**PUBLIC MEETING ON IMPLEMENTATION OF**

**HUMAN RIGHTS OBLIGATIONS RELATING TO THE ENVIRONMENT**

**28 OCTOBER 2015**

**10:00 am to 13:00 pm, Room XXIII**

**Palais des Nations**

**Convened by the United Nations Special Rapporteur on human rights and the environment**

**and the Office of the High Commissioner for Human Rights (OHCHR)**

1. **Background**

In March 2012, the Human Rights Council decided to appoint an Independent Expert on human rights and the environment. In Resolution 19/10, the Council requested the Independent Expert, among other things, to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and to identify and promote best practices on the use of human rights obligations and commitments to inform, support and strengthen environmental policy making. Later that year, the Council appointed John Knox, a professor at Wake Forest University, to the position.

Over the next two years, Professor Knox held a series of consultations around the world, in which he heard the views of civil society organizations, governments, international organizations, and academics on the relationship of human rights and the environment. With the assistance of attorneys and academics working on a *pro bono* basis, he also reviewed human rights agreements, declarations, and resolutions, statements by governments in and through the General Assembly and the Human Rights Council, and statements made on environmental matters by every major human rights body, including: the “treaty bodies” of independent experts appointed to oversee compliance with the UN Covenants and other human rights treaties; the thematic special rapporteurs appointed by the Human Rights Council to promote compliance with specific human rights or the rights of particular groups; and the human rights tribunals established to review compliance with the regional human rights treaties.

On the basis of this detailed review, he published 14 reports, one for each source or category of sources, describing in detail their statements about the application of human rights norms to the environment. In March 2014, he submitted a “mapping report” to the Human Rights Council summarizing what international human rights agreements and institutions have said about environmental protection.[[1]](#footnote-1)

The following year, he prepared over 100 one-page descriptions of good practices, which he summarized in a report to the Human Rights Council in March 2015.[[2]](#footnote-2)

In March 2015, at the conclusion of the three year term of the initial appointment, the Human Rights Council decided by consensus in Resolution 28/11 to renew the mandate for another three years and to change the title to Special Rapporteur. The renewed mandate requests the Special Rapporteur to continue to study human rights obligations relating to the environment and to identify good practices in the use of such obligations, but it also asks him to “promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,” to disseminate his findings by “continuing to give particular emphasis to practical solutions with regard to their implementation,” and to “work on identifying challenges and obstacles to the full realization” of such obligations.

Specifically, Resolution 28/11 requests the Special Rapporteur and the Office of the High Commissioner for Human Rights (OHCHR) to convene “an expert seminar on the effective implementation of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, challenges thereto and the way forward, on the basis of the findings of the mandate holder.” A report on the seminar will be submitted to the Human Rights Council at its 31st session, in March 2016.

In addition to organizing the seminar, the Special Rapporteur would like to take the opportunity of being in Geneva to hear views from Permanent Missions to the United Nations Office, International Organizations and civil society organizations to inform this report and also his future work promoting the effective implementation of human rights obligations relating to the environment.

The principal findings of the mandate holder are set out in the mapping and good practices reports. The diverse sources reviewed indicate a growing level of consensus about how human rights norms apply to environmental issues. The conclusions can be summarized as follows:[[3]](#footnote-3)

First, there is no longer serious doubt that environmental degradation can and does interfere with the enjoyment of a wide range of human rights. To give just a few examples, many regional tribunals and other human rights bodies have described how climate change, the improper disposal of toxic wastes, exposure to radiation and harmful chemicals, oil pollution, and large-scale water pollution, as well as many other types of environmental harm, infringe human rights, including the right to life, the right to the enjoyment of the highest attainable standard of physical and mental health, and the right to an adequate standard of living and its components, such as the rights to food, water, and housing.

Moreover, human rights bodies have emphasized that, in the words of the Human Rights Council, “environmental damage is felt most acutely by those segments of the population already in vulnerable situations.” For example, it is universally recognized that because of their close relationship with and dependence upon nature, indigenous communities are particularly vulnerable to environmental harm.

The second point of agreement is that international human rights law sets out obligations on States that are relevant to environmental protection. Human rights law, as defined in international treaties at the global and the regional level, requires States to respect and protect (and, in some cases, promote and fulfill) the human rights of those within their jurisdiction (and arguably beyond their jurisdiction). Despite the wide variety of human rights treaties reviewed, the bodies interpreting them have reached remarkably congruent conclusions as to how those obligations apply in the environmental context. The mapping report organizes those conclusions according to three sets of duties: procedural obligations; substantive obligations; and obligations relating to those in vulnerable situations.

1. *Procedural obligations.* To respect and protect the human rights of people threatened by environmental harm, States have several procedural duties. First, human rights bodies repeatedly conclude that States must assess the potential environmental impacts on human rights of a proposed course of action before taking the action. Second, they must make publicly available information about those impacts, as well as, more generally, information they possess about the environment and the possible effects of different actions on it. Third, States have general obligations to facilitate public participation in governmental decision-making, and these obligations apply to environmental decision-making. Fourth, States must take steps to protect the rights of expression and association, including when those rights are being exercised by environmental activists or anyone else in the context of environmental issues. Finally, States must provide access to judicial and/or other legal remedies for environmental harm to human rights, and for failure to follow the States’ other duties under environmental human rights law.

These procedural duties may appear at first to be based primarily on civil and political rights, and it is certainly true that the International Covenant on Civil and Political Rights, as well as other human rights instruments setting out civil and political rights, include rights to freedom of expression, association, participation, and remedy that support these obligations. But in the environmental context, human rights bodies have also derived these obligations from economic, social, and cultural rights, including the rights to health, food, and water.

The wide acceptance of the importance of these procedural duties is indicated by their inclusion in a number of international environmental instruments as well. Perhaps the most famous is the 1992 Rio Declaration, Principle 10 of which states that “[e]nvironmental issues are best handled with participation of all concerned citizens,” that “each individual shall have appropriate access to information concerning the environment,” that “States shall facilitate and encourage public awareness and participation by making information widely available, and that “[e]ffective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” The Rio Declaration is not in itself a binding legal instrument, but human rights bodies have made clear that they view the rights of access to information, participation, and remedy reflected in Principle 10 to be required by human rights law.

2. *Substantive obligations.* Human rights instruments and institutions have stated that governments have duties to adopt substantive as well as procedural frameworks to protect against environmental harm that may infringe on enjoyment of human rights.

In contrast to the relatively strict procedural obligations described above, however, human rights bodies have declined to adopt concrete substantive limits on levels of pollution or other types of environmental harm. They have made clear that, as long as States meet their procedural duties, they have some discretion to decide how to balance environmental protection against other societal interests, including economic development.

At the same time, this discretion is not unlimited. In the words of the mapping report, “the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.” In reviewing whether States have struck appropriate balances in particular cases, human rights bodies have identified a number of relevant factors. For example, they have referred to national and international standards for health and pollution. If a policy or action does not meet such standards, it is much more likely to be considered in violation of the State’s human rights duties. Another relevant factor is whether the action in question is retrogressive. If the action lowers standards, then it is strongly discouraged. Once a State has adopted environmental standards into its law, human rights bodies regularly state that it must implement those standards. And States are obligated not to discriminate in applying any environmental policy. The right to equal protection under the law, which is protected by the Universal Declaration of Human Rights, the Covenants, and many other human rights agreements, includes equal protection under environmental law.

Finally, it is clear that the obligations on States extend to protection against environmental harm from private actors, including corporations.

3. *Obligations relating to those in vulnerable situations*. In addition to these across-the-board obligations, human rights law imposes more specific duties on States with respect to those particularly vulnerable, including women, children, and those in extreme poverty. These duties have been elaborated in most detail with respect to indigenous peoples. On the basis of International Labour Organization Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, the UN Special Rapporteur on the rights of indigenous peoples and other human rights experts have described a number of duties imposed by human rights law in respect of indigenous peoples and environmental protection, including a heightened obligation to facilitate the participation of indigenous peoples in decisions that concern them, by generally not allowing extractive activities to take place within their territories without their free, prior and informed consent, and a duty to ensure that any development that does take place provides a reasonable benefit to the indigenous community affected.

Many governments, civil society organizations, and international organizations are already employing human rights perspectives to a vast array of environmental problems. The Special Rapporteur identified good practices with respect to each of the above obligations, in every region of the world.

The human rights norms relating to the environment are continuing to develop and evolve. With a view to further clarifying the applicable obligations, the Special Rapporteur is continuing to examine some thematic issues, including in particular climate change and ecosystem protection.

Nevertheless, the human rights norms relating to environmental protection are already clear enough that it is appropriate to examine how they can be better promoted and implemented, as Resolution 28/11 requests. This effort is in line with broader endeavors to shift the focus of the Human Rights Council “from declaration to implementation,” as expressed in the context of the Glion Human Rights Dialogue among governments and other interested stakeholders earlier this year.[[4]](#footnote-4)

1. **Objectives of this public meeting**

This public meeting will inform the work of the Special Rapporteur to the Human Rights Council pursuant to Resolution 28/11, which requests the Special Rapporteur, among other things, to prepare a report for the Human Rights Council on the effective implementation of human rights obligations relating to the environment the challenges and the way forward. In that light, the objectives of this meeting are:

a) to identify methods to promote the implementation of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;

b) to analyze the pros and cons of such methods, in light of their feasibility and potential effectiveness;

c) to identify challenges to the effective implementation of such methods; and

d) to provide recommendations to the Council, as well as to governments, civil society organizations, international organizations, as to the way forward.

Here a few examples of potential methods of implementation that may deserve further attention in this seminar. This list is not intended to be exclusive or to suggest preferences of the Special Rapporteur or OHCHR, but rather to help to spark discussion.

One category is the adoption of instruments at the global and/or the regional level. Examples of types of norm-clarifying instruments at the global level include: (1) treaties; (2) declarations adopted by the Human Rights Council or the UN General Assembly, such as the UN Declaration on the Rights of Indigenous Peoples; (3) guiding principles presented to the Human Rights Council, such as the Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court presented by the Working Group on Arbitrary Detention this year, and the Guiding Principles on Business and Human Rights presented by John Ruggie in 2011; (4) resolutions adopted by the Human Rights Council or the General Assembly; and (5) statements by expert bodies, such as the General Comments adopted by UN treaty bodies.

At the regional level, an important current example is the negotiation by ECLAC countries of a regional agreement on rights of access to information, participation, and remedy, as an effort to implement Principle 10 of the Rio Declaration.

Another set of possible measures has to do with mainstreaming a human rights perspective in international agencies.[[5]](#footnote-5) Some positive steps have already been taken in this respect. The UN Environment Programme has been very active in supporting the identification of good practices in the use of human rights obligations, and the clarification of the relationship between human rights and the environment. The UN Development Programme is currently undertaking a program on environmental governance. But more could be done, for example with other UN bodies and specialized agencies, multilateral environmental agreements, international financial institutions, and regional development agencies.

A third category of practical methods of implementation could include efforts to provide technical assistance, especially at the national level. Such assistance could run a very wide spectrum, including (a) model legislation; (b) handbooks such as the multi-volume handbook prepared by the former Special Rapporteur on the right to water;[[6]](#footnote-6) and (c) educational courses offered by international agencies, such as UNITAR.

Concrete methods of implementation could also include the provision of forums where information could be exchanged and disseminated, such as the annual forum on business and human rights.

**3. Outputs**

This public meeting will inform the report of the Special Rapporteur to the Human Rights Council pursuant to Resolution 28/11. It will also help to provide a basis for the continuing work of the Special Rapporteur beyond that report, to promote the effective implementation of human rights obligations relating to the environment.

**4. Participants**

The public meeting will gather Permanent Missions to the United Nations Office, International Organizations and civil society organizations in Geneva .

**5. Format**

The public meeting will be an interactive, open and informal debate moderated by the Special Rapporteur.

The Chatham House rules shall be observed during the discussion (i.e., points raised during the discussion will not be ascribed to any specific participant), to encourage those contributing to do so as candidly as possible.

1. The mapping report and the specific reports on which it is based are available at <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx> and

   <http://srenvironment.org/mapping-report-2014-2/>. [↑](#footnote-ref-1)
2. The good practices report is available at <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/GoodPractices.aspx> and <http://srenvironment.org/good-practices-report-2015/>. [↑](#footnote-ref-2)
3. The following description is taken from a recent chapter by Professor Knox, to be published in Environmental Disasters and International Law (forthcoming 2016). [↑](#footnote-ref-3)
4. Universal Rights Group, The Human Rights Council at 10: Improving Relevance, Strengthening Impact (2015), available at <http://www.universal-rights.org/urg-policy-reports/glion-human-rights-dialogue-human-rights-council-10-improving-relevance-strengthening-impact/>. [↑](#footnote-ref-4)
5. For a general discussion of mainstreaming human rights perspectives in the UN and in national governments, see Paul Hunt, “Is the UN Human Rights Council delivering on its mandate to mainstream human rights?” (24 August 2015), at <http://www.universal-rights.org/blog/un-human-rights-council-delivering-mandate-mainstream-human-rights/>. [↑](#footnote-ref-5)
6. <http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>. [↑](#footnote-ref-6)