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The International Legal Rights of Indigenous Peoples Affected by Natural Resource Exploitation: A Brief Case Study

BY MARTIN WAGNER*

Introduction

In the northeastern corner of Colombia, on the slopes of the Andes mountains near the border of Venezuela, lies a region of cloud and rainforest inhabited by an indigenous people called the U'wa. For thousands of years, the U'wa have lived in harmony with their environment, moving regularly to minimize their impact on the land, letting fields go fallow for ten to fifteen years to permit them to recover fully between uses, and hunting, fishing and harvesting within the bounds of sustainability.

The U'wa lifestyle is related to the spiritual foundations of their culture. The U'wa believe their land to be the center of the Earth, sacred territory their gods have placed the U'wa there to protect. Furthermore, the U'wa believe that the continued survival of the species and the health of the environment in their territory is essential for the continued survival of all humankind. In the words of one U'wa leader, "The U'wa territory is the heart of the world, from which run the veins that nourish the Universe. If the territory is destroyed, the world will be drained of its life-blood."¹

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1. Colombian U'wa Community, Present Situation, at <http://www.uwacolombia.org/uwa/probes.htm> (last visited Sept. 13, 2001) (author's translation) ("El territorio U'wa es el corazón del mundo, por él corren las venas que

The U'wa have performed their duties well. Their land, among the most biologically diverse places on Earth, is pristine and the rivers are pure. In certain locations, the U'wa have prohibited the presence of humans, so as to protect and honor animals and their spirits. The U'wa have been repaid in kind, for the land has supported them and their neighbors, indigenous peoples and recent settlers alike, for as long as any can remember.

But the U'wa's life of peace and harmony is in serious jeopardy. In the middle of the last century, the government of Colombia began giving title to U'wa territory to colonizers and the Catholic church. By 1970, the U'wa had lost 85% of their traditional territory, being forced to live on a system of indigenous reserves consisting of approximately 247,000 acres of land. During the same period, disease, violence and the loss of traditional means of subsistence caused the U'wa population to drop from nearly 20,000 to approximately 2000 people. In 1992, in what may be the fatal blow, the U.S. corporation Occidental Petroleum purchased from the Colombian government the right to explore an area called the Samoré Block, which covers significant portions of U'wa indigenous reservations and is completely within U'wa traditional territory. In September 1999, Colombia granted a license to Occidental Petroleum to drill an exploratory oil well within U'wa ancestral territory.

The U'wa have known about the oil for thousands of years – they call it *ruiría*, and consider it to be the blood of Mother Earth, any disturbance of which violates the U'wa's sacred responsibility to protect their territory. The U'wa also know that oil exploitation in their territory would almost certainly result in environmental devastation and the destruction of the U'wa people and culture. Drilling wastes from oil wells typically contain such toxins as arsenic, lead, mercury, benzene, naphthalene and other hydrocarbons. Reviews of what little technical information is available suggest that Occidental's exploratory well is likely to pollute the surface- and groundwater with these contaminants, and to cause large-scale erosion and other harms. Full development of an oilfield in the area is likely to cause the same harms in greater degree. These impacts are consistent with what has occurred in another Colombian oilfield operated by Occidental, where the surface water has been contaminated with heavy metals and other toxins at levels as much as fifty times above international standards.

alimentan el universo, si se destruye, se desangra el mundo.”).

In addition to the purely environmental damage, the contamination often caused by oil exploitation activities results in serious harm to human health. The Inter-American Commission on Human Rights (IACHR) has noted that “[h]uman exposure to oil and oil-related chemicals, through the skin or ingested in food or water, or through fumes absorbed via the respiratory system, has been widely documented to cause adverse effects to human health and life.”² People living in the vicinity of petroleum facilities in the region have been reported to have significantly higher rates of spontaneous abortion, headache, nausea, anemia, dermatitis and fungal infection.³ Water samples from such areas show high levels of contaminants linked to health effects ranging from skin irritation to blood disorders, cancer and birth defects.⁴

Aware of all of these risks to their environment, lives and culture, the U’wa have promised to take all possible peaceful steps to prevent oil exploitation in their ancestral territory. If they are unsuccessful, they have promised that, “rather than see our sacred values (the earth, oil, etc.) profaned, we will take our own lives in a collective suicide of the U’wa people. If in the struggle for that which is ours, we must take a final step, this will be it; if, to defend life, we must give ours, we will do so.”⁵

The situation of the U’wa is not unique. Natural resource exploitation is causing massive environmental damage in myriad locations throughout the world. Furthermore, because of their close connection to the environment and their lack of political power, indigenous people often feel the effects of this damage most directly.

International law is not blind to the plight of the U’wa and other indigenous peoples. Massive environmental damage on indigenous lands violates numerous international norms. Unfortunately, international norms are seldom given the same weight as the desires

2. *Report on the Situation of Human Rights in Ecuador*, Organization of American States, Inter-American Commission on Human Rights, at 80-81, 89, OEA/Ser.L/V/II.96, doc. 10 rev. 1 (April 24, 1997) [hereinafter *IACHR Ecuador Report*].

3. *Id.* at 90-91.

4. *Id.*

5. Colombian U’wa Community, Who are the U’wa and what do they represent?, at <http://www.uwacolombia.org/uwa/quieneses.htm> (last visited Sept. 13, 2001) (author’s translation) (“Antes que ver a nuestros sagrados mayores profanados (la tierra, el petróleo, y otros) preferimos nuestra propia muerte, el suicidio colectivo del pueblo U’wa, si en la lucha por lo nuestro hemos de dar un último paso, será ese, si para defender la vida debemos dar la nuestra lo haremos.”).

of corporations or the (frequently parallel) decisions of governments. Nevertheless, such norms can be valuable in the defense of indigenous peoples and the environment, whether in domestic courts, international tribunals, or as a basis for shaping public opinion. This article briefly describes some of the relevant international norms.

I. Human Rights and Environmental Degradation

Massive environmental degradation such as is likely to occur with development of an oilfield in U'wa territory violates numerous human rights, the most fundamental of which is the right to a healthy environment. This right exists in many national constitutions and laws,⁶ as well as in international law.

In 1994, a United Nations Special Rapporteur issued a report on Human Rights and the Environment. On the basis of consultations with seventeen other internationally-renowned jurists and an exhaustive examination of "some 350 multilateral treaties, 1,000 bilateral treaties, and a multitude of instruments of intergovernmental organizations," the Special Rapporteur concluded that, under current customary international law, "[a]ll persons have the right to a secure, healthy and ecologically sound environment."⁷ This right is recognized explicitly in several international human rights agreements, including the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁸

The right to a healthy environment is also recognized in several international environmental agreements. For example, the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment and the 1992 Rio Declaration on Environment

6. The constitutions of 100 of 190 nations in the world recognize the right to a clean and healthy environment and/or the state's obligation to prevent environmental harm.

7. *Human Rights and the Environment: Final Report by Mrs. Fatma Zohra Ksentini, Special Rapporteur*, U.N. ESCOR, Commission on Human Rights, 46th Sess., at 8 & Annex I, princ. 2, at 75, U.N. Doc. E/CN.4/Sub.2/1994/9 (1994) [hereinafter *Ksentini Final Report*].

8. International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, art. 12, 993 U.N.T.S. 3 (recognizing right to health, noting relationship to environment) (135 nations are party) [hereinafter ICESCR]. *See also* Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, *opened for signature* Nov. 14, 1988, art. 11, O.A.S.T.S. No. 69, *reprinted in* 28 I.L.M. 156 [hereinafter *Additional American Protocol*].

and Development each recognize the right.⁹ Although neither of these declarations is binding, the Rio Declaration has been reaffirmed by 115 nations in a binding agreement, the 1994 Desertification Convention.¹⁰ Today, only 34 of 190 nations have not signed some agreement that directly or indirectly recognizes a right to a healthy environment.¹¹

Several international environmental agreements also support the right to a healthy environment by prohibiting or establishing liability for environmental harm. These include the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal,¹² ratified by 113 nations, the Montreal Protocol on Substances that Deplete the Ozone Layer,¹³ ratified by 112, and the European Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment.¹⁴

In addition to violating the right to a healthy environment, massive environmental devastation violates numerous other human rights, including the rights to life, health and security of person.¹⁵ As

9. Declaration of the United Nations Conference on the Human Environment, June 16, 1972, princ. 1, U.N. Doc. A/Conf.48/14/Corr.1 (1972), *reprinted in* 11 I.L.M. 1416; Rio Declaration on Environment and Development, June 14, 1992, princ. 1, *in Report of the United Nations Conference on Environment and Development*, Annex I, at 8, U.N. Doc. A/CONF.151/5/Rev.1 (1992), *reprinted in* 31 I.L.M. 874.

10. United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, June 17, 1994, pmbl., U.N. Doc. A/AC.241/27 (1994), *reprinted in* 33 I.L.M. 1328 [hereinafter *Desertification Convention*].

11. These agreements include the Desertification Convention, *id.*; the Banjul [Africa] Charter on Human and Peoples' Rights, *adopted* June 27, 1981, art. 24, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, *reprinted in* 21 I.L.M. 58 ("All peoples shall have the right to a generally satisfactory environment favorable to their development."); and the Additional American Protocol, *supra* note 8, art. 11 ("Everyone shall have the right to live in a healthy environment.").

12. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Mar. 22, 1989, S. TREATY DOC. NO. 102-5 (1991), 1673 U.N.T.S. 57, *reprinted in* 28 I.L.M. 649.

13. Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 6, 1987, S. TREATY DOC. NO. 100-10 (1987), *reprinted in* 26 I.L.M. 1541, *as amended* June 29, 1990, S. TREATY DOC. NO. 102-4 (1991), *reprinted in* 30 I.L.M. 537.

14. Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, June 21, 1993, Council of Europe, pmbl., arts. 2(2), 6(1), Europ. T.S. No. 150, *reprinted in* 32 I.L.M. 1228.

15. Among other sources, the right to life is guaranteed in the International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, art. 6, S. EXEC. DOC. E, 95-2 (1978), 999 U.N.T.S. 171 [hereinafter *ICCPR*]; *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, art. 3 (1948) [hereinafter *UDHR*]; and the American Convention on Human Rights, Nov. 22,

the Inter-American Commission on Human Rights has stated, "The right to have one's life respected is not . . . limited to protection against arbitrary killing. States Parties are required to take certain positive measures to safeguard life and physical integrity. Severe environmental pollution may pose a threat to human life and health."¹⁶ In areas inhabited or frequented by humans, such as the U'wa territory, massive pollution or environmental harm violates these rights.

By impacting resources on which humans may depend for their survival and health, massive environmental harm also affects rights related to physical sustenance. Several international agreements recognize a right to food,¹⁷ and the first provision of each of the global human rights covenants states that "[i]n no case may a people be deprived of its own means of subsistence."¹⁸ For a people like the U'wa, who depend on their territory for clean water and sufficient and sustainable sources of food, pollution and other environmental harm directly affect these non-derogable rights.¹⁹

International human rights tribunals have also acknowledged that environmental devastation violates international law. For example, in *EHP v. Canada*, the U.N. Human Rights Committee concluded that large-scale dumping of nuclear waste violates the right to life, health, and security of person.²⁰ Similarly, in *Yanomami Indians v. Brazil*, the Inter-American Commission on Human Rights held that harm arising from mining activities violated the rights to life

1969, art. 4, 1144 U.N.T.S. 123 [hereinafter American Convention].

The right to health is guaranteed in, *inter alia*, the ICESCR, *supra* note 8, art. 12; the American Declaration of the Rights and Duties of Man, art. XI, OEA/ser. L/V/II.23, doc. 21 rev. 6 (1948); and the Additional American Protocol, *supra* note 8, art. 10.

The right to security of person appears in the ICCPR, *supra* note 15, art. 9; the UDHR, *supra* note 15, art. 3; and the American Convention, *supra* note 15, art. 7.

16. *IACHR Ecuador Report*, *supra* note 2, at 88.

17. ICESCR, *supra* note 8, art. 11.; *see also* Additional American Protocol, *supra* note 8, art. 12.

18. ICCPR, *supra* note 15, art. 1; ICESCR, *supra* note 8, art. 1.

19. Under the ICCPR, many rights may be infringed in times of "public emergency." ICCPR, *supra* note 15, art. 4. The Covenant does not permit derogation from the right to life, however, *id.*, and article 1's statement that "[i]n no case may a people be deprived of its own means of subsistence" indicates that the same is true of the latter right. ICCPR, *supra* note 15, art. 1 (emphasis added).

20. *EHP v. Canada*, Communication No. 67/1980, in United Nations, 2 Selected Decisions of the Human Rights Committee under the Optional Protocol 20, U.N. Doc. CCPR/C/OP/2 (1990).

and health.²¹ In 1997, the same Commission issued a report addressing the dumping of large amounts of oil production wastes into soil and surface water in remote areas of the Amazon River basin. Noting that such dumping can result in serious harm to human health, the Commission concluded that the dumping violates the rights to life, personal security and health.²² Significantly, the Commission noted that both the state and the companies responsible for the dumping are responsible for these violations.²³

II. Indigenous Rights

The impact of oil exploitation on the U'wa demonstrates a common characteristic of environmental harm: its effects are often felt most severely by indigenous peoples. The Inter-American Commission on Human Rights has noted that oil exploitation on indigenous lands often leads to:

the displacement of indigenous inhabitants and communities. Oil exploitation activities have proceeded through traditional indigenous territory with little attention to the placement of facilities in relation to existing communities: production sites and waste pits have been placed immediately adjacent to some communities; roads have been built through traditional indigenous territory; seismic blasts have been detonated in areas of special importance such as hunting grounds; and areas regarded as sacred, such as certain lakes, have been trespassed.²⁴

Environmental harm often has a special impact on indigenous people. The IACHR and the U.N. Special Rapporteur on Human Rights and the Environment have both noted that “[c]ertain indigenous peoples maintain special ties with their traditional lands, and a close dependence upon the natural resources provided therein – respect for which is essential to their physical and cultural survival.”²⁵

21. Yanomami Indians v. Brazil, Case No. 7615, IACHR Res. No. 12/85 (Mar. 5, 1985), *reprinted in* ANNUAL REPORT OF THE IACHR 1984-85, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (Oct. 1, 1985) (applying articles I and XI of the American Declaration of the Rights and Duties of Man).

22. *IACHR Ecuador Report*, *supra* note 2, at 88-94.

23. *Id.* at 94. The United Nations Special Rapporteur has also noted that “[t]he State and other parties to development . . . have the duty, among others, to refrain from activities damaging to the environment and to take positive measures for preserving it.” *Ksentini Final Report*, *supra* note 7, at 60 (emphasis added).

24. *IACHR Ecuador Report*, *supra* note 2, at 110.

25. *Id.* at 106 (citing *Ksentini Final Report*, *supra* note 7, ¶¶ 77, 78-93). See also *Proposed American Declaration on the Rights of Indigenous Peoples*, Inter-Am.

Because of this intimate connection between indigenous peoples and their lands, displacement from indigenous lands or damage to these lands "invariably leads to serious loss of life and health and damage to the cultural integrity of indigenous peoples."²⁶ As the U.N. Special Rapporteur has recognized:

[Cultural] disintegration is compounded by destruction of the ecology and habitat upon which indigenous groups depend for their physical and cultural survival. Deforestation, particularly of rain forests, and pollution introduced by outsiders jeopardize the *modus vivendi* of indigenous groups. The social nexus binding members of the group to the environment is thus annihilated.²⁷

These concerns have led to special protections for indigenous lands and people under international law. For example, ILO Convention 169 recognizes "the special importance for the cultures and spiritual values of [indigenous peoples'] relationship with [their] lands or territories," and requires special measures for safeguarding the environment of indigenous peoples.²⁸ The U.N. Draft Declaration of Principles on the Rights of Indigenous Peoples provides that "[i]ndigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which they have traditionally owned or otherwise occupied or used."²⁹ The Proposed American Declaration on the Rights of Indigenous Peoples recognizes that "[i]ndigenous peoples have the right to a safe and healthy environment, which is an essential condition for enjoyment of

C.H.R., 95th Sess., 1333d mtg., pmb., OEA/Ser/L/V/II.95 (1997) ("Recognizing the respect for the environment accorded by the cultures of indigenous peoples of the Americas, and considering the special relationship between those peoples and the environment, the lands, the resources and the territories in which they live . . .") [hereinafter *Proposed American Declaration*].

26. *Ksentini Final Report*, *supra* note 7, ¶ 77.

27. *Id.* ¶ 80 (quoting Prof. Vitit Muntarhorn, background paper prepared for the 1989 U.N. Seminar on the Effects of Racism and Racial Discrimination on the Social and Economic Relations Between Indigenous Peoples and States, U.N. Doc. E/CN.4/1989/22, Annex III A, 27-28 (1989)).

28. Convention Concerning Indigenous and Tribal Peoples in Independent Countries, International Labor Organization Convention No. 169, *opened for signature* June 27, 1989, arts. 4.1, 7.4, 13, 72, Int'l Lab. Off. Official Bull. 59 (Ser. A, No. 2), *reprinted in* 28 I.L.M. 1382 [hereinafter ILO Convention 169].

29. *Draft Declaration of Principles on the Rights of Indigenous Peoples*, art. 25, in *Discrimination Against Indigenous Peoples: Report of the Working Group on Indigenous Populations*, U.N. ESCOR, Commission on Human Rights, 45th Sess., Annex I, U.N. Doc. E/CN.4/Sub.2/1993/29 (1999) [hereinafter *U.N. Draft Declaration*].

the right to life and collective well-being.”³⁰

To achieve the necessary protection, these agreements recognize numerous specific indigenous rights.³¹ In particular, when indigenous peoples have been forced from their lands, or resources have been used without their consent, these agreements establish a right to restitution or, where restitution is not possible or damage is irreversible, to compensation.³² The agreements also provide for protection against the disposal of hazardous or toxic substances in indigenous lands.³³

The close relationship between the environment and indigenous cultures also means that harm to the environment often violates numerous internationally recognized cultural rights. These include the rights to a cultural life;³⁴ recognition of cultural, religious and spiritual identity and integrity;³⁵ freedom of expression,³⁶ and freedom of religion.³⁷ In certain circumstances, harm to indigenous lands may also violate the right to property,³⁸ while involuntary relocation often associated with natural resource exploitation may violate indigenous peoples’ right to freedom of residence and movement.³⁹

These principles of international law have been recognized by international and domestic tribunals. For example, in a case called

30. *Proposed American Declaration*, *supra* note 25, art. XIII.1.

31. These include the rights of indigenous peoples to own, control and use their lands and territories, ILO Convention 169, *supra* note 28, art. 14; *Proposed American Declaration*, *supra* note 25, art. XVIII.2; *U.N. Draft Declaration*, *supra* note 29, art. 26; to participate in decisions concerning the use of their territories and related natural resources, ILO Convention 169, *supra* note 28, arts. 7, 15; *Proposed American Declaration*, *supra* note 25, art. XIII.2, 4; *U.N. Draft Declaration*, *supra* note 29, art. 30; and not to be removed from their lands without “free and informed consent.” ILO Convention 169, *supra* note 28, art. 16; *Proposed American Declaration*, *supra* note 25, art. XVIII.6; *U.N. Draft Declaration*, *supra* note 29, art. 10.

32. *U.N. Draft Declaration*, *supra* note 29, arts. 27, 28; *Proposed American Declaration*, *supra* note 25, art. XVIII.7.

33. *U.N. Draft Declaration*, *supra* note 29, art. 28; *Proposed American Declaration*, *supra* note 25, art. XIII.6.

34. ICCPR, *supra* note 15, arts. 1(1), 27; ICESCR, *supra* note 8, art. 15(1)(a); Additional American Protocol, *supra* note 8, art. 14.

35. ICCPR, *supra* note 15, arts. 18, 27; ILO Convention 169, *supra* note 28, arts. 5, 8.

36. ICCPR, *supra* note 15, art. 19; American Convention, *supra* note 15, art. 13.

37. ICCPR, *supra* note 15, art. 18; American Convention, *supra* note 15, art. 12.

38. ICCPR, *supra* note 15, art. 17(1) (arbitrary interference with home); American Convention, *supra* note 15, art. 21 (property); *id.* art. 11 (protection from arbitrary interference with home).

39. ICCPR, *supra* note 15, art. 12(1); American Convention, *supra* note 15, art. 22.

Lubicon Lake Band v. Canada, the U.N. Human Rights Committee found that expropriation and destruction of an indigenous tribe's land for oil and gas exploitation threatened the way of life and culture of the tribe, and therefore violated their right to enjoy their culture, as guaranteed by article 27 of the International Covenant on Civil and Political Rights (ICCPR).⁴⁰ Similarly, in *Ilmari Lansman v. Finland*, the same committee concluded that the approval of mining activities in areas essential to Finnish indigenous peoples' culture and spiritual practices threatened their cultural integrity and thereby violated article 27 of the ICCPR.⁴¹ The Inter-American Commission on Human Rights has reached the same conclusion concerning environmental destruction on indigenous lands and involuntary relocation of indigenous peoples from their traditional lands due to development activities, noting "[n]ot to recognize [indigenous] rights and cultural values results in a forced assimilation with results that can be disastrous."⁴²

III. Related Procedural Rights – Consultation

International law requires prior consultation with any indigenous peoples who will be affected by development projects. For example, ILO Convention 169 requires governments to consult indigenous peoples, "whenever consideration is being given to legislative or administrative measures which may affect them directly."⁴³ Because Colombian law, like the laws of some other nations, imposes similar obligations, the Colombian government should have consulted with the U'wa before granting Occidental the environmental licenses necessary to proceed with the project.

In early January 1995, the Colombian Environment Ministry and

40. *Lubicon Lake Band v. Canada* (U.N. Hum. Rts. Comm. Mar. 26, 1990), reprinted in U.N. Doc. CCPR/C/38/D/167/1984 (1990).

41. *Ilmari Lansman v. Finland*, Case No. 511/1992 (U.N. Hum. Rts. Comm. Oct. 26, 1994), reprinted in U.N. GAOR, 50th Sess., Supp. No. 40, vol. I, U.N. Doc. A/50/40 (1994).

42. *Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin 76*, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.62, doc. 10 rev. 3, at 81 (Nov. 29, 1983) (involuntary relocation due to development activities violated article 27 of the ICCPR); see also *Yanomami Indians v. Brazil*, Case No. 7615, IACHR Res. No. 12/85 (Mar. 5, 1985), reprinted in ANNUAL REPORT OF THE IACHR 1984-85, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (Oct. 1, 1985) (destruction of Brazilian rainforests violated the human rights of indigenous peoples).

43. ILO Convention 169, *supra* note 28, art. 6.1(a).

Occidental met with U'wa representatives and explained the exploration plans. In response, the U'wa representatives stated that although the U'wa were generally opposed to oil exploitation in their traditional territory, the representatives could not make a formal response concerning the project without first consulting U'wa elders and religious leaders who live in the forests and mountains. Occidental claims the U'wa representatives signed a memorandum at the meeting that established conditions for seismic exploration on U'wa land; the U'wa representatives, who are illiterate, recall being told they were signing an attendance sheet. Despite an agreement to reconvene the consultation in February, the Colombian government granted Occidental an exploration license without any further meetings with the U'wa.

As a result of its failure to consult meaningfully with the U'wa, Colombia has violated its international and domestic obligations. The U'wa may use this violation as the basis of a claim in domestic courts, or at the International Labour Organization or some other international tribunal.

IV. Land Issues

Separate from their opposition to oil exploitation in their traditional territory, the U'wa have long struggled to obtain legal title to their ancestral territory. Their primary request, made first in 1993, was that the Colombian government increase the area of the U'wa reservation, bringing into one contiguous reservation the several smaller parcels already recognized. The U'wa's strong and public opposition to oil exploitation in their territory gave them leverage to achieve this goal that they probably would not have had otherwise.

In 1995, when the government approached the U'wa to discuss Occidental's oil plans, the U'wa leaders made clear that they would not discuss oil exploitation if the government did not first resolve the U'wa's land claims. They reiterated this demand frequently during the course of their opposition to Occidental's oil project. In August 1999, the government agreed to expand the borders of the U'wa reservation to include a total of 543,000 acres. When they signed the agreement to expand their territory, the U'wa leaders made clear that the U'wa remained opposed to oil exploitation anywhere within their ancestral territory, which extends beyond the new limits of their reservation. Less than a month after agreeing to expand the U'wa reservation, however, the Colombian Minister of the Environment

granted a permit for Occidental Petroleum to begin drilling an exploratory well only 500 meters from the border of the new reservation, and well within the U'wa ancestral territory. Supported by the Colombian police and military forces' violent repression of peaceful protest by the U'wa, Occidental began drilling the well in late 2000. Although the well came up dry in August 2001, Occidental apparently plans to drill other exploratory wells in U'wa ancestral territory.

V. Conclusion

If present trends continue, more and more indigenous lands and peoples will suffer the devastation that often accompanies natural resource exploitation. Because national governments are frequently unwilling to prevent such damage, international law must fill the void. In principle, it has begun to do so, as this Article demonstrates. In practice, however, while international trade law gives corporations greater and greater powers, international human rights and environmental norms remain almost uniformly unenforceable.

If we do not soon turn principle into practice – providing real and enforceable protections for indigenous peoples and the environment – it may be too late. At stake is the continued existence of many indigenous peoples and many of the few unspoiled places left on the planet. We must therefore raise our voices with the U'wa and other indigenous peoples to call attention to the gap between principle and practice. Together, we must demand that national and international institutions bridge that gap by recognizing and applying the right to a healthy environment and all related rights.