ADD TO SECTION 5.5 ‘ACTIONS TAKEN BY OTHER INTERNATIONAL BODIES”

**INTERNATIONAL ORGANIZATIONS AND COUNCILS**

**1.) THE WORLD HEALTH ORGANIZATION (WHO)**

On World Health Day in 2008, the World Health Organization (WHO) chose to highlight the affects of climate change on human health in recognition of the increasing risk that climate change poses to global public health security.

In collaboration with the Nature Conservation and Nuclear Safety (BMU) and the German Federal Ministry for the Environment, WHO/Europe are carrying out a broad-scale initiative to protect health from climate change across seven countries including Albania, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, the former Yugoslav Republic of Macedonia and Uzbekistan. The initiative includes addressing climate adaptation and strengthening health infrastructure **FOOTNOTE A**.

# In 2010, the WHO, along with United Nations Development Programme (UNDP), launched the first ever global public health project focusing on adaptation to climate change entitled *Climate Change Adaptation to Protect Human Health.* The program’s objective is led by Ministries of Health and national partners in 7 countries including China, Jordan and Kenya, with the aims “to increase adaptive capacity of national health system institutions, including field practitioners, to respond to climate-sensitive health risks” FOOTNOTE B.

# *References*

## FOOTNOTE A “Protecting health from climate change: a seven-country initiative in the eastern part of the WHO European Region”. *WHO.* World Health Organization, N.p., n.d. Web. 03 July 2013

**FOOTNOTE B** "Climate Change Adaptation to Protect Human Health." *WHO*. N.p., n.d. Web. 03 July 2013

**2.) THE ARTIC COUNCIL**

Minister for Foreign Affairs of Sweden Carl Bildt, also chair of the Arctic Council, made the following official statement regarding the Council’s stance on climate change recognizing the dangers of exceeding a 2°C rise in global temperatures: “The fight against climate change is an imperative common challenge for the international community and requires immediate global measures… We therefore urge all countries to take decisive action, recognizing that deep cuts in global GHG emissions are required according to science with a view to reducing global GHG emissions so as to hold the increase in global average temperature below 2°C above pre-industrial levels”. The statement is supported by all eight members states of the Arctic Council **FOOTNOTE C.**

***References***

**FOOTNOTE C** Arctic Council. Statement to UNFCCC COP XVII. Available at <http://www.arctic-council.org/images/attachments/extra_information/arctic_council_statement_to_the_cop_xvii.pdf>

**3.) OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS**

As stated on the UN Human Rights website, “It is becoming apparent that climate change will have implications for the enjoyment of human rights” **FOOTENOTE D**. The United Nations Human Rights Council and the Office of the United Nations High Commissioner (OHCHR) have taken repeated action in recognition of the threat to basic human rights posed by the varied consequences of climate change. For instance, over the past 5 years, the United Nation Human Rights Council has adopted three climate-oriented resolutions For instance, in the first resolution 7/23 “Human rights and climate change*”* **FOOTNOTE E,** adopted on March 28th 2008, the Council expressed concern that climate change “poses an immediate and far-reaching threat to people and communities around the world”.In acknowledgement of this, the Human Rights Council requested that the Office of the United Nations High Commissioner (OHCHR) prepare a study on the relationship between climate change and human rights. In this study, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, the OHCHR concluded that “An increase in global average temperatures of approximately 2°C will have major, and predominantly negative, effects on ecosystems across the globe, on the goods and services they provide” (p. 7) **FOOTNOTE F**

After the OHCHR submitted the study to the Human Rights Council in March of 2009, the Council adopted its second climate-oriented resolution 10/4 “Human rights and climate change” **FOOTNOTE G,** which recognizes the following key points: i.) “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights …”; ii.) the impacts of climate change “will be felt most acutely by those segments of the population who are already in a vulnerable situation …”, iii.) “effective international cooperation to enable the full, effective and sustained implementation of the United Nations Framework Convention on Climate Change … is important in order to support national efforts for the realization of human rights implicated by climate change-related impacts”; and finally, iv.) “human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change”.

On March 24, 2011, the Council issued resolution 16/11 “Human rights and climate change” **FOOTNOTE H,** to officially recognize that that, i.) while climate-related impacts “affect individuals and communities around the world, environmental damage is felt most acutely by those segments of the population already in vulnerable situations; ii.)

“many forms of environmental damage are transnational in character and that effective international cooperation to address such damage is important in order to support national efforts for the realization of human rights”. In this resolution, the Council also urges “States to take human rights into consideration when developing their environmental policies”.

Finally, In September 2011, the Council adopted its fourth resolution, 18/22 “Human rights and climate change,” **FOOTNOTE I,** which re-affirmed the resolutions 7/23, 10/4, and 16/11 and affirmed that international human rights standards such as those enshrined in the *Universal Declaration of Human Rights* **FOOTNOTE J** and in the core *universal human rights treaties* **FOOTNOTE K** in ways which promote “policy coherence, legitimacy, and sustainable outcomes”(p. 3).

Furthermore, on March 30th 2012, the UN High Commissioner for Human Rights Navi Pillay released an open letter to all Permanent Missions in New York and in Geneva that underscores the responsibilities on behalf of all States to ensure “full coherence between efforts to advance the green economy, on the one hand, and their human rights obligations on the other” (p. 2) **FOOTNOTE L**. In this letter, Pillay also goes on to state that inclusion of human rights provisions with climate-related polices is essential and affirms that “The lessons are clear: strategies based on the narrow pursuit of economic growth without due regard for equity and related environmental, social, and human rights considerations will both fail in their economic objectives, and risk damaging the planet, and the fundamental rights of the people who live here. Incoherence between international human rights standards, environmental strategies, and economic policies can undercut all three. The logic of integration…is unavoidable. Without explicit human rights safeguards, policies intended to advance environmental or development goals can have serious negative impacts on those rights” (p. 1).

***References*:**

**FOOTNOTE D**

"Human Rights and Climate Change." *Human Rights and Climate Change*. N.p., n.d. Web. 03 July 2013.

**FOOTNOTE E**

Human Rights Council. (March 28TH, 2008). *Resolution 7/23. Human rights and climate change.* United Nations General Assembly.

<http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf>

**FOOTNOTE F** Human Rights Council. (January 2009). *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights.* United Nations, General Assembly. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/103/44/PDF/G0910344.pdf?OpenElement>

**FOOTNOTE G**

Human Rights Council. (March 25TH, 2009). *Tenth Session: Resolution 10/4. Human rights and climate change.* United Nations General Assembly.

<http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf>

**FOOTNOTE H**

Human Rights Council. (March 24TH, 2011). *Resolution adopted by the Human Rights Council: 16/11 Human rights and climate change.* United Nations General Assembly.

<http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/126/85/PDF/G1112685.pdf?OpenElement>

**FOOTNOTE I**

Human Rights Council. (September 30th, 2011). *Resolution adopted by the Human Rights Council: 18/22 Human rights and climate change.* United Nations General Assembly.

<http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/18/22>

**FOOTNOTE J** UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>

## FOOTNOTE K UN General Assembly, *The Core International Human Rights Instruments and their monitoring bodies*. Available at:

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

**FOOTNOTE L** Navanethem Pillay, High Commissioner for Human Rights (2012). *Open Letter To all Permanent Missions in New York and Geneva*. United Nations Office of the High Commission for Human Rights. <http://www.ohchr.org/Documents/Issues/Development/OpenLetterHC.pdf>,

**4.) COMMONWEALTH OF NATIONS**

The Commonwealth Forum of National Human Rights Institutions **FOOTNOTE M** also officially recognizes the threat of climate change impacts on human rights, and affirms the need for vulnerable populations to have a voice in international discussions around policy and plans to address consequences of climate change such as human displacement, desertification, and rising sea levels, among others.

In 2007 the Commonwealth announced its *Lake Victoria Commonwealth Climate Change Action Plan* **FOOTNOTE N,** which commits member states to addressing climate change and gives a platform for groups especially vulnerable to climate impacts. Along with the Commonwealth, the International Coordinating Committee of NHRI (ICC) also made climate change and human rights a priority in its operations. In this action plan, the Commonwealth outlined a series of commitments and resolutions made by Heads of Government addressing the threat of climate change to human and economic security.These include a reaffirmation of the commitment to the 1989 Langkawi Declaration on Environment when Commonwealth that recognized that “serious deterioration of the environment is a threat to the well-being of current and future generations” **(p. 3) here or footnote?).** The plan also calls for increased financial flows to address plans for climate adaptation, and to improve their effectiveness. Moreover, Heads of Government also resolve “individually and collectively, to pursue active participation through the UNFCCC, caucusing together and leveraging from our shared vision and diversity to the fullest extent possible” (p. 4).

***References:***

**FOOTNOTE M** See theCommonwealth Forum of National Human Rights Institutions. *The Human Rights Impacts of Climate Change.* Accessed July 2013.<http://cfnhri.org/working-groups/climate-change-and-human-rights/climate-change-background/>

**FOOTNOTE N** Commonwealth Secretariat (November 2007). Lake Victoria Commonwealth Climate Change Action Plan. Available at: [http://www.thecommonwealth.org/files/173014/FileName/FinalA5ClimateChangeAW\_2col.pdf](Lake%20Victoria%20Action%20Plan%20.%20Available%20at:%20http://www.thecommonwealth.org/files/173014/FileName/FinalA5ClimateChangeAW_2col.pdf)

**5.) COUNCIL OF EUROPE**

As declared on the Council of Europe’s website, “Climate change is the most serious environmental problem that the world faces today, having a major impact on the basic elements of human life.”

In January, 2011 the Committee on the Environment, Agriculture and Local and Regional Affairs of the Parliamentary Assembly of the Council of Europe issued the declaration on Climate Change **FOOTNOTE O**. In it, the Committee emphasized the importance that global temperature does not rise above 2°C from pre-industrial levels, and stressed the importance of international agreements to lower GHG emissions.

Moreover, on June 25th 2009, the Parliamentary Assembly introduced Recommendation 1879 “Renewable energies and the environment” which contains 12 distinct recommendations to be adopted by the Council of Europe member states **FOOTNOTE P**. As outlined, these recommendations are made with acknowledgment that “the current energy system, characterized by the excessive consumption of fossil fuels, is increasingly unable to solve the problems of energy supply. The supply structures of conventional sources of energy are increasingly at odds with society’s needs for accessible and clean energy.” The Assembly calls for measures to restructure the energy system to ensure “lasting energy security and environmental protection” be taken “as rapidly as possible”. Plans for the development of a sustainable energy infrastructure are bound to “making renewable energies rapidly and comprehensively available”. The Recommendation also officially recognizes that renewable energies can be utilized on a decentralized basis and thus “will allow a lively market to develop”. Delays with respect to action on these issues “would mean that the crises over energy and the conflicts over distribution of the remaining resources, with their associated social costs, would continue to escalate until they became impossible to manage.”

**FOOTNOTE O** Committee on the Environment, Agriculture, and Local and Regional Affairs

“As the world’s warmest year ends, time for climate change to be seen as a human rights issue”. *Council of Europe*: *Human Rights Environment: Climate change, a threat to human rights.* Last updated 2012. Read the full Declaration at: <http://www.assembly.coe.int/Communication/270111_declarationclimate_E.pdf>

**FOOTNOTE P** Council of Europe*. Assembly debate* on 25 June 2009 (25th Sitting) (see [Doc. 11918](http://www.assembly.coe.int//Main.asp?link=http://www.assembly.coe.int/ASP/Doc/RefRedirectEN.asp?Doc=Doc.%2011918), report of the Committee on the Environment, Agriculture and Local and Regional Affairs, rapporteur: Mr Le Grand). Available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/EREC1879.htm>

**6.) INDIAN OCEAN COMMISSION (IOC)**   
The Indian Ocean Commission (IOC) is an intergovernmental body created in 1984 to advocate and protect the interests of the south-east Indian Ocean islands including Madagascar, Comoros, La Réunion (France), Mauritius and Seychelles.

Since 2008, the IOC has officially acknowledged climate change as a major challenge for Small Island Developing States (SIDS), and recognizes climate change adaptation as an integral component of IOC's actions. The IOC has recently undertaken a number of climate-oriented projects, such as the ACCLIMATE project (see [http://www.acclimate-oi.net](https://webmail.ihostexchange.net/owa/redir.aspx?C=593f3e546f584c819c4949d684197bf2&URL=http%3a%2f%2fwww.acclimate-oi.net)) that focuses on growing sustainable agriculture, mitigating natural risks and building capacity for Small Island Developing States (SIDS) to protect themselves from the threats posed by changes in weather.

**7.) THE SECRETARIAT OF THE PACIFIC COMMUNITY (SPC)**

The SPC acknowledges that climate change resulting from increased GHG emissions is posing additional risks for the region, including increasing air and ocean surface temperatures. SPC is dedicating resources to help Pacific Island countries and territories (PICTs) to confront climate variability and climate through the implementation of strategies such as the Climate Change Engagement Strategy for SPC (2011-2015) and in co-operation with members of the Council of Regional Organizations in the Pacific (CROP). Climate change projects that express the strategy are supported by a number of external partners and collaborators include the Coping with Climate Change in the Pacific Island Region (CCCPIR) initiative, which involves the German Federal Ministry for Economic Cooperation and Development (BMZ); the International Climate

Change Adaptation Initiative, which is funded by the Australian Agency for International Development (AUSAid), and a project to increase food security and resilience in the PICTs which involves the United States Agency for International Development (USAID).

**8.) THE KYOTO PROTOCOL**

The Kyoto Protocolis an international treaty listing binding obligations on industrialized countries to reduce GHG emissions. The Kyoto Protocol was adopted by Parties to the UNFCCC in 1997, and enforced in 2005. In the Protocol, thirty-seven industrial nations as well as the European Union are obliged to binding lowered emissions targets for GHG emissions. The protocol includes two commitment periods: the first period applies to emissions between 2008-2012; and the second that applies to emissions between 2013-2020. In December 2012, members at the 2012 United Nations Climate Change Conference agreed to set 2015 as the date wherein a successor document to the Kyoto Protocol will be implemented and which will extend until 2020. Amendments to the existing protocol were made in 2012 to accommodate this second commitment period.

**9. WORLD HERITAGE**

Parties to the UNESCO World Heritage (WH) have a legal duty—imposed primarily on the host States—to protect and transfer regions designated as WH sites to future generations. This duty also extends to all State Parties whose operations are presently damaging or could potentially cause damage to WH sites in other nations. Since 2004, approximately 40 organizations and a number of individuals have drawn attention to this legal duty, namely with reference to sites that include mountain areas and coral reefs that are threatened by climate change. Together, this coalition has submitted 6 petitions to the World Heritage Committee adding the following sites to the List of World Heritage in Danger on account of climate change: *Mount Everest, the Peruvian Andes, the Blue Mountains, US and Canadian glaciers, and the Great Barrier and Belize Barrier Reefs*to the List of World Heritage in Danger because of climate change.

The WH Committee adopted a world heritage and climate change strategy in July 2006 in Lithuania that emphasized adaptation, followed by a call on behalf of the Committee for States Parties to participate in the UN Climate Change conferences in order to achieve a comprehensive post-Kyoto agreement; the Committee also endorsed a policy document on climate change impacts on world heritage that was presentated at the General Assembly of States Parties in autumn 2007.

**MULTINATIONAL FINANCIAL INSTITUTIONS.**

**1.) NORDIC INVESTMENT BANK (NIB)**

The Nordic Investment Bank (NIB) is the shared international financial institution of the eight Nordic and Baltic countries including Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, Norway and Sweden. The NIB holds an AAA/Aaa credit rating by the leading rating agencies such as Standard & Poor's and Moody's.

As declared on their mission statement **FOOTNOTE Q**, the NIB has an explicit environmental mandate from both Nordic and Baltic owners to promote and invest in environmentally friendly projects. It is important to note that, for the NIB, the term "environment" speaks to both ecological and social attributes, as innovation in one sector has direct implications with the other. As such, initiatives that advance the renewable energy sector are a priority, in large part due to their effect of helping to decrease GHG emissions.As the NIB President and CEO Henrik Normann states: “Projects that support the increase of sustainable energy production have strong mandate compliance for NIB. Electricity generation from renewable sources, such as wind, crowds out the supply of fossil fuel based energy, and thus indirectly reduces emissions of the greenhouse gas CO2”.

Moreover, the NIB does not only finance investments that will improve the environment, but analyzes the projected environmental impacts—including both environmental and social aspects—each project will have as a regular component of the consideration process for financing in accordance with NIB's mission of promoting sustainable growth across its member countries.

A significant portion of the NIB’s total loan portfolio is classified as “environmental loans”. Two special entities focus on environmental loans, including the Baltic Sea Environment (BASE) and The Climate Change, Energy Efficiency and Renewable Energy (CLEERE) frameworks.

***References***

**FOOTNOTE Q** "Mission and Strategy." *Nordic Investment Bank*. N.p., n.d. Accesible at: <http://www.nib.int/index.php?id=9>

**2.) AFRICAN DEVELOPMENT BANK (AfDB)**

As stated by the President of the African Development Bank (AfDB), *“Climate change is central to the core business of the African Development Bank and requires urgent action.”*  In 2009, the Bank Group developed its *Strategy of Climate Risk Management and Adaptation* (CRMA) **FOOTNOTE R**, which calls for growth and support in capacity building for African countries to confront the challenges of climate change. It lays down guidelines for loans and investment that ensure all projects are “climate proof”, which means that they are “designed, installed, implemented and managed to reduce to a minimal level the adverse effects of climate change, with the most cost-effective ratio as possible.”

This strategy calls for increased support for capacity building of African countries to tackle climate change risks. It also ensures that all investments financed by the Bank are work towards “enhancing climate resilience and climate-proofing of economic and social infrastructure” (Bank Group, pg. 11). The CRMA outlines strategies to decrease the vulnerability of African nations to climate change and build sustainable energy infrastructure, and includes investments of almost USD $8 billion by 2015.

***References:***

**FOOTNOTE R** Bank Group, African Development Bank, (2009). *Climate Risk Management and Adaptation*, p. 11.Online. See <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Policy-Documents/Climate%20Risk%20Management%20and%20Adaptation%20Strategy%20_CRMA_%20(2).pdf>

**3.) ASIAN DEVELOPMENT BANK (ADB).**

The Asian Development Bank (ABD) conducted a regional project beginning in 2010 that was designed to generate policy options for addressing climate-induced migration throughout Asia and the Pacific **FOOTNOTE S & T.**

The project aimed to deepen the understanding of climate-induced migration, and rouse policy debate exploring ways to confront the projected migration of millions of people due to increasing global temperatures in the coming years. While human displacement and migration due to climate change is anticipated to occur as an increasing and gradual phenomenon, the effects of climate change on human populations are already being felt in Asia and in regions in the Pacific. For instance, communities in these areas are already experiencing the effects of climate change, including the erosion of shorelines, desertification, and more frequent extreme weather such as severe storms and flooding. Thus, the project’s central objective was to encourage the development and adoption of responsible, forward-thinking practices and policies that improve the management of large-scale movement of people due to climate change. The project culminated in 2012 and is described in a comprehensive report “Addressing Climate Change and Migration in Asia and the Pacific” (see

<http://reliefweb.int/sites/reliefweb.int/files/resources/addressing-climate-change-migration_0.pdf> )

***References:***

**FOOTNOTE S**

Asian Development Bank, (2009). *Technical Assistance for Policy Options to Support Climate-Induced Migration.* Manila

**FOOTNOTE T**

The University of Adelaide Flinders University The University of Waikato, (2009). *Climate Change and Migration in Asia and the Pacific*. Asian Development Bank (ADB). <http://www.preventionweb.net/files/11673_ClimateChangeMigration.pdf>

African Development Bank (2012). *Addressing Climate Change and Migration in Asia and the Pacific.* Final Report. <http://reliefweb.int/sites/reliefweb.int/files/resources/addressing-climate-change-migration_0.pdf>

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**TO ADD TO SECTION 3 on FRUSTRATION OF NATIONAL OR INTERNATIONAL LAWS.**

**1.) RELEVANT LEGISLATION**

*a.) Climate related legislation:*

Types of climate related legislation include: i.) Targets and trajectories legislation, which mandates emissions reduction goals bound by specific timelines expressed as either short or long term goals; ii.) Market creation legislation; iii.) Information-based legislation; iv.) legislation clarifying property rights in carbon and liabilities; v.) legislation to implement international commitments.

*b.) Climate-oriented attributes of existing legislation*

In addition to legislation developed specifically to address climate change, there is a range of existing legislation that involve climate-related issues. These include the following: i.) Environmental Impact Assessment (EIA) law ii.) Planning legislation; iii.) Building codes; iv.) Energy legislation; v.) Transport regulations; vi.) Legislation affecting carbon market claims; vii.) Major projects regulations.

In addition to these areas, the creation of new legislation describing and legally enshrining the rights of the environment is resulting in a number of important legal precedents where so-called “wild law” is enforced over commercial interests.

*c.) International legislation*

**Australia: Federal laws**

* Energy Efficiency Opportunities Act 2006
* National Greenhouse and Energy Reporting Act 2007
* Clean Energy Act 2011
* Renewable Energy (Electricity) Act 2000 (Cth)

**Australia: State laws**

* Climate Change and Greenhouse Emissions Reduction Act 2007 (SA)
* Electricity (Greenhouse Gas Emissions) Act 2004 (ACT)
* Climate Change Act 2010 (Vic)

**Mexico: Federal Law**

* General Climate Change Law (June 5 of 2012)

**New Zealand**

* Energy Efficiency and Conservation Act 2000
* Climate Change Response Act 2002 (as amended 2006)
* Resource Management (Energy and Climate Change) Amendment Act 2004
* Climate Change (Emissions Trading and Renewable Preference) Bill (NZ)

**United Kingdom**

* The ClimateChange Act 2008 (c 27)
* The Climate Change and Sustainable Energy Act 2006 (c 19)

**2.) LEGAL PRECEDENTS**

**-- For the following chunk, could we integrate comments from pg. 47 which are at the start of Section 3.4, and end just before “Canadian Domestic Law”, as well as comments at pg. 50 beginning under “US domestic law” until the first case study (“Massachutesetts vs. EPA”). We can also fit in Section 3.5 “Why fossil fuels are like tobacco” in as well. Integrating comments from among these sections as well as the text below can help us build a more general legal framework. I’m not happy with what I have below but need either Milan’s brain or a discussion to help shape these comments into something better.**

Climate change has been described as a “super wicked problem” on account of its complexity and its multiple exacerbating features, which have an incredibly wide spatial and temporal scope **FOOTNOTE 1.** As outlined by Richard Lazarus (2010) **FOOTNOTE 2a**, developing effective legal solutions to the problem of climate change remains a staunch challenge for a number of reasons, prominent among these being the absence of an existing institutional framework of government that has the ability to design, exercise, and maintain laws that are required to address climate-related problems **FOOTNOTE 2b**. As Lazarus describes, the influence on lawmaking processes by parties seeking to satisfy short-term interests and resistance to pre-commitment strategies that could “bind the future” at the expense of the present **FOOTNOTE 2c** represent challenges that prevent the timely development and implementation of federal climate change law.

However, the need for adequate climate law that is grounded in long-term approaches is urgent. As Lazarus points out, current legislative inaction may contribute to “potential devastation and global destabilization” **FOOTNOTE 2d** that will directly threaten the well-being and security of future generations. As Lazarus argues, “it would be tragically wrong to posit that protection of the political prerogatives of the future precludes current generations from adopting laws that seek to preserve the options of future generations” **FOOTNOTE 2e.** This point is especially important to note given the responsibility of public institutions to operate in the interest of its citizens and of the nation they represent in accordance with a long-term vision that is not bound by election terms or other similar constraints.

The critical deficits that remain in the arena of federal climate legislation, both in Canada and internationally, is increasingly at odds with the growing consensus among international organizations around the world such as the United Nations Human Rights Council, The Council of Europe, the Commonwealth of Nations, and the World Health Organization, among others, that recognizes an inextricable link between the protection of health and the preservation of a healthy environment, and between the full enjoyment of human rights and the impacts of climate change (see Section 5.6 *Actions taken by International Bodies*). Furthermore, the growing recognition of the risks posed by anthropomorphic climate change on enshrined rights exists alongside the rising number of court cases implicating climate change and its impacts. In what follows, we detail specific examples of case law **corresponding to the pieces of legislation outlined above** that both recognizes the danger of climate change to the health and well-being of the public and that also represents a new model of jurisprudence (ie. “wild law”) that elevates protection of the environment above commercial or industry interests.

**FOOTNOTE 1.** *See* Kelly Levin et al., (July, 2007). *Playing It Forward: Path Dependency, Progressive Incrementalism, and the “Super Wicked” Problem of Global Climate Change 8-10* (unpublished manuscript, on file with author), *available at* [http://environment.yale.edu/uploads/publications/2007levinbernsteincashore auldWicked-Problems.pdf](http://environment.yale.edu/uploads/publications/2007levinbernsteincashore%20auldWicked-Problems.pdf).

**FOOTNOTE 2a.**

Lazarus, R. (2010). Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future*. Environmental Law and Policy Annual Review*. *Environmental Law Institute:* Washington, D.C.*,* pp. 10749-10756.

**FOOTNOTE 2b.** *ibid,* p. 10750

**FOOTNOTE 2c.** *ibid,* p. 10752

**FOOTNOTE 2d** *ibid,* p. 10752

**FOOTNOTE 2e** *ibid,* p. 10752

**3.) CASE LAW**

The following section lists cases in which demonstrate the growing legal recognition of the harmful effects of climate change. Individual cases are listed according to relevant areas of legislation.

**ENVIRONMENTAL IMPACT ASSESSMENTS**

***i.) “*Australian Conservation Foundation v. Minister for Planning”** **FOOTNOTE 1**

**Held:** greenhouse gas (GHG) emissions from burning coal must be considered in plans for approving coal mine extensions.

**FOOTNOTE 1:** *Australian Conservation Foundation v. Minister for Planning* [2004] 1 VCAT 2029. Judgment of Justice Stuart Morris, available here:

**http://www.austlii.edu.au/au/cases/vic/VCAT/2004/2029.html**

***ii.) “*Gray v. The Minister for Planning” FOOTNOTE 2**

**Held:** that the GHG emission from burning coal must be considered in the environmental impact assessment of new coal mines in New South Wales, under Part 3A of the Environmental Planning and Assessment Act 1979. In this ruling, Justice Pain asserted two common environmental law concepts that are receiving increased judicial attention: inter-generational equity (IGE) and the precautionary principle (PP). Firstly, she found that the IGE requires assessment of cumulative GHG impacts and affirmed that: “three fundamental principles underpinning the principle of intergenerational equity are identified: (i) the conservation of options principle which requires each generation to conserve the natural and cultural diversity in order to ensure that development options are available to future generations; (ii) the conservation of quality principle that each generation must maintain the quality of the earth so that it is passed on in no worse condition than it was received; (iii) the conservation of access principle which is that each generation should have a reasonable and equitable right of access to the natural and cultural resources of the earth...In terms of environmental impact assessment which takes into account the principle of intergenerational equity, as set out above, one important consideration must be the assessment of cumulative impacts of proposed activities on the environment.” [paras 119 & 122]

Justice Pain also explained a shift in the burden of proof is underscored by the PP:

“the function of the precautionary principle is to require the decision-maker to assume that there is, or will be, a serious or irreversible threat of environmental damage and to take this into account, notwithstanding that there is a degree of scientific uncertainty about whether the threat really exists or its extent. As identified in Telstra v Hornsby at [150], if the two conditions precedent or thresholds are satisfied so that there is a threat of serious or irreversible environmental damage and there is the requisite degree of scientific uncertainty the principle will apply so that the shift in an evidentiary burden will occur meaning that the proponent for the development has to demonstrate that the threat does not exist or is negligible.” [para 127]

**FOOTNOTE 2:** *Gray v. The Minister for Planning* [2006] NSWLEC 720. Judgment of Justice Pain, available here:

http://www.lawlink.nsw.gov.au/lecjudgments/2006nswlec.nsf/2006nswlec.nsf/WebView2/DC4DF619D E3B3F02CA257228001DE798?OpenDocument

***iii.)* “Friends of the Earth et al., v. Mosbascher and Merrill” FOOTNOTE 3**

**Held:** On March 30th 2007 the court ordered thatanymajor federal government projects that contribute to climate change are bound by the US National Environmental Policy Act (NEPA).

**FOOTNOTE 3:** *Friends of the Earth et al., v. Mosbascher and Merrill,*488 F. Supp. 2d 889 [N.D. Cal. 2007]. See the judgment here: <http://www.gc.noaa.gov/documents/gcil_extra_friends.pdf>

***iv.)* “Centre for Biological Diversity et al. v. Brennan” FOOTNOTE 4**

**Held:** In August 2007, a federal judge ruled in favor of the Center for Biological Diversity and ordered the Bush administration end its violation of the Global Change Research Act’s requirement (Title 15 U.S.C. § 2936) that obliges the federal climate research program to give a episodic scientific assessment of global change impacts (including impacts on agriculture, the environment, natural resources, energy use and production, transportation, human health and social systems, as well as biological diversity). The court ordered the Administration to produce a new scientific assessment by May 31, 2008.

**FOOTNOTE 4** *Centre for Biological Diversity et al. v. Brennan,*571 F.Supp.2d 1105 (2007). Full details of case at <http://www.leagle.com/decision-result/?xmldoc/20071676571cyfsupp2d1105_11574.xml/docbase/CSLWAR3-2007-CURR>

**REGULATION GHG EMISSIONS FROM MOTOR VEHICLES**

***v.) “*Massachusetts vs. Environmental Protection Agency (EPA*)”:* FOOTNOTE 5**

**Held:** In what has been called the “most influential climate change decision to date” **FOOTNOTE 6** on April 2nd 2007, the US Supreme Court court held 5/4 that carbon dioxide is an air pollutant under s 202(a)(1) of the Clean Air Act. The court rejected the contention, then upheld by EPA, that GHGs did not fall under the definition of “air pollutant” within the Clean Air Act (CAA). The Court held that “greenhouse gases fit well within the Act’s capacious definition of ‘air pollutant’" **FOOTNOTE 7** and ruled that the EPA had statutory authority to regulate GHG emissions from new motor vehicles. Justice Stevens delivered a harsh blow to the Bush Administration’s position on climate change by stating that: "[t]he harms associated with climate change are serious and well-recognized” **FOOTNOTE 8** and the: "EPA does not dispute the existence of a causal connection between man-made greenhouse gas emissions and global warming" **FOOTNOTE 9**. The judge also stated that the: "EPA has offered no reasoned explanation for its refusal to decide whether greenhouse gases cause or contribute to climate change" **FOOTNOTE 10**.

The court further upheld that “policy judgments have nothing to do with whether greenhouse gas emissions contribute to climate change and do not amount to a reasoned justification for declining to form a scientific judgment” **FOOTNOTE 11.**  The EPA was ordered to reach a scientific conclusion about whether GHG emissions from new vehicles causes or contributes to the endangerment of public health and welfare. The Court confirmed that EPA may make an endangerment finding despite lingering scientific debate and held that the existence of “some residual uncertainty” did not excuse the EPA's decision to decline to regulate greenhouse gases under the CAA **FOOTNOTE 12**. Indeed, for the EPA to avoid regulating emissions of GHGs, they would need to show “scientific uncertainty … so profound that it precludes EPA from making a reasoned judgment as to whether greenhouse gases contribute to global warming” **FOOTNOTE 13.**

In this case, 14 scientists had filed an *amicus curiae* brief with the Supreme Court, stating that: *“the Earth’s climate is changing in ways that are significantly increasing the risk of adverse impacts on public welfare.Time is of the essence because delay in greenhouse gas regulation will only accelerate global climate change. EPA must begin regulating greenhouse gas emissions from motor vehicles now to slow climate change in time to reduce the risk of adverse impacts.”* **FOOTNOTE 14**

On December 7th, 2009, the EPA issued an Endangerment Finding under Section 202(a) of the Clean Air Act and concluded that (1) the current and project concentrations of six classes of GHGs in the atmosphere “threaten the public health and welfare of current and future generations” and (2) the combined emissions of these GHGs from new motor vehicles “contribute to the greenhouse gas pollution which threatens public health and welfare” **FOOTNOTE 15.**

**FOOTNOTE 5** *Massachusetts v. Environmental Protection Agency*, 549, U.S. 497 (2007). Available at: <http://www.supremecourt.gov/opinions/06pdf/05-1120.pdf>

**FOOTNOTE 6:** Centre for Climate and Energy Solutions (n.d.). *Clean Air Act Cases*. <http://www.c2es.org/federal/courts/clean-air-act-cases>

**FOOTNOTE 7:** Massachusetts v. EPA, 549 U. S. (2007), Opinion of the Court, p. 30.

<http://www.epa.gov/climatechange/endangerment/>

**FOOTNOTE 8:** ibid, 18

**FOOTNOTE 9:** ibid, 20

**FOOTNOTE 10:** ibid, 32

**FOOTNOTE 11:** ibid, 31

**FOOTNOTE 12:** ibid, 32

**FOOTNOTE 13:** ibid, 31

**FOOTNOTE 14** Brief for the Climate Scientists as Amicus Curiae, p. 9, *Massachusetts v. Environmental Protection Agency,* 549, U.S. 497.

<http://www.climatesciencewatch.org/file-uploads/climate_scientists_brief.pdf>

**FOOTNOTE 15:** "Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act." *EPA*. Environmental Protection Agency, n.d. Web. 03 July 2013.

***vi.) “*Coke Oven Environmental Task Force v. EPA*”* FOOTNOTE 16**

**Held:** This case was stayed in the DC Circuit pending the Supreme Court's decision in Mass v. EPA. In this case, plaintiffs urged the courts to recognize that the EPA possess similar authority to regulate GHG emissions from stationary sources such as electric power plants (under Clean Air Act sections 108, 109 and 110). After the 2008 M v EPA ruling, a settlement agreement was signed in which the EAP agreed to impose restrictions on GHG emissions from large power plants. The new rules must require new or newly modified power plants to drastically reduce emissions.

**FOOTNOTE 16** *New York, et al. v. EPA*, No. 06-1131 (D.C. Cir. 2006)

***vii.) “*Friends of the Earth et al v Mosbacher*”* FOOTNOTE 17**

In the US case of *Friends of the Earth et al v Mosbacher et al* [2007], Friends of the Earth, Greenpeace and the cities of Santa Monica, Oakland, Arcata and Boulder sued the US export credit agencies, the Export-Import Bank and the Overseas Private Investment Corporation for funding federal government projects that contributed to climate change. The US National Environmental Policy Act (NEPA) required the institutions to consider the effect of the projects on the environment, including climate change, and the Court found that they had failed to do so.

**FOOTNOTE 17** *Friends of the Earth, Inc. v. Mosbacher (Oversea Private Investment Corp. and the Export- Import Bank),* No. 02-4106 (N.D. Cal. 2005)

**SUING POWER COMPANIES IN PUBLIC NUISANCE**

***i.)* “State of Connecticut, et al. v. American Electric Power Company, Inc., et al.”*****FOOTNOTE 18***

**Held:** The court dismissed a case alleged by eight US States, the city of New York and three NGOs as raising “non-justiciable political questions” on the basis of the common law tort of public nuisance against 5 of the largest US power companies (and one subsidiary). On June 2006 an appeal hearing occurred. On 21st June 2007, the parties were ordered to make submissions on the implications of the Supreme Court judgment in *Massachusetts et al. v. EPA by* the Court of Appeals, which were filed by the plaintiffs on July 6th 2007. In Judge Preska’s ruling, she noted that: “Congress has recognized that carbon dioxide emissions cause global warming and that global warming will have severe adverse impacts in the United States, but it has declined to impose any formal limits on such emissions” **FOOTNOTE 19.**

**FOOTNOTE 18**

*State of Connecticut, et al. v. American Electric Power Company, Inc., et al*., 564 U. S. \_\_\_\_ (2011) Available at: <http://www.supremecourt.gov/opinions/10pdf/10-174.pdf>

**FOOTNOTE 19** US District Court for the Southern District of New York, 15th September 2005, Judge Loretta A. Preska, Cases Nos. 04 Civ. 5669 (LAP) and 04 Civ. 5670 (LAP), p. 5. The judgment is here: <http://ag.ca.gov/globalwarming/pdf/Connecticut_%20AEP_Decision_Dismiss_2005Sep152004July24.pdf>

**ACCESS TO INFORMATION**

***i.)* “BUND and Germanwatch e.v. v. Federal Republic of Germany represented by the Minister of Economy and Labour” FOOTNOTE 21*.***

**Held:** In January 2006 a court settlement was reached wherein the Berlin Administrative Court rejected the German government’s claim that it was not subject to the freedom of environmental information laws (derived from the EU and the Aarhus Convention). It also rejected the government’s arguments that it did not affect climate change and the environment. The case was brought on in June 2004 by Germanwatch and BUND (Friends of the Earth Germany), who petitioned the German Economic Ministry to make public the contribution to climate change made by energy production projects that were supported by the German taxpayer through its export credit agency Euler Hermes AG.

**FOOTNOTE 21** Bund für Umwelt und Naturschutz Deutschland e.v. (BUND) (German section of NGO Friends of the Earth) and Germanwatch e.v. v. Federal Republic of Germany represented by the Minister of Economy and Labour (BMWA) 2006, VG 10A 215.04, Administrative Court Berlin (Verwaltungsgericht) (10 January 2006).

**VIOLATIONS OF RIGHTS TO LIFE AND DIGNITY**

***i.)* “Gbemre v. Shell Petroleum Development Company of Nigiera Ltd et al.” FOOTNOTE 20**

**Held:** that gas-flaring by Shell Nigeria represents a “gross violation” of the constitutionally-guaranteed rights to life and dignity of Mr Jonah Gbemre and the Iwherekan community in Delta State. This case represented the first time a Nigerian court applied the rights to life and dignity to an environmental case. The court ordered Shell Nigeria to stop flaring in the community immediately.

**FOOTNOTE 20** 12 Federal High Court of Nigeria, Benin City, 14th November 2005, Justice C.V. Nwokorie, Suit No: FHC/B/CS/53/05. The judgment is here: <http://www.climatelaw.org/media/media/gas.flaring.suit.nov2005/ni.shell.nov05.judgment.pdf>

**HUMAN RIGHTS**

**i.) Article 11, *The European Committee of Social Rights* Case Law.**

In its case law, the European Committee of Social Rights has developed a connection between the protection of environment and the protection of public health. This link is made in Article 11 of the *European Social Charter* **FOOTNOTE 22**. The Article affirms that, *“*everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable”.The Committee has interpreted this Article as including the right to a healthy environment, which adheres States to … ''take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at the local level and to help to reduce it on a global scale.''**FOOTNOTE 23.**

According to the European Court of Human Rights,Article11 complements Articles 2 and 3 of the *European Convention on Human Rights* by enforcing a variety of positive obligations that are designed to secure its effective execution and implementation. **FOOTNOTE 24** The Committee underscores that health-related rights as embodied in the two treaties are irrevocably linked given that "human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the *European Social Charter* or under the *European Convention of Human Rights* - and health care is a prerequisite for the preservation of human dignity". **FOOTNOTE 25.** As such, the obligations under Article 11 include a commitment on behalf of Parties to ensure “the effective exercise of the right to protection of health … either directly or in cooperation with public or private organizations, to take appropriate measures designed inter alia to remove as far as possible the causes of ill health”. Note that the term “health” adheres to the definition outlined in the Constitution of the World Health Organization (WHO), and refers to both physical and mental well-being. Moreover, the Article stipulates that, “health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action”. Here, “avoidable risks” include those that result from environmental threats, including air pollution. **FOOTNOTE 26**

**FOOTNOTE 22** Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint n°30/2005, decision on the merits of 6 December 2006, § 216 and 219.

**FOOTNOTE 23** European Council (September 1st, 2008).*Digest of the Case Law of the European Committee of Social Rights.* Available at:<http://www.coe.int/t/dghl/monitoring/socialcharter/Digest/DigestSept2008_en.pdf>

**FOOTNOTE 24** Conclusions 2005, *Statement of Interpretation on Article 11*§5.

**FOOTNOTE 25** International Federation of Human Rights Leagues (FIDH) v. France, Complaint No. 14/2003, Decision on the merits of 3 November 2004, §31.

**FOOTENOTE 26** Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint n°30/2005, decision on the merits of 6 December 2006, § p. 202

***ii.)”*Inuit Circumpolar Conference v. U.S. Electricity Generation Industry”**

On December 7th 2005, an NGO comprised of the Inuit people of Alaska, Canada Greenland and Russia, and the Inuit Circumpolar Conference (“ICC”), filed a petition to the Inter-American Commission on Human Rights (“IACHR”) **FOOTENOTE 27**. The petition, led by elected chair of the ICC Sheila Watt-Cloutier, posited that the United States’ acts and omissions on climate policy had violated human rights of the Inuit peoples under the American Declaration of Rights and Duties of Man including, for example, the right to the benefits of their culture, the right to enjoy personal property and lands that have been traditionally occupied by their people, as well as the right to the preservation of health. **FOOTENOTE 28**

**Held:** The ICC petition was dismissed by the IACHR the following November on the basis that it failed to establish ‘whether the alleged facts would tend to characterize a violation of rights protected by the American Declaration.’ Despite the dismissal, the petition has been praised as one of the first climate change cases that establishes a direct link between global warming and the violation of human rights. A ruling that acknowledges such a link could open the floodgates for similar actions.

**FOOTENOTE 27** Watt-Cloutier, Sheila. *Petition to the Inter American Commission on human rights violations resulting from global warming and caused by the United States*. (December 7th 2005). The full petition is here: <http://www.inuitcircumpolar.com/files/uploads/icc-files/FINALPetitionICC.pdf>

**FOOTENOTE 28** For more on this case see:Niehuss, Juliette. "Inuit Circumpolar Conference v. Bush Administration: Why the Arctic Peoples Claim the United States' Role in Climate Change has Violated their Fundamental Human Rights and Threatens their Very Existence." Sustainable Development Law & Policy, Spring 2005, 66-67, 82.

**RIGHTS OF NATURE (violations of “wild law”) – can be integrated into the section that deals with “wild law” (approx. pg. 46 of brief where Ecuador and Bolivia are mentioned).**

**i.)** “**Vilcabamba River v. Provincial Government of Loja”**

**Held:** On March 30th 2011, the Provincial Court of Loja granted an injunction against the Provincial Government of Loja to stop violating the Constitutional rights of the Vilcabama river under Article 71 of the Ecuadorian Constitution **FOOTNOTE 29**. Two citizens applied for an interdict against the government’s plan to widen a road without proper environmental assessment. The plaintiffs claimed the project would have multiple negative effects on the river, including flooding and disruption to the habitat of local wildlife. The Court ruled in alignment with the *precautionary principle*, which holds that until the government could prove that the expanding the road would not adversely affect Nature, the presumption is for the protection of the rights of Nature. The Court also upheld the *intergenerational principle*, which recognizes the importance of Nature for ensuring the interests of present and future generations.

**FOOTNOTE 29:** Provincial Court of Justice of Loja, sentence No. 11121-2011-0010, March 30, 2011.

**ii.)** “**The Attorney General of Belize vs. Ms. Westerhaven Schiffahrts GMBH & CO KG and Reider Shipping BV”**

**Held:** In 2010 the Chief Justice of the Court ruled that the Mesoamerican Coral Reef is not property but a Living Being. As such the reef is a part of Belize's national patrimony and consequently cannot be sacrificed due to commercial interests. The ruling came as a result of charges brought forth in January 2009 against a shipping company whose vessel collided into the reef causing extensive damage. The Court found the shipping company liable for the incident and ordered it to pay out $11 million Belize dollars ($5.5 million US dollars) plus an interest of 3% per year for both environmental and ecological losses.

The judgment is here: <http://www.elaw.org/system/files/westerhaven.26.4.10.pdf>

**FOOTNOTE 30:** *The Attorney General of Belize vs. Ms. Westerhaven Schiffahrts GMBH & CO KG and Reider Shipping BV*[2009] SCJA 45

TO BE INCLUDED WHERE BOLIVIA AND ECUADOR ARE MENTIONED TO HAVE INTRODUCED “RIGHTS OF NATURE” LEGISLTION.

Legal recognition of the “Rights of Nature” is increasing internationally. The following lists nations and cities who have developed new legislation recognizing the rights of the environment.

i.) The Mora County in New Mexico established a Bill of Rights and passed the *Community Water Rights and Local Self-Government Ordinance*. This recognizes the public’s rights to clean air and water, to a healthy environment, and also recognizes the rights of Nature. This ordinance prohibits activities that interfere with any or all of these rights, including oil and gas extraction. Thomas Linzey, Esq., executive director of The Community Environmental Legal Defense Fund (CELDF), helped members of the country draft the law commented on the passing of the ordinance, stating, "Today's vote in Mora County is a clear rejection of this structure of law which elevates corporate rights over community rights, which protects industry over people and the natural environment." **FOOTNOTE 31**

The Mora County ordinance helped to usher numerous similar laws throughout the US. For instance, in 2010, a bill of rights was passed in Pittsburgh that bars shale gas fracking and affirms both community control and the rights of nature **FOOTNOTE 32,** and Las Vegas followed suit and passed its own bill in 2012 **FOOTNOTE 33**. Sixteen additional towns in Pennsylvania, Ohio, Maryland, New York, New Hampshire and New Mexico have enacted similar ordinances to protect community resources and ecosystems **FOOTNOTE 34**.

**FOOTNOTE 31**."*Mora County, New Mexico Asserts Rights to Community Control, Rights of Nature*. N.p., n.d. Web. 03 July 2013.

**FOOTNOTE 32**, "Las Vegas Ordinance - Committee for Clean Water, Air and Earth." *Las Vegas Ordinance - Committee for Clean Water, Air and Earth*. N.p., n.d. Web. 03 July 2013.

**FOOTNOTE 33** "The Community Environmental Legal Defense Fund : Pittsburgh's Community Protection from Natural Gas Extraction Ordinance." *The Community Environmental Legal Defense Fund : Pittsburgh's Community Protection from Natural Gas Extraction Ordinance*. N.p., n.d. Web. 03 July 2013.

**FOOTNOTE 34** "The Community Environmental Legal Defense Fund : Ordinances." *The Community Environmental Legal Defense Fund : Ordinances*. N.p., n.d. See <http://www.celdf.org/resources-ordinances> for a full list and access to official documentation for all referenced ordinances).

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**Government negligence on legal commitments to confront climate change**

***i.)* “Friends of the Earth et al. v. Minister of Environment”FOOTNOTE 35**

Canada was the first country every to be put on trial for failing to meet its legal commitments to tackle climate change. In May 2007, Friends of the Earth Canada, with Sierra Legal, filed a case against the Environment and Health Ministers. In the case, the plaintiffs alleged that under section 166 of the Canadian Environmental Protection Act 1999, the federal government has a duty to take action to limit GHG emissions. In September 2006, The Canadian Commissioner of the Environment and Sustainable Development reported **FOOTNOTE 36** that, at that time, there was evidence of a widening gap between Canada's GHG emissions and its Kyoto commitments (\*to which it had not yet withdrawn). For instance, in 2004 Canada's GHG emissions were 26.6% above 1990 levels, indicating 34.6% discrepancy from Canada's Kyoto target of reduction of GHG emissions by 6% through 2008-2012. Following this, an international legal opinion was presented to the Canadian government in October 2006, which indicating, *inter alia*, that the government was in breach of the obligations set out in the 1992 UN Framework Convention on Climate Change (UNFCCC); specifically, the government was in breach of Article 4.2(a) and (b), in conjunction with Article 2 of the framework by not having established measures aimed at stabilizing atmospheric concentrations by reversing long-term trends of increasing GHG emissions; it was also determined that the government was in breach of the Kyoto Protocol obligation to show advancements in achieving the 6% GHG reduction level by 2005, with opinion holding that the target would also be violated in 2012.

**Held:** The case was originally stayed after the unanticipated passage of a private member’s bill into law in 2008 that requires the government to meet international Kyoto targets. In October of 2008 The Court ruled that the legislation (KPIA) itself is not justiciable and so dismissed the case. **FOOTNOTE 37**

**FOOTNOTE 35** *Friends of the Earth, et al. vs. Canada,* 2008 FC 1183, [2009] 3 F.C.R. 201. The judgment is here: <http://reports.fja.gc.ca/eng/2008/2008fc1183/2008fc1183.pdf>

**FOOTNOTE 36** Office of the Auditor General Canada (September 2006). *Report of the Commissioner of the Environment and Sustainable Development* <http://www.oag-bvg.gc.ca/internet/English/parl_cesd_200609_e_936.html>

**FOOTNOTE 37** *Friends of the Earth, et al. vs. Canada,* 2008 FC 1183. See judgment here:

<http://www.climatelaw.org/cases/case-documents/canadacasedocs/foekpia/dismiss>

ii.) Below is a non-exhaustive list of similar and successful cases brought against the Canadian, US or Australian governments for failure to comply with international and legal commitments.

* **Pembina Institute for Appropriate Development v. Canada (Attorney General), 2008 FC 302, [2008] 4 F.C.R. D-12**
  + ***Held:***The Federal Court found that the judicial review of the environmental impact assessment report by the Canada-Alberta Joint Review Panel, which recommended the Department of Fisheries and Oceans to approve Imperial Oil’s application to undertake the Kearl Lake oil sands mining project, did not meet the requirements set out under the *Canadian Environmental Assessment Act*, S.C. 1992, c. 37 1 The Court found that the Panel failed provide the rationale for its conclusion that the Project’s GHG emissions would be insignificant and that such a decision—made without sufficient understanding of the Project’s effects—were in violation of the Act, s. 34(*c*)(i).
* **Center for Biological Diversity, et al. v. National Highway Traffic Safety Administration (NHTSA), 508 F.3d 508 (9th Cir. 2007)**
  + Held: The Ninth Circuit found that 4 of 7 challenges put forth by the plaintiffs were valid. The plaintiffs challenged a Final Rule issued by the NHTSA which set corporate fuel economy standards (CAFE) under the Energy Policy and Conservation Act (EPCA) and the National Environmental Policy Act (NEPA). The Ninth Circuit found that the NHSTA acted capriciously with respect to four EPCA challenges and also held that the Final Rule's associated Environmental Assessment (EA) was inadequate under NEPA. The courts ordered for the swift declaration of CAFE standards that met with court's opinion and also ordered a full Environmental Impact Statement (EIS).
* **Border Power Plant Working Group v**. **DOE**, **260 F. Supp. 2d 997 (S.D. Cal. 2003)**
  + *Held*: The court ruled in favour of plaintiffs that challenged the government’s approval of power transmission lines that would transfer power generated from a plant in Mexico to the California grid. The court found that the GHG emissions produced from the Mexican power plant have sufficient indirect environmental impacts and the plaintiffs had standing due to concerns over public health.
* **Australian Conservation Foundation v Latrobe City Council** **(2004) 140 LGERA 100**
  + *Held:* The Victorian Civil and Administrative Tribunal held that the environmental impacts of GHG emissions that were expected to be generated by the Hazelwood Power Station ought to be considered in plans to facilitate mining in the West Field coalfields to supply coal for the Hazelwood station.
* **Gray v** **The Minister for Planning** **(2006) 152 LGERA 258.**
  + Held: On 27 November 2006, Justice Nicola Pain ruled in favour of the applicant and found that the respondent, the Director General of Planning, had failed to take principles of ecologically sustainable development into account when accepting an environmental assessment conducted by the by Centennial Coal Company Limited (‘Centennial’) regarding the Anvil Hill mine (‘the Project’).

**Industry violations of the OECD Guidelines for Multinational Enterprises**

A number of European NGOs have initiated legal action against car companies as a result of perceived failure on behalf of the industry to adhere to its voluntary agreements with the European Commission to reduce the average carbon emissions from new cars to 140g/km by 2008/9. **FOOTNOTE 38**

**FOOTNOTE 38** COWI A/S. *Fiscal Measures to Reduce CO2 Emissions from New Passenger Cars: Final Report. January 25th 2005.* European Commission's Directorate-General for Environment. Full report here: <http://ec.europa.eu/taxation_customs/resources/documents/co2_cars_study_25-02-2002.pdf>

**SOME KIND OF CONCLUDING STATEMENT???**

Taken together, existing legal precedents, new dimensions of jurisprudence, new pieces of climate-related legislation, and growing consensus amongst international organizations about the dangers of climate change—expressed in constitutional resolutions, parliamentary recommendations, and international regulations—stand as evidence that the fossil fuel industry causes and contributes to activity that increasingly requires legislative regulation to protect public welfare as well as the environment, and can rightfully be described as socially harmful. Thus, we argue that it is both scientifically sanctioned and lawful to affirm that the primary activities of the fossil fuel industry—which include the extraction, transportation, and burning of fossil fuels—frustrates points of existing law including the protection of basic human rights, as well as the Rights of Nature.

TO BE INTEGRATED INTO SECTION “WHY FOSSIL FUELS ARE LIKE TOBACCO”

It is important to note here that the case law discussed in **Section** **3.4 of this brief** does not include legislation specifically designed to allow divestment from the fossil fuel industry, similar to that which enabled divestment in the case of South Africa (Bill 9 *An Act Permitting Trustees and other Persons to Dispose of South African Investments*). However, precedent for divestment from an industry whose primary operations are not prohibited under federal law or that is not subject to targeted legislation enabling withdrawal of investment exists—namely, the case of the university’s divestment from tobacco companies in 2007.

Indeed, the increasing volume of case law that recognizes the harmful effects of climate change, **detailed in depth in the section above,** demonstrates important parallels to the legal history of the tobacco industry. In the case of tobacco, the growing recognition of the harmful impacts of the previously socially-sanctioned activities of producing and consuming tobacco products resulted in increased legislative regulation and litigation against tobacco manufacturers, as well as social stigmatization both of the tobacco industry and the activity of smoking. These trends were made manifest in university policy, namely the banning of smoking on certain areas of university property in efforts at protecting and promoting health on campus, which in turn legitimated full divestment from tobacco industries on behalf of the university in 2007. The university’s divestment from tobacco companies can be seen a result of a wider historical shift that saw tobacco manufacturers move from operating with broad social and legal license to proceeding under a growing body of governmental regulations and increasing legal scrutiny.

A very brief overview of the legal history of the tobacco industry helps to demonstrate the parallels between the trajectories of tobacco and climate litigation, as in both cases the growing recognition of the harmful effects of each industries’ primary products has resulted in an ever-expanding body of litigation and legislation designed to restrict and regulate their use and consumption. To begin, legal action against tobacco companies began with a single personal injury lawsuit in 1954 in the US. At this early stage, the industry was successful in subverting blame for the harm smoking inflicted upon individuals by legally framing the problem as one of individual choice and responsibility. This strategy helped the tobacco industry win every legal action taken against in for the next forty years. However, in the 1980s this trend began to shift, corresponding to the growth of scientific evidence showing the harmful effects of smoking and the addictive nature of cigarettes and other tobacco products **FOOTNOTE 39**.

In light of the growing recognition of the adverse health impacts and related costs caused by the use of tobacco products, the importance of protecting the conduct of the industry itself from legal accountability was paramount. For instance, in a 1986 document outlining legal advice to Phillip Morris, the company was advised to “keep the focus of the trial on the personal choices and responsibilities of the plaintiff and away from the conduct of the industry” **FOOTNOTE 40**. This, because the primary activities of the tobacco industry—the production and distribution of tobacco products for consumption—had been conducted up until that point with full awareness on behalf of manufacturers that such activities result in social harm. It was only with growing awareness on behalf of the public of the harmful effects of smoking that the legal tide began to turn. For instance, in the 1992 landmark case of *Cipollone v. Liggett* **FOOTNOTE 41**, the plaintiff and her family alleged that tobacco manufacturers withheld the information that smoking was addictive and caused lung cancer. This example marked the first instance where tobacco companies were ordered to pay damages in a liability case. In the following decades, as the consequences of the consumption of tobacco products were increasingly made manifest, the industry itself was forced to publicly recognize the harmful effects of their products; accordingly, the volume of litigation against the industry grew, as did the number of successes on behalf of plaintiffs, with consumer protection policies and antitrust laws forming the basis of much of the successful legal action against the industry. **FOOTNOTE 42**

The rate of lawsuits against the tobacco industry continued to increase into the turn of the century. For instance, in 1994 the U.S., cases pending against Philip Morris totaled 278; in 2001, this number grew to 1,580 **FOOTNOTE 43.** The Tobacco Master Settlement Agreement of 1998, which was a class action initiated by 46 U.S. against the four largest U.S. tobacco companies, resulted in a court ruling ordering these companies to payout a total $206 billion US over 25 years. In the same year, British Columbia became the first province to begin legal action against tobacco companies to recover health-care costs related to smoking; since that time, other provinces including New Brunswick, Nova Scotia, Saskatchewan, Manitoba and P.E.I. have joined B.C.’s ongoing proceedings against the tobacco industry, and are seeking damages in the amount of billions of dollars **FOOTNOTE 44.** Thus, from the 1950s through to the present time, thousands of legal actions have been taken against the tobacco industry globally, including personal injury lawsuits, public interest lawsuits and government lawsuits.

The trajectory of climate litigation, wherein the dangers of climate change and the threats its impacts have on the protection of human health and basic rights are increasingly recognized and validated, is reminiscent of the legal history of the tobacco industry. In his book *Unlocking the Global Warming Toolbox*, Steven Ferrey (2010) notes that “while litigation is just beginning, it is possible that GHG emissions could become the next tobacco … with the courts finding defendant liability or required actions” **FOOTNOTE 45.** Similarly, in an article describing the possible implications of the “Inuit Circumpolar Conference v. US” case, which argued that climate change infringes on the human rights of the Inuit peoples, **(see pg. X of this brief),** the *New York Times* declared that a victory could “lead to a[] . . . stream of litigation, somewhat akin to lawsuits against tobacco companies” **FOOTNOTE 46.** While this particular case was dismissed, pending cases can have similar effects. For instance, in the case of “Beaver Lake Cree Nation v. Her Majesty the Queen (HMTQ) Alberta (AB), Attorney General of Canada” (**see Section 3.4 “Canadian domestic law”),** the Beaver Lake Cree were granted the opportunity to go trial against the Canadian and Alberta governments by the Alberta Court of Appeals. This case has already broken new ground in terms of questioning the constitutional validity of the oil sands project by being granted trial, and, if the case advances successfully, can have unprecedented implications for future cases petitioning not only that climate change poses risks to human health and basic rights but that the primary activities of fossil fuel companies are in the violation of national and international law.

Moreover, just as the expansive record of litigation against the tobacco industry has forced these manufacturers to recognize the dangers associated with their products and have positioned them increasingly on the defensive, a similar shift in conduct is evident in the conduct of fossil fuel companies in recent years. For instance, in the light of an ever-growing list of oil spills, scientific research confirming the contamination natural resources as a result of fossil fuel projects, extreme weather events across the globe, and international recognition of the problem of climate change. **[Section will be continued…]**

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| **FOOTNOTE 39** Michon, Kathleen, J.D. "Tobacco Litigation: History & Recent Developments." *Nolo.com*. N.p., n.d. Web. 09 July 2013  **FOOTNOTE 40** Edwards J. Report from Phillip Morris Counsel to Phillip Morris Counsel Regarding Meeting on Addiction. 6 November, 1986. Bates No: 2025005346/5367  **FOOTNOTE 41** Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992). Judgment is here: <http://www.law.cornell.edu/supct/html/90-1038.ZO.html>  **FOOTNOTE 42** Michon, Kathleen, J.D. "Tobacco Litigation: History & Recent Developments." *Nolo.com*. N.p., n.d. Web. 09 July 2013 |

**FOOTNOTE 43** Jacobson PD, Soliman S. Litigation as public health policy: theory or reality? *Journal of Law, Medicine & Ethics* 2002; 30:224-238.

**FOOTNOTE 44** News, CBC. "The History of Anti-tobacco Litigation in Canada." *CBCnews*. *CBC/Radio Canada,* 13 Mar. 2012

**FOOTNOTE 45** Ferrey, S. (2010) *Unlocking the Global Warming Toolbox*, Penwell Books: Tulsa, p. 140.

**FOOTNOTE 46** Revkin, A. December 15th, 2004. *Eskimos Seek to Recast Global Warming as a Rights Issue.* The New York Times. Available at: <http://www.nytimes.com/2004/12/15/international/americas/15climate.html?_r=0>

**TO BE USED IN SHELL SECTION?**

*ii.)* Ecuador vs. Chevron Texaco:In 2001, after almost two decades of litigation and multiple rulings against the oil company, an Ecuadorean court fined Chevron to the tune of $8.6bn (plus 10% reparations fee) for contaminating the land around their oil operations which included Amazon rainforests and rivers with 18.5 billions of gallons of toxic materials between 1972 and 1992. The lawsuit was brought against the oil company on behalf of 30,000 Ecuadorean citizens.