

# **The Role of Human Rights in the Follow-up to Rio+20**

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- o Thank you, Madam Ambassador. Your Excellencies, ladies and gentlemen, it is an honor to be here today to speak about the role of human rights in the follow-up to Rio+20.
- o The recognition that environmental harm can interfere with the full enjoyment of human rights is not new. The first paragraph of the proclamation of the 1972 Stockholm Declaration states:  
  
“Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself.”
- o There are countless examples of ways that environmental harm can infringe the enjoyment of human rights.
  - o When toxic substances are dumped in countries that have not accepted them and do not have adequate facilities to treat them, with the result that individuals living near the waste site become sick and even die, those individuals’ human rights to life and health have been abused.
  - o When oil or mining companies deposit their waste into rivers and streams, they harm the human right to water of those who live nearby.
  - o When governments around the world fail to restrict emissions of greenhouse gases, jeopardizing the continued existence of vulnerable communities in the Arctic and in low-lying coastal areas, among others, they fail to protect many human rights, including rights to life, health, property, development, and self-determination.
  - o When individuals cannot find out basic facts about the environmental risks of proposed projects in their neighborhoods, and are unable to participate in the decision-making procedures that determine whether to approve the projects, they are denied their rights to information and to participation.
  - o And when individuals try to speak out against proposed projects that would harm their local environment, but are beaten and even killed by those who would silence their voices, then their human rights to expression and association, as well as their rights to life and to physical integrity, have been violated.
- o All of this is well-known. But the relationship between human rights and the environment is still less well-known than it should be. Too often, human rights issues and environmental issues are discussed in complete separation from one another.

- o The follow-up to Rio+20 provides a critical opportunity to ensure that policies and measures that advance sustainable development are firmly grounded in human rights.
- o Why does this matter? What does a human rights perspective add to environmental policy?
- o A full answer to that question would take much longer than my allotted time. But let me highlight three aspects of the answer.
  - o First, a human rights perspective demonstrates the fundamental importance of environmental protection.
  - o Second, it provides minimum substantive standards that environmental policies must strive to meet.
  - o And third, it sets out procedural tools that are necessary for environmental policies to be fair and effective.
- o On the first point: placing environmental protection in the context of human rights accurately reflects the fundamental importance of the environment to human dignity, equality, and freedom, the grounds of all human rights.
  - o In other words, it makes clear that protecting the environment is imperative, morally and legally, in order to protect the rights set out in the Universal Declaration of Human Rights, including rights to life and health.
  - o Moreover, it helps to draw attention to the grave effects of environmental harm on particular individuals and communities.
- o Many States have chosen to underscore the importance of environmental protection by adopting an explicit human right to a healthy environment.
  - o More than 90 States have adopted such a right in their national constitutions.
  - o They and many others have also joined together to incorporate the right in regional instruments, including the 1981 African Charter on Human and Peoples' Rights, the 1988 San Salvador Protocol to the American Convention on Human Rights, the 1998 Aarhus Convention adopted by the UN Economic Commission for Europe, the 2004 Arab Charter on Human Rights, and the Human Rights Declaration adopted by the Association of Southeast Asian Nations in 2012.
- o The second advantage of a human rights approach to environmental protection is that human rights law sets minimum substantive standards.

- o Even without adoption of an explicit new right to a healthy environment, it has become clear that existing human rights, such as rights to life, health, and property, can be infringed by environmental harm.
- o As a result, States have obligations under human rights law with respect to such harm – duties to refrain from causing the harm themselves, and to protect against harm caused by others.
- o The precise contours of these duties have not always been clear, but they are rapidly becoming clearer.
- o In particular, there is a growing body of human rights jurisprudence on the effect of environmental harm on existing rights.
  - o Much of it is being developed by regional human rights bodies, such as the African Commission on Human and Peoples' Rights, the Inter-American Commission and Court of Human Rights, and the European Court of Human Rights.
  - o In addition, human rights bodies at the United Nations, including special rapporteurs working under the Human Rights Council, as well as human rights treaty bodies such as the Committee on Economic, Social and Cultural Rights, have brought human rights standards to bear on particular environmental harms.
- o The third advantage of a human rights perspective is that it sets out procedural rights whose implementation is vital to environmental policy-making. In general, these are rights whose free exercise makes policies more transparent, better informed and more responsive.
  - o They include rights to freedom of expression and association, rights to receive information and participate in decision-making processes, and rights to legal remedies. When directed at environmental issues, the exercise of such rights results in policies that better reflect the concerns of those most concerned and, as a result, that better safeguard their rights to life and health, among others, from infringement through environmental harm.
  - o Here, too, the connection between such rights and environmental protection has been recognized by the international community, most famously in Principle 10 of the 1992 Rio Declaration, but also in the 1998 UNECE Aarhus Convention.
    - o Last year, UNEP took another step forward in this respect, by publishing Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters.

- o And Latin American and Caribbean states are exploring the possibility of a regional agreement on such access rights.
- o Some human rights bodies have, in effect, closed the circle between the substantive rights, such as rights to life and health, that are most likely to suffer environmental harm, and the procedural rights whose implementation helps to ensure environmental protection.
- o In order to safeguard the environment from the types of harm that violate the first set of rights, they have concluded that States should respect and ensure the second set of rights.

[[For example, the African Commission on Human and Peoples' Rights has said that government compliance with the spirit of the rights to health and to a satisfactory environment in the African Charter must include "ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities."]]

[[In a series of cases construing the right to privacy, the European Court of Human Rights has similarly held that States must follow a decision-making process that includes "appropriate investigations and studies," gives the public access to information, and provides those concerned effective legal remedies.]]

[[In construing indigenous and tribal property rights, the Inter-American Court of Human Rights has stated that the State must consult with the community regarding any proposed concessions or other activities that may affect their lands and natural resources, ensure that no concession is issued without a prior assessment of its environmental and social impacts, and guarantee that the community receives a reasonable benefit from any such plan if approved. With respect to "large-scale development or investment projects that would have a major impact," the state must do more than consult; it must obtain the community's "free, prior, and informed consent, according to their customs and traditions."]]

- o Making this connection between substantive rights and procedural duties can create a kind of virtuous circle: strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to life, health, property and privacy.
- o The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of other human rights.

- o In short, human rights and the environment are not only interrelated, they are interdependent. A healthy environment is fundamentally important to the enjoyment of human rights, and the exercise of human rights is necessary for a healthy environment.
- o At the beginning of my talk, I said that human rights issues and environmental issues have too often been discussed in complete separation from one another.
- o But, as this brief description shows, that is changing.
  - o UNEP and the Office of the UN High Commissioner for Human Rights have held joint expert meetings, in 2002 and 2009, to clarify the relationship between human rights and the environment, and last year, in preparation for Rio+20, they issued a comprehensive joint report.
- o Also last year, the UN Human Rights Council decided to create a new special mandate: an independent expert with a three-year term to study human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and to identify, promote and exchange views on best practices in that regard.
- o I have the honor of having been appointed to fulfill that mandate last summer.
- o I make my first report to the Human Rights Council in two weeks. The report, which is already publicly available, sets out the issues and explains how I will try to address them.
- o Over the next year, I will seek to map in detail the human rights obligations pertaining to the environment.
  - o Some of those obligations are now firmly established, but many issues are still not well understood. Clarification of the obligations is necessary for States and others to better understand what those obligations require and ensure that they are fully met, in every context from domestic policy to international negotiation.
  - o I will present my conclusions to the Human Rights Council in March 2014.
  - o To that end, I will hold a series of expert and public consultations.
    - o The next one is at the end of this week, here in Nairobi. It will focus on procedural rights and duties.
    - o Later consultations will examine substantive rights and duties, vulnerable groups, and other issues.
- o I invite and welcome your participation and comments on this work as it goes forward.
- o As part of my mandate, the UN Human Rights Council instructed me to “contribute a human rights perspective to follow-up processes” to Rio+20.

- o The Rio+20 outcome document, “The Future We Want,” provides a sturdy basis for such a perspective, by referring to many specific human rights, including rights to food, water, health, and gender equality.
- o But more remains to be done.
- o As the Rio+20 follow-up continues, human rights considerations should be an integral part of its work. In particular:

Human rights law must help to inform the SDGs and fundamental standards for environmental protection. The Rio+20 follow-up should reflect States’ obligations to take steps to prevent environmental degradation that violates human rights, and to protect the human rights of those threatened by environmental harm.

And human rights law must be taken into account in developing environmental governance. Human rights to freedom of expression and association, to information, to participation in decision-making, and to remedies, must be protected, at both the national and the international level.
- o To this end, States should continue to take account of the decisions and recommendations from the many forums, from international conferences to special procedures to regional human rights tribunals, which are actively developing and implementing the human rights norms relevant to environmental protection.
  - o My mandate is to help to identify and disseminate those norms, but it is important to remember that they are not frozen in place while this mandate proceeds. Their development will continue to flourish in the years to come.
- o I look forward to contributing to your vital task of ensuring that development becomes truly sustainable – that is, truly protective of human rights and of the environment.