

CIEL 1999 IN REVIEW

In February, CIEL helped to organize a civil society workshop in Indonesia on community based natural resource management and property rights. The meeting showcased ten case studies written by Indonesian NGOs from various islands with the guidance of CIEL attorney Owen Lynch. This is part of a multi-year effort financed by USAID.

In March, CIEL Addressed the WTO High-Level Meeting on Trade and the Environment. The meeting brought together over 140 NGOs, 70 governments and 24 IGOs to discuss trade and environment. CIEL's influence was very apparent throughout this meeting. CIEL wrote two of the nine main speeches (UNEP head Klaus Topfer's and Durwood's), as well as the remarks of one of the Chairs (Prince Saddrudin Aga Khan). The US government endorsed CIEL's position that NGOs be allowed to submit amicus briefs at the WTO. After the meeting, Durwood was one of two people invited for a private audience with the WTO Director General to discuss how the WTO could improve public participation. Three of CIEL's former students were also attended as members of various government and NGO delegations.

In March, CIEL Sparked an Unprecedented Public Hearing before the Board of the World Bank. As part of our long-standing efforts to promote citizen-based accountability at the World Bank, CIEL forced the World Bank of Directors to partially reverse its efforts to weaken the Bank's Inspection Panel. The Inspection Panel is designed to hear citizen complaints about Bank-financed projects. CIEL along with the Bank Information Center led the campaign to maintain the power of the Inspection Panel. As one strategy in that campaign, CIEL and BIC convinced the Bank to hold the first Board-level public 'hearing' in its history. The hearing elicited comments from over twenty civil society organizations from around the world who have monitored or tried to use the Inspection Panel. As one of the leading organizations pressing for increased transparency and public participation in Bank governance, CIEL felt both the public hearing and the resulting strengthening of the Panel were significant victories. The story was covered by National Public Radio, the Financial Times and Wall Street Journal, among others.

In April, CIEL filed a Precedent-Setting Challenge to Ayahuasca Plant Patent. CIEL represented the Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA) and the Coalition for Amazonian Peoples and their Environment (Amazon Coalition) in the first-ever challenge to a patent issued by the United States Patent and Trademark Office over a naturally-occurring plant that is sacred to indigenous groups. An American researcher, Loren Miller, claimed a patent over the Ayahuasca plant, which has been used by indigenous peoples' throughout the Amazon for

generations in religious rituals. US patents are supposed to reward those who contribute a new invention to society. Consequently, patent law requires that a patented plant be new and distinct from other known varieties, and not be naturally occurring (Ayahuasca grows wild throughout the Amazon basin). In this case, CIEL demonstrated that the supposed variety had been known to US botanists for years before Miller applied for his patent. Moreover, the medicinal and psychotherapeutic uses of Ayahuasca have been known by indigenous societies for generations. The patent challenge was delivered to the PTO by indigenous leaders from the Amazon Basin, together with two shamans. It highlights the moral issues involved in patenting life, together with the clash between western intellectual property regimes and traditional knowledge. These issues are at the cutting edge in debates over biodiversity conservation and use. The immediate goal of CIEL's challenge to the patent is to persuade the patent office to revoke the patent. The longer term goal is to use this case as precedent for re-shaping the legal system to protect indigenous rights and provide proper legal incentives for biodiversity conservation. Copies of some of the press surrounding this challenge are attached. CIEL has also petitioned the Patent and Trademark Office to set a general policy protecting indigenous knowledge of biodiversity.

In April, CIEL Defended the Philippine Indigenous Peoples Rights Act (IPRA) of 1997. In collaboration with the Legal Rights and Natural Resources Center - Kasama sa Kalikasan (LRC-KSK), a leading Philippine public interest law NGO, CIEL recently provided support before, during and after a Supreme Court hearing *en banc* of an expedited constitutional challenge by the mining industry to the Philippines unique Indigenous Peoples Rights Act. The IPRA will potentially benefit an estimated ten million indigenous peoples in the biodiversity-rich uplands of the Philippines. CIEL's assistance included: helping draft an amicus curiae brief on behalf of 113 indigenous leaders and prominent Filipino supporters, helping with preparations for oral arguments by lawyers from LRC - KSK; attending and analyzing the Supreme Court hearing; assistance with preparation of a Final Memoranda for the Supreme Court; and speaking to print and air journalists.

In May, CIEL organized a controversial luncheon for the hemisphere's FTAA trade negotiators meeting in Miami. In anticipation of the luncheon, CIEL released a spanish-language paper written in partnership with two other organizations, discussing environmental impacts of the proposed regional investment liberalization. The lunch was controversial, because the negotiators had previously tried to funnel all civil society participation through a cramped and ineffective formal process. CIEL's invitation to the lunch sparked a full debate among the negotiators over whether to accept any such invitations outside the formal process, thus breaking down the barriers to civil society participation in the regional trade talks. In the end, representatives from 17 countries in the hemisphere attended the lunch and sparked a valuable dialogue about environment and investment.

In May, CIEL hosted its first Head of State, the Slovak Prime Minister. The Prime Minister spoke at the reception we hosted in cooperation with the Slovak Embassy for

one of the winners of the Goldman Environmental Prize. The Goldman Prize is the most important human rights and environment prize for grassroots activists. Earlier in the same week CIEL also hosted a reception for the winner from Burma, as well.

In May, representatives from CIEL's climate, trade and biodiversity programs led different working groups in the Trans-Atlantic Environmental Dialogue. CIEL staff facilitated one of the working groups and were primary drafters of the statement for three of the four working groups. The TAED is a high-profile, government initiative to build alliances in environment, labor and trade between the U.S. and European Union.

In May, CIEL and the International Human Rights Law Group filed an amici curiae brief with the Inter American Court of Justice in San Juan, Costa Rica. The brief asserted that the Republic of Nicaragua is constitutionally and legally obliged to recognize the community-based property rights of an indigenous Mayan community, the Mayagna (Sumo) Community of Awas Tingni. The case arose out of a Nicaraguan concession of indigenous lands to Asian logging interests. On February 4, 2000 the Inter American Court decided that it will consider the merits of the case, an unprecedented ruling in a legal proceeding that may have a profound impact on the rights of millions of indigenous people of the Americas.

In June, CIEL provided technical and legal support to a high-profile challenge of a World Bank loan to China. The loan would involve the relocation of ethnic Chinese farmers into an area traditionally used by ethnic Tibetans and Mongolians. The exiled government of Tibet opposed the project as being one of the main strategies for China to eliminate Tibetan culture. The Bank, under pressure from China, had hurried the loan preparation, ignoring all of its policies on environmental assessment, indigenous peoples and involuntary resettlement. CIEL drafted a claim to the Inspection Panel and led a high-level effort to oppose the project (an effort that included no fewer than four meetings with Bank President James Wolfensohn). In the end, the project was approved but subject to the outcome of the inspection panel investigation triggered by CIEL's claim.

In August, CIEL launched our first substantial initiative in Africa, as we began planning a major conference in East Africa to highlight the role of community based property rights in sustainable development. Working with Kenya's RECONCILE and Center for Environmental Policy and Law (CEPLA) Tanzania's Lawyers Environmental Action Team (LEAT), and Uganda's Attorneys Coalition for Environment and Development (ACODE), as well as the World Resources Institute, the conference will bring together lawyers from around the region to discuss community based property rights. The conference is scheduled for early August, 2000.

In August, CIEL visited the Yacyreta dam site in Paraguay at the request of Sobrevivencia, a Paraguayan organization that represents people resettled and otherwise affected by the dam. The Yacyreta project is a massive World Bank-financed dam on the Argentine-Paraguayan border that has long been marked with corruption and environmental and social damage. The project has commanded the attention of highest

levels of the Bank, including President Wolfensohn who has promised on several occasions to fix the problems that every one recognizes exist at the project. Sobrevivencia and CIEL, along with the Bank Information Center, are trying to convince the Bank to stop the dam at its current height, so there is no further resettlement or environmental damage. Yacyreta is in Encarnacion, Paraguay. Sobre and CIEL also took this opportunity to meet with affected people from both sides of the river and listen to their descriptions of the situation and proposals for solutions and check the operations of the dam and electricity producing entity, important steps to strengthen our advocacy work.

In September, CIEL launched a short-term campaign to raise the profile of big-leaf mahogany, a commercially important tree species that is decreasing through much of its range. CIEL submitted to the US Fish & Wildlife Service a comprehensive review of the biological status and trade patterns in mahogany, with the hope of convincing the US to propose listing mahogany as a ‘threatened’ species under the Convention on International Trade in Endangered Species (CITES). In the face of heavy industry pressure, the US rejected our position, but we did raise the profile of this issue within the White House and the State Department. As a result, the US is currently trying to determine what steps it will take to respond to the clear scientific evidence that CIEL presented. Brazil must present a report on the status of mahogany at the next CITES conference of the parties, and we believe this provides the US an opportunity to promote stronger conservation measures.

In October, the International Finance Corporation's (IFC) new Compliance Adviser and Ombudsman held a roundtable discussion with environmental and business representatives to discuss potential operating procedures for the ombudsman. The ombudsman will receive complaints from project-affected people and make recommendations directly to the President of the World Bank Group, James Wolfensohn. CIEL supported the creation of the ombudsman at the IFC and participated in the selection of the first ombudsman, Ambassador Meg Taylor from Papua New Guinea. After the roundtable, proposed procedures were developed by the ombudsman, and CIEL will provide comments on the draft procedures later this month.

In November, CIEL's climate change team highlighted the need for strong compliance and implementation systems to the government delegates responsible for negotiating the climate change rules under the Kyoto Protocol. CIEL distributed a series of three papers promoting creative and realistic ways to ensure that the Kyoto Protocol is implemented and enforced so that we receive real reductions in greenhouse gas emissions. CIEL also sponsored a workshop on the first day of the meeting to highlight the need for a workable compliance system. CIEL was subsequently invited by the government delegates to present our recommendations in a statement to the Joint Working Group on Compliance (JWG). Behind the scenes, we promoted the idea of a Compliance Fund as well as a strong NGO role in the compliance system to the United States' and European Union's delegations. In part because of CIEL's efforts, both the United States and the European Union have strengthened their positions on compliance and we believe there is now a good chance for a strong compliance and implementation system for the climate change regime.

In November, CIEL trade team members from Washington and Geneva converged in Seattle for the WTO Ministerial Conference. The Seattle Ministerial marked a culmination of intensive advocacy, organizing and outreach activities for CIEL's staff. In Seattle, CIEL staff participated in eleven different panels on a wide range of trade and environment issues. CIEL President Durwood Zaelke was on official US delegation, which led him among other things to be ejected from several 'closed' USTR meetings. He also met with the President Clinton along with three other environmental CEOs to press for changes in how US trade policy is made. CIEL staff worked tirelessly behind the scenes with key European (Austria and Germany) and developing country (the Africa Group) representatives to support strong positions, particularly on trade and development issues. We also prepared and distributed ten different publications on trade and environment in Seattle, including:

- *Tree Trade*, a report co-authored with the World Resources Institution and the (CIFOR) that assesses the environmental impacts of the Administration's proposal for accelerated tariff liberalization in the forest product sector by WTO members;
- *Safe Trade in the 21st Century*, a briefing paper released by Greenpeace International;
- *Trade Measures and Multilateral Environmental Agreements*, a paper for WWF International calling on WTO Members to ensure that WTO rules do not undercut multilateral environmental agreements;
- a paper for the South Centre arguing against the inclusion of biotechnology as a separate topic in the WTO talks;
- an Activists Handbook on GMOs and the WTO, a guide prepared for and published by the Consumer's Choice Council;
- a series of papers in spanish and english critiquing the investment provisions of the Free Trade Agreement for the Americas;
- a paper evaluating the relationship of WTO rules and the convention on persistent organic pollutants (POPs) currently being negotiated; and
- Fisheries Conservation and Trade Rules, a paper prepared with Greenpeace that assesses the relationship between international fisheries rules and the WTO.

In November, CIEL also filed a petition to the Commission on Environmental Cooperation (CEC), the environmental institution created under NAFTA, demonstrating that the United States has systematically failed to enforce the Migratory Bird Treaty Act against logging companies. Eight other groups from Mexico, Canada, and the US supported the Petition. Earlier this year, a lawyer working for CIEL obtained a 'smoking gun' memo written by the director of the FWS that the agency has a "longstanding, unwritten policy" not to enforce the Act with respect to logging. While the CEC cannot legally compel any of the NAFTA parties to begin enforcing their laws, it can result in a publicly available investigation and finding of fact that is politically difficult to ignore.

The CEC responded to the petition with unprecedented speed, stating that it was a "particularly strong" candidate for review because it asserts a "widespread pattern of ineffectual enforcement" that "is longstanding in nature" and nationwide in scope." The United States has 30 days to respond (60 days in "exceptional circumstances") after

which the CEC will determine whether or not to prepare a factual record. Our submission, as well as the CEC's determination, is posted on the CEC website.

In November, the US Patent and Trademark Office (PTO) upheld CIEL's petition seeking to void a patent previously granted on the Ayahuasca vine, a plant used by many Amazonian indigenous people for its medicinal and hallucinogenic qualities. CIEL had filed the patent challenge on behalf of the Amazon Coalition and several indigenous groups in March. The PTO endorsed our arguments that the claimed plant variety was not distinctive or novel, and thus could not be patented. This was the first successful challenge to a patent relating to indigenous knowledge, although the PTO failed to address the more important policy argument that the plant's religious value warranted an exception from patenting. CIEL has also petitioned the Patent and Trademark Office to set a general policy protecting indigenous knowledge of biodiversity.

In December, CIEL assisted DECOIN, an environmental organization from Ecuador in filing a claim to the Inspection Panel regarding the PRODEMINCA, a World Bank-financed technical assistance loan to Ecuador. The group is concerned that the loan has led to mineral prospecting in a protected reserve, which they fear will open the area for more intensive mining as happened previously in Ecuador. CIEL's review of the project suggested that Bank staff violated policies relating to environmental assessments and natural habitats.