

Rio+20: Joint Report OHCHR and UNEP
(Final, October 21, 2011)

Background

During the High Level Expert Meeting on the “New Future of Human Rights and Environment: Moving the Global Agenda Forward” (Nairobi, 30 November-1 December 2009), OHCHR and UNEP reviewed developments concerning the relationship between human rights and the environment, and discussed ways and means to promote integrated strategies and policies for the protection of human rights and the environment. The preparation of a joint publication was discussed as a way of taking these issues forward and contributing to the 2012 United Nations Conference on Sustainable Development (also known as Rio+20).

This report takes up that proposal as it seeks to make a substantive contribution to the Rio + 20 Conference through an analysis of the interrelationship between human rights and the environment as they both form integral and indivisible parts of sustainable development. The linkage discussed is central to efforts to move towards a green economy that will deliver benefits to the international community in addressing food, energy and water security and in achieving sustainable development and the Millennium Development Goals. The United Nations Environment Programme (UNEP) describes the “green economy” as an economic system “that recognizes the properties of healthy ecosystems as the backbone of economic and social well-being and as a precondition for poverty reduction.”¹ It is a system in which the costs arising from the degradation of ecosystems are internalized and clean technologies and sustainable agriculture serve as major engines of economic growth, job creation and poverty reduction.

This report examines the development and status of norms and standards as well as current trends in respect of the linkages between human rights and protection of the environment, as two of the three pillars of sustainable development. The report provides information and shares knowledge, but also seeks to contribute to further developments in this area by providing a sound basis for work by UNEP and OHCHR as well as other UN and regional organizations. In the specific context of the Rio +20 Summit, the report aims to raise awareness of the potential for concrete actions to foster sustainable development based on the linkages between human rights and the environment. The shift towards a green economy requires coherent policies integrating the three pillars of sustainable development, that is, the economic, social and environmental aspects, which in turn demand collaboration between various sectoral ministries at the national level and cohesion between the organizations and institutions dealing with various aspects of sustainable development at the international (global and regional) level.

Part I of the report presents an overview of the evolution in recognition of the interaction between human rights and environmental conditions in the wider context of sustainable development. It depicts growing awareness of the interconnectedness of issues such as human well-being, health, security and equity, and impairment of the environment. It also takes stock of concerns for the impact on human rights of anthropogenic climate change and the loss of ecosystem services in relation to human well-being. Part I concludes by pointing to the need for further work on this topic in order to clarify the complex and multilayered inter-linkages between human rights and the environment, and to develop

action in these respective areas that is mutually supportive at all levels. Such action may be enhanced by increased institutional cooperation between organizations concerned with human rights and the environment at the global, regional and national levels.

Part II reviews and analyses how human rights and environmental protection may be integrated fully in the broader vision of sustainable development, with a particular focus on creating a green economy in the context of sustainable development and poverty eradication. This part especially describes the promotion of ecosystem services as a key means to achieve sustainable development and a green economy. Ecosystems provide essential services for human well-being and economic development, in addition to ensuring the continuation of natural processes and resources. This part of the report also seeks to identify gaps and possible entry points to raise awareness on inter-linkages of human rights and environment to foster sustainable development.

Part III describes the institutional architecture that underpins the work on human rights and environment at the international level. This section identifies avenues for the integration of human rights in international processes devoted to the environment (e.g. discussion of the human rights impacts of climate change in the UNFCCC Conference of the Parties) and vice versa (e.g., possible contributions of MEA-related bodies and UNEP's Governing Council to Human Rights bodies).

Part IV focuses on the way forward, suggesting how human rights and the environment should be integrated into the three pillars of sustainable development. It will also provide specific recommendations on how to incorporate human rights and environment issues in the two themes of 'green economy' and 'institutional framework for sustainable development', at the international and at the national level, in sustainable development policies, strategies and programmes.

Part I - Recognizing the Relationship between Human Rights and the Environment

The relationship between human rights and the environment is examined herein first at the international level, where there has been progressive recognition of the relationship, then at the regional level and finally through national legislation.

1.1 Progressive recognition of linkages at the international level

Almost from the emergence of contemporary concern with environmental protection in the late 1960s, the impact of environmental sustainability on the enjoyment of human rights was strongly perceived. The linkage figured prominently in the United Nations Conference on the Human Environment, held in Stockholm in 1972. In preparation for the Stockholm Conference, governments gathering at the 45th session of the Economic and Social Council specified that the conference was to focus on the impairment of the environment and the effects of this on "the condition of man, his physical and mental well-being, his dignity and his enjoyment of basic human rights in developing as well as developed countries."²

The Stockholm Conference

The Stockholm Declaration set out 25 common guiding principles for the preservation and enhancement of the human environment. Principle 1 underlined that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations." The governments also proclaimed in the concluding Stockholm Declaration that "[t]he

protection and improvement of the human environment is a major issue which affects the well-being of peoples.”³

After Stockholm, environmental scholars and activists began to consider human rights in a more instrumental fashion, identifying those rights whose enjoyment could be considered a prerequisite to effective environmental protection. They focused in particular on the procedural rights of access to environmental information, public participation in decision making, and access to justice and remedies in the event of environmental harm.

The World Commission on Environment and Development

In 1983, the General Assembly voted to create the World Commission on Environment and Development, an independent body linked to but outside the U.N. system and later more commonly known as the Brundtland Commission. Its mandate was to take up the critical relationship between environmental protection and economic development and to formulate realistic proposals for reconciling or balancing the two subjects; to propose new forms of international cooperation on these issues to influence policies in the direction of needed changes; and to raise the levels of understanding and commitment to action of individuals, organizations, businesses, and governments. The conclusions of the Brundtland Report⁴ stressed the need for an integrated approach to development policies and projects that, if environmentally sound, should lead to sustainable economic development in both developed and developing countries. The Report emphasized the need to give higher priority to anticipating and preventing problems. It defined *sustainable development* as development that meets present and future environment and development objectives and concluded that without an equitable sharing of the costs and benefits of environmental protection within and between countries, neither social justice nor sustainable development can be achieved.

The Rio and Johannesburg Summits

Subsequent key UN conferences on environment and sustainable development, notably the 1992 Rio Earth Summit (Rio Declaration and Agenda 21), the 2002 World Summit on Sustainable Development, and the Millennium Summit, reflected on the relationship between human rights and environment. The Brundtland Report led the United Nations to convene a second global conference on the environment in 1992 in Rio de Janeiro, Brazil, under the title U.N. Conference on Environment and Development (UNCED). The Rio Declaration on Environment and Development⁵ that emerged from the Conference recognized the right to development, but was clear in Principle 4 that “[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”

The Rio Declaration also recognized the critical role that the exercise of human rights plays in sustainable development. Principle 10 emphasized this in providing:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Chapter 23 of Agenda 21, on strengthening the role of major groups, proclaims that individuals, groups and organizations should have access to information relevant to the environment and development, held by national authorities, including information on

products and activities that have or are likely to have a significant impact on the environment, as well as information on environmental protection matters. The Preamble to Chapter 23 also calls for broad public participation in decision-making “[o]ne of the fundamental prerequisites for the achievement of sustainable development.” This includes the need of individuals, groups, and organizations to participate in environmental impact assessment procedures and to know about and participate in decisions, particularly those that potentially affect the communities in which they live and work. Section III of Agenda 21 identifies major groups whose participation is needed: women, young persons, indigenous and local populations, nongovernmental organizations, local authorities, workers, business and industry, scientists, and farmers.

In the aftermath of Rio, virtually every major international convention concerning multilateral cooperation added environmental protection as one of the goals of the states parties. Areas of international action that developed during earlier periods, including human rights, began evolving in new directions to take into account environmental considerations. The result was an infusion of environmental norms into most branches of international law, including free trade agreements that mention environmental cooperation as an aim.⁶ U.N. Secretary-General Kofi Annan in his 1998 Annual Report on the Work of the United Nations Organization spoke in favor of a rights-based approach to environmental protection, because it “describes situations not simply in terms of human needs, or of development requirements, but in terms of society’s obligations to respond to the inalienable rights of individuals.”

The states that participated in the World Summit on Sustainable Development, which met between August 26 and September 4, 2002, agreed to “reaffirm commitment to the Rio Principles, the full implementation of Agenda 21 and the Programme for the Further Implementation of Agenda 21.” At the end of the Conference, the participating governments adopted the Declaration on Sustainable Development affirming their will to “assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development at local, national, regional and global levels.”

The United Nations 2005 World Summit Outcome Document reaffirmed that sustainable development constitutes a key element of the overarching framework of the United Nations activities and defined sustainable development in terms of three interdependent and mutually reinforcing pillars: economic development, social development, and environmental protection. At the same time the 2005 World Summit Outcome also acknowledged human rights together with peace and security as the three interlinked and mutually reinforcing pillars of the United Nations system.

Other global recognition of linkages

ICJ Judge Weeramantry, in his separate opinion in *Case Concerning the Gabčíkovo-Nagymaros Project*,⁷ recognized that the enjoyment of internationally recognized human rights depends upon environmental protection

The protection of the environment is . . . a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.

In the field of human rights, specific rights inseparable from environmental quality have been recognized by the international community. The most developed example is the right to water. In 1999, the United Nations General Assembly asserted that “the rights to

food and clean water are fundamental human rights and their promotion constitutes a moral imperative both for national governments and for the international community.”⁸ The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁹ imposes a duty on States parties to ensure that women ‘enjoy adequate living conditions, particularly in relation to... water supply.’¹⁰ Subsequently, in the United Nations Convention on the Rights of the Child (CRC),¹¹ States parties agreed to combat disease and malnutrition ‘through the provision of adequate nutritious food and clean drinking water.’¹²

Various environmental milieu and services have been recognized in particular as essential to the enjoyment of human rights. General Comment 15 (The Right to Water) of the Committee on Economic, Social, and Cultural Rights¹³ notes:

The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights. . . . The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water-related disease and to provide for consumption, cooking, personal, and domestic hygienic requirements.¹⁴

In 2010 the United Nations General Assembly endorsed the human right to safe and clean drinking water and sanitation.¹⁵ Resolution 64/292 speaks to the importance of equitable, safe and clean drinking water and sanitation as an integral component of the realization of all human rights and links the right to water to achievement of the Millennium Development Goals and the Plan of Implementation of the World Summit on Sustainable Development. The important first operative paragraph of the resolution “*Declares* the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.”

In September 2010, the Human Rights Council adopted a similar resolution¹⁶ in which it affirmed that the human right to safe drinking water and sanitation is “derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.” The Council called upon States to take specific measures to achieve progressively the full realization of human rights obligations related to access to safe drinking water and sanitation, including in unserved and underserved areas. In this respect, States were asked to pay particular attention to persons belonging to vulnerable and marginalized groups. It also urged development partners to adopt a human rights-based approach when designing and implementing development programmes.

Climate change is another issue in which the linkages have been recognized because both human rights and the environment are endangered by anthropogenic changes in the climate. On 28 March 2008, the Human Rights Council adopted its first resolution on “human rights and climate change.” (res. 7/23). The resolution recognised the threat that climate change poses to human rights and requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) conduct a detailed study on human rights and climate change. On 25 March 2009, the Council adopted resolution 10/4 “Human rights and climate change” in which it, inter alia, notes that “climate change-related impacts have a range of implications, both direct and indirect, for the effective enjoyment of human rights ...”; recognizes that the effects of climate change “will be felt most acutely by those segments of the population who are already in a vulnerable situation ...”, recognizes that “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 affirms that “human rights obligations and commitments have the potential to inform and strengthen international and national policy-making in the area of climate change”.

The enjoyment of other human rights, like the right to food and the right to health, is also inextricably linked to environmental conditions, as recognized in the reports submitted by the relevant UN special rapporteurs. It has been recognized that “[a] fifth of the disease burden in developing countries can be linked to environmental risk factors.”¹⁷ A direct causality has been established between malaria and deteriorating ecosystems, where in particular the disease flares up in ecological systems altered by irrigation projects, dams, construction sites, standing water and poorly drained areas. It is estimated, for example, that the deforestation and consequent immigration of people into the Brazilian interior increased malaria prevalence in the region by 500 per cent.¹⁸ The same trend has been observed between ecological damage and other vector-borne diseases across a range of developing countries.¹⁹ The burden of these diseases falls especially hard on the poor who often lack the resources to seek medical treatment. The enjoyment of internationally-guaranteed rights thus depends upon a sound environment.

1.2 Activities at the regional level

In the 1980s, the linkage between human rights and the environment began being enshrined in binding international agreements. The Preamble to the UNECE’s Aarhus Convention recognizes that “adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself.”²⁰

The African Charter on Human Rights, adopted in Nairobi, Kenya, on June 27, 1981, proclaimed in its Article 24 that, “All peoples shall have the right to a general satisfactory environment favorable to their development.”²¹

A more detailed formulation of the right was included in the Additional Protocol to the American Human Rights Convention on Economic and Social Rights, adopted in San Salvador, El Salvador, on November 17, 1988.²² It proclaimed both the rights of individuals and the duty of states in this field:

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

The 2004 Revised Arab Charter on Human Rights also contains a right to a safe and healthy environment. Its Article 38 specifies:

Every person has the right to an adequate standard of living for himself and his family, that ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.

Within the general topic, the right to water is also mentioned in the African Charter on the Rights and Welfare of the Child (ACRWC)²³ which provides that State parties are required to take measures to “ensure the provision of adequate nutrition and safe drinking water... .”²⁴ Similarly, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Women’s Protocol)²⁵ provides that State parties shall take ‘appropriate measures to... provide women with access to clean drinking water.’²⁶ Within Europe, the Protocol on Water and Health, adopted by the Economic Commission for Europe in 1999,²⁷ obligates states parties to ensure adequate supplies of wholesome drinking water (art. 4(a)). The European Charter on Water Resources, adopted by the

Council of Europe in 2001,²⁸ provides unequivocally that “Everyone has the right to a sufficient quantity of water for his or her basic needs.”²⁹

Regional intergovernmental meetings have concluded with statements of support for the human right to water. The Abuja Declaration, adopted by 45 African and 12 South American States at the First Africa-South America Summit in 2006, contained the commitment of the participating states to ‘promote the right of our citizens to have access to clean and safe water and sanitation within our respective jurisdictions.’³⁰ The Message from Beppu, adopted in December 2007 by 37 States from the Asia-Pacific region at the First Asia-Pacific Water Summit held in Beppu, Japan, recognised “the people’s right to safe drinking water and basic sanitation as a basic human right and a fundamental aspect of human security.”³¹ Subsequently, eight South Asian States adopted The Delhi Declaration, in which they recognised “that access to sanitation and safe drinking water is a basic right, and according national priority to sanitation is imperative.”³²

The treaty provisions referred to have led to important jurisprudence on the content of environmental rights. The African Commission on Human and Peoples Rights has decided cases concerning pollution and the exclusion of indigenous peoples from their lands set aside for nature preserves.³³ It has concluded that the right to environment is a justiciable right that must be integrated into and balanced with the right to development.³⁴

Regional jurisprudence has further developed the linkages between human rights and environment in the context of economic activities. In taking up these cases, human rights tribunals have given effect to various human rights linked to environmental protection through reference to international environmental principles, standards and norms. In addition, they have emphasized the importance of enforcing national environmental rights provisions. In so doing they have given substantive content to environmental rights and corresponding state obligations. In its *Öneriyıldız v. Turkey* judgment, for example, the European Court referred to the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment³⁵ and the Convention on the Protection of the Environment through Criminal Law³⁶ despite the fact that the majority of member States, including the respondent State, had neither signed nor ratified the two Conventions.

In *Taşkın and Others v. Turkey*,³⁷ the European Court built on its case-law concerning Article 8 of the Convention in matters of environmental protection, largely on the basis of principles enshrined in the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.³⁸ *Taskin* involved challenges to the development and operation of a gold mine, which the applicants alleged caused environmental damage to the detriment of people in the region. Appropriate procedures had been followed; the challenge was to the substance of the decision taken. Applicants litigated the issue and won in domestic courts, with the Turkish Supreme Administrative Court repeatedly concluded that the operating permit in issue did not serve the public interest and that the safety measures which the company had taken did not suffice to eliminate the risks involved in such an activity. The European Court similarly concluded that the government had violated the human rights of the applicants by failing to enforce its own environmental laws.

In reviewing the applicable legal framework, the Court referred to Rio Principle 10 and the Aarhus Convention, as they set forth procedural rights. In addition, however, the Court also quoted from a Parliamentary Assembly resolution on environment and human rights³⁹ that addressed the substantive issues in the case. The Assembly resolution

recommended that member states ensure appropriate protection of life, health, family and private life, physical integrity and private property, taking particular account of the need for environmental protection, and that member states recognize a human right to a healthy, viable and decent environment. The latter includes the objective obligation for states to protect the environment in national laws, preferably at the constitutional level. Given this recommendation and the domestic Constitutional guarantees, the Court found a violation despite the absence of any accidents or incidents with the mine. The mine presented an unacceptable risk.

Similarly, using environmental standards, the European Court has given some indications of the quality of environment required to comply with the Convention's substantive guarantees. In the first major decision⁴⁰ involving environmental harm as a breach of the right to private life and the home, guaranteed by Article 8 of the European Convention, the European Court held that severe environmental pollution may affect individuals' "well-being" to the extent that it constitutes a violation of Article 8. The pollution need not reach the point of affecting health, if the enjoyment of home, private and family life are reduced and there is no fair balance struck between the community's economic well-being and the individuals effective enjoyment of guaranteed rights.⁴¹

Environmental principles also were incorporated into by the European Court of Human Rights, in its judgment in the *Affaire Tătar c. Roumanie* (App. No. 67021/01), delivered March 17, 2009. The European Court of Human Rights quoted extensively from the Stockholm and Rio Declarations, among other international sources, and cited to developments in the European Union to conclude that, in Europe, the precautionary principle has evolved from being a philosophical concept to becoming a legal norm, and recalled to the government the importance of the precautionary principle.

In the Western Hemisphere, the Inter-American Commission and Court have articulated the right to an environment at a quality that permits the enjoyment of guaranteed rights, despite a lack of reference to the environment in nearly all inter-American normative instruments. In the cases presented to these institutions, applicants have asserted violations of the rights to life, health, property, culture, and access to justice, but some of them have also cited to guarantees of freedom of religion and respect for culture. The Commission's general approach to environmental protection has been to recognize that a basic level of environmental health is not linked to a single human right, but is required by the very nature and purpose of human rights law:

The American Convention on Human Rights is premised on the principle that rights inhere in the individual simply by virtue of being human. Respect for the inherent dignity of the person is the principle which underlies the fundamental protections of the right to life and to preservation of physical well-being. Conditions of severe environmental pollution, which may cause serious physical illness, impairment and suffering on the part of the local populace, are inconsistent with the right to be respected as a human being.⁴²

Human rights tribunals have made clear that the state may be responsible whether pollution or other environmental harm is directly caused by the State or whether the State's responsibility arises from its failure to regulate properly private-sector activities.⁴³ Human rights instruments require States not only to respect the observance of rights and freedoms but also to guarantee their existence and the free exercise of all of them against private as well as State actors. Thus any act or omission by a public authority which impairs guaranteed rights may violate a state's obligations.⁴⁴ This is particularly

important in respect to the environment, where most activities causing harm are undertaken by the private sector.

In the Inter-American system, positive obligations for the state to act derive not only from the generic obligations of Convention Article 1, but also from Convention Article 4, which guarantees an individual's right to have his or her life respected and protected by law.⁴⁵ In the case of *Yanomami v. Brazil*⁴⁶ the Inter-American Commission found that the government had violated the Yanomami rights to life, liberty and personal security guaranteed by Article 1 of the Declaration, as well as the right of residence and movement (Article VIII) and the right to the preservation of health and well-being (Article XI)⁴⁷ because the government failed to implement measures of “prior and adequate protection for the safety and health of the Yanomami Indians.”⁴⁸

The *Yanomami* case did not go into detail about the conduct required of a government or the standard of care the Commission would expect. Other cases and country studies have helped to clarify some issues in this respect, specifying that governments must enact appropriate laws and regulations, and then fully enforce them. In a country report on Ecuador, the Commission referred generally to the obligation of the state to respect and ensure the rights of those within its territory and the responsibility of the government to implement the measures necessary to remedy existing pollution and to prevent future contamination which would threaten the lives and health of its people, including through addressing risks associated with hazardous development activities, such as mining.⁴⁹ Governments must regulate industrial and other activities that potentially could result in environmental conditions so detrimental that they create risks to health or life.⁵⁰ Furthermore, the government must enforce the laws that it enacts as well as any constitutional guarantee of a particular quality of environment.⁵¹ The Commission was clear: “Where the right to life, to health and to live in a healthy environment is already protected by law, the Convention requires that the law be effectively applied and enforced.”

The State must also comply with and enforce the international agreements to which it is a signatory, whether these are human rights instruments or ones related to environmental protection. In the Ecuador report, the Commission noted that the state is party to or has supported a number of instruments “which recognize the critical connection between the sustenance of human life and the environment”, including: the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights, the ICCPR and the ICESCR, the Stockholm Declaration, the Treaty for Amazonian Cooperation,⁵² the Amazon Declaration,⁵³ the World Charter for Nature,⁵⁴ the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere,⁵⁵ the Rio Declaration on Environment and Development,⁵⁶ and the Convention on Biological Diversity.⁵⁷ Through the standard-setting and enforcement process, the State must “take the measures necessary to ensure that the acts of its agents . . . conform to its domestic and inter-American legal obligations.”

States thus are not exempt from human rights and environmental obligations in their development projects: “the absence of regulation, inappropriate regulation, or a lack of supervision in the application of extant norms may create serious problems with respect to the environment which translate into violations of human rights protected by the American Convention.”⁵⁸ In the case of the *Saramaka People v. Suriname*,⁵⁹ the Inter-American Court set forth three safeguards it deemed essential: (1) the state must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or

extraction plan within Saramaka territory; (2) the state must guarantee that the Saramakas will receive a reasonable benefit from any such plan within their territory; and (3) the state must ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the state's supervision, perform a prior environmental and social impact assessment.⁶⁰ It is notable that these requirements parallel the Bonn Guidelines on Access and Equitable Benefit-Sharing, adopted pursuant to the Convention on Biological Diversity, although the Court does not cite them, referring instead to views of the UN Human Rights Committee,⁶¹ ILO Convention No. 169, and World Bank policies,⁶² and the 2007 UN Declaration on the Rights of Indigenous Peoples.⁶³ The Court viewed benefit-sharing as inherent to the right of compensation recognized under Article 21(2) of the Convention.⁶⁴

The European Court's jurisprudence is similar. The Court requires at a minimum that the State should have complied with its domestic environmental standards.⁶⁵ The issue of compliance with domestic law is particularly important when there is a domestic constitutional right to environmental protection. The European Court will review governmental actions in the light of the domestic law. *Okyay and Others v. Turkey*⁶⁶ concerned the failure of Turkish authorities to enforce constitutional rights and statutory environmental laws. The applicants had successfully challenged in domestic courts the operations of thermal-power plants in Southwest Turkey, which they claimed would damage the environment and pose risks for the life and health of the Aegean region's population. They explicitly argued that Article 56 of the Turkish Constitution guaranteed them the right to life in a healthy and balanced environment. They did not argue that they had suffered any economic or other loss. The European Court agreed that they had a right under Turkish law to protection against damage to the environment and that their rights under Article 6(1) had been violated due to the failure of Turkish authorities to comply in practice and within a reasonable time with the domestic court's judgments.

1.3 National Actions

In recognition of the linkages between human rights and the environment, lawmakers in many countries have drafted constitutional and legislative provisions setting forth the right to an environment of a specified quality, such as healthy, safe, secure, clean, or ecologically sound. Some 130 constitutions in the world, including the overwhelming proportion of those amended or written since 1970, include a state obligation to protect the environment or a right to a safe, healthy, ecologically balanced (or other adjective) environment.⁶⁷ About half the constitutions take the rights-based approach, and the other half proclaim state duties. Within Europe,⁶⁸ the French Constitution was amended in 2005 and now includes a Charter of the Environment ("Charter").⁶⁹ The Charter affords all citizens of France the right to live in a "balanced environment, favorable to human health."⁷⁰

In the United States, States in the U.S. have the power to provide their citizens with rights additional to those contained in the federal Constitution, and state constitutions revised or amended from 1970 to the present have added environmental protection among their provisions.⁷¹ In fact, every state constitution drafted after 1959 explicitly addresses conservation of nature and environmental protection.⁷² The provisions vary in content, generally falling into one of three categories. First, some provisions articulate the public policy of the state, requiring the government to act in favor of environmental protection. A second group of constitutions establishes funds for environmental programs or calls for the acquisition and regulation of natural resources as part of the public trust. Finally, a

third group of constitutional provisions expressly recognizes the right of citizens to a safe, clean or healthy environment.⁷³

In Latin America, Article 19 of the 1980 Constitution of Chile provides for a “right to life” and a “right to live in an environment free of contamination” and establishes that certain other individual rights may be restricted to protect the environment.⁷⁴ The Government of Chile is required to “ensure that the right to live in an environment free of contamination is not violated” and to “serve as a guardian for and preserve nature/the environment.”⁷⁵

The South African Constitutional Court relied on the international environmental principles in giving substantive content to the Constitutional guarantee of environmental quality. *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province, and Others*⁷⁶ a case that required the integration of the need to protect the environment with the need for social and economic development. In the Court’s view, the international principle of sustainable development provided the applicable framework for reconciling these two needs.⁷⁷ Sustainable development “recognises that socio-economic development invariably brings risk of environmental damage as it puts pressure on environmental resources” but it envisages that decision-makers “will ensure that socio-economic developments remain firmly attached to their ecological roots and that these roots are protected and nurtured so that they may support future socio-economic developments.”⁷⁸ In turn, this broad definition of sustainable development incorporates both the internationally recognised principle of integration of environmental protection and socio-economic development, and the principle of inter-generational and intra-generational equity.⁷⁹

As will be described more fully in Part III, the linkages between the environment and human rights have led to evolution in the mandates of international organizations and institutions concerned with each topic. All human rights treaty bodies with jurisdiction to receive communications from individuals have received denunciations of violations linked to environmental conditions, while MEA treaty bodies such as the Conference of the Parties to the Convention on Biological Diversity⁸⁰ have examined issues of information, participation and access to justice in the context of Article 8j on indigenous and local communities. The development of safeguards policies by international financial institutions integrates both environmental concerns and human rights into the funding of development projects.

Where no specific quality of environment is constitutionally-guaranteed, national courts may still have jurisdiction to judge governmental action or inaction with reference to environmental laws and standards. Environmental protection laws in many, if not most states, provide for citizen lawsuits as a means of enforcing legislative and regulatory standards. Such suits have played a significant role in enforcing clean air and water acts,⁸¹ as well as endangered species laws. As with human rights litigation, citizens sue the government to secure its performance of mandatory duties under the law;⁸² in addition, however, suits may be brought against regulated industries and other polluters in order to halt environmental harm. Courts have upheld citizen suit provisions and enforced substantive limits on permissible activities. In general, government officials are held to a due diligence standard.⁸³ The criteria used to assess whether or not due diligence has been exercised could be useful in human rights cases to decide whether or not a government has taken the requisite measures to respect and ensure environmental rights. In general, due diligence is tested by whether or not the government sought

compliance by the polluter through an enforcement action; whether or not the government monitored the polluter's activities after conclusion of the enforcement action; and whether or not the penalties assessed provided adequate deterrence against repetition of the violation.⁸⁴

Conclusions to Part I

The linkages between human rights and environmental protection are multi-dimensional and reciprocal. Through legislation and jurisprudence, it has become generally accepted that:

- Failure to respect, ensure and fulfil internationally- and domestically-guaranteed human rights can lead to environmental destruction by ignoring the needs of individuals and groups who can contribute to environmental protection and economic development if they are consulted and are able to participate in decision-making about activities, programmes and policies that may impact them or their surroundings;
- Failure to conserve natural resources and biodiversity can undermine human rights, e.g., by destroying resources and ecosystem services on which many people, especially indigenous and local communities, depend;
- Economic and other public activities, programmes and policies can either undermine or support the goals of environmental protection, human rights and sustainable development. Failure to provide information or consult affected persons, as well as activities that displace local communities can negatively impact both human rights and environmental protection. Conversely, environmental protection supports human rights through securing sustainable availability of critical natural resources and ecosystem services, protecting the latter as well as the former.

Part II – Integrating Human Rights and the Environment in Developing the Green Economy

Using UNEP's definition of a green economy as an economic system "that recognizes the properties of healthy ecosystems as the backbone of economic and social well-being and as a precondition for poverty reduction" this part examines how human rights and environmental protection can be integrated into a broad vision of sustainable development, in particular through emphasis on ecosystem services as essential basis for human well-being and economic development. .

As part I showed, protection of the environment and the promotion of human rights are increasingly seen as intertwined, complementary goals, and as two of the three fundamental pillars of sustainable development. The two fields share a core of common interests and objectives indispensable for sustainable development, although not all human rights violations are necessarily linked to environmental degradation, nor are all human rights requisites for environmental protection. Nonetheless, the interrelationship of human rights and the environment has become undeniable.

Each human being depends on ecosystems and the services they provide, such as food, water, disease management, climate regulation, spiritual fulfillment, and aesthetic enjoyment.⁸⁵ At the same time, all human activities have an impact on the environment. Human activities have changed ecosystems more rapidly and extensively in the past half century than in any comparable period of time in history. While this transformation has

contributed to substantial net gains in human well-being and economic development in many regions of the world, not all people or regions have benefited; indeed conditions for many have deteriorated. Moreover, the full costs associated with the gains have only recently become apparent.⁸⁶

Environmental protection and economic development activities must take into account the laws of nature. Environmental milieu (air, water, soil) and all species are interdependent. Harm to one aspect of the environment is thus likely to have broad and unforeseen consequences on other dimensions of nature, including human well-being. Another reality is that many degraded or exploited resources are nonrenewable and thus exhaustible; living resources may become extinct. Substances that in isolation may be benign can combine with others to produce new and unforeseen harms.

Planning and regulation is made more difficult by scientific uncertainty about many aspects of the physical world. Although there is an unprecedented amount of knowledge today, no one knows the ecological processes over the 5-billion-year history of the earth with sufficient detail and understanding to be able to predict all the consequences and causal relationships of various human activities. Scientific uncertainty thus often attends issues of the nature and scope of adverse environmental impacts of human activities. Exacerbating the uncertainty, damage often is perceived years after the causative actions occur. It becomes difficult to determine future risk and to develop appropriate policies to avoid long-term harm.

While there is uncertainty, there is also general agreement that environmental protection and respect for human rights generate economic benefits.⁸⁷ Poor countries and poor people, in particular, may gain from the green economy. While environmental assets provide just two percent of total wealth in the Organisation for Economic Co-operation and Development (OECD) countries, they provide around 26 percent of wealth in the poorest countries.⁸⁸ Within a single country, India, seven percent of GDP is directly attributable to ecosystem services, but the poorest ten percent of the population derives 57 percent of its gross domestic product from ecosystem services.

Economics cannot be divorced from its social and economic underpinnings. Instead economic growth should be sought that leads simultaneously to the creation of employment and livelihoods, and to the gradual elimination of social marginalization. At the same time, it must lead us away from wasteful use of the earth's resources and ecosystems, from the depletion of species, and from air and water pollution toward clean, renewable, and sustainable forms of resource use. Indeed, the proposition that the world needs to move towards a "green" economy suggests that the current economic model is not working for the environment and future generations. A green economy and any institutions devised for it should focus fundamentally on the wellbeing of all people across present and future generations. If the immediate goal is to make the economy more ecologically efficient by meeting current economic needs without compromising present and future ecological integrity, the greater goal is to do so in a way that the needs of all people can be met and sustained. Therefore, a deep commitment to fairness and social justice is central to the green economy transformation. If the transition to this vision of a green economy needs to involve fundamental changes, there are already a number of public and private sector initiatives and partnerships that seek to promote a transition to a green economy world.

Green Accounting and Poverty Reduction

Renewable resources, such as ecosystem services, as well as nonrenewable resources such as mineral deposits, some soil nutrients, and fossil fuels, are capital assets. Yet traditional national economic accounts do not measure resource depletion or the degradation of these resources. When estimates of the economic losses associated with the depletion of natural assets are factored into measurements of the total national wealth, they significantly change the balance sheet of countries whose economies significantly depend on natural resources, reducing their wealth in both the short and long term.

Moreover, in many areas of the world, levels of poverty remain high and inequities are increasing, in particular in regard to ensuring a sufficient supply of or access to ecosystem services. The degradation of these services is particularly harmful to many of the world's poorest people and is sometimes the principal factor causing poverty. In general, changes in ecosystems benefit some people and burden others who may either lose access to resources or livelihoods or be affected by externalities associated with the change. For several reasons, groups such as the poor, women, and indigenous communities have tended to suffer disproportionately from negative changes. The combination of high variability in environmental conditions and relatively high levels of poverty leads to situations where people can be highly vulnerable to changes in ecosystems. Taking a concrete example, the lack of access to water as well as water pollution occur disproportionately in indigenous and rural communities throughout the world, and within these communities produce their most frequent and serious impacts on the vulnerable members of the communities: women, children, aged, and infirm.⁸⁹

The degradation of ecosystem services poses a significant barrier to the achievement of the Millennium Development Goals and the MDG targets for 2015 in respect to improving human well-being by reducing poverty, hunger, child and maternal mortality, by ensuring education for all, by controlling and managing diseases, by tackling gender disparity, by ensuring environmental sustainability, and by pursuing global partnerships. Many of the regions facing the greatest challenges in achieving the 2015 targets are those facing the greatest problems of ecosystem degradation. Although socioeconomic policy changes should play the primary role in achieving most of the MDGs, many of the targets (and goals) are unlikely to be achieved without significant improvement in management of ecosystems. The role of ecosystem changes in exacerbating poverty (Goal 1, Target 1) for some groups of people is clear, and the goal of environmental sustainability, including access to safe drinking water (Goal 7, Targets 9, 10, and 11), cannot be achieved as long as most ecosystem services are being degraded. Progress toward other MDGs is also particularly dependent on sound ecosystem management.

Mankind is part of a global ecosystem wherein the aims of human rights and environmental protection within the parameters of sustainable development ultimately seek to achieve the highest quality of life for humanity sustainable within existing natural conditions. Environmental law adds to the goal of human rights the purpose of sustaining life globally by balancing the needs and capacities of present generations of all species with those of the future. Combining the two dimensions can be seen as taking a rights-based approach to environmental protection, a concept closely linked to the notion of environmental justice, a notion that includes (1) legal institutions and procedures for accountability and dispute settlement and (2) the substantive content of norms regulating the use of power over persons and resources. Throughout, equitable principles infuse environmental law, as seen in such principles as inter-generational equity and common but differentiated responsibilities.

Substantive Human Rights That Require Sustainable Development

UN treaty bodies and the Inter-American and European tribunals, hear complaints about failures to enforce national environmental rights⁹⁰ or about environmental degradation that violates one or more of the guaranteed rights in the agreements over which they have jurisdiction.⁹¹ This jurisprudence is important in setting a baseline or central framework for decisions about projects or policies that aim at creating or stimulating a green economy and sustainable development. In turn, the enjoyment of these rights will be enhanced through environmental protection in the creation of a green economy.

The *right to life*, enshrined in article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights, is “non-derogable” and foundational, since without it, all other rights would be devoid of meaning. The Human Rights Committee has said that it is a right that should not be interpreted narrowly and that States should take positive measures to guarantee it, including measures to reduce infant mortality and to increase life expectancy. The right to life is affected by environmental disasters and more long-term environmental degradation, which produce life-threatening diseases. The Red Cross estimates that 1998 was the first year in which the number of refugees from environmental disasters exceeded those displaced as a result of war.⁹² Between 2000 and 2004, some 262 million people were affected by climate disasters and 98 percent of them were in the developing world.⁹³

Every human being is entitled to the *enjoyment of the highest attainable standard of health* conducive to living in dignity. The Committee on Economic, Social and Cultural Rights noted that the right to health is closely related to and dependent upon the realization of other human rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition of torture, privacy, access to information and the freedoms of association, assembly and movement. Furthermore, the Committee recognized that the highest attainable standard of physical and mental health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life and extend to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment.

United Nations treaty bodies and Charter organs have taken up environmental degradation when it threatens the rights to life and health. The former Human Rights Commission and the current Council have consistently recognized that environmental violations “constitute a serious threat to the human rights to life, good health and a sound environment for everyone.”⁹⁴ Treaty bodies monitoring compliance through periodic state reporting have expressed concern over environmental degradation as it affects the enjoyment of human rights.⁹⁵

The *right to adequate food* is part of the broader right to an adequate standard of living, which also includes housing and clothing, and the distinct fundamental right to be free from hunger, which is closely linked to the right to life. The Committee on Economic, Social and Cultural Rights considers that the core content of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.

These rights that are listed are internationally guaranteed, but cannot be enjoyed in a degraded environment. Thus, efforts to promote and achieve a green economy can enhance not only the sustainability of natural capital, but assist in the realization of human rights. In turn, as the next section describes, the enjoyment of other guaranteed

rights can help produce better decision-making with respect to the use of natural resources in a sustainable manner that leads to economic growth.

Procedural Human Rights in the Environmental Context

If the enjoyment of human rights depends on environmental protection, in turn, environmental protection is enhanced by the exercise of certain human rights, such as the rights to information, public participation in decision-making and access to justice. Effective compliance with environmental laws and standards necessitates knowledge of them as well as of environmental conditions. In addition, local communities play a vital role in preserving the resources upon which they depend. Allowing those potentially affected to participate in decision-making processes concerning harmful activities may prevent or mitigate the threatened harm and contribute to public support for environmental action, as well as lead to better decisions consistent with sustainable development. In the event the activity goes forward and harm is suffered, access to justice can provide for restoration or remediation of the damaged environment. In general, procedural human rights – access to information, public participation in decision-making and access to justice -- linked to environmental protection have received the greatest attention in legal instruments⁹⁶ and jurisprudence,⁹⁷ as well as in doctrine.⁹⁸

In a speech on July 5, 2011, United Nations Secretary-General Ban Ki-Moon noted that the Aarhus Convention on Access to Information, Public Participation and Access to Justice “is more important than ever”. The “treaty’s powerful twin protections for the environment and human rights can help us respond to many challenges facing our world, from climate change and the loss of biodiversity to air and water pollution. And the Convention’s critical focus on involving the public is helping to keep Governments accountable.”

Access to Information

Access to environmental information is a prerequisite to public participation in decision making and to monitoring governmental and private-sector activities. The nature of environmental deterioration, which often arises only long after a project is completed and can be irreversible, compels early and complete data to make informed choices. Transboundary impacts also produce significant demands for information across borders. The rights to information and participation, and their particular importance for both human rights and environment matters, are well reflected in the international legal framework, in both human rights law and environmental law.

It has been generally recognized that public access to information when requested and the obligation of public authorities to disclose and inform, irrespective of requests, are imperative for the prevention of environmental human rights problems and the protection of the environment. Disputes often arise owing to a lack of information or the failure of the State or of business entities to ensure full disclosure of the potential dangers of activities to individuals, communities and the environment. In many cases, even Governments claim not to have access to the necessary information on the potential dangers to human beings and the environment.

The right to information constitutes an essential feature of democratic processes and of the right to participation in public life. Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression; that right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers. The right is also enshrined in article 19 of the International Covenant on Civil and Political Rights. Article

19(2) stipulates that everyone should have the right to freedom of expression; that right should include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. Article 19(3) does allow certain restrictions, but they should only be such as are provided by law and are necessary (a) for the respect of the rights and reputations of others; (b) for the protection of national security or of public order, or of public health and morals. Article 25 of the Covenant in turn prescribes that every citizen should have the right and the opportunity to take part in the conduct of public affairs.

The Special Rapporteur on the Adverse Effects of the Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights has noted the frequent violation of the right to information regarding the transboundary movement of wastes and dangerous products.⁹⁹ Toxic wastes and dangerous products are often not labelled in the local language, which further exposes the population to severe health and environmental risks and hazardous products and wastes in developing nations are frequently dumped in rural and isolated areas, where there is a high prevalence of illiteracy and inadequate information. Political instability and armed conflicts also result in the withholding of vital information that is necessary to the health, environment and well-being of the population.

Informational rights are widely found in global¹⁰⁰ and regional¹⁰¹ environmental treaties. Article 6 of the U.N. Framework Convention on Climate Change provides that its parties “shall promote and facilitate at the national and, as appropriate, sub-regional and regional levels, and in accordance with national laws and regulations, and within their respective capacities, public access to information and public participation.” The U.N. Convention on Biological Diversity refers in its preamble to the general lack of information and knowledge regarding biological diversity and affirms the need for the full participation of women at all levels of policy-making and implementation. Article 13 of the Convention calls for education to promote and encourage understanding of the importance of conservation of biological diversity. Article 14 refers to environmental assessment procedures that allow for public participation. Article 15(2) of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 10 September 1998 requires each State party to ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in annex III to the Convention.

The Stockholm Convention on Persistent Organic Pollutants of 22 May 2001 aims at protecting human health and the environment from persistent organic pollutants. Article 10(i) provides that each party should, within its capabilities, promote and facilitate provision to the public of all available information on persistent organic pollutants and ensure that the public has access to public information and that the information is kept up to date. The Convention also calls for education and public awareness programmes to be developed, in particular for women, children and the poorly educated (art. 10(1)(c)). Parties to the Convention are also obligated to make accessible to the public, on a timely and regular basis, the results of their research, development and monitoring activities pertaining to persistent organic pollutants (art. 11(2)(e)). The Convention stipulates that, although parties that exchange information pursuant to the Convention should protect any confidential information, information on health and safety of humans and the environment should not be regarded as confidential (art. 9(5)).

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal sets out obligations for the exchange of information for both the State concerned and interested parties. In article 4(2)(f), the Convention clearly requires that information about a proposed transboundary movement of hazardous wastes and other wastes be provided to the States concerned and that it clearly state the effects of the proposed movement on human health and the environment. In article 4(2)(h), it encourages cooperation through activities with other parties and/or interested organizations for the dissemination of information on transboundary movements in order to improve environmentally sound management and to work towards the prevention of illegal traffic. Article 13(1) provides that parties to the Convention should ensure that, should an accident occur during the transboundary movement of wastes and other wastes or their disposal and that is likely to present risks to human health and the environment in other States, those States are immediately informed.

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed in Aarhus, Denmark, on 25 June 1998, takes a very comprehensive approach to the recognition of the importance of the right to information and public participation. As [of] 17 September 2007, there were 41 parties to the Convention. Although it was open for signature only to State members of the Economic Commission for Europe and those with consultative status with it (art. 17), article 19 of the Convention opens the door to accession by other States on the condition that they are members of the United Nations and that the accession is approved by the meeting of the parties to the Convention. In the preamble, it states that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.” In the following paragraph, it states that, in order to be able to assert that right and observe that duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and, in that regard, citizens may need assistance in order to exercise their rights.

Articles 4 and 5 of the Convention obligates States parties to collect and publicly disseminate information, and to make such information available to the public in response to requests. Each party to the Convention is to publish a national report on the state of the environment every three to four years. In addition to the national report, the party is obliged to disseminate legislative and policy documents, treaties and other international instruments relating to the environment. Each party must ensure that public authorities, upon request, provide environmental information to a requesting person without the latter having to state an interest. Information should be made public within one month, or, in exceptional cases, in not more than two months (art. 4(2)). In addition to providing information on request, each State party must be proactive, ensuring that public authorities collect and update environmental information relevant to their functions. This requires States parties to establish mandatory systems to obtain information on proposed and existing activities which could significantly affect the environment. (art. 5(1)). The Convention does provide for a number of exceptions in article 4(4) to the duty to inform, in the light of other political, economic and legal considerations, but they are to be interpreted in a restrictive way and take into account the public interest served by disclosure.

Public participation is guaranteed by articles 6 to 8 of the Convention. Public participation is required in regard to all decisions on whether to permit or renew permission for industrial, agricultural and construction activities listed in annex I to the

Convention, as well as other activities which may have a significant impact on the environment (art. 6(1)(a)–(b)). The public must be informed in detail about the proposed activity early in the decision-making process and be given time to prepare and participate in the decision-making (art. 6(2)–(3)). In addition to providing for public participation in decisions on specific projects, the Convention calls for public participation in the preparation of environmental plans, programmes, policies, laws and regulations (arts. 7

Jurisprudence also reinforces the right to information. In the case of *Claude Reyes v. Chile*, the Inter-American Court of Human Rights felt it was

important to emphasize that there is a regional consensus among the States that are members of the Organization of American States about the importance of access to public information and the need to protect it. This right has been the subject of specific resolutions issued by the OAS General Assembly.¹⁰² In the latest Resolution of June 3, 2006, the OAS General Assembly, “urge[d] the States to respect and promote respect for everyone’s access to public information and to promote the adoption of any necessary legislative or other types of provisions to ensure its recognition and effective application.”¹⁰³

One such example of facilitating proactive disclosure of information would include the creation of systems informing the public on right to information laws. The implementation of right to information laws would also entail the setting up of systematic records management, including managing, recording and archiving. Although many models of information commissions already exist in different regions, they usually have similar functions, acting as external independent authorities with a clear mandate to supervise the implementation of the right to information.

Public Participation

The major role played by the public in environmental protection is participation in decision making, especially in environmental impact or other permitting procedures. Public participation is based on the right of those who may be affected, including foreign citizens and residents, to have a say in the determination of their environmental future. Participation is also critical to the effectiveness of law. The process by which rules emerge, or how proposed rules become norms and norms become law, is a matter of legitimacy, and legitimacy in turn affects compliance. Legitimacy depends on participation: the governed must have and perceive that they have a voice in governance through representation, deliberation, or some other form of action. Participation may take place through elections, grassroots action, lobbying, public speaking, hearings, and other forms of governance, whereby various interests and communities participate in shaping the laws and decisions that affect them.

As with the right to information, the right to public participation is widely expressed in human rights instruments. Article 21 of the Universal Declaration of Human Rights affirms the right of everyone to take part in governance of his or her country, as does the American Declaration of the Rights and Duties of Man (art. 20) and the African Charter (art. 13). Article 25 of the International Covenant on Civil and Political Rights provides that citizens have the right, without unreasonable restrictions, “to take part in the conduct of public affairs, directly or through freely chosen representatives.” The American Convention contains identical language in article 23. These provisions have been invoked far less often than those concerned with information and redress.

Access to Justice

The right of access to justice and redress is expressed in article 2, paragraph 3(a), of the International Covenant on Civil and Political Rights, which guarantees victims of human rights violations an effective remedy. There are two aspects to the right to a remedy:

access to justice and substantive redress. They require the existence of independent and impartial bodies with the capacity to afford redress after a hearing which respects due process guarantees. More and more national administrative and judicial bodies throughout the world are giving effect to the right to a remedy in cases of alleged violations of constitutional rights to a sound environment, related in some cases to the right to life or to health. While the International Covenant on Economic, Social and Cultural Rights has no provision comparable to article 2(3) of the International Covenant on Civil and Political Rights, it has been argued that the rights it recognizes also require that remedies be available for victims of violations. The Committee on Economic, Social and Cultural Rights has noted, for example, that any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both the national and international levels and should be entitled to adequate reparation.

The Rights of Indigenous Peoples

Indigenous peoples are uniquely vulnerable to environmental harm because of the increasing pressures on their lands and resources, as well as the cultural and religious links they maintain with their ancestral territories. Most indigenous peoples live in highly vulnerable ecosystems that in the past few decades, have come under increased pressure as outsiders have sought and extracted or converted natural resources to supply a growing global demand. The territories used and occupied by indigenous peoples have become a major source of hydroelectric power, minerals, hardwoods, and pasture lands. Other indigenous regions are being threatened or lost as a result of climate change. For those indigenous and tribal peoples who have remained in their traditional territories, the invasion of the outside world has brought with it disease; exploitation; loss of language and culture; and in too many instances, complete annihilation of the group as a distinct entity.

ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Geneva, June 27, 1989) contains numerous references to the lands, resources, and environment of indigenous peoples (e.g., arts. 2, 6, 7, 15). The Convention requires states parties to take special measures to safeguard the environment of indigenous peoples (art. 4). In particular, governments must provide for environmental impact studies of planned development activities and take measures, in cooperation with the peoples concerned, to protect and preserve the environment of the territories they inhabit.

The *United Nations Declaration on the Rights of Indigenous Peoples*, adopted by the General Assembly on September 12, 2007 with only four dissenting votes contains several provisions relating human rights and environmental conditions. In addition to protection indigenous lands (arts. 10, 25-27) and resources (arts. 23, 26) the declaration contains procedural rights of participation (art. 18) and prior informed consent (art. 19) as well as a specific article on conservation. Article 29 provides:

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

In the case of *Yanomami v. Brazil*¹⁰⁴ the Inter-American Commission found that the government had violated the Yanomami rights to life, liberty and personal security guaranteed by Article 1 of the Declaration, as well as the right of residence and movement (Article VIII) and the right to the preservation of health and well-being (Article XI)¹⁰⁵ because the government failed to implement measures of “prior and adequate protection for the safety and health of the Yanomami Indians.”¹⁰⁶ Other cases and country studies specified that governments must enact appropriate laws and regulations, and then fully enforce them. The Inter-American Commission referred generally to the obligation of the state to respect and ensure the rights of those within its territory and the responsibility of the government to implement the measures necessary to remedy existing pollution and to prevent future contamination which would threaten the lives and health of its people, including through addressing risks associated with hazardous development activities, such as mining.¹⁰⁷ Governments must regulate industrial and other activities that potentially could result in environmental conditions so detrimental that they create risks to health or life.¹⁰⁸ Furthermore, the government must enforce the laws that it enacts as well as any constitutional guarantee of a particular quality of environment.¹⁰⁹ The Commission was clear: “Where the right to life, to health and to live in a healthy environment is already protected by law, the Convention requires that the law be effectively applied and enforced.” The State must also comply with and enforce the international agreements to which it is a signatory, whether these are human rights instruments or ones related to environmental protection. Through the standard-setting and enforcement process, the State must “take the measures necessary to ensure that the acts of its agents . . . conform to its domestic and inter-American legal obligations.”

In sum, Inter-American standards emphasize that States are not exempt from human rights and environmental obligations in their development projects: “the absence of regulation, inappropriate regulation, or a lack of supervision in the application of extant norms may create serious problems with respect to the environment which translate into violations of human rights protected by the American Convention.”¹¹⁰ In the case of the *Saramaka People v. Suriname*,¹¹¹ the Inter-American Court set forth three safeguards it deemed essential: (1) the state must ensure the effective participation of the members of the Saramaka people, in conformity with their customs and traditions, regarding any development, investment, exploration or extraction plan within Saramaka territory; (2) the state must guarantee that the Saramakas will receive a reasonable benefit from any such plan within their territory; and (3) the state must ensure that no concession will be issued within Saramaka territory unless and until independent and technically capable entities, with the state’s supervision, perform a prior environmental and social impact assessment.¹¹² The Court referred in this regard to views of the UN Human Rights Committee,¹¹³ ILO Convention No. 169, and World Bank policies,¹¹⁴ and the 2007 UN Declaration on the Rights of Indigenous Peoples.¹¹⁵ The Court also viewed benefit-sharing as inherent to the right of compensation recognized under Article 21(2) of the American Convention.¹¹⁶

Part III – The Institutional Framework

In almost four decades since the landmark Stockholm Conference on the Human Environment, the international community has struggled to determine how to address critical common problems related to utilization of the earth's resources, but also has sought to find the appropriate place of environmental law in the extensive range of pre-existing global legal regimes and policies. A global green economy will necessitate an emphasis on coordination and implementation, better incorporating public, private, and civil society, including at the national and sub-national levels. This will require multilevel governance. The subsidiarity principle should guide policy and management efforts, dealing with each issue at the smallest appropriate level to bring decision-making as close as possible to the affected persons. Implementation requires evaluation, monitoring, and accountability. At present, the separate development of normative and institutional regimes for the fields of human rights, environmental protection, and economic matters such as free trade or international finance, means that governance is often competitive rather than coordinated. This section looks at the institutional framework.

There are a growing number of examples of state and international practice in respect of joint consideration of the environment and human rights. Concern for human rights has been brought into environmental impact assessment mechanisms nationally and internationally, while environmental sustainability has been included in human rights/humanitarian field work. International financial institutions and other institutions like OECD have included considerations of both environment and human rights protection in their recent normative policies.

Many existing institutions at both the global and the national level have the mandate to address environmental protection, while others are devoted to human rights. Both sets of institutions face a variety of challenges related in part to the need for greater cooperation across sectors and the need for coordinated responses at multiple levels. A large number of the interlinked issues are recent concerns and were not specifically taken into account in the design of today's institutions, so changes in existing institutions and the development of new ones may be needed. In particular, there is no comprehensive international agreement addressing these matters in a holistic manner, nor is there a single agency addressing the problems. The lack of coordination among different agencies and treaty bodies has had some negative effect on the success of integrative laws and policies and should be a priority issue for the future.

The general approach to strengthening environmental protection or sustainable development has been one of institutional proliferation. The 1972 Stockholm Conference on Human Environment and the 1992 United Nations Conference on Environment and Development each created a new body in the UN system to address the concerns identified at the conferences. Respectively, this led to the creation of the United Nations Environment Programme (UNEP) in 1972 and the United Nations Commission on Sustainable Development (CSD) in 1992. These bodies were added to the many already-existing UN institutions. UNEP was given a limited mandate, but over time has taken on additional functions, including providing secretariat functions for a multitude of MEAs: CITES, CBD, Convention on Migratory Species, Based Convention, Rotterdam Convention and the Stockholm Convention (jointly with the FAO), as well as the Montreal Protocol. Recently, clustering of treaties by themes has started as a mechanism to avoid overlap and to create synergies.

The UN CSD was created by the UN General Assembly in order to follow up on the outcomes of UNCED, in particular, state action to implement Agenda 21. While the UN

CSD could point to a number of successes in its first years, as early as 1997 observers began questioning its effectiveness. As a functional commission of ECOSOC, the CSD has no power to require action from its decisions, particularly as it relates to instructing UN agencies, programmes and funds. Unlike other related UN agencies, it does not report to the UN General Assembly, but like many of them, it lacks sufficient financial resources.

UNEP and the CSD are not the only institutions created after the major conferences. Agenda 21 recommended the establishment of an Inter-Agency Committee on Sustainable Development (IACSD) by the Administrative Committee on Coordination (ACC), headed by the Secretary-General. ACC was to provide a vital link and interface between the multilateral financial institutions and other United Nations bodies at the highest administrative level. In turn, it was expected to establish a special task force, subcommittee or sustainable development board, taking into account the experience of other UN bodies and the respective roles of UNEP and UNDP.

The ACC established the Inter-Agency Committee on Sustainable Development (IACSD) in 1993, chaired by the Under Secretary General for Policy Coordination and Sustainable Development. The IACSD was made up of what were called Task Managers of Agenda 21. These were the Agencies and Programmes who were assigned responsibility for each of the different chapters of Agenda 21. From 1993 to 2000 this body dealt with coordination of the implementation of Agenda 21 throughout the UN system, but it was abolished in 2000 under the UN Reform package that transformed the ACC into the Chief Executive Board (CEB) in 2001. Since then there has been no interagency coordination on sustainable development.

Instead the UN replaced this single high level body with three new groups: UN Oceans, UN Water and UN Energy, mechanisms intended to facilitate coordination and coherence in these three policy areas.

In 1999, the General Assembly added yet another governance body, the Environment Management Group (EMG), created pursuant to paragraph 5 of its resolution 53/242. The EMG consists of all the agencies in the United Nations system, and the secretariats of the multilateral environmental agreements, the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO). It has a mandate to coordinate approaches and information exchange, promote joint action by United Nations agencies and create synergies among and between the activities of the UN agencies on environment and human settlement issues. UNEP serves as the secretariat for the group.

The problem of governance is exacerbated because, despite the multitude of UN institutions, other bodies operate at the global level. The United Nations must interact with the International Financial Institutions (IFIs) that have approached sustainable development at times in a conflicting manner. The link between the UN and the actions of the IFIs is stronger than it was in 1992 and 2002, but it could still gain significantly from increased formal and informal ties. The World Bank Group, the IMF and WTO play a vital role in the economic sphere. Notably, the Global Environmental Facility, the major financial mechanism for key multilateral environmental agreements, is not a member of the Chief Executive Board (CEB) for Coordination. Any new high level body created should include the Bretton Woods institutions to increase system wide coherence between them and the UN.

Another governance issue arises with the need to reconcile environmental and human rights obligations and those in the area of trade. The World Trade Organization (WTO)

does not have a mandate to set rules or criteria concerning trade measures agreed to in MEAs.

Existing national and global institutions are not well designed to deal with the management of common pool and transboundary resources. Issues of ownership and access to resources, rights to participation in decision-making, and regulation of particular types of resource use or discharge of wastes can strongly influence the sustainability of ecosystem management and are fundamental determinants of who wins and loses from changes in ecosystems. Weak systems of regulation and accountability are common in national agencies.

International accountability has taken several tracks. Many procedures are designed, first, to prevent harm and international disputes. Others recognize the need for international monitoring and compliance mechanisms. Human rights complaints and communications procedures are widely used today when environmental deterioration reaches the point that the enjoyment of human rights is foreclosed. Several environmental agreements also now provide communications procedures to ensure access to justice for those whose rights have been violated. For example, the North American Agreement on Environmental Cooperation, known informally as the NAFTA Side Agreement,¹¹⁷ enables the public to complain when one of the three governments (Canada, Mexico, and the United States) appears to be failing to enforce its environmental laws effectively, including laws on access to information and public participation. Any nongovernmental organization or person established or residing in the territory of a party to the Agreement may make a submission in writing on enforcement matters for consideration by the Secretariat of the CEC. Following a review of the submission, the CEC may investigate the matter and publish a factual record of its findings, subject to approval by the CEC Council.

Recognizing the need for greater incorporation of environmental and human rights concerns into development operations, the World Bank issued its Operational Directive on Environmental Assessment (ODEA) 4.00 in 1989, and a subsequent revision in 1991.¹¹⁸ The main purpose of the ODEA “is to standardize and formalize a process in which all projects to be financed by the Bank undergo a specific assessment.”¹¹⁹ In 1994, the World Bank created its Inspection Panel as a three-member body to increase the accountability of the World Bank for the consequences of the projects it funds. In addition to increasing transparency and accountability, the executive directors specified that one key objective of the Panel would be to ensure that projects were “fully compatible” with World Bank policies and procedures, including its safeguard policies respecting women and indigenous peoples, as well as its policies on involuntary resettlement and environmental impact assessment. The Panel is empowered to receive and investigate requests for inspection from people directly affected by World Bank projects in cases where the Bank has failed to implement and enforce its own policies, procedures, or loan agreements.

The Aarhus Convention mentioned above mirrors many human rights texts. The Convention’s rights-based approach to environmental protection induced the drafters to create compliance procedures and to include public participation at the international level. Primary review of implementation by states parties is conferred on the Meeting of the Parties (MOP), at which nongovernmental organizations “qualified in the fields to which this Convention relates” may participate as observers if they have made a request and not more than one-third of the parties present at the meeting raise objections (art. 10). The Convention (art. 15) also directed the MOP to create a “non-confrontational, non-judicial

and consultative” optional arrangement for compliance review, which “shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention.” This tentative language marked the first time a compliance procedure was added to an international environmental agreement, and it led to the innovative complaints procedure of the Aarhus Convention.

With regard to achieving the ‘green economy’, social goals that aim to examine ancillary policies are needed to reconcile social goals with the other objectives of economic policy, including provision of safeguards, safety nets, and capacity building. One of the major concerns is the role of non-state actors and ensuring compliance with national and international environmental and human rights laws and standards. Several initiatives have been taken recently in this respect, including the May 25, 2011 revision to the OECD Guidelines for Multinational Enterprises, which adds a chapter on human rights and expands consideration of the environment. In 2005, UN Secretary-General Kofi Annan appointed a Special Representative on human rights and transnational corporations and other business enterprises, following a request by the UN Commission on Human Rights (Res. 2005/69). In June 2008 the Special Representative preproposed a policy framework on business and human rights to the Human Rights Council, a framework entitled “Protect, Respect and Remedy.” In May 2011 the Framework was supplemented by “Guiding Principles for the Implementation of the United Nations ‘Protect, Respect and Remedy’ Framework.” This was followed, on June 16, 2011, by the Council’s decision to form a working group and an annual meeting of business, government and civil society representatives to discuss the principles. Both the OECD and UN Framework lack strong monitoring or dispute-settlement mechanisms.

Efforts to strengthen the institutional framework for sustainable development may point to more coordinated international environmental governance at the interagency UN level, including UNCT and UNDAAF systems, and strengthening the work of national and local institutions to elaborate human rights sensitive national sustainable development strategies.

Part III – The Way Forward

Sustainable development remains the fundamental principle that can integrate human rights, environmental protection, and economic development in moving towards a green economy. The three pillars are indivisible and can only progress if all are considered in a mutually-reinforcing manner. Human rights standards and principles should inform and strengthen policy-making in the area of sustainable development, promoting policy coherence and viable outcomes. The human rights framework draws attention to the importance of addressing environment and development policies, measured by overall human rights objectives, including through assessing possible effects of such policies and measures on human rights. Moreover, looking at vulnerability and adaptive capacity in human rights terms highlights the importance of analysing power relationships, addressing underlying causes of inequality and discrimination, and gives particular attention to marginalized and vulnerable members of society.

The human rights framework seeks to empower individuals and underlines the critical importance of effective participation of individuals and communities in decision-making processes affecting their lives. Equally, human rights standards underline the need to prioritize access of all persons to at least basic levels of economic, social and cultural

rights, such as access to basic medical care, essential drugs and to compulsory primary education free of charge. The human rights framework also stresses the importance of accountability mechanisms in the implementation of measures and policies in the area of climate change and requires access to administrative and judicial remedies in cases of human rights violations.

There are thus numerous reasons for adopting the RBA in action. In particular, this approach may serve to:

- bring greater clarity about the underlying causes of positive or negative impacts of various economic or other activities on human rights and the environment, and the impact of the enjoyment or lack of enjoyment of human rights on environmental protection, thus allowing for better choices among policies and projects;
- improve outcomes by facilitating positive synergies, and generally improving the governance of natural resources;
- increase the legitimacy of activities, programmes and policies by integrating social concerns with environmental goals, drawing on a widely agreed upon set of norms specifying the rights and responsibilities of all actors;
- be an effective instrument to ensure the accountability of governments, the private sector and environmental or human rights organizations with regard to the impact of their activities on the environment and human rights;¹²⁰
- provide stronger cross-sectoral links, which can further efforts toward sustainable development, by providing a framework to integrate social development, economic development, and environmental protection;
- demonstrate the positive contribution of conserving a safe and healthy environment to human rights and, conversely, increase awareness of the negative impact on human rights of failing to protect critical natural resources and biodiversity; and
- help further universal and local values and norms favouring conservation and social justice.

There are also challenges to developing and implementing inter-linkages of human rights and environmental protection, including the following:

- Not all governments or other actors are fully engaged in long term conservation efforts or the realization human rights, despite international and domestic legal guarantees, and proponents may have limited ability to press the issue;
- Human rights focuses on living individuals and has yet to develop a theoretical construct or mechanisms to contribute to inter-generational equity;
- Human rights guarantees are about the well-being of humans and thus are only indirectly concerned with the environment.
- There may be conflicts or competition between rights, either across groups, or within a single group.
- Capacities of States and non-state actors may be limited; the rights-based approach requires substantial resources of time, expertise, information, and funding. These deficits in capacity can be mitigated or overcome by seeking out partnerships among all the relevant stakeholders.

An effective set of responses to the problems mentioned include social, economic, legal and institutional barriers that need to be addressed.

Governance: The inappropriate institutional and governance arrangements mentioned above, as well as the presence of corruption and weak systems of regulation and accountability limit the effective integration of environment and human rights into

economic planning and activities. Weak human and institutional capacity related to the assessment and management of ecosystems and their services, underinvestment in regulation and management, lack of public awareness, and lack of awareness among decision-makers of both the threats and the opportunities that more sustainable management of ecosystems and public participation could provide hinder the green economy.

Economic: Economic and financial interventions provide powerful regulatory instruments; however, market mechanisms and most economic instruments can only work effectively if supporting institutions are in place, and thus there is a need to build institutional capacity to enable more widespread use of these mechanisms. A related program could support investment in the development and diffusion of clean technologies that could reduce the harmful impacts of various drivers of ecosystem change, while also producing new industries and employment opportunities.

A specific measure to stimulate the green economy would be to eliminate subsidies that promote unsustainable use of resources. Although removal of subsidies will produce net benefits, compensatory mechanisms may be needed for poor people who are adversely affected by the removal of subsidies. Removal of agricultural subsidies should be accompanied by actions designed to minimize adverse impacts on ecosystem services in developing countries. Alternatively, taxes or user fees could be imposed on activities with “external” costs, for example, taxes on excessive application of nutrients or ecotourism user fees.

More focus can be given to tradable permits. One of the most rapidly growing markets in the environmental sector is the carbon market. It is *speculated* that this market may grow to \$10 billion to \$44 billion by 2010. The creation of a market in the form of a nutrient trading system may also be a low-cost way to reduce excessive nutrient loading.

Mechanisms to enable consumer preferences to be expressed through markets support both human rights and environmental protection, while providing incentives for green technology. Current certification schemes for sustainable fisheries and forest practices, for example, provide people with the opportunity to promote sustainability through their consumer choices.

Social and behavioral factors: The lack of political and economic power of some groups (such as poor people, women, and indigenous peoples) affects human rights, environmental protection and economic development. Participatory structures that address the marginalization of these groups and their insufficient knowledge (as well as the poor use of existing knowledge) can support the three pillars of sustainable development. In most regions, for example, relatively limited information exists about the status and economic value of resources, and their depletion is rarely tracked in national economic accounts. Basic global data on the extent and trend in different types of ecosystems and land use are scarce. Models used to project future environmental and economic conditions have limited capability of incorporating ecological “feedbacks,” including nonlinear changes in ecosystems. At the same time, decision-makers do not use all of the relevant information that is available. This is due in part to institutional failures that prevent existing policy-relevant scientific information from being made available to decision-makers and in part to the failure to incorporate other forms of knowledge and information (such as traditional knowledge and practitioners’ knowledge) that are often of considerable value for ecosystem management.

Most resource management and investment decisions are strongly influenced by considerations of the short term monetary costs and benefits of alternative policy choices. Decisions can be improved if they are informed by the total economic value of alternative management options and involve deliberative mechanisms that bring to bear noneconomic considerations as well. Enhancing and sustaining human and institutional capacity for assessing the consequences of ecosystem change for human well-being and acting on such assessments requires greater technical capacity for agriculture, forest, and fisheries management and for effective management of other ecosystem services.

Accountability: NGOs can submit petitions to MEA treaty secretariats calling on those bodies to take steps to resolve a particular environmental and public health harm that is not receiving adequate attention but is occurring within a member nation-state.¹²¹ Second, NGOs can encourage nation-states to initiate inter-state dispute resolution under these MEAs to help resolve an environmental or public health problem. These strategies may help to strengthen the effectiveness of MEAs and better protect the environment and public health. Third, where the MEA allows, NGOs can participate at MEA Conferences of the Parties or appropriate bodies of charter-based institutions and lobby member states to take particular environmental action. The weak enforcement mechanisms of MEAs have undermined the ability to protect effectively the environment and public health.

Most MEAs allow non-state actors to participate as observers at periodic meetings among the MBA members states known as the Conference of the Parties (“COPs”) in the case of conventions and Meetings of the Parties (“MOPs”) in the case of Protocols. Observer NGOs can often lobby generally on an issue among an audience involved and familiar with the MBA, even if the observer NGO cannot vote.

Ultimately, a rights-based approach to development means that all state and non-state actors planning or engaged in policies, projects, programmes and activities with potential impact on humans and the environment shall secure to all potentially affected persons the substantive and procedural rights that are guaranteed by national and international law. This rights-based approach, properly implemented, should facilitate the achievement of an ecologically-sustainable environment, inter- and intra-generational equity and respect for the intrinsic value of nature. In sum, this approach puts an emphasis on environmental protection and the livelihoods and human rights aspects of projects, programmes and activities.

Implementation

As an important step toward developing and implementing an integrated approach to these issues, each State should develop and adopt policies, laws and regulations governing activities that could negatively impact human rights or the environment. Such measures, including planning or land use laws and environmental impact assessment or risk assessment procedures, should identify and commit to integrating human rights considerations in the design, prior approval and implementation of all projects, programmes, and activities, whether undertaken by State agents or non-state actors. In addition to complying with international and local laws, private sector actors could design their own codes of conduct or construct a similar publicly-available policy commitment to human rights and environmental norms. Components of such codes or policy commitments could include some of the following.

- Recognition that development and other projects and activities impact the environment and human beings, coupled with a commitment to take steps in all cases to minimize environmental harm and ensure respect for human rights.

- Recognition that all stakeholders who are involved in an activity can influence their partners, and that all those involved should therefore seek to assist each other to fulfil environmental and human rights responsibilities. Supportive actions may include, where appropriate, creating incentives and building capacities for governmental and non-governmental partners to meet the goal of conservation with justice.
- Recognition that the harmful impact of projects and activities on the environment and human rights often falls disproportionately on the most vulnerable or marginalized individuals and peoples and that efforts need to be made to reach out in particular to these individuals and groups.
- Recognition that there are synergies between environmental protection and human rights and that these synergies should be identified and promoted through outreach and training, including by bringing together local communities and individuals and organizations with knowledge and experience in conservation and human rights.
- Recognition that ecology, history, culture, governance, economy, law and other elements contribute to shaping the design and impact of activities on the environment and human rights, and these elements should be investigated and, where appropriate, incorporated into projects and the strategies for implementing them.
- Recognition that increased efforts are necessary to develop and disseminate information about the importance of the environment and respect for human rights in the implementation of all activities and projects.

Once a general framework of laws and policies is in place, it must be implemented with respect to any activity, project or programme that might have a negative impact on the environment or human rights. Consultations have to be undertaken in good faith, with multi-stakeholder dialogues exploring different options, their advantages and constraints, with the aim of developing a collective vision of desired outcomes.

Today proponents of activities or projects that have a potentially negative impact on sustainable development have greater demands upon them, and greater opportunities before them, to take account of and utilize human rights law to ensure that their projects minimize impacts that are deleterious to the environment or the rights of local communities. A rights-based approach presents a highly effective approach for actors interested in understanding and addressing their works' linkages to human rights and the environment. Despite the difficulties and efforts required to implement the approach, there are many and good reasons for adopting it, not the least of which is the possibility for drawing on mutually reinforcing relationships between the environment and human rights to achieve the three pillars of sustainable development.

These initiatives will not happen without legal and governance regimes at national and global levels to steer effort and investment in the direction of a green economy integrating human rights and environmental protection. Good law needs good science and good economics to develop a sound approach. This program must be built further into the many programs within the United Nations system, including its specialized agencies. The wide range of environmental and human rights agreements need to be considered in an integrated manner with overall coherence and a strengthened governance system that can respond in a timely manner to the multiple environmental and developmental challenges that exist. Well functioning markets and economies depend on well-functioning institutions. Rules, norms and regulations must be in place,

but also the institutional coordination to ensure implementation and compliance with them.

¹ UNEP, *Globalization and the Environment – Global Crises: National Chaos?* Delivered to the Twenty-fifth Session of the Governing Council/Global Ministerial Env't Forum, Nairobi, Kenya, Feb. 16-20, 2009, UNEP/GC.25/16 (Dec. 24, 2008).

² ECOSOC resolution 1346 (XLV).

³ *Report of the U.N. Conference on the Human Environment, Declaration of the U.N. Conference on the Human Environment*, U.N. Doc. A/CONF.48/14/Rev.1, p. 3 (June 5-16, 1972).

⁴ World Commission on Environment and Development, U.N. Doc. A/42/47 (11 Dec. 1987), *reprinted in* OUR COMMON FUTURE 43 (1987).

⁵ The Rio Declaration on Environment and Development, Report of the United Nations Conference on Environment and Development, A/CONF.151/26/Rev.1 (Vol. 1) (3–14 June 1992), Annex I, pp. 3–8, *reprinted in* 31 I.L.M. 874 (1992).

⁶ Such agreements include the North American Free Trade Agreement (NAFTA), Treaty Establishing the South African Development Community (Windhoek, Aug. 17, 1992); Treaty Establishing a Common Market for Eastern and Southern Africa (Kampala, Nov. 5, 1993); Agreement on the North American Free Trade Area (Washington, Ottawa, Mexico City, Dec. 17, 1992); Tropical Timber Agreement (Jan. 26, 1994) and European Energy Charter (Dec. 17, 1994).

⁷ Case Concerning the Gabčíkovo-Nagymaros Project, [1997] I.C.J. Rep. 7, 91–92.

⁸ UN GA Res. A/Res/54/175 of 17 Dec. 1999 (83rd plenary mtg), para 12

⁹ Adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December 1979; entry into force 3 September 1981.

¹⁰ CEDAW, Art 14 (2).

¹¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989; entered into force 2 September 1990.

¹² CRC, Art 24 (2).

¹³ General Comment No. 15 (2002), U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) on the Right to Water under articles 11 and 12 of the ICESCR/

¹⁴ *Id.* at ¶¶ 1–2.

¹⁵ UNGA Res. A/64/292, A/64/L.63/Rev.1, GA, 26 July 2010, *The human right to water and sanitation.*

¹⁶ A/HRC/15/L.14, 24 September 2010, “*Human rights and access to safe drinking water and sanitation.*”

¹⁷ *Id.* at 37.

¹⁸ Smith A.T.P., *The Wealth of Nations* (MIT Press, Cambridge, MA, 2002).

¹⁹ Platt, A.E., *Infecting Ourselves: How Environmental and Social Disruptions Trigger Disease*, Worldwatch Paper 129 (World Watch Institute, Washington, DC, 1996).

²⁰ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998. Doc. ECE/CEP/43 [hereinafter Aarhus Convention].

²¹ Article 24, African Charter on Human and Peoples Rights, African Charter on Human and Peoples Rights, O.A.U. Doc. CAB/LEG/67/3 Rev. 5, *reprinted in* 21 I.L.M. 58 (1982).

²² Article 11, Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, O.A.S.T.S. 69, *reprinted in* 28 I.L.M. 156 (1989).

²³ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

²⁴ ACRWC, Art 14 (2) (2).

²⁵ Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); *reprinted in* 1 Afr. Hum. Rts. L.J. 40, entered into force Nov. 25, 2005.

²⁶ Women’s Protocol, Art 15(a).

²⁷ Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, done in London, on 17 June 1999 MP.WAT/2000/1EUR/ICP/EHCO 020205/8Fin, 18 October 1999.

²⁸ Council of Europe, Committee of Ministers, Recommendation Rec(2001)14 Of the Committee of Ministers to member states on the European Charter on Water Resources (*Adopted by the Committee of Ministers on 17 October 2001, at the 769th meeting of the Ministers' Deputies*)

²⁹ Para. 5. The text explains that “International human rights instruments recognise the fundamental right of all human beings to be free from hunger and to an adequate standard of living for themselves and their families. It is quite clear that these two requirements include the right to a minimum quantity of water of satisfactory quality from the point of view of health and hygiene.”

³⁰ Abuja Declaration, adopted at First Africa-South America Summit, 26 – 30 November 2006 (Abuja, Nigeria) Para 18, available at < www.asasummit-abuja2006.org>.

³¹ Message from Beppu, adopted at the 1st Asia-Pacific Water Summit, which was held in Beppu, Japan, on 3-4th December 2007, Para 2, available at <http://www.worldwatercouncil.org/fileadmin/www/Programs/Right_to_Water/Pdf_doct/Message_from_Beppu_071204.pdf>.

³² The Delhi Declaration, adopted at The Third South Asian Conference on Sanitation (SACOSAN III) on “Sanitation for Dignity and Health,” November 16-21 2008, Vigyan Bhawan, New Delhi, India, Para 1, available at <<http://www.ddws.nic.in/infosacosan/ppt/Delhi%20Declaration%207.pdf>>.

³³ *Centre for Minority Rights Dev. v. Kenya*, Comm. No. 276/2003 (Afr. Comm’n on Hum. & Peoples’ Rts. Feb. 4, 2010). The complaint on behalf of the Endorois community alleged that Kenya had forcibly removed the Endorois from their ancestral lands without proper prior consultations or adequate and effective compensation when the government created the Lake Hannington Game Reserve in 1973 and re-gazetted the Lake Bogoria Game Reserve in 1978 (together, the Game Reserve)—with the consequence that they were evicted from their ancestral lands.

³⁴ *Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria*, African Commission on Human and Peoples’ Rights, Communication No. 155/96, October 2001.

³⁵ ETS no. 150 – Lugano, 21 June 1993.

³⁶ ETS no. 172 – Strasbourg, 4 November 1998.

³⁷ No. 46117/99, 10 Nov. 2004.

³⁸ *Taşkın and Others v. Turkey*, no. 49517/99, §§ 99 and 119, 4 December 2003.

³⁹ Parliamentary Assembly Recommendation 1614 (2003) of 27 June 2003. See also as in *Okay and Others v. Turkey*, no. 36220/97, judgment of 12 July 1996, Rep. 2005-VII 43 Eur. H.R. Rep 788 (2006)

⁴⁰ *Lopez Ostra v. Spain*, Eur. Ct. Hum. Rts [1994] Ser. A, No. 303C.

⁴¹ In *Powell & Raynor v. United Kingdom*, Eur. Ct. Hum. Rts [1990] Ser. A No. 172, the European Court found that aircraft noise from Heathrow Airport constituted a violation of Article 8, but was justified as “necessary in a democratic society” for the economic well-being of the country and was acceptable under the principle of proportionality because it did not “create an unreasonable burden for the person concerned.” The latter text could be met by the State if the individual had “the possibility of moving elsewhere without substantial difficulties and losses.”

⁴² Inter-Am. Comm. H.R., *Report on the Situation of Human Rights in Ecuador*, OAS doc.

OEA/Ser.L/V/II.96, doc. 10 rev. 1, April 24, 1997, at 92 [hereinafter Report on Ecuador].

⁴³ See: *Hatton and Others v. the United Kingdom*, (GC) no. 36022/97, Eur. Ct. Hum. Rts, 2003-VIII; *Mareno Gomez v. Spain*, no. 4143/02, 16 Nov. 2004, para. 55; *Giacomelli v. Italy*, paras. 78-79; *Surugiu v. Romania*, no. 48995/99, 20 April 2004.

⁴⁴ *Velasquez Rodriguez Case*, 4 Inter-Am. Ct. H.R. (ser. C) at 155 (Judgment of July 29, 1988) (concerning disappearance of civilians perpetrated by the Honduran army); *Godinez Cruz Case*, 5 Inter-Am. Ct. H.R. (ser. C) at 152-53 (Judgment of Jan. 20, 1989).

⁴⁵ Art 4(1) reads: Every person has the right to have his life respected. This right shall be protected by law....No one shall be arbitrarily deprived of his life.

⁴⁶ *Yanomami Case*, Res. No. 12/85, Case 7615 (Brazil), in *Annual Report of the IACHR 1984-1985*, OEA/Ser.L/V/II.66, doc. 10, rev. 1 (1985), 24.

⁴⁷ *Id.* at 33

⁴⁸ *Id.* at 32.

⁴⁹ Report on Ecuador *supra* n. 84 at 94.

⁵⁰ Inter-Am. C.H.R., *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, doc. 10 rev. 1 (1997)[hereinafter *Report on Ecuador*], p. v. The Commission first became aware of problems in this region of the country when a petition was filed on behalf of the indigenous Huaorani people in 1990. The Commission decided that the situation was not restricted to the Huaorani and thus should be treated within the framework of the general country report.

⁵¹ In the Ecuador report, the Commission heard allegations that the Government had failed to ensure that oil exploitation activities were conducted in compliance with existing legal and policy requirements. The Commission's on site delegation also heard that the Government of Ecuador had failed to enforce the inhabitants' constitutionally protected rights to life and to live in an environment free from contamination. The domestic law of Ecuador recognizes the relationship between the rights to life, physical security and integrity and the physical environment in which the individual lives. The first protection accorded under Article 19 of the Constitution of Ecuador, the section which establishes the rights of persons, is of the right to life and personal integrity. The second protection establishes "the right to live in an environment free from contamination." Accordingly, the Constitution invests the State with responsibility for ensuring the enjoyment of this right, and for establishing by law such restrictions on other rights and freedoms as are necessary to protect the environment. Thus, the Constitution establishes a hierarchy according to which protections which safeguard the right to a safe environment may have priority over other entitlements.

⁵² Treaty for Amazonian Cooperation, 17 I.L.M. 1045 (1978).

⁵³ Amazon Declaration, 28 I.L.M. 1303 (1989).

⁵⁴ World Charter for Nature, G.A. Res. 37/7, U.N. Doc. A/37/51 (1982).

⁵⁵ Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, 161 U.N.T.S. 229 (1940).

⁵⁶ Rio Declaration on Environment and Development, *supra* n. .

⁵⁷ Convention on Biological Diversity, 31 I.L.M. 818 (1992).

⁵⁸ Report on Ecuador at 89.

⁵⁹ Case of the Saramaka People v. Suriname, judgment of Nov. 28, 2007.

⁶⁰ *Id.* at para. 129.

⁶¹ See ICCPR, General Comment No. 23, The Rights of Minorities (Art. 27), U.N. Doc. CCPR/C/21 Rev 1/Add.5, Aug. 4, 1994 and *Apirana Mahuika et al. v. New Zealand*, U.N. doc CCPR/C/70/D/47/1993, Nov. 15, 2000.

⁶² See World Bank, Revised Operational Policy and Bank Procedure on Indigenous Peoples, OP/BP 4.10.

⁶³ UN Declaration on the Rights of Indigenous Peoples, approved by the General Assembly Sept. 14, 2007.

⁶⁴ Article 21(2) provides that [n]o one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

⁶⁵ *Id.*; see also *Ashworth and Others v. the United Kingdom*, 20 Jan. 2004; , *Moreno Gomes v. Spain*, 2004-X Eur. Ct. H.R. 327 (2005).

⁶⁶ *Okay and Others v. Turkey*, *supra* n. 57.

⁶⁷ EARTHJUSTICE, ENVIRONMENTAL RIGHTS REPORT 2007: HUMAN RIGHTS AND THE ENVIRONMENT app. (2007) (containing constitutional provisions concerning the environment from 118 countries), available at <http://www.earthjustice.org/news/press/007/earthjustice-presents-2007-environmental-rights-report-to-un.html>.

⁶⁸ the Constitution of Belgium, where the right to "lead a worthy life of human dignity" includes "the right to protection of a sound environment";⁶⁸ Portugal where the Constitution asserts that "all have the right to a healthy ecologically balanced human environment and the duty to defend it";⁶⁸ and Spain where the Constitution states that "everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it."⁶⁸ Further north, the Finnish Constitution, adopted in 2000, states that the "public authorities shall endeavor to guarantee for everyone the right to a healthy environment."⁶⁸ Likewise, the Norwegian Constitution, altered in 1992, contains a right to "an environment that is conducive to health."⁶⁸ In addition, a great number of Eastern European countries have, following the breakdown of the Soviet Union, altered or changed their constitutions to include a substantive right to the environment.⁶⁸

⁶⁹ Legifrance, Charter for the Environment, art. 1, *available at*

<http://www.legifrance.gouv.fr/html/constitution/const03.htm>; see, e.g., David Marrani, *The Second Anniversary of the Constitutionalisation of the French Charter for the Environment: Constitutional and Environmental Implications*, 10 ENVTL. L. REV. 9 (2008); James R. May, *Constituting Fundamental Environmental Rights Worldwide*, 23 PACE ENVTL. L. REV. 113, 113–14 (2005–06).

⁷⁰ [Legifrance, *Id.*]

⁷¹ See Ala. Const. art. VIII; Cal. Const. art. X, § 2; Fla. Const. art. II, § 7; Haw. Const. art. XI; Ill. Const. art. XI; La. Const. art. IX; Mass. Const. § 179; Mich. Const. art. IV, § 52; Mont. Const. art. IX, § 1; N.M. Const. art. XX, § 21; N.Y. Const. art. XIV; N.C. Const. art. XIV, § 5; Ohio Const. art. II, § 36; Pa. Const. art. I, § 27; R.I. Const. art. 1, § 17; Tex. Const. art. XVI, § 59; Utah Const. art. XVIII; Va. Const. art. XI, § 1. For discussions of these provisions, see A.E. Dick Howard, *State Constitutions and the Environment*, 58 Va. L. Rev. 193, 229 (1972); Roland M. Frye Jr., *Environmental Provisions in State Constitutions*, 5 Env'tl.

L. Rep. 50028–29 (1975); Stewart G. Pollock, *State Constitutions, Land Use, and Public Resources: The Gift Outright*, 1984 Ann. Surv. Am. L. 13, 28–29; Robert A. McLaren, Comment, *Environmental Protection Based on State Constitutional Law: A Call for Reinterpretation*, 12 U. Haw. L. Rev. 123, 126–27 (1990); Carole L. Gallagher, *The Movement to Create an Environmental Bill of Rights: From Earth Day 1970 to the Present*, 9 Fordham Envtl. L.J. 107 (1997). For a listing of all environmental provisions in state constitutions, see Bret Adams et al., *Environmental and Natural Resources Provisions in State Constitutions*, 22 J. Land Resources & Envtl. L. 73 (2002). The authors take a broad reading of the topic, including all provisions that touch on natural resources. They come to a total of 207 state constitutional provisions in forty-six state constitutions.

⁷² For a listing of all environmental provisions in state constitutions, see Bret Adams et al., *Environmental and Natural Resources Provisions in State Constitutions*, 22 J. LAND RESOURCES & ENVTL. L. 73 (2002). The authors take a broad reading of the topic, including all provisions that touch on natural resources. They come to a total of 207 state constitutional provisions in 46 state constitutions.

⁷³ See Ala. Const. art. VIII; Cal. Const. art. X, § 2; Fla. Const. art. II, § 7; Haw. Const. art. XI; Ill. Const. art. XI; La. Const. art. IX; Mass. Const. § 179; Mich. Const. art. IV, § 52; Mont. Const. art. IX, § 1; N.M. Const. art. XX, § 21; N.Y. Const. art. XIV; N.C. Const. art. XIV, § 5; Ohio Const. art. II, § 36; Pa. Const. art. I, § 27; R.I. Const. art. 1, § 17; Tex. Const. art. XVI, § 59; Utah Const. art. XVIII; Va. Const. art. XI, § 1. For discussions of these provisions, see: A. E. Dick Howard, *State Constitutions and the Environment*, 58 VA. L. REV. 193, 229 (1972); Roland M. Frye, Jr., *Environmental Provisions in State Constitutions*, 5 ENVTL. L. REP. 50028-29 (1975); Stewart G. Pollock, *State Constitutions, Land Use, and Public Resources: The Gift Outright*, 1984 ANN. SURV. AM. L. 13, 28-29; Robert A. McLaren, Comment, *Environmental Protection Based on State Constitutional Law: A Call for Reinterpretation*, 12 U. Haw. L. REV. 123, 126-27 (1990).

⁷⁴ CHILE CONST, art. 19 §§ 1, 8.

⁷⁵ *Id.* art. 19, § 8. In 1988, the Supreme Court of Chile held that the constitutional-environmental provisions established a substantive right. Residents of the village of Chanaral filed suit against a government-run copper mine to restrain the company from continuing to discharge tailings on local beaches and coves. Based on a site visit, the Court found much of the shore and local waters inert and enjoined further dumping within one year. *Pedro Flores y Otros v. Corporacion Del Cobre, Codeloco*, Division Salvador. Recurso de Proteccion, (1988) 12.753.FS. 641 (Chile), <http://www.unescap.org/drpad/vc/document/compendium/chl.htm> (summary).

⁷⁶ Case no CCT 67/06; ILDC 783 (ZA 2007). The case arose out of a decision by the Department of Agriculture, Conservation and Environment, of a South African province to grant private parties permission to construct a filling station.

⁷⁷ *Id.* paras. 56-57.

⁷⁸ *Id.* paras. 58.

⁷⁹ *Id.* paras. 59. In addition, NEMA sets out some of the factors that are relevant to decisions on sustainable development. These factors largely reflect international experience. But as NEMA makes it clear, these factors are not exhaustive. The Court quoted the factors set forth in the domestic National Environmental Management Act, Section 2(4)(a):

“Sustainable development requires the consideration of all relevant factors including the following:

- (i) That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
- (ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
- (iii) that the disturbance of landscapes and sites that constitute the nation's cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;
- (iv) that waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;
- (v) that the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
- (vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
- (vii) that a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
- (viii) that negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.”

⁸⁰ concluded on June 2, 1992, and entered into force on December 29, 1993.

⁸¹ The U.S. Clean Air Act of 1970, 42 U.S.C. § 7604, was the first of some twenty environmental statutes in the U.S. to provide for citizen enforcement by allowing suit to be brought for injunctive relief to force compliance and to require the Environmental Protection Agency (EPA) to perform mandatory duties imposed on it by the statute. See Michael D. Axline ENVIRONMENTAL CITIZEN SUITS (Butterworth Legal Publishers, 1995); James R. May, “*Now More than Ever: Recent Trends in Environmental Citizen Suits*,” 10 Widener Law Review 8 (2004). The 1972 Clean Water Act, 33 U.S.C. § 1365 is similar, but also authorized citizens to sue polluters for civil penalties. Similar provisions exist in nearly all statutes under the authority of the EPA.

⁸² See, e.g. *Friends of the Earth v. United States EPA*, 2006 U.S. App. LEXIS 10264 (D.C. Cir. 2006)(successfully challenging the EPA determination that pollution caps under the Clean Water Act could be done on a seasonal or annual basis and not as daily loads).

⁸³ Where the agency is engaged in appropriate enforcement of the law through judicial action, citizen suits are inadmissible. See *Baughman v. Bradford Coal Co.*, 592 F.2d 215, 219 (3rd Cir. 1979), cert denied 441 U.S. 961 (1979); *PIRG of N.J. v. Fritzsche, Dodge & Olicott, Inc.*, 759 F.2d 1131 (3rd Cir. 1985).

⁸⁴ In *Citizens for a Better Environment v. Laidlaw Environmental Services (TOC), Inc.*, 890 F. Supp. 470 (D.S.C. 1995), rev’d on other grounds, 149 F.3d 303 (4th Cir. 1998); rev’d on other grounds, 528 U.S. 167 (2000), a civil penalty of \$100,000 was considered inadequate and a citizen suit for additional penalties was allowed to proceed.

⁸⁵ *Ecosystem services* are the benefits people obtain from ecosystems. These include *provisioning services* such as food, water, timber, and fiber; *regulating services* that affect climate, floods, disease, wastes, and water quality; *cultural services* that provide recreational, aesthetic, and spiritual benefits; and *supporting services* such as soil formation, photosynthesis, and nutrient cycling.

⁸⁶ *Millennium Ecosystem Assessment: Ecosystems and Human Well-Being: Synthesis* (World Resources Inst., 2005).

⁸⁷ As noted in one study, “Incorporation of “green stimulus” elements in the financial recovery packages in 2008–09 was not driven by an environmental lobby, but by economic calculations of Beyond Rio+20: Governance for a Green Economy 29 the potential for job creation and economic resilience. Within many countries, anticipated scarcity in access to fossil fuels and “rare earth” minerals (to pick just two examples) are driving policy and technological efforts to shape alternative futures. Private sector actors are anticipating major shifts in markets and resource availability, and planning for much lower carbon intensity production as a result. In short, the economics of scarcity and uncertainty are stimulating significant efforts to develop alternative, “greener” business models and patterns.” *Beyond Rio+20: Governance for a Green Economy* (Boston University 2011), p. 36.

⁸⁸ Hamilton, K., G. Ruta, K. Bolt, A. Markandya, S. Pedroso-Galinato, P. Silva, M. S. Ordoubadi, G. Lange, and L. Tajibaeva. 2005. *Where is the Wealth of Nations?* Washington D.C.: The World Bank

⁸⁹ See, Statement to the Permanent Forum on Indigenous Issues by Catarina de Albuquerque, Special Rapporteur on the human right to safe drinking water and sanitation, 24 May 2011.

⁹⁰ In many of the cases discussed *infra* the applicants cite to constitutional provisions guaranteeing the right to a safe and healthy or other quality environment. See, e.g. the discussion of *Okayay v. Turkey* and *Krytatos v. Greece, infra*.

⁹¹ Most commonly invoked are the rights to life, health, property, culture, information, privacy, and home life. See Shelton, “*Human Rights And The Environment: What Specific Environmental Rights Have Been Recognized?*,” 35 Denv. J. Int’l L. & Pol’y 129 (2006).

⁹² International Committee of the Red Cross, *Annual Report* (Geneva, 1999).

⁹³ UNDP *supra* n. 1, p. 8.

⁹⁴ Human Rights Commission res. 2003/71 of 25 April 2003; Council Resolution 16/11, 12 April 2011 on human rights and the environment.

⁹⁵ The Committee on the Elimination of All Forms of Discrimination Against Women, in its Concluding Observations on the state report of Romania, expressed its “concern about the situation of the environment, including industrial accidents, and their impact on women’s health.” U.N. CEDAW, *Concluding Observations on Romania*, U.N. Doc. A/55/38, at p. 89 (Aug. 19, 2000). In 2003–04, the Committee on Economic, Social, and Cultural Rights included references to the environment in its concluding observations on the second periodic report of Ecuador. The Committee voiced concerns “about the negative health and environmental impacts of natural resource extracting companies’ activities” on the exercise of land and culture rights by the affected indigenous communities and the equilibrium of the ecosystem. ICESCR, *Concluding Observations on Ecuador* U.N. Doc. E/C.12/1/Add.100, para. 12 (May 14, 2004). See also the Committee’s concluding observations on the initial report of Yemen (U.N. Doc. E/C.12/1/Add.92, Dec. 12, 2003). The concluding observations of the Human Rights Committee on, for example, the report of Suriname, U.N. Doc. CCPR/CO/80/SUR, para. 21, March 30, 2004, and of the

Committee on the Rights of the Child regarding Jamaica (U.N. Doc. CRC/C/15/Add.210, July 4, 2003), Jordan (U.N. Doc. CRC/C/15/Add.125, at para. 50, June 13, 2000), and South Africa (U.N. Doc. CRC/C/15/Add.122, at para. 30, Feb. 23, 2000) similarly expressed the Committee's concern over environmental degradation. *See also Concluding Observations on Kyrgyzstan*, U.N. Doc. CRC/C/15/Add.127 (Aug. 9, 2000); *Concluding Observations on Grenada*, U.N. Doc. CRC/15/Add.121 (Feb. 28, 2000); *Solomon Islands*, E/C.12/1/Add.84, at paras. 461, 474 (Nov. 18, 2002).

⁹⁶ Most environmental agreements now contain provisions calling for public information and participation. See, e.g., Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano, June 21, 1993), Art.13-16; North-American Agreement on Environmental Cooperation (September 13, 1993), Art. 2(1)(a); International Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (Paris, June 17, 1994), Preamble, Arts. 10(2)(e), 13(1)(b), 14(2), 19 and 25; Convention on Co-operation and Sustainable Use of the Danube River (Sofia, June 29, 1994), Art.14; Protocol on Water and Health to the 1992 Convention on the Protection and use of Transboundary Watercourses and International Lakes (London, June 17, 1999), Art. 5(i); Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal, January 29, 2000), Art. 23. See in particular, the Aarhus Convention, *supra* note 3.

⁹⁷ See, e.g. *Apirana Mahuika et al v. New Zealand*, Comm. No. 547/1992, CCPR/C/70/D/547/1993, views issued Nov. 16, 2000, in which the Human Rights Committee found no violation of Maori fishing rights, emphasizing that they had the opportunity to participate in the decision-making process in relation to the fishing measures adopted.

⁹⁸ See, e.g., Sumudu Atapattu, *The Right to a Healthy Life or the Right To Die Polluted?: The Emergence of a Human Right to a Healthy Environment Under International Law*, 16 TUL. ENVTL. L.J. 65, 72-73 (2002).

⁹⁹ *Report of the Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights*, U.N. Doc. A/HRC/7/21 (Feb. 18, 2008), para. 38.

¹⁰⁰ E.g., Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, Sept. 22, 1992), art. 9; Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment (Lugano, June 21, 1993), arts. 13–16; North-American Agreement on Environmental Cooperation (Sept. 13, 1993), art. 2(1)(a); International Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, June 17, 1994), Preamble, arts. 10(2)(e), 13(1)(b), 14(2), 19, and 25; Convention on Co-operation and Sustainable Use of the Danube River (Sofia, June 29, 1994), art. 14; Energy Charter Treaty, Lisbon (Dec. 17, 1994), art. 19(1)(i) and 20; Amendments to the 1976 Barcelona Convention for the Protection of the Mediterranean Sea against Pollution (Barcelona, June 10, 1995), arts. 15 and 17; Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (Barcelona, June 10, 1995), art. 19; Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Sept. 10, 1998), art. 15(2); Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes (London, June 17, 1999), art. 5(i); Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Montreal, Jan. 29, 2000), art. 23; International Treaty on Plant Genetic Resources for Food and Agriculture (Nov. 3, 2001).

¹⁰¹ See, e.g., the 1992 Paris Convention on the North-East Atlantic (art. 9), the IAEA Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Vienna, Sept. 5, 1997), and article 10(1) of the global Convention on Persistent Organic Pollutants (Stockholm, May 22, 2001).

¹⁰² Cf. Resolution AG/RES. 1932 (XXXIII-O/03) of June 10, 2003, “Access to Public Information: Strengthening Democracy”; Resolution AG/RES. (XXXIV-O/04) of June 8, 2004, “Access to Public Information: Strengthening Democracy”; Resolution AG/RES. 2121 (XXXV-O/05) of June 7, 2005, “Access to Public Information: Strengthening Democracy”; and AG/RES. 2252 (XXXVI-O/06) of June 6, 2006, “Access to Public Information: Strengthening Democracy.”

¹⁰³ Cf. Resolution AG/RES. 2252 (XXXVI-O/06) of June 6, 2006, “Access to Public Information: Strengthening Democracy,” second operative paragraph.

¹⁰⁴ *Yanomami Case*, Res. No. 12/85, Case 7615 (Brazil), in *Annual Report of the IACHR 1984-1985*, OEA/Ser.L/V/II.66, doc. 10, rev. 1 (1985), 24.

¹⁰⁵ *Id.* at 33

¹⁰⁶ *Id.* at 32.

¹⁰⁷ Report on Ecuador *supra* n. 84 at 94.

¹⁰⁸ Inter-Am.C.H.R., *Report on the Situation of Human Rights in Ecuador*, OEA/Ser.L/V/II.96, doc. 10 rev. 1 (1997)[hereinafter *Report on Ecuador*], p. v. The Commission first became aware of problems in this region of the country when a petition was filed on behalf of the indigenous Huaorani people in 1990. The Commission decided that the situation was not restricted to the Huaorani and thus should be treated within the framework of the general country report.

¹⁰⁹ In the Ecuador report, the Commission heard allegations that the Government had failed to ensure that oil exploitation activities were conducted in compliance with existing legal and policy requirements. The Commission's on site delegation also heard that the Government of Ecuador had failed to enforce the inhabitants' constitutionally protected rights to life and to live in an environment free from contamination. The domestic law of Ecuador recognizes the relationship between the rights to life, physical security and integrity and the physical environment in which the individual lives. The first protection accorded under Article 19 of the Constitution of Ecuador, the section which establishes the rights of persons, is of the right to life and personal integrity. The second protection establishes "the right to live in an environment free from contamination." Accordingly, the Constitution invests the State with responsibility for ensuring the enjoyment of this right, and for establishing by law such restrictions on other rights and freedoms as are necessary to protect the environment. Thus, the Constitution establishes a hierarchy according to which protections which safeguard the right to a safe environment may have priority over other entitlements.

¹¹⁰ Report on Ecuador at 89.

¹¹¹ Case of the Saramaka People v. Suriname, judgment of Nov. 28, 2007.

¹¹² Id. at para. 129.

¹¹³ See ICCPR, General Comment No. 23, The Rights of Minorities (Art. 27), U.N. Doc. CCPR/C/21 Rev 1/Add.5, Aug. 4, 1994 and Apirana Mahuika et al. v. New Zealand, U.N. doc CCPR/C/70/D/47/1993, Nov. 15, 2000.

¹¹⁴ See World Bank, Revised Operational Policy and Bank Procedure on Indigenous Peoples, OP/BP 4.10.

¹¹⁵ UN Declaration on the Rights of Indigenous Peoples, approved by the General Assembly Sept. 14, 2007.

¹¹⁶ Article 21(2) provides that [n]o one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.

¹¹⁷ Sept. 14, 1993, 32 I.L.M. 1480 (1993).

¹¹⁸ Id. at 58–59; see also Dennis J. Scott, *Making a Banking Turn*, 9 ENVTL. F. 21 (1992).

¹¹⁹ Shihata, *supra* note 9, at 9.

¹²⁰ Indigenous peoples, local communities, and other civil society actors are increasingly demanding greater accountability from conservation actors regarding past and present impacts of protected areas establishment and management. Examples can be found in www.danadeclaration.org/text%20website/textindex.html, www.forestpeoples.org/, www.survival-international.org/ and www.iucn.org/themes/ceesp/WAMIP/WAMIP.htm

¹²¹ Linda A. Malone & Scott Pasternack, *Defending the Environment: Civil Society Strategies to Enforce International Environmental Law* 153–59 (2004).