



# Factsheet on Human Rights and the Environment

## Linkages between human rights and the environment

Environmental sustainability and the promotion of human rights are closely intertwined and complementary objectives that are at the core of sustainable development.

The mutually supportive nature of these objectives has several dimensions.

- Ecosystems and the services they provide, such as food, water, disease management, climate regulation, and spiritual fulfilment, are preconditions for the full enjoyment of human rights, including rights to life, health, water, and food.
- At the same time, efforts to promote environmental sustainability can only be effective if they occur in the context of conducive legal frameworks, and are greatly informed by the exercise of certain human rights, such as the rights to information, public participation in decision-making and access to justice.

The implementation of the post-2015 development agenda will require States and other relevant actors to adopt policies and mobilize resources to advance equitable, human-rights-based and sustainable development. The linkages between human rights and the environment are one of the key aspects that need to be addressed in balancing the three dimension of sustainable development across the Sustainable Development Goals (SDGs).

A significant number of court cases, national constitutions and legislation, and international instruments have acknowledged the close linkages between the two fields, in particular with respect to substantive and procedural human rights.

### Substantive rights

International and national law have addressed environmental aspects of a number of substantive human rights. These include civil and political rights, such as the rights to life, religion and property; and cultural and social rights such as rights to health, water, food, and culture. On occasion, human rights mechanisms have addressed the right to a healthy environment directly, but mainly they have focused on the environmental dimensions of more established rights, though emerging rights, such as the right to water and the right to development, have played a major role.

Environmental regimes have touched on individual rights by providing liability and compensation mechanisms, which imply

### Box 1: The right to a healthy environment

The right to a healthy environment is now recognized in many national constitutions and regional instruments, with over 90 national constitutions recognizing some form of environmental rights since the mid-1970s. Many subnational governments also recognize such rights in the absence of their lack of recognition through a national constitution. About two thirds of the constitutional rights refer to health; alternative formulations include rights to a clean, safe, favorable or wholesome environment. Some States have included more detailed rights, such as rights to receive information and to participate in decision-making about environmental matters.

recognition of legally recognizable interests in property and health. Both human rights law and environmental law recognize collective rights implicated by environmental degradation, such as rights held by indigenous peoples. In addition, environmental instruments and international tribunals have mentioned rights held by future generations, though these rights are not well established or defined.

Both human rights and environmental law have recognized the effect of environmental degradation on human welfare. A number of multilateral environmental agreements (MEAs) recognize the link between the environment and human health and well-being, and many MEAs include provisions regarding civil liability and compensation for damage caused by environmental degradation, particularly in the context of pollution. Human rights tribunals have found violations of recognized rights of life, property, health, and a healthy environment caused by environmental factors. The state of the natural environment has also been discussed in the context of the right to respect for family and private life, the right to healthy working conditions, the right to humane treatment, and the right to development. Where the right to a healthy environment actually exists at the regional level, the right has been recognized by courts and tribunals, such as in the cases decided by the African Commission on Human and Peoples Rights based on article 24 of the African Charter, which states that all peoples have the right to a general satisfactory environment.<sup>1</sup>

<sup>1</sup> See e.g., *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria*, Afr. Comm'n H. & Peoples' R., No. 155/96, (May 27, 2002).

Indigenous rights comprise an area of overlap between environmental and human rights law. Both regimes provide special protections for indigenous property rights and rights to control over natural resources. Human rights law has also discussed the environmental aspects of indigenous rights to culture and subsistence. Human rights tribunals have specifically dealt with issues of indigenous rights when indigenous people are forcibly removed from their ancestral land, discussing the implications of such displacement on indigenous rights to religion, property, culture, health, food, and housing.<sup>2</sup> Environmental law has also dealt with protection of collective intellectual property rights, through principles of benefit sharing, i.e. in the context of genetic resources.

In addition, there is some suggestion in both fields that the disproportionate impact of environmental degradation on certain groups could amount to a violation of rights to freedom from discrimination. This potential has been discussed primarily in the context of discrimination against indigenous peoples,<sup>3</sup> though it has also come up in the context of racial minorities.<sup>4</sup>

Finally, environmental degradation plays a decisive role in many conflict situations; it can contribute to the outbreak of a conflict and result in the infringement of fundamental human rights, such as the right to life and the right to health. These infringements include damages to the life and properties of victims of conflict, disruption of normal living conditions, and loss of access to basic services. On the other hand, conflicts can also fuel environmental degradation, by weakening governance structures, undermining positive environmental practices and promoting uncontrolled systems of resource exploitation.

It is thus crucial that conflict management and prevention take environmental protection into account from the outset, along with humanitarian, economic and social needs. Failing to incorporate environmental protection into peacebuilding strategies or neglecting to establish strong governance systems which factor in the environmental rule of law can jeopardize the peace process and the well-being of the population and the environment.

## Procedural rights

Procedural rights are a key point of intersection between environmental and human rights law. Rights to access to information, participation in decision-making, and access to justice are found in both environmental and human rights instruments, and have been interpreted under both regimes to provide broad protections for environmental interests. The protection and promotion of procedural rights has been, and

### Box 2: Access to genetic resources and the fair and equitable sharing of benefits arising from their utilization

In the context of indigenous peoples' rights, the obligation to guarantee access to genetic resources and the fair and equitable sharing of benefits arising from their utilization is also relevant. The concept of Access and Benefit Sharing (ABS) is embedded in the 1992 Convention on Biological Diversity and its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, which entered into force in 2014. The Nagoya Protocol further details the rights and obligations of the different actors involved and generates considerable implications for the rights of indigenous and local communities. While human rights are not explicitly mentioned, the Protocol builds on existing human rights concepts. It requires:

- the prior informed consent or approval and involvement of indigenous and local communities: (i) for access to genetic resources where the communities have the established right to grant such access; and (ii) for access to traditional knowledge associated with genetic resources held by indigenous and local communities;
- State parties to take measures ensuring that benefits arising from the utilisation of genetic resources held by indigenous and local communities are shared in a fair and equitable way with the community concerned based on Mutually Agreed Terms;
- State parties to take indigenous and local communities' customary laws and community protocols into account when regulating access and benefit sharing.

In addition, the Protocol establishes an access and benefit-sharing clearing house as a means to share information related to access and benefit sharing.

continues to be, and important tool for the protection of the natural environment.

Principle 10 of the Rio Declaration made a significant impact on the emphasis on procedural rights in an environmental context. This principle declares that "Environmental issues are best handled with participation of all concerned citizens, at the relevant level." It goes on to state that individuals should have

2 See e.g., *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-Am. Ct., (ser. C) No. 79 (Aug. 31, 2001); Centre for Minority Rights Development (Kenya) and Minority Rights Group international on behalf of Endorois Welfare Council v. Kenya, Afr. Comm'n H. & Peoples' R., No. 276/2003 (Feb. 4, 2010).

3 *Maya Indigenous Communities of the Toledo District v. Belize*, inter-Am. Comm'n H.R., Report No. 40/04, (2004)

4 *Mossville Environmental Action Now v. United States*, Inter-Am. Comm'n H.R., Report No. 43/10, (Mar. 17, 2010) (admissibility decision).



appropriate access to information, the ability to participate in decision-making processes, and effective access to judicial and administrative proceedings, including redress and remedy.

A number of subsequent MEAs adopted in the early 1990s incorporated minimum standards for access to information and participation, though they vary on the extent of participation and whether there were any review procedures or access to remedy. The Aarhus Convention is the most significant international environmental agreement protecting procedural human rights, though it operates mainly at a regional level. The Preamble declares the right of everyone to live in an environment adequate to his or her health and well-being. Article 1 provides for rights of access to information, public participation and access to justice. The Aarhus Compliance Committee operates a relatively effective complaints mechanism, which has interpreted and developed the Convention's principles.

Procedural rights, including rights of information, participation, and access to justice, have been recognized in the context of regional and global human rights instruments as well. The Inter-American Court has recognized the right to access to information in an environmental context in connection with the freedom of expression provided in Article 13 of the American Convention of Human Rights. The European Court of Justice has found that lengthy administrative proceedings to pursue an environmental right may violate the Article 6 right to fair hearing within a reasonable time. Against the background of oil pipeline finance in Chad, The World Bank Inspection Panel has also acknowledged human rights and environment procedural rights. It found that the human rights situation raised questions about the Bank's compliance with policies on informed and open consultation, and recommended further monitoring.

A special form of procedural protection unique to environmental law is the environmental impact assessment, which has been linked to the rights to information and public participation. This mechanism has been provided for in several global MEAs such as the UN Convention on the Law of the Sea and the Convention on Biological Diversity, as well as human rights agreements such as the ILO Convention 169 concerning Indigenous and Tribal Peoples, and regional agreements, particularly agreements relating to regional seas. The UNECE Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) exclusively addresses the procedural requirements of environmental impact assessments, including the requirement of public participation in the assessment process.

Environmental impact assessments have been connected to human rights in regional and global jurisprudence. The African Commission on Human and Peoples Rights found that failure to conduct an environmental impact assessment contributed to a violation of the right to property. The European Court of Human Rights found that an environmental impact assessment is important to the determination of an appropriate balance

between individual and public interests, and that failure to conduct such an assessment contributed to a violation of the right to respect for privacy and home life. In the Pulp Mills Case, the ICJ recognized environmental impact assessment as a practice that has become an obligation of general international law, although it found that international law does not prescribe the scope or content of such assessments.

## Implementing a Rights-Based Approach (RBA) to environmental protection

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 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, including environmental decisions. Equally, human rights standards emphasize the need to prioritize access of all persons to at least basic levels of economic, social and cultural rights. 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 rights-based approach for dealing with environmental protection and sustainable development. 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;



- 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.

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 prevent negative impacts on 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 or non-state actors.

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