the facts.

200. ...the investigation of the facts and sanctioning of those responsible...is the obligation of the State ...[and is] an obligation that must be discharged seriously and not as a mere formality.¹³²

The remedy with respect to the investigation and sanctioning of those responsible should consist of The State of Mexico adopting the following measures.

- a) Withdrawal of Military Justice from judicial proceedings for the investigation and sanctioning of those responsible for the torture infringed upon Rodolfo Montiel and Teodoro Cabrera, so that the case be submitted to a common court.
- b) The sanctioning of those responsible should include punitive damages. It is worth highlighting that, in addition to being a sanction, punitive damages play a very important preventive role based on their highly persuasive character. This is why the remedy, according to the Inter-American Court, should necessarily consider this type of damage award, which fuses a sanction and preventive duties into one legal mechanism.

¹³² Inter-American Court of Human Rights, "*Panel Blanca*" Case; Case *Paniagua Morales et. al. v. Guatemala*; Reparations (Art.63.1 American Convention on Human Rights), Sentence of May 25, 2001; *Suarez Rosero Case, Reparations*, para. 79; and *El Amparo Case, Reparations*, para. 61ca.

c) Ensure that torture and other human rights violations are assessed and sanctioned as such by competent jurisdictional bodies, in accordance with the international definition of human rights violations.

d) Ensure that necessary measures are taken to immediately execute apprehension orders against judicial police officers, which have not been fulfilled in the course of the criminal process, including the preventive suspension of security officers that have taken part in the arrest of Montiel and Mr. Cabrera, while the claims for the violation of their human rights are definitively resolved.

e) Investigation and judgment of the conduct of intervening judges, in relation to the responsibilities that, by action or omission, they bear.

2. Duty to Prevent Further Human Rights Violations.

The duty to prevent further human rights violations in this case is closely related to the current impunity enjoyed by those who violated the human rights of Montiel and Cabrera. Lack of action on the part of the State of Mexico implies a tacit consent for these violations to continue. As the Inter-American Court of Human Rights has stated, “... the State that leaves human rights violations unpunished, violates its duty to ensure free and full exercise of the rights of the people within its jurisdiction...”,¹³³

...by impunity one must understand the failure on the whole to investigate, prosecute, capture, try, and condemn those responsible for violations of human rights protected by the American Convention ...The State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic repetition of human rights violations, and total defenselessness of victims and their relatives.¹³⁴

Therefore, the remedy in this context should also include the adoption of measures necessary to prevent the repetition of violations of human rights consecrated in the American Convention.

An essential step in preventing human rights abuses and combating impunity is to offer all the guaranties necessary for human rights advocates (including environmental activists) to perform their important without any abusive interference from authorities. The Mexican National Commission on Human Rights, as well as other human rights and environmental institutions, must have the support of the government in order to effectively monitor human rights violations and advocate on behalf the victims. The State of Mexico must adopt measures necessary to fulfill the recommendations of the National Commission on Human Rights.

In particular, the State of Mexico should modify its domestic, legislative, and administrative instruments in order to firmly and definitively eradicate torture from the criminal justice system.

¹³³ Cfr. *Bamaca Velasquez Case*, para. 129; *Blake Case, Reparations*, para. 121 and Third Resolutive Point; *Suarez Rosero Case, Reparations*, para. 107 and Sixth Resolutive Point.

¹³⁴ Inter-American Court of Human Rights, “*Panel Blanca*” Case, *supra*; *Paniagua Morales and others v. Guatemala Case, supra*, Reparations (Art.63.1 American Convention on Human Rights); Sentence of May 25, 2001.

And to achieve all of these goals, the State of Mexico should limit the value attached to extra-judicial confessions, modify its erroneous interpretation of the "principle of immediacy" under Mexican law, and reduce the civil jurisdiction of the military justice system.

a. Excessive Value Attached to Extra-Judicial Confessions.

It is imperative that the State of Mexico adopts legislative and other appropriate measures to ensure that a declaration made by the defendant before a competent judge is the only legitimate confession of the proceedings, explicitly eliminating the incriminatory character of the confession made before the Judicial Police force. Any other declaration or testimony must be rejected, where there is indication of coercion or torture.

This Honorable Commission has expressed on prior occasions its concern regarding the value that the Mexican criminal justice system confers upon extra-judicial confessions:

305. According to information received by Inter-American Court on Human Rights, most cases of torture and of cruel, inhuman and degrading treatment occur in the context of the criminal justice system, mainly during the early stages of the investigation of criminal offenses. The agents who are usually guilty of committing acts of torture are members of the Federal and state judicial police, the Office of the Public Prosecutor or of the Armed Forces. Below is an excerpt from the report issued recently by the United Nations Special Reporter, Nigel Rodley, regarding the practice of torture in Mexico:

Torture is inflicted primarily to obtain confessions or information. At times, it is practiced in conjunction with brutal prison treatment. Its perpetrators may be federal or state police officers, members of the preventive or judicial police force, or military personnel, when the military is involved in law enforcement activities.

309. The practice of torture as a method of police investigation has been encouraged by the legal validity that the Mexican legal system confers on the first statement by the accused, which, as we have already noted in this report, is taken not by the judge but by the Office of the Public Prosecutor...

311. Historical experience has shown conclusively that to accord probative value to extra judicial statements or statements made during the investigative stage of criminal proceedings merely encourages the practice of torture, insofar as the police prefer to expend less effort in the investigation and to seek instead the confession of the accused person.¹³⁵

¹³⁵ Inter-American Commission on Human Rights, Report on the Situation of the Human Rights in Mexico, OAS/Ser.L/V/II.100, Doc. 7 rev. 1, September 24th, 1998.

b. Erroneous Interpretation of the Principle of Procedural Immediacy.

The persistence of the Mexican justice system in according probative value to extra-judicial statements is closely related to the improper judicial interpretation of the principle of procedural immediacy. The Supreme Court of Mexico has stated that “[i]n conformity with the principle of procedural immediacy and unless the retraction of the confession is legal, the first statements by the accused made without sufficient time for preparation or for exculpatory reflection should prevail over later statements.”¹³⁶

Yet this Honorable Commission has stated that:

312. ...the process [of obtaining a statement from the defendant] should be conducted directly and promptly by the judge, with special emphasis being placed on the direct relationship between the judge and the person accused. Both the International Covenant on Civil and Political Rights and the American Convention provide that the accused must be brought "... promptly before a judge....".

314. In criminal matters, the principle of procedural immediacy is of fundamental importance, since the problems to be resolved by the court concern the basic faculties of the human person, which may be affected by the criminal justice system of the State. Consequently, the guarantee of procedural immediacy should in all cases be construed as having effect only between the judge and the accused person. Improper and erroneous interpretations, including statements given at police stations or at the Office of the Public Prosecutor should be rejected, since they are not given before the judge himself.

315. The Mexican State is construing the guarantee of procedural immediacy in a way, which, instead of serving as a procedural guarantee for those accused of a crime, is becoming its very antithesis, the source of abuse of the rights of accused persons...¹³⁷

The remedy, therefore, as far as prevention is concerned, should include:

- i. Assistance being provided to the Mexican State Magistrate for the revision of the erroneous interpretation of the principle of procedural immediacy. By virtue of the function of the Commission to promote the observance and defense of human rights, it is appropriate that this Honorable Commission take charge in providing such assistance.
- ii. Concrete initiatives being taken to instruct and train those officials in charge of law enforcement, as regards the absolute prohibition of practices of torture, and of cruel, inhuman and degrading treatment, and making clear to these officials that the illegal and unlawful arrest of environmental activists not only affects their physical integrity, but also leaves society devoid of defenders of natural resources.

¹³⁶ Thesis number 82, Federal law seminar, appendix on defined jurisprudence 1917-1971, Part II, First Chamber, p. 175.

¹³⁷ Report on the Situation of the Human Rights in Mexico, *supra* note 135.

iii. Concrete and efficient measures being taken to supervise public agents (armed forces and police) from the State of Guerrero with a view to prevent new acts of torture and other violations of human rights consecrated in the Convention.¹³⁸

c. Excessive Jurisdiction Conferred Upon Military Justice.

Another factor contributing to the situation of impunity is the excessive jurisdiction that the State of Mexico has conferred upon the Military Justice. With respect to this issue, the remedy should consist of the immediate reform of the military legal system (Military Code) in order to restrict the competence of military justice to matters that strictly concern military officials.

Military Justice does not grant the minimum guarantees required by the Inter-American System of Human Rights. This is due to the absolute dependence of the Executive Power on the appointment of judges as well as on the substance of the proceedings. The jurisdiction of the Military justice system must be restricted to military matters. The excessive jurisdiction that the Mexican legal system confers upon the military justice system encourages the perpetration of human rights violations.¹³⁹

¹³⁸ The serious situation of the human rights in the state of Guerrero has been mentioned by different institutions (“Many of the causes of human rights violations are systemic and exist all over the country, but the crisis is particularly serious in the Southern states of Chiapas, Oaxaca and Guerrero...”). Amnesty International, “México Bajo la sombra de la impunidad” at <http://www.derecho.org/nizkor/doc/ai.html>.

The State of Mexico’s failure to take adequate steps to protect human rights is illustrated by figures presented by the National Commission on Human Rights. Between 1990 and 1995, the Commission addressed different Mexican State authorities through 53 recommendations, of which 25 had not been fulfilled by the end of 1996. The State of Guerrero is one of the States that presents the highest number of politically motivated killings, as well as disappearance of leaders and activists. “Black lists” circulate secretly but circulate freely enough to create a state of terror.

In the State of Guerrero there are currently 45,000 soldiers. Most of the rural population of those States live under a situation of military occupation and suffer from effective suspension of their constitutional guarantees. Provisional or permanent military camps have been established in communal or common lands. This situation violates agrarian laws. There are military outposts on roads and entrances to communities. Peasants, mainly indigenous people, suffer from a permanent deprivation of their freedom of movement and are interrogated about their destination, their identity, their activities and their families’ activities, their possible links with armed groups, and for information about the latter. Such interrogations are carried out without any apprehension order and without judicial control whatsoever, violating the provisions of Article 16 of the Constitution. International Federation of Human Rights, “Del Discurso a la Realidad: Una Situación de Violaciones Flagrantes y Sistemáticas a los Derechos Humanos en México,” International Mission of Investigation in Mexico, April, 1997 (translated).

¹³⁹ The Mexican legal system reserves a wide scope of competence for military tribunals, including having military officers involved in human rights violations being investigated and prosecuted in military tribunals. The Code of Military Justice confers military tribunals with jurisdiction to judge common offenses committed by military officers when in service or when such offenses are committed in service occasions.

The Military Judiciary includes the Supreme Military Tribunal, the Ordinary Councils of War, the Extraordinary Councils of War, military judges, and the Office of the Public Prosecutor of Military Justice. Military officials in active service participate in all these instances. The Executive Power appoints the members of the Supreme Military Tribunal as well as of the Ordinary Councils of War and military judges. The Office of the Public Prosecutor of Military Justice depends on the Defense Office and has the exclusive ability to advance investigations and criminally accuse military officers (presumably involved in crimes) before Tribunals. The Executive Power can order the Office of the Public Prosecutor of Military Justice to abandon criminal accusations or to withdraw them. In

B. Remediating the Consequences Produced by the Infractions.

Because extra-judicial confessions obtained by means of torture served as the sole evidence of the fabricated crimes “committed” by Rodolfo Montiel and Teodoro Cabrera, the legal process against the two environmental activists is absolutely and irrefutably null and void. It is essential that the true facts be revealed and acquittals ordered.

The violation of the human rights of Montiel and Cabrera has as its predecessor another human rights violation: a violation that implies the destruction of cultures and communities, through the devastation of natural resources that are indispensable for those communities to economically and culturally survive.

Peasants that witness the desertification of their lands, riverside dwellers that have their rivers polluted, and coastal dwellers suffering exhausted fishing resources and degraded water resources, can expect only misery and forced exile. The peasant farmers from Guerrero knew this very well. For this reason, they continued to strive to defend their cultural and environmental identity, despite serious risks to their lives. Alternatively, their lives, culture, rights, and future would have been gradually wiped out.

The illegal arrest and treatment of Rodolfo Montiel and Teodoro Cabrera constituted not only an obstacle to their personal commitment to the defense of the environment, but severely impacted the *Organization of Peasant Ecologists of la Sierra de Petatlán and Coyuca de Catalán (OCESP)*. By means of torture, illegal apprehension of OCESP’s leaders, and the unpunished assassination of its members, the Mexican State generated a state of terror among other peasant activists that participated in this environmental organization.

order to perform investigative activities, the Office of the Public Prosecutor of Military Justice is assisted by the Board of Judicial Police, composed of commanders of military units.

Civil victims are excluded from participating in these proceedings. The primacy of the principle of military hierarchy within military jurisdiction and the highest dependence of the Executive Power on military jurisdiction are only two factors among several factors that lead us to conclude that these tribunals do not meet the conditions of an independent and impartial tribunal required by international norms. International Federation of Human Rights, “Del Discurso a la Realidad: Una Situacion de Violaciones Flagrantes y Sistemáticas a los Derechos Humanos en Mexico,” *supra* note 138, emphasis *added* (translated).

The Mexican State must assume its corresponding responsibility and remedy the damages caused to OCESP. The State must:

1. Grant technical and financial support to the organization.
2. Provide its members the guaranties necessary for them to perform their functions.
3. Study the extent of the damages suffered by the communities and mediate the means to halt environmental degradation produced by intensive exploitation of timber resources.
4. Investigate which human rights were infringed by the environmental degradation that resulted from excessive exploitation of the forests of the State of Guerrero.
5. Mediate the means necessary to legally protect the natural resources on which the survival of the communities depends.

C. The Establishment of Compensation to be paid to the Injured Party for the Damages Caused.

On the subject of appropriate compensation to injured parties, the Inter-American Court has stated:

Concerning material damage (*supra* 10.1, 10.3 and 10.6), from the time the Court has submitted its first sentence as regards remedies, it has recognized that the violations of the rights protected create for the victim a right to remedy the consequences produced by the breach which includes the payment of an indemnity as compensation for material and moral damages.¹⁴⁰

Material damage includes within its scope emerging damages and loss of profits. In this case, the victims and their relatives must be fairly compensated for the damages suffered.

It is worth highlighting that the illegal arrest and treatment of Montiel and Cabrera caused serious harm to their families: due to a legitimate fear of reprisals being taken by officials, and in order to be in contact with their illegally arrested relatives, the families had to endure forced displacement. They lost their rural communal family life, and were forced into an unfamiliar and hostile urban environment (the city of Iguala), where they remained cut off from their basic customs, such as their work in the countryside. Once the victims were freed, they were precluded from returning to their community and continuing their advocacy because of powerful aligned against them. This situation brought about serious damages to Montiel and Cabrera, to their relatives, and to the OCESP; damages that must be considered in order to establish fair compensation.

¹⁴⁰ Case *Gustavo Adolfo Cesti Hurtado v. Peru*; Interpretation of the remedy sentence; (Art.63.1, American Convention on Human Rights); Sentence of November 27, 2001.

Finally, the moral damage suffered must also be remedied. Montiel and Cabrera were subject to humiliation, inhuman and degrading treatment, and torture; they each saw their partner being assassinated, bore the disgrace of being unlawfully arrested, and remained deprived of their freedom for an extensive period.

VII. CONCLUSION

The signatory organizations, deeply concerned with the violations perpetrated in this case, submit to the Inter-American Commission on Human Rights this *amicus curiae* brief. We respectfully request that the factual and legal arguments contained herein be considered in the resolution of this case.

We are convinced that this Honorable Commission will seriously judge the severe human rights violations suffered by Rodolfo Montiel and Teodoro Cabrera, and recognize that the unjust persecution and abuse of environmental defenders is a clear violation of their human rights. This recognition will help avert the profound impact that silencing those who defend the earth has on the human person.

Respectively submitted,

Date

Romina Picolotti
**Center for Human Rights
Environment**
Argentina

Date

Lewis Gordon
**Center for International &
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United States of America

The *amici curiae* have been authorized by the following organizations to express the latter's support of and adherence to the arguments made and position taken in the above brief:

Earthrights International
United States of America

Sobrevivencia
Paraguay

Justicia Para la Naturaleza
Costa Rica

CEDARENA
Costa Rica

CEMDA (Centro Mexicano de Derecho Ambiental)
Mexico