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**The United Nations Mandate on**

**Human Rights and the Environment**

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o I would like to express my gratitude to the Committee on the Rights of the Child for inviting me to speak at this Day of General Discussion.

o I will say a few words about the relationship between human rights and environmental protection, which may help to put this event into a broader context, and highlight why today’s discussions are so important.

o In 2012, I was appointed by the United Nations Human Rights Council to be the first UN Independent Expert on the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

o The Council asked me to clarify the relationship of human rights and environmental protection.

o Why did this relationship need clarification? Largely because environmental human rights – that is, human rights understood to be related to environmental protection – are late arrivals to the body of human rights law.

o The Universal Declaration of Human Rights does not mention the environment..

o Nor, at the time, did the national constitutions to which the drafters of the Universal Declaration looked for inspiration.

o The silence was understandable. Although human beings have always known of our dependence on the environment, we were only beginning to realize how much damage our activities could cause to the environment and, as a result, to ourselves. Efforts to mitigate environmental degradation were then still in their infancy.

o As the environmental movement grew, from the 1960s on, there began to be calls for human rights law to recognize the importance of environmental protection.

o The recognition of the close relationship between human rights and the environment took two forms.

o The first was the adoption of an explicit new right to an environment characterized in terms such as healthy, safe, satisfactory or sustainable.

o In 1976, Portugal became the first country to adopt a constitutional “right to a healthy and ecologically balanced human environment”.

o Since then, about 100 States have adopted similar rights in their national constitutions.

o Regional human rights agreements drafted after the 1970s have also included such rights. Examples include the 1981 African Charter on Human and Peoples’ Rights, the 1988 Additional Protocol to the American Convention on Human Rights, and the 2004 Arab Charter on Human Rights.

o But despite repeated efforts, no global instrument sets out an explicit right to a healthy (or satisfactory, safe or sustainable) environment.

o Instead, United Nations human rights bodies, including the Human Rights Council, the special procedures, and the treaty bodies, concentrated on what I have called “greening” existing human rights – that is, they have examined the relationship of a wide range of rights, including rights to life, health, food, water, and housing, to environmental issues.

o Regional human rights tribunals, including the European Court of Human Rights and the Inter-American Court of Human Rights, did likewise.

o As a result, these human rights bodies created an environmental human rights jurisprudence.

o By the time my mandate was created, this jurisprudence was quite extensive.

o But it had developed in many different forums, and it was not obvious what the jurisprudence provided, and whether it was coherent enough to have given rise to a set of human rights norms relating to the environment.

o Therefore, my first task as the Independent Expert was to study this developing field of law.

o To that end, I held consultations in every region of the world. I heard from hundreds of people working to bring human rights norms to bear on environmental issues. And, with *pro bono* assistance, I researched what human rights tribunals, international bodies, and domestic courts have said about the relationship.

o In 2014, I published 14 reports describing statements of human rights bodies on how the rights within their purview applied to environmental issues. Each report was devoted to a particular human rights body, or set of bodies.

o For example, a report described what the Human Rights Committee had said about environmental issues in the context of the International Covenant on Civil and Political Rights, another report did the same for the Committee on Economic, Social and Cultural Rights, and so on.

o Perhaps of most relevance here, one of the reports addressed the Convention on the Rights of the Child, and the interpretations of the Convention by the Committee on the Rights of the Child.

o If I had to sum up the lengthy reports I wrote about the relationship of human rights and the environment in one sentence, I would say:

We must have a healthy environment in order to be able to enjoy human rights, and

we must be able to exercise our human rights in order to have a healthy environment.

o My summary mapping report to the Human Rights Council in March 2014 was longer than one sentence, however!

o It described four main conclusions that I reached from this effort to map what human rights institutions have said about the environment.

o First, human rights tribunals and other international bodies have made clear that environmental harm can and does interfere with the full enjoyment of a vast range of human rights.

o This may seem obvious, of course. It is well understood that pollution causes the deaths of millions of people every year, and that climate change threatens the lives of millions more over the coming decades.

o Nevertheless, even 15 years ago, many governments were reluctant to accept the conclusion that naturally follows – that environmental harm interferes with the enjoyment of rights to life and health, among many others.

o That has changed. Not only human rights bodies, but also governments, have accepted the basic idea that environmental harm threatens and often infringes so many human rights.

o In addition, human rights bodies have emphasized that human rights law requires States to take steps to protect people from such environmental harm.

o Human rights bodies have reached remarkably congruent conclusions about what this obligation requires.

o Specifically, they have identified three categories of subsidiary obligations: procedural obligations, substantive obligations, and the heightened obligations States owe to those who are especially vulnerable to environmental harm.

o Procedural obligations include obligations:

(a) to assess environmental impacts and make environmental information public;

(b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and

(c) to provide access to effective remedies for environmental harm.

o These obligations are often considered to correspond to civil and political rights, but in the environmental context they have been derived from the full range of human rights whose enjoyment is threatened by environmental harm, including rights to health, food, and water.

o States also have substantive obligations to protect against environmental harm that interferes with the enjoyment of human rights. Specifically, States have an obligation to adopt a legal framework that protects against such environmental harm. This obligation includes a duty to protect against such harm when it is caused by corporations and other non-State actors, as well as by State agencies.

o The obligation to protect human rights from environmental harm does not require the cessation of all activities that may cause any environmental degradation. States have discretion to strike a balance between environmental protection and other issues of societal importance, such as economic development and the rights of others.

o But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights. In determining whether an environmental law has struck a reasonable balance, relevant factors include whether it meets national and international health standards, and whether it is retrogressive. There is a strong presumption that retrogressive measures are not permissible. Moreover, once a State has adopted environmental standards into its law, it must implement and comply with those standards.

o Finally, States must take into account the situation of groups particularly vulnerable to environmental harm. States must not discriminate against groups on prohibited grounds in the application of their environmental laws and policies. And they must take additional steps to protect certain groups.

o These obligations are developed in most detail with respect to indigenous peoples. Perhaps this is not surprising. Because of their close relationship with the environment, indigenous peoples are particularly vulnerable to impairment of their rights through environmental harm.

o But it seems likely that in sheer numbers, no group is more vulnerable to environmental harm, as a whole, than children. The civil society organization Terre Des Hommes, for example, has recently pointed out that every year, more than three million children die from environmental disasters.

o Children are also particularly susceptible to persistent and long-term environmental degradation, such as air pollution and water pollution. Because children’s immune systems are still developing, they suffer easily from skin, respiratory and intestinal diseases, among others.

o Of course, the Convention on the Rights of the Child recognizes the importance of the environment. Negotiated well after the rise of the environmental movement, its Parties agree that education of the child shall be directed, among other things, to: “The development of respect for the natural environment.” art. 29(1(e)

o In addition, the Convention recognizes the special vulnerability of children to environmental harm, stating in its article 24(2)(c) that environmental pollution poses “dangers and risks” to nutritious foods and clean drinking water, which are necessary for children to be able to enjoy their right to health.

o And the Committee has included references to environmental harm in various of its concluding observations and general comments.

o Indeed, its concluding comments sometimes include subsections entitled “environmental health.”

o And its General Comment 15 (April 2013), on the right to health, stated that:

States should take measures to address the dangers and risks that local environmental pollution poses to children’s health in all settings. ¶ 49

o The General Comment also addressed climate change, a threat to human rights that is not addressed explicitly in the text of the Convention, stating:

The Committee draws attention to the relevance of the environment, beyond environmental pollution, to children’s health. Environmental interventions should, inter alia, address climate change, as this is one of the biggest threats to children’s health and exacerbates health disparities. ¶ 50

o As important as these references are, however, it would be highly useful for a more detailed exploration of how environmental harm interferes with the enjoyment of the right to health, as well as many other rights, such as rights to housing, food, and water. In addition, the double vulnerability of indigenous and minority children also deserves further examination.

o At the same time, it would be very valuable to further clarify the obligations of States to protect these rights from environmental harm.

o To give just one example, it is critical to explain how children should be able to exercise their rights of information, participation, and remedy to protect against environmental harm.

o So this Day of General Discussion could not be more timely or important.

o I also want to state to the participants, and to the Committee, that I and my colleagues stand ready to assist the Committee in any way we can, with the support of the Human Rights Council.

o In 2015, the Council renewed my mandate for another three years and changed my title to Special Rapporteur, indicating its belief that the norms in this area were sufficiently well defined that the mandate should shift to promoting their implementation.

o I think that the Council would be delighted to see that I am fulfilling that part of the mandate (in part) by participating in this Day of General Discussion, and I am happy to help in any further ways that I can!