

# **Human Rights and the Environment: Carrying the Conversation Forward**

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Ladies and gentlemen, it is an honor to be here today to speak about the relationship of human rights and the environment. For the next three days, this seminar will carry forward a conversation that, in some ways, began more than 40 years ago. In 1972, in Stockholm, at the very first international conference on the environment, countries recognized that environmental protection is of fundamental importance to human rights. The 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.”

Since 1972, we have seen countless examples of ways that the failure to protect the environment interferes with 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 hazardous waste sites are located in the communities of disfavored minorities, or resources are extracted from the territory of indigenous peoples without their agreement, then their right to enjoy their property without discrimination has been infringed.
- 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 communities, 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 suffer threats and violence 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.

All of these abuses may seem obvious. But the relationship between human rights and the environment is still less well-known than it should be. Too often, the conversation about human rights and the environment has fallen silent, as those concerned with human rights on the one hand, and those concerned with environmental protection on the other, address their topics in complete separation from one another.

One might ask, does this really matter? Why is it important to continue the dialogue between human rights and the environment? What does a human rights perspective add to environmental policy? More complete answers to these questions will emerge over the course of our discussions here this week. But let me put forward three preliminary answers.

- o First, a human rights perspective demonstrates the fundamental importance of environmental protection to the dignity, equality, and freedom of human beings.
- o Second, a human rights framework 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.

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. In other words, it makes clear that protecting the environment is imperative, morally and legally, in order to protect rights to life, health, property and, indeed, all other rights set out in the Universal Declaration of Human Rights. Moreover, a human rights perspective helps to draw attention to the grave effects of environmental harm on particular individuals and communities.

Many States have chosen to underscore the importance of environmental protection by adopting an explicit human right to a healthy environment. More than 90 States have adopted such a right in their national constitutions. They and many others have also joined together to incorporate the right in regional instruments.

For example, the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also known as the Aarhus Convention after the Danish city in which it was signed in 1998, states in its first article:

“In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.”

The Aarhus Convention now has 46 parties in Europe and central Asia, including almost every country from Portugal to Kazakhstan.

Just last November, the Association of Southeast Asian Nations adopted the ASEAN Human Rights Declaration, which states:

“Every person has the right to an adequate standard of living for himself or herself and his or her family including . . . [t]he right to a safe, clean and sustainable environment.”

By adopting this right at the constitutional or international level, countries have announced that they believe that the right to live in a satisfactory environment is of the same fundamental importance as other human rights.

The second advantage of a human rights approach to environmental protection is that human rights law sets minimum substantive standards. 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. 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.

The precise contours of these duties have not always been clear, but they are rapidly becoming clearer. There is a growing body of human rights jurisprudence on the effect of environmental harm on existing rights. Much of it is being developed by domestic courts and by regional human rights bodies, including the European Court of Human Rights. 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. They suggest that while States have discretion to decide how to protect the environment, they must endeavor to protect against environmental harms that cause grave or widespread infringements of basic rights, including rights to life, health, water, and food.

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. 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.

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. Last year, the UN Environmental Programme 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. And Latin American and Caribbean states are exploring the possibility of a regional agreement on such access rights.

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. 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.

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. The converse is also true. Failure to meet procedural obligations can result in a degraded environment that interferes with the full enjoyment of human rights.

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.

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. But, as this brief description shows, that is changing.

Domestic courts have interpreted their constitutional rights to require governments to take specific steps to protect the environment. Regional human rights tribunals are developing an environmental human rights jurisprudence. And in March 2012, the United Nations 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.

I have the honor of having been appointed to fulfill that mandate in July 2012. Since my appointment, I have held consultations in a number of different cities, including Geneva, Nairobi, Panama City, and Washington, D.C, on different aspects of the mandate. I made my first report to the Human Rights Council in March 2013. The report set out the issues and explained how I will try to address them.

Over the last year, I have been seeking to map in detail the human rights obligations pertaining to the environment. I will present my conclusions to the Human Rights Council in March 2014. Some of those obligations are now firmly established, but many issues are still not well understood. Let me briefly highlight three:

- o First, how important is the adoption of an explicit right to a healthy environment? What does such a right add, if anything, to the scope of existing human rights such as rights to life and health?
- o Second, what does the human rights perspective have to say about transboundary environmental harm? Much of international human rights

law was developed to define the duties of a State toward those within its jurisdiction. But many of the worst kinds of environmental harm are transboundary, or even global. What obligations does human rights law impose on States to protect those harmed by the extraterritorial consequences of actions taken within their borders?

- o Finally, how can different institutions work together to promote human rights in the context of environmental protection? How can global, regional, and national institutions support one another? Moreover, much environmental harm comes from private actors, such as corporations. What responsibilities do they have to protect human rights from environmental harms?

I want to conclude by thanking you again for the opportunity to participate in this timely and important seminar. I look forward to our carrying forward together this vital conversation about human rights and the environment.