

**ELAW**

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**advocate**

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# Keeping Coal in the Ground

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The world needs to move past coal. Coal kills people and is the largest source of CO<sub>2</sub> emissions – we simply cannot continue burning coal if we hope to protect the climate.

ELAW applauds the work of local advocates who over the past five years have helped halt coal-fired power plants in Egypt, India, Kenya, Senegal, South Africa, Sri Lanka, and Thailand; shelved proposed coal mines in Brazil, the Philippines, and Poland; and shuttered a coal mine in Chile.

These victories saved roughly 185.1 million metric tons of CO<sub>2</sub> – the equivalent of taking 40 million cars off the road every year.

Renewable energy sources – solar and wind – are proving cheaper than coal, but coal companies and their allies in governments are not giving up. ELAW partner Rizwana Hasan in Bangladesh says: "There was only one coal-based power plant in the country five years ago. Now we are going to have 29."

Developers are pushing to build hundreds of new coal plants and mines around the world. If they succeed, we will be locked into burning more coal for decades. If we can shut down new coal projects, we can prevent damage and move on to renewable energy.

We are pleased to share some recent work challenging coal.



ELAW Staff Scientist Dr. Mark Chernaik (right) appears on Vietnamese Talk TV.

## Vietnam: Anatomy of a Flawed EIA

Just after midnight Pacific Time on July 15, ELAW Staff Scientist Dr. Mark Chernaik Zoomed into Vietnamese Talk TV to share his expertise on problems with the proposed Vung Ang 2 coal-fired power project. He spoke at the invitation of ELAW partners at The Law and Policy of Sustainable Development Research Center (LPSD), based in Hanoi.

The next day, Phuong Bui with LPSD's Coal Finance Working Group, wrote to Mark:

"I knew it was very early morning yesterday from your side but you still managed to join us. Thank you so much for your kindness and enthusiasm. Your participation was very valuable and meaningful to the Talk Show. We consider the Talk Show very successful. Hopefully, we will get some optimistic actions in next few months from authorities, as well as from banks and investors, about the Vietnam Power Development Plan."

(STORY CONTINUED ON PG. 2)



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The Environmental Law Alliance Worldwide (ELAW) helps communities speak out for clean air, clean water, and a healthy planet. We are a global alliance of attorneys, scientists, and other advocates collaborating across borders to promote grassroots efforts to build a sustainable, just future.

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# Keeping Coal in the Ground



CONTINUED FROM PG.1

Mark has been working closely with LPSD to help challenge the ill-advised coal project. He reviewed the project’s environmental impact assessment (EIA) – a very technical document, exceeding several hundred pages – and found many flaws.

“The EIA I reviewed was submitted to authorities in Vietnam and to an international lending institution as part of proposals to foreign lenders, without which the project would not be built,” says Mark.

The Saigon Times reported on August 15th that government officials announced no additional coal-fired thermal power plants will be developed in 2020-2030! The proposed Vung Ang 2 power plant is not yet under construction, buying time to convince government decision-makers and lenders that Vietnam’s energy future lies with clean affordable energy from wind and sun, not costly fossil fuels.

**“Coal does not make sense. There are cheaper ways to generate power.”**

Ernie Niemi  
President, Natural Resource Economics

**Excerpts from Dr. Mark Chernaik’s presentation on Vietnamese Talk TV**

*The purpose of the proposed Vung Ang 2 Thermal Power Plant is to supply electricity. But a coal-fired power plant is not the only option for generating electricity: utility-scale solar and wind projects also generate electricity.*

*Had the EIA for the proposed coal-fired power plant assessed alternatives, then it would have informed stakeholders and decision-makers about the higher costs and risks of coal-fired power for Vietnam, than power from other sources. Vietnam is building and will continue to build renewable power plants that generate electricity at a lower price than coal-fired power.*

*The EIA contains other flaws relating to health and environmental harm. For example, even though the height of the stacks that emit pollutants are more than 100 meters lower than the height of nearby hills, the EIA used a simple air pollutant dispersion model, not approved by U.S. regulators, that did not take into account how these hills would trap pollution along the coast when winds are calm and the ground is cool, underestimating how emissions from the proposed plant would affect air quality.*

*The EIA also allows the plant to emit respirable particulate matter at 10 times the rate permitted for new, large power plants in the European Union, and to dispose of waste coal ash in a wet ash pond, despite International Finance Corporation (IFC) recommendations that waste ash be kept dry, to reduce environmental impacts.*

*The EIA also allows the plant to discharge heated water that would raise the temperature of the ocean by more than 3 degrees Celsius in an elliptical area more than 500 meters long, in violation of IFC guidelines for new power plants.*

**Dominican Republic: Saying No to Coal**

More than 120 people participated in an August 24 webinar, to learn about possibilities for a transition away from coal in the Dominican Republic.

The new Punta Catalina thermal power plant burns coal. ELAW partner Euren Cuevas co-hosted the conference to promote a switch away from coal. ELAW Staff Scientist Dr. Mark Chernaik and Ernie Niemi, President of Natural Resource Economics, provided expert commentary.

ELAW has been working with Euren for years to advance clean energy in the Dominican Republic. Euren is Executive Director at Instituto de Abogados para la Protección del Medio Ambiente (Institute of Lawyers for the Protection of the Environment, INSAPROMA). He co-hosted the conference with the Comité Nacional de Lucha Contra el Cambio Climático (National Committee for the Fight Against Climate Change) and the Autonomous University of Santo Domingo.

Mark told the audience: “The environmental costs of not converting the Punta Catalina thermal power plant to natural gas are high. Converting would cut in half carbon dioxide emissions, and reduce particulate matter, sulfur dioxide, and the need to dispose coal ash. But conversion to gas instead of coal is not the only option. Rapid advances in solar power, wind power, and battery storage technology offer the country the option of a clean and inexpensive electrical energy without any of the external environmental costs associated with burning fossil fuels.”

Ernie told the audience that the external risks associated with coal-fired power plants far outweigh the benefits. He had traveled to the Dominican Republic in July 2019, at the request of INSAPROMA, and shared similar findings with academics and decision-makers.

“Coal does not make sense,” he said. “There are cheaper ways to generate power.”

**Pakistan: Proposed Coal-fired Power Plant Threatens Community Water**

Plans for an open-pit lignite mine (the dirtiest form of coal) in Pakistan’s Thar desert threaten to create severe water shortages for local communities. ELAW Staff Scientist Dr. Mark Chernaik reviewed the study, “Thar Coalfield Water Impacts: Financial and Social Risks,” conducted by Paul Winn at Hydrocology Consulting.

Pakistan’s Dawn newspaper cited Mark’s findings, which he shared at the study’s virtual launch event: “Commenting on the study, Dr. Mark Chernaik, staff scientist for Environmental Law Alliance Worldwide (ELAW), said: ‘The [study] will make an important contribution to [the ongoing] debate on building coal-fired power plants in the middle of a scorching desert.’ He argued that a dry air cooling system was impractical for coal-fired plants located in a hot desert like Thar. So, he said, the only option available for these plants was to have a water-based cooling system.

Citing figures from the study, he said the government’s proposed water diversion scheme would create an evaporation pond because of the high levels of water evaporation in the desert. According to him, starting with 0.1 per cent salinity of the source of water, salinity of the reservoir would soon exceed levels that farmlands could safely use without damaging crops.”

In late July, the Sindh Environmental Protection Agency granted approval of the water supply project for creating a reservoir in the middle of the Thar dessert, fed with water from the Chotiari Reservoir.

The Alternative Law Collective, a coalition of environmental lawyers in Pakistan, are preparing a legal challenge to the short-sighted approval.



# Keeping Coal in the Ground



The Cerrejón coal mine, Colombia

## Colombia: Protecting the Wayúu from a Polluting Coal Mine

The largest open-pit coal mine in Latin America is harming people living in nearby communities. The Wayúu Indigenous people of La Guajira, Colombia live near the Cerrejón mine. Lawyers at the José Alvear Restrepo Lawyers' Collective (CCAJAR) are seeking justice for the Wayúu, by challenging the mining operations in court.

The environmental and health impacts of the Cerrejón mine are well documented and have been the subject of several court rulings in recent years.

In late 2019, the Constitutional Court of Colombia issued Sentence T-614 in favor of the affected Wayúu community's rights to health and a healthy environment. The petitioners, Mary Luz Uriana Ipuana and Yasmina Uriana are Wayúu women concerned about the impacts of air pollution on the children and other vulnerable people in the Provincial resguardo (Indigenous territory) near the mine. However, the Court did not order the company to close the mine. The petitioners returned to the Court, seeking stronger remedies.

In August, ELAW U.S. submitted an amicus curiae brief supporting the Wayúu community's request to stop pollution from the coal mine and protect their rights to health and a healthy environment, especially the children most affected by particulate matter from the coal mine. Pedro León and Killian Doherty of ELAW's law team, and Staff Scientist Dr. Mercedes Lu drafted the brief. The case is pending.



In 2017, the Wayúu gather outside Colombia's Congress, wearing face masks to protest air pollution from mining operations in La Guajira. PHOTO: Meche Lu, ELAW.

## Zimbabwe: Seeking a Just Transition to Clean Energy

The U.S. \$3 billion Sengwa coal-fired power project in northern Zimbabwe was first proposed in the 1990s, but did not move forward due to lack of funding. The project was recently revived by Rio Energy Ltd. and proposes to move water from the Zambezi River to the plant and construct new power lines.

ELAW partners at the Zimbabwe Environmental Law Association (ZELA) have called on the government to learn whether licenses have been issued and ensure that the project is consistent with

constitutional rights to environmental justice and complies with renewable energy policies in Zimbabwe.

ELAW Law Program Director Jennifer Gleason shared legal strategies for protecting communities from pollution generated by coal-fired power plants at a webinar earlier this year hosted by ZELA. Meanwhile, ELAW Africa Program Fellow Bernard Ngilim is working with ZELA staff to review laws governing the project.

**"The landmark aspect is that, for the first time, climate change is specifically confirmed to be a legally 'relevant factor' in terms of the National Water Act, to be taken into account when considering a water use license application."**

Michelle Koyama  
Centre for Environmental Rights  
SOUTH AFRICA



New solar hybrid project in Goma, DRC.

## Democratic Republic of the Congo: Solar Powered Peace

ELAW partner Olivier Ndoole reports a big win for renewable energy in the Democratic Republic of the Congo (DRC): The Nuru company's 1.3MW solar hybrid project in Goma has received a permit to begin distribution.

Nuru's website says the project will be the largest off-grid mini-grid in sub-Saharan Africa.

ELAW collaborated with Olivier's organization, Alerte Congolaise pour l'Environnement et les Droits de l'Homme Congolaise (Alert for the Environment and Human Rights, ACEDH), to review and assess the project's EIA, prepared by the developers.

"Olivier was able to inform the government decision-makers that the project reflected best practices and had a smaller footprint than many solar projects," says ELAW Staff Scientist Dr. Mark Chernaik.

Mark worked closely with Olivier and ELAW Law Associate

Paola Eisner to create a presentation, in French and English, for government officials in North Kivu Province who asked for Olivier's help analyzing the EIA.

Olivier is the Executive Secretary at ACEDH. He traveled to Eugene as an ELAW Fellow earlier this year and is doing courageous work defending landless communities near Virunga National Park, a region plagued by civil unrest and home to some of the few mountain gorillas in the world. Meeting the need for dependable electricity will help lay the foundation for a peaceful DRC.

Nuru's solar project in Goma is one of the first private energy ventures in DRC and the first to partner with NGOs.

"Our partnership with ELAW was critical and I thank everyone for helping me pull our presentation together on such short notice," said Olivier.



## South Africa: Landmark Ruling Against Coal

In August, South Africa's national Water Tribunal scrapped two water use licenses granted to ACWA Power for the proposed 600MW Khanyisa coal-fired power station in the Mpumalanga Highveld. This landmark ruling protects precious water resources from the demands of new coal-fired power plants in South Africa.

ELAW partners at the Centre for Environmental Rights (CER) worked with groundWork to file the appeal upheld by the Water Tribunal, which ruled that licenses for water use should consider the risks of climate damage, and that if it had, "it could not have concluded that the authorized water uses promoted the beneficial and sustainable use of water in the public interest."

The Tribunal also ruled that public participation was fatally flawed.

"The landmark aspect is that, for the first time, climate change is specifically confirmed to be a legally 'relevant factor' in terms of the National Water Act, to be taken into account when considering a water use license application," says CER attorney Michelle Koyama. "Any company that intends to start any sort of project which requires a water use license and which will implicate climate change (such as a coal-fired power station) should bear the Water Tribunal's ruling and the new legal requirement in mind, when applying for a water use license."

ACWA Power cannot finalize its project and reach commercial and financial close without a water use license. ACWA was ordered to conduct a full public participation, in respect of the water use license for the project by 21 September 2020.

If the company chooses to re-file its application for a water license, ELAW partners will be ready to demonstrate again that a coal-fired power plant taking water from a water-stressed community is unwise for the future of South Africa.



## Strengthening Indigenous Advocacy in Brazil

In 1996, Brazil's Instituto Socioambiental (ISA) sent the first ever Indigenous lawyer in Brazil, Paulo Pankararu, to Oregon for an ELAW Fellowship. This year, ELAW has forged a new partnership with Paulo, Instituto Pro Bono (IPB), and the Articulation of Indigenous Peoples of Brazil (APIB) to build the capacity of Brazil's Indigenous lawyers working to protect human rights and the environment.

There are now roughly 90 Indigenous lawyers in Brazil. Fifteen of them will receive mentorship and legal education in rights-based representation from Paulo and other experts in Brazil over the next year.

Due to the pandemic, we have moved our activities online.

IPB held virtual workshops this summer on Criminal Law, International Human Rights Law, Indigenous Land Rights, and Organizational Law and Information Security, as well as several meetings to discuss case studies of particular interest to the Indigenous lawyers.

In August, ELAW coordinated the first of several workshops focused on environmental law. To provide a solid foundation for understanding Brazilian environmental law, ELAW reached out to partners who have been practicing public interest environmental law in Brazil for decades.

Raul Silva Telles do Valle, Director of Socio-environmental Justice and Rights at WWF-Brazil, explained how environmental concerns are addressed in Brazil's Constitution, how courts have interpreted those constitutional provisions, and how Brazil's National Environmental Policy Law implements those provisions.

Biviany Rojas Garzón, Coordinator of the Xingu Program for ISA, discussed Brazil's environmental licensing and environmental impact review systems, relevant procedures and protections for Indigenous peoples, as well as ongoing efforts by powerful interests in the Brazilian Congress to minimize those procedures and protections.

ELAW remains committed to collaborating with our Brazilian partners to advance environmental and human rights advocacy.



Above: Representatives of Indigenous groups from the Amazon region and other areas of Brazil are participating in the training program.



At right: ELAW Associate Director Lori Maddox (on left) with 2020 ELAW Fellows, in Brasília, February 2020.

## Remembering Fierce Femmes of ELAW



### Kay Treacle, Calla Lily Rebel

When Kay was growing up in a working-class neighborhood in Tacoma, Washington, she thought that the nearby smelter was where clouds came from. She and her neighbors were poisoned every day by arsenic and other pollutants spewing out of the smelter's towers. She never developed a sense of smell, which she blames on the smelter.

Kay dedicated her life to protecting the environment. She was a founding member of Seattle's Greenpeace office, where Kay and her team's direct action helped communities learn about and oppose projects that threatened their lives and the environment.

After her work at Greenpeace, Kay served as the Executive Director of the Bank Information Center, where she helped defend communities from ill-advised projects funded by large international banks, like dams that threatened to flood rural communities for the sake of sending profits and electricity to far away cities and other countries. Kay served two terms on ELAW's board of directors.

Kay died in 2020 of liver cancer, a type of cancer often caused by exposure to arsenic. Kay is remembered for being fearless and funny. Her joy and laughter were contagious, and her tactical mind was a gift to many movement strategists at ELAW and around the world.

The necklace in the drawing is a Kwakiutl-styled orca Kay wore for many years while working at Greenpeace. The fire elements are based on a design by Coastal Salish artist lessLIE.

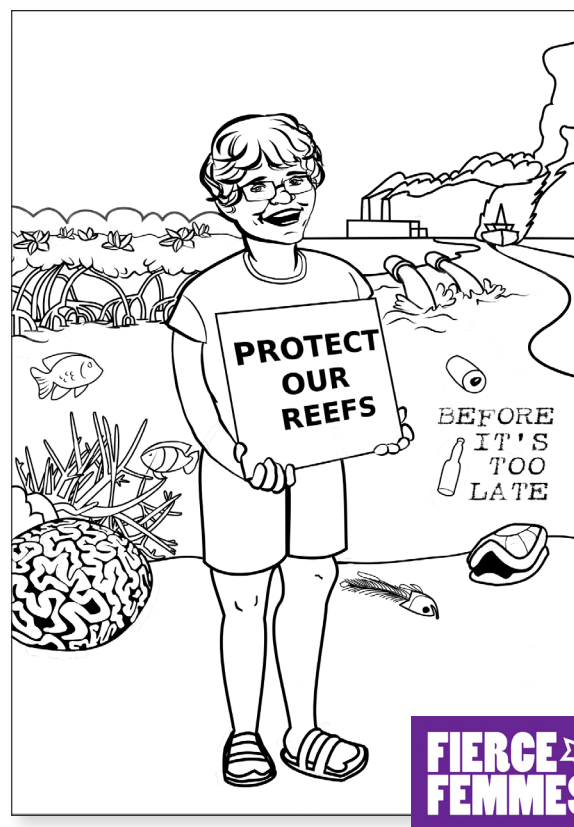
### Candy Gonzalez

Candy dedicated her life to fighting injustice. In the 1960s, Candy fought for equal rights for Black people in the United States as a member of the Student Nonviolent Coordinating Committee (SNCC). She traveled to Mississippi with other SNCC volunteers during the 1964 Freedom Summer to help Black Americans register to vote. The group faced violent opposition from white communities and government officials: while 17,000 Black Americans attempted to register during that summer, only 1,600 applications were accepted, some of Candy's fellow volunteers were assassinated, and at least 20 Black churches across the state were bombed or burned. Candy was jailed and brutally beaten by police, and the injuries she sustained that summer caused her chronic pain.

Candy went to law school to build skills to fight for justice. In the 1990s, she relocated to Belize where she worked tirelessly for communities and ecosystems with the Belize Institute of Environmental Law and Policy. She held the government accountable to the people through the courts, the media, and public campaigns to protect Belize's environment from excessive coastal development, dams, and oil projects. Her work to support public participation in the political process made it easier for communities to stand together against private profiteers seeking to destroy the ecosystems. Candy also supported lawyers engaged in similar struggles around the world. She is remembered as a fierce, public-spirited advocate for justice, and a steadfast friend. The design behind Candy depicts a mural by artists Rick Galvez and Francisco Bonilla.

**"Candy's shoes are too big to be filled by those of us who knew and loved her dearly but we shall honour the work she did and celebrate the amazing person she was. I will especially miss this beautiful soul who touched my life in so many different ways she would never know . . . rest in power, Candy."**

Theiva Lingam, Malaysia



Illustrations by Paola Eisner,

ELAW Law Associate and author of the coloring book *Fierce Femmes* ([bit.ly/fiercefemmesfree](http://bit.ly/fiercefemmesfree)).

You can download these illustrations as free coloring book pages at [bit.ly/specialeditionelaw](http://bit.ly/specialeditionelaw).





# ELAW

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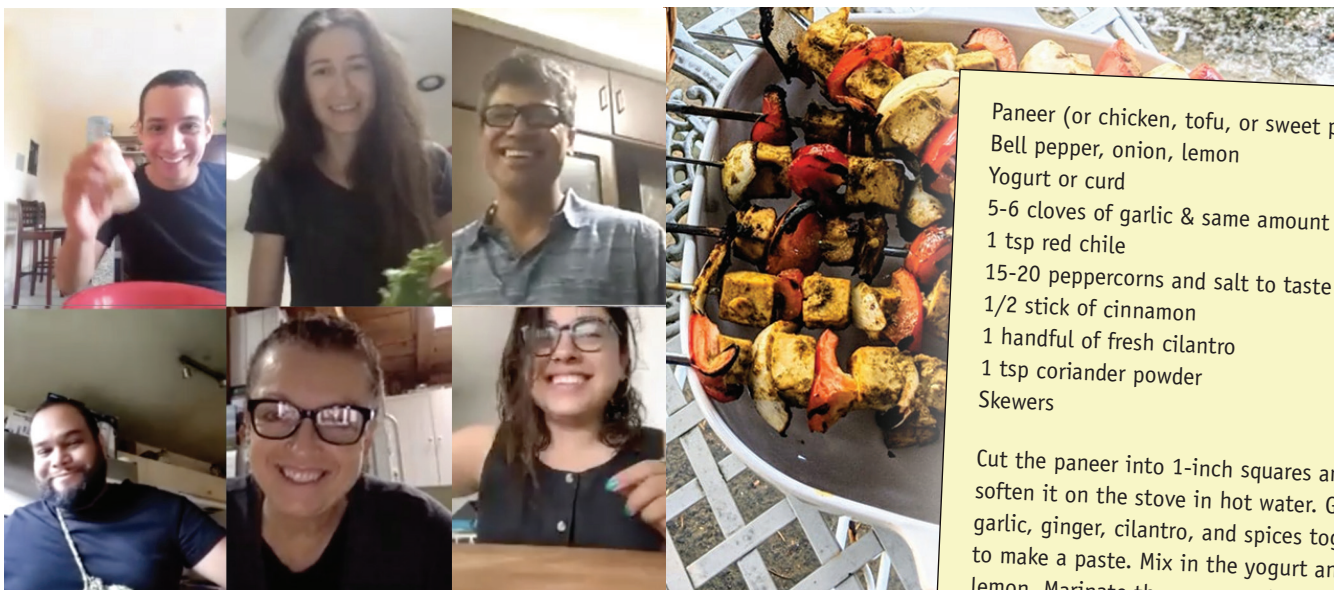
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## Together Through the Pandemic

In March, partners around the world began coming together on weekly calls to share updates on the pandemic and its impact on human rights and the environment. Bernis Cunningham of Centro Nicaragüense de Conservación Ambiental (Nicaraguan Center for Environmental Conservation) proposed that we cook together to share international flavors while we chat. Rahul Choudhary of Legal Initiative for Forest and Environment (LIFE) in India recently demonstrated his delicious recipe for paneer tikka!



From top left to bottom right: Bernis Cunningham (Nicaragua), Paola Eisner (U.S.), Rahul Choudhary (India), Eduardo Mosqueda (Mexico), Maggie Keenan (U.S.), Ximena Ramos Pedrueza Ceballos (Mexico.)

We hope you get a chance to try it out! ➤

Paneer (or chicken, tofu, or sweet potato)  
Bell pepper, onion, lemon  
Yogurt or curd  
5-6 cloves of garlic & same amount ginger  
1 tsp red chile  
15-20 peppercorns and salt to taste  
1/2 stick of cinnamon  
1 handful of fresh cilantro  
1 tsp coriander powder  
Skewers

Cut the paneer into 1-inch squares and soften it on the stove in hot water. Grind the garlic, ginger, cilantro, and spices together to make a paste. Mix in the yogurt and lemon. Marinate the paneer cubes in the spice-yogurt mixture for 2 hours. Then, load the skewers with the paneer, onion, and bell pepper and grill or bake. Enjoy!