



# Issue Brief

## Environmental Rule of Law: Critical to Sustainable Development

The rule of law is a fundamental concept at the heart of the UN. The Secretary-General has defined the rule of law as a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.<sup>1</sup>

Environmental rule of law is central to sustainable development. The ever increasing environmental pressures from climate change, biodiversity loss, water scarcity, air and water pollution, soil degradation, among others, have far reaching economic and social consequences. They contribute to poverty and to growing social inequalities. Conflicts over natural resources and environmental crimes exacerbate the problems. At least 40 percent of internal conflicts over the last 60 years have a link to natural resources. The risks of violent conflict increase when exploitation of natural resources causes environmental damage, loss of livelihood, or unequal distribution of benefits. Poor people are especially vulnerable, as are women and girls. Natural resources that are managed sustainably, transparently, and on the basis of the rule of law can be the engine for sustainable development as well as a platform for peace and justice.

### Violations of environmental law undermine sustainable development

At its first universal session in 2013, UNEP's Governing Body adopted Decision 27/9, on Advancing Justice, Governance and Law for Environmental Sustainability. In it, Members States recognized the growing importance of rule of law in the field of the environment in order to reduce violations of environmental law and to achieve sustainable development overall. They held that 'the violation of environmental law has the potential to undermine sustainable development and the implementation of agreed environmental goals and objectives at all levels and that the rule of law and good governance play an essential role in reducing such violations'. Decision 27/9 is the first internationally negotiated document to establish the term 'environmental rule of law.' It invited Governments and relevant organizations to reinforce international, regional and sub-regional cooperation to combat noncompliance with environmental laws.

Hundreds of treaties, nonbinding legal instruments, documents setting forth internationally agreed goals and objectives, and national laws and policies address environmental problems. Implementation and compliance with them remains a major challenge. For example, of the 90 most important environmental goals and objectives, significant progress has to date only been made in four. Several critical thresholds for humanity may soon be exceeded, beyond which abrupt and generally irreversible changes to the life-support functions of the planet could occur.<sup>2</sup>

Environmental rule of law integrates the critical environmental needs with the essential elements of the rule of law, and provides the basis for reforming environmental governance. It prioritizes environmental sustainability by connecting it with fundamental rights and obligations. It implicitly reflects universal moral values and ethical norms of behaviour, and it provides a foundation for environmental rights and obligations. Without environmental rule of law and the enforcement of legal rights and obligations, environmental governance may be arbitrary, that is, discretionary, subjective, and unpredictable.

### A unique opportunity provided by the post-2015 development agenda

The post-2015 development agenda provides a unique opportunity to ensure that sustainable development is based on the rule of law, and affords all people equality in terms of environmental protection. It also provides a vehicle for translating the hundreds of existing commitments in the field of environment into action. To this end, legal and practical means to increase transparency, strengthen access to information and enhance public participation in environmental decision-making processes will be needed.

We need to increase the capacity of all those critical to implementing environmental rule of law. This includes in particular courts and other tribunals, law enforcement agencies, auditing institutions and other stakeholders at the national, sub-regional, regional and international levels. Courts and tribunals the world over now address environmental issues. More than 50 States have established specialized environmental courts and tribunals. Yet, citizen access to justice in environmental matters differs greatly from country to country and is far from being barrier free. These barriers must be removed and the capacity of courts and tribunals to dispose of environmental cases strengthened.

The protection of the environment and the promotion and protection of human rights are increasingly recognized as intertwined and complementary. Ecosystems and the services they provide, including food, water, disease management, climate regulation, spiritual fulfilment and aesthetic enjoyment, are the foundations for the full enjoyment of human rights, such as the right to life, health, food and safe drinking water. At the same time, human rights are instrumental in fostering sustainable development and environmental objectives. The 1972 Stockholm Declaration on the Human Environment expressed this connection<sup>3</sup> and the 2012 Rio+20 Conference explicitly affirmed it.<sup>4</sup>

1 Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies, S/2004/616

2 UNEP, The fifth edition of the Global Environmental Outlook (GEO-5), <http://www.unep.org/geo/geo5.asp>

3 Principle 1 of the 1972 Stockholm Declaration on the Human Environment already established 40 years ago that humanity is entitled to "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 (...)".

4 Governments at Rio+20 reaffirmed that broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development. The Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, adopted at the UNEP World Congress on Justice, Governance and Law for Environmental Sustainability also affirms that environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and the rule of law, to be predicated on, among other things: the recognition of the relationship between human rights and the environment.

A rights-based approach to guide decision-making will ultimately lead to better results in implementing the post-2015 development agenda and in addressing the impact of environmental degradation generally, in particular its impact on the world's poorest and most vulnerable populations. It will encourage economic development that recognizes that healthy ecosystems are a precondition for reducing poverty and an opportunity for development and economic growth.

## Delivering environmental justice

The UNEP International Advisory Council for Environmental Justice<sup>5</sup> and other voices have repeatedly underscored the increasing number of examples from around the world that the rule of law and sound institutions are essential for societies to respond to increasing environmental pressures in a way that respects fundamental rights and principles of justice and fairness, including for future generations and across national borders.<sup>6</sup> These examples also show that in the absence of environmental rule of law, key objectives of good governance cannot be realized. Public participation in decision-making, transparency, and accountability of all persons, institutions and entities, both public and private and including the State itself, rely on the supremacy of the law, as embodied in the environmental rule of law.

## A bold new reality for sustainable development

Moving forward, the global community must make the environmental rule of law a reality for all by realizing its intrinsic value for environmental justice and sustainable development.

It must work towards eliminating financial and other barriers obstructing access to justice in environmental matters. It must invest in environmental legislation, increase support for legislators, and strengthen the capacity of all those involved in implementing, complying with, and enforcing the obligations.

This can only be achieved through fair, effective and transparent institutions and the rule of law, predicated on:

1. fair, clear and implementable environmental laws;
2. public participation in decision-making, and access to justice and information in environmental matters, in accordance with Principle 10 of the Rio Declaration;
3. accountability and integrity of institutions and decision-makers, including through the active engagement of environmental auditing and enforcement;
4. clear and coordinated mandates and roles, across and within institutions;
5. accessible, fair, impartial, timely and responsive dispute resolution mechanisms, including developing specialized expertise in environmental adjudication, and innovative environmental procedures and remedies;
6. recognition of the mutually reinforcing relationship between human rights and the environment; and
7. specific criteria for the interpretation of environmental law.<sup>7</sup>

Just and sustainable development outcomes and the resilience of the poor and those in vulnerable situations to environment-related extreme events require that the post-2015 development agenda fully incorporates the environmental rule of law.

This Issue Brief was prepared by the United Nations Environment Programme (UNEP) under the patronage of the members of the UNEP International Advisory Council for Environmental Justice:

Justice Ricardo Luis Lorenzetti, Chief Justice of Argentina  
The Rt. Hon. Tun Arifin Zakaria, Chief Justice of Malaysia  
Justice Antonio Herman Benjamin, National High Court of Brazil (STJ)  
Justice Winston Anderson, Judge of the Caribbean Court of Justice  
The Rt. Hon. Lord Carnwath of Notting Hill C.V.O., Supreme Court of the United Kingdom  
Justice Philip Waki, President of the Residual Special Court for Sierra Leone  
Edith Brown Weiss, Francis Cabell Brown Professor of International Law at Georgetown University  
Scott Fulton, Visiting Scholar, ELI and Principal, Beveridge and Diamond, PC  
Scott Vaughan, President and CEO, International Institute for Sustainable Development (IISD)

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<sup>5</sup> The Council's main objective is to provide guidance and advice to UNEP and its partners in the implementation of the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability, the furtherance of the World Congress process and the advancement of justice, governance and rule of law for environmental sustainability overall.

<sup>6</sup> See also the proceedings of the Global Symposium on Environmental Rule of Law held during the 1st Session of the United Nations Environment Assembly (UNEA) in June 2014, <http://www.unep.org/unea/erl.asp>

<sup>7</sup> This list of principles forms the core of the 'Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability' adopted by Chief Justices, Heads of Jurisdiction, Attorneys General, Auditors General, Chief Prosecutors, and other high-ranking representatives of the judicial, legal and auditing professions, who gathered in Rio de Janeiro, Brazil, from 17 – 20 June 2012 for the UNEP World Congress on Justice, Governance and Law for Environmental Sustainability. These principles have also been universally recognized by UNEP Governing Council Decision 27/9, which held that environmental rule of law includes 'mutually supporting governance features, including information disclosure, public participation, implementable and enforceable laws, and implementation and accountability mechanisms including coordination of roles as well as environmental auditing and criminal, civil and administrative enforcement with timely, impartial and independent dispute resolution'.