



# General Assembly

Distr.: General  
16 December 2011

Original: English

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## Human Rights Council

### Nineteenth session

Agenda items 2 and 3

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## **Analytical study on the relationship between human rights and the environment**

### **Report of the United Nations High Commissioner for Human Rights**

#### *Summary*

The present report is submitted in accordance with resolution 16/11 of the Human Rights Council. This analytical study examines the key components of the relationship between human rights and the environment, with emphasis on the following themes: the conceptual relationship between human rights and the environment; environmental threats to human rights; mutual reinforcement of environmental and human rights protection; and extraterritorial dimensions of human rights and the environment.

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## I. Introduction

1. In its resolution 16/11 on human rights and the environment, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights “in consultation with and taking into account the views of States Members of the United Nations, relevant international organizations and intergovernmental bodies, including the United Nations Environment Programme and relevant multilateral environment agreements, special procedures, treaty bodies and other stakeholders, to conduct, within existing resources, a detailed analytical study on the relationship between human rights and the environment, to be submitted to the Human Rights Council prior to its nineteenth session”.

2. The resolution identified several key components of the interaction between human rights and the environment, including the following:

(a) Sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights;

(b) Environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights;

(c) While these implications affect individuals and communities around the world, environmental damage is felt most acutely by those segments of the population already in vulnerable situations;

(d) Many forms of environmental damage are transnational in character and that effective international cooperation to address such damage is important in order to support national efforts for the realization of human rights;

(e) Human rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection and promoting policy coherence, legitimacy and sustainable outcomes.

3. Pursuant to the resolution 16/11, this analytical study examines the key components of the relationship between human rights and the environment, with emphasis on the themes identified by the Council in its abovementioned resolution.

4. Submissions were received from the following Member States: Argentina, Azerbaijan, Bahrain, Brazil, Colombia, Costa Rica, Cuba, Estonia, Finland, Georgia, Germany, Greece, Guatemala, Honduras (three submissions), Iraq, Macedonia, Maldives, Mauritius, Mexico, Paraguay, Republic of Moldova, Serbia, Slovenia, Spain, Switzerland and Turkey. Regarding other United Nations agencies and programmes, contributions were submitted by the Economic Commission for Latin America and the Caribbean, the United Nations High Commissioner for Refugees and the United Nations Office on Drugs and Crime. Lastly, a number of contributions were made by non-governmental organizations, academic institutions and national human rights institutions: Åbo Akademi University, Institute for Human Rights (Finland); Asociación Interamericana para la Defensa del Ambiente (AIDA) (Mexico); ADET (Amis des Etrangers au Togo) (Togo); Caritas (Slovenia); Centro de Estudios Ambientales (CEDEA) (Argentina); Earthjustice (United States of America), in joint submission with AIDA (Mexico) and Human Rights Advocates International, Inc. (United States); Espoir pour Tous (Democratic Republic of Congo); Forum for Indigenous Perspectives and Action (India) and Citizens’ Concern for Dams and Development (India); the Grand Council of the Crees (Eeyou Itschee) (Canada), in a joint submission with 75 indigenous organizations; Inuit Circumpolar Council (Greenland); International Commission of Jurists, Dutch Section (Netherlands); International Union for Conservation of Nature and Natural Resources (IUCN) – Environmental Law Center (Germany); Oregon Toxics Alliance (United States); Pace University (United States);

Scottish Human Rights Commission (United Kingdom of Great Britain and Northern Ireland); Human Rights Ombudsman Office (Slovenia); Stand Up for Your Rights (Netherlands); Solidarité pour les Initiatives des Peuples Autochtones (SIPA) (Rwanda) and University of Ljubljana, Faculty of Social Sciences (Slovenia).

5. In line with the requirements of resolution 16/11, the present report discusses the theoretical issues that arise in the relationship between human rights and the environment; major environmental threats and their impact on human rights; how environmental protection contributes to the realization of human rights; the extent to which national constitutions have incorporated environmental rights and responsibilities; the work of the Charter of the United Nations and human rights treaty bodies regarding the relationship between human rights and the environment; the evolving jurisprudence of regional human rights bodies; and the debate over the extraterritorial dimension of human rights and environment. Lastly, the analytical study also offers conclusions and recommendations.

## **II. Theoretical discussions on the relationship between human rights and the environment**

6. Since the United Nations Conference on the Human Environment in 1972, the relationship between human rights and the environment has led to a vigorous intellectual discussion regarding a number of critical issues. The theoretical discussion engages two central issues. First, what is the nature of the relationship between human rights and the environment? Second, should the international community recognize a new human right to a healthy environment?

7. In connection with the first issue, namely the nature of the relationship between human rights and the environment, there are three major approaches to explaining this. These approaches are capable of coexisting and do not necessarily exclude one another. The first approach postulates that the environment is a precondition to the enjoyment of human rights. This approach underscores the fact that life and human dignity are only possible where people have access to an environment with certain basic qualities. Environmental degradation, including pollution of air, water and land can affect the realization of particular rights, such as the rights to life, food and health.

8. The second approach submits that human rights are tools to address environmental issues, both procedurally and substantively. This approach emphasizes the possibility of using human rights to achieve adequate levels of environmental protection. From a procedural perspective, rights such as access to information, participation in public affairs and access to justice are central to securing governance structures that enable society to adopt fair decision-making processes with respect to environmental issues. From a substantive perspective, this approach underscores the environmental dimensions of certain protected rights.

9. The third approach proposes the integration of human rights and the environment under the concept of sustainable development. Accordingly, this approach underlines that societal objectives must be treated in an integrated manner and that the integration of economic, environmental and social justice issues is done with a view to the concept of sustainable development.

10. These three approaches have influenced global vision, policymaking, development of jurisprudence relating to human rights and the environment and the debate over the recognition of a new human right to a healthy environment.

11. The second central issue of theoretical and practical importance concerns the call from some quarters for the recognition of a human right to a healthy environment. The

debate has involved a number of difficult questions. For example, what is the benefit of formulating a new human right to a healthy environment? Some individuals have noted that the international community should not proclaim new human rights whose content is difficult to define with clarity. Others have noted that national courts have been capable of providing meaningful content to the right to a healthy environment in national constitutions, and that international tribunals have been able to articulate State responsibilities in connection with the environmental dimension of protected rights.

12. Another issue widely debated in legal literature is whether international law already recognizes a right to a healthy environment. This debate rests on an analysis of the traditional sources of international law. Some commentators note that the recognition of a right to a healthy environment in national constitutions sets the stage for a discussion focused on an emerging rule of custom. Others point to the fact that certain international instruments already recognize the right to a healthy environment and that, accordingly, for the parties to those treaties, the relevant question is not one of recognition but of implementation and monitoring.

13. Yet another question concerning the legal implications of the recognition of a right to live in a healthy environment is who are the right-holders and duty-bearers? This is particularly relevant where environmental degradation results from the activities of private actors, such as legal entities and transnational corporations.

14. It is apparent that these theoretical debates have led to a rich discussion on the relationship between human rights and the environment. They have also informed the development of a human rights-based jurisprudence on environmental issues at the regional level, as well as the development and adoption of a number of international instruments that reflect the growing relationship between human rights and environment.

### **III. Major environmental threats to human rights**

15. Environmental degradation has the potential to affect the realization of human rights. This section identifies key environmental threats and their impact on human rights and vulnerable populations.

16. First, atmospheric-related environmental impacts are becoming more predominant as a result of increasing human activity, population growth and continued economic growth. These activities exacerbate atmospheric emissions, leading to air pollution, climate change and ozone-layer depletion.

17. Second, there are numerous land-based environmental threats, which include land degradation, deforestation and desertification. The impacts here tend to be more regional, although land degradation has global effects. Each is environmentally destructive, with adverse impacts on continued human well-being.

18. Third, the United Nations Environment Programme points out that development and the water environment are interconnected. Degradation in water quality, freshwater scarcity and stresses on oceans, such as fisheries collapse, are all prevalent environmental problems. These issues come with potential human rights implications.

19. Fourth, hazardous waste, chemical contamination and pollution are pervasive environmental threats with visible human rights implications. Unfortunately, chemical production, use and disposal are not always performed in line with adequate safety protocols, leading to chemicals being released into the environment. Aware of this threat, States are beginning to strengthen their regulation of chemicals, including at the international level through several multilateral environmental agreements.

20. Fifth, another important threat is the loss of biodiversity, which can particularly affect the resilience of communities that closely depend on the environment for livelihoods and development. Biodiversity should be distinguished from wildlife conservation, in order to develop a more focused approach to elucidating the impacts of biodiversity loss on human rights.

21. Sixth, according to the United Nations Environment Programme, since 2000, over 2,500 natural disasters have occurred worldwide, impacting billions of people. Between 1987 and 2007, more than 1.5 million people died as a result of natural disasters, such as from hurricanes and tropical cyclones, tsunamis, volcanic eruptions, earthquakes, droughts, floods and landslides. Certain natural disasters may be aggravated by human activity, such as the emission of greenhouse gases into the atmosphere, while others are the result of geological processes that require further explanation. In either case, human rights are implicated and entail the need for measures to prevent risks, including the dissemination of reliable and adequate information to the public.

22. In summary, a number of environmental threats have, or will have, an adverse impact on all aspects of human rights and well-being, and environmental protection must be ensured to protect human rights and sustain and improve human well-being.

#### **IV. Environmental protection contributes to the enjoyment of human rights**

23. A significant number of international human rights and environmental instruments show how environmental protection contributes to the enjoyment of human rights. This section analyses the relationship between human rights and the environment under existing international human rights and environmental instruments. Examination of these instruments indicates that human rights and the environment are interrelated, as such instruments recognize that the environment plays a critical part in protecting and promoting human rights.

24. As environmental awareness grows, there is greater understanding that the survival and development of humanity and the enjoyment of human rights are dependent on a healthy and safe environment. Accordingly, the need to protect and promote a healthy environment is indispensable not only for the sake of human rights, but also to protect the common heritage of mankind. By establishing the relationship between human rights and the environment, human rights and environmental instruments contribute significantly to ensuring the enjoyment of human rights and a healthy environment.

25. Certain international human rights instruments concluded after the 1972 United Nations Conference on the Human Environment explicitly recognized the linkage between human rights and the environment. For example, the Convention on the Rights of the Child refers to the environment plainly: article 24, paragraph 2 (c), requires States to pursue the full realization of the right of the child to the enjoyment of the highest attainable standard of health taking into consideration the dangers and risks of environmental pollution. Regional human rights instruments such as the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights make explicit references to the environment.

26. Older human rights instruments that were adopted before the linkage between human rights and the environment emerged do not explicitly refer to the environment. However, as detailed in subsequent sections, the human rights treaty bodies and regional human rights mechanisms have interpreted their respective human rights instruments in a manner that recognizes the environmental dimensions of protected rights. In this regard, older human rights instruments recognize the linkage between human rights and the environment by

implication, such as in relation to the environmental dimensions of the rights to life, food, health, housing, property and private and family life, among others. Procedural human rights and cross-cutting components of the human rights-based approach – such as the right to participation in political life, the right of specific groups to be consulted in decision-making processes, access to justice, due process, access, transparency and accountability – are also relevant for environmental decision-making.

27. Similarly, the examination of many environmental instruments shows that they articulate their objectives with regard to the protection of public health and the environment, incorporate notions of common heritage of mankind and recognize environmental protection as an essential component for human survival and development. In addition, several environmental instruments also proclaim explicitly the importance of access to information, public participation and access to justice in environmental matters, which are crucial guarantees for democracy and the rule of law.

28. The examination of human rights and environmental instruments leads to the conclusion that human rights and the environment are explicitly and implicitly interrelated. The growing awareness of this interrelationship makes an important contribution to the enjoyment of human rights and a healthy environment. Certain aspects of the linkage are, however, in need of strengthening and further clarity, in order to more effectively promote human rights and a healthy environment. For example, greater elucidation is needed as to how to apply a rights-based approach to the negotiation and implementation of multilateral environmental agreements.

## **V. National constitutions incorporate environmental rights and responsibilities**

29. A constitution is a fundamental expression of a State's core values and principles. Today, a vast number of countries incorporate provisions related to environmental protection into their national constitutions.

30. The trend toward constitutional recognition of the right to a healthy environment began with the 1972 Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration). Since then, the number of national Constitutions that incorporate environmental rights and responsibilities has increased significantly. In 1994, the Ksentini Report on human rights and environment (E/CN.4/Sub.2/1994/9 and Corr.1) found that over 60 countries had established constitutional provisions on environmental protection (para. 241). In 2010, the number of constitutions including explicit references to environmental rights and/or responsibilities had increased to 140, meaning that more than 70 per cent of the world's national constitutions include such provisions.

31. The increasing constitutional recognition of environmental rights and responsibilities globally reflects growing awareness of the importance of environmental values and greater acceptance of a right to a healthy environment. The practice of States in this area may eventually set the stage for renewed debate on the status of customary law on the right to a healthy environment.

## **VI. The jurisprudence of regional human rights systems**

32. The jurisprudence on environmental issues that has emerged from the African, European and Inter-American human rights systems has contributed to clarifying how environmental degradation affects human rights. This section explores the case law of three

regional human rights mechanisms, namely the African, Inter-American and European systems.

33. These three regional human rights systems have addressed cases involving environmental issues and developed jurisprudence linking human rights and the environment. These bodies of law have identified how environmental issues relate to the rights protected under the relevant regional human rights instruments. In their jurisdictional exercise in response to individual and collective complaints, the regional systems have clarified the environmental dimensions of a number of protected rights, such as the right to life, the right to health, the right to private and family life, the right to property and the right to development.

34. The African Commission on Human and Peoples' Rights has especially focused on the rights of indigenous and tribal peoples affected by environmental degradation resulting from extraction activities and their forceful removal from their traditional lands.<sup>1</sup> The African Commission has detailed the importance of the right to a healthy environment recognized in the African Charter on Human and Peoples' Rights, underscoring the role of carrying out environmental impact and independent scientific assessments prior to such activities. The African Commission has also given details on the right to benefit from natural resources and the right to development, articulating important standards regarding informed consultations and free and prior informed consent.

35. The Inter-American Court of Human Rights has contributed to establishing important standards of protection for indigenous and tribal peoples in relation to the environment. The Court has recognized that indigenous and tribal peoples have a right to property over the lands and territories that they have traditionally occupied.<sup>2</sup> To reach this conclusion, the Court interpreted the American Convention of Human Rights in the light of other relevant international human rights treaties. For example, the right to the ancestral lands, territories and natural resources has been supported by the right to self-determination recognized in both the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, and by the standards set by International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

36. The Inter-American Court has also developed a system of safeguards that apply where the State is considering approving development or investment projects that may impair the enjoyment of the rights of indigenous peoples. In such cases, in order to safeguard the survival of the peoples concerned, the State is required to: conduct independent environmental and social assessments; ensure adequate benefit-sharing schemes; and conduct effective and culturally appropriate consultations, as well as obtaining free and prior informed consent in certain cases. These safeguards doubtless contribute to clarifying the linkage between human rights and the environment. At the same time, further guidance is needed to implement these safeguards.

37. The European Court of Human Rights has also contributed to elucidating the human rights and environmental relationship, particularly in cases involving environmental

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<sup>1</sup> See, for example, *SERAC and CESR v. Nigeria*, communication No. 155/96, 27 May 2002; *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, communication No. 276/2003, 4 February 2010.

<sup>2</sup> See, for example, *Moiwana Community v. Suriname*, 15 June 2005; *Claude-Reyes, et al. v. Chile*, 19 September 2006; *Sawhoyamaya Indigenous Community v. Paraguay*, 29 March 2006.



pollution.<sup>3</sup> The Court has found that environmental pollution can interfere with the enjoyment of several protected rights, particularly the right to life and the right to private and family life. The Court has also established that the State has positive duties to protect individuals from environmental risks. This body of law has clarified State responsibilities to address environmental risks once they become known, including through appropriate and effective regulation, monitoring and enforcement, and State duties to disclose information to the public regarding environmental risks.

38. In its approach to the relationship between human rights and environmental issues, the European Court has been inspired by notions of environmental democracy. The Court has noted that the positive duty to act in protection of individual rights needs to be balanced against the collective interests of society. In designing its environmental policy, the State enjoys a margin of appreciation. However, this margin of appreciation is not unfettered, being limited by the proportionality of any given interference with protected rights. In determining proportionality, the European Court has emphasized the importance of respect for national law and procedural guarantees that enable societal dialogue on environmental policy, such as access to information, the ability to participate in decision-making, and the possibility of requesting judicial review of governmental decisions. Where national law is not respected or where procedural guarantees are lacking, there is no fair balance of proportionality and State responsibility may be engaged for the environmental and human rights interference.

39. Lastly, the European Committee of Social Rights, the monitoring body of the European Social Charter, has clarified the environmental dimensions of the right to health.<sup>4</sup> The Committee has also clarified that States must take all practicable steps in the realization of the right to health, which includes adequate implementation of international environmental agreements.

40. In summary, the African, Inter-American and European human rights systems have contributed to elucidating the environmental dimensions of rights protected under the relevant human rights instruments. The adjudication of cases involving forced displacement, environmental pollution or unsustainable extraction of natural resources has led to the designation of a growing body of State responsibilities regarding decision-making processes relating to environmental policy and the protection of persons and communities affected by environmental risk.

## VII. Environment in the work of charter-based United Nations human rights bodies

41. The Human Rights Council and its predecessor, the Commission on Human Rights, have produced relevant statements and studies on the connection between the environment and human rights. In addition, special procedures established by those bodies have produced an important body of documentation regarding certain aspects of the linkage between the two fields. The present chapter briefly examines how the charter-based human rights bodies, including the special procedures they have established, have addressed the intersection of human rights and environmental protection, with a focus on specific

<sup>3</sup> See, for example, *Fredin v. Sweden*, application No. 12033/86 (1991); *López Ostra v. Spain*, App. No. 16798/90 (1994); *Öneryıldız v. Turkey*, application No. 48939/99 (2004); *Fadeyeva v. Russia*, App. No. 55723/00 (2005).

<sup>4</sup> See *Marangopoulos Foundation for Human Rights v. Greece*, collective complaint No. 30/2005, 6 December 2006.

references to State obligations under international law to protect the environment and to fulfil human rights that may be threatened by environmental damage.

42. In August 1989, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (later called the Sub-Commission on the Promotion and Protection of Human Rights), a subsidiary body of the Commission on Human Rights, mandated the preparation of a study of environmental degradation and its relation to human rights. The final report was presented in 1994 by Fatma Zohra Ksentini, and offered the Sub-Commission the possibility for the first time of considering environmental problems comprehensively and with a specific focus on their relation to human rights (E/CN.4/Sub.2/1994/9). The Ksentini report was a landmark precedent that detailed the interconnection of these two fields. The main conclusion of the report is that environmental rights are already part of the existing and universal human rights standards and principles, and that they are recognized at the national, regional and international levels. A set of principles on human rights and environment was also annexed to the report, but no action was taken on the principles.

43. In 1997, the Sub-Commission entrusted to El Hadji Guissé the preparation of a working paper on the right of access of everyone to drinking water supply and sanitation services (E/CN.4/Sub.2/1998/7). Mr. Guissé presented his report in 1998, finding that the right to “water is essential to everyone’s life” and is closely linked to the existence of human life itself and fundamental rights such as health and housing. This report also noted the linkage between water, on the one hand, and peace and security, on the other, given that scarce water resources and the lack of access to drinking water and sanitation provoke armed conflict. Access to water is also related to cultural and collective rights, such as the right of peoples to self-determination and their inalienable right to possess and consume their own wealth and natural resources.

44. The Commission on Human Rights first expressed an interest in exploring the link between environmental preservation and the promotion of human rights in 1990 in its resolution 1990/41. Over the years, the Commission drew attention to the negative impacts of environmental damage on the enjoyment of some human rights. It pointed out the importance of adopting environmental policies that take into consideration the impact of environmental degradation on marginal groups, especially those discriminated against because of their ethnic origin. In a similar vein, the Commission in its resolution 2005/60 recommended that States take “all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development”.

45. In 1995, the Commission appointed the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights. The Special Rapporteur presented her first report to the Commission in 1996 (E/CN.4/1996/17), and since then the mandate holder has produced annual reports, conducted several country visits and processed numerous individual complaints relevant to its mandate. The Special Rapporteur has continually drawn attention to the negative effects of inadequate hazardous waste management infrastructure on the environment and individuals’ and communities’ well-being.

46. The Commission on Human Rights also appointed a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (subsequently renamed as the Special Rapporteur on the rights of indigenous peoples). The Special Rapporteur stated that major indigenous rights issues relate to land, territory, the environment and exploitation of natural resources, in addition to poverty, low standards of living and the negative social, economic and environmental impacts that result from development projects. Further, the Special Rapporteur identified self-government, autonomy, political participation and the right to self-determination as issues deserving

particular attention. These findings led the Special Rapporteur to prepare a thematic report focusing on the impact of large-scale or major development projects on the human rights and fundamental freedoms of indigenous peoples and communities (E/CN.4/2003/90).

47. In 2005, the Commission on Human Rights adopted resolution 2005/69 requesting the Secretary-General “to appoint a special representative on the issue of human rights and transnational corporations and other business enterprises”. Under this mandate, the Special Representative studied the environmental implications of corporate activities, as well as the role of States in regulating the activities of transnational corporations. The Special Representative noted the importance of environmental and social impact assessments already practiced in certain industries, yet also noted some of the deficiencies of these impact assessments.

48. The Human Rights Council, since its creation in March 2006, has enacted several resolutions relevant to the relationship between human rights and the environment, specifically referring to climate change, the dumping of toxic waste and the right to food.<sup>5</sup>

49. The Human Rights Council has repeatedly stated that massive violations of the right to adequate food, in particular in developing countries, are related in part to “environmental degradation, desertification and global climate change, [and] natural disasters”.<sup>6</sup> Moreover, the Council has expressed its concern regarding the impact of natural disasters, disease and pests on agricultural production and food security. In addition, the Council has referred to the need to prevent further desertification and land degradation and to expand environmentally sustainable agriculture to fight worldwide hunger.

50. Originally established by the Commission on Human Rights in April 2000, the Special Rapporteur on the right to food is mandated by the Human Rights Council to promote the protection of the universal right to adequate food and freedom from hunger. The Special Rapporteur has devoted considerable time to investigating the relationship between agribusiness, environmental degradation and human rights. The Special Rapporteur has also studied the potential impacts of climate change on the right to food and shown that agroecology, with its emphasis on the recycling of nutrients and energy and on diversifying species, enhances the sustainability of food systems and their resilience to climate change.

51. The Human Rights Council has renewed several times the mandate of the Special Rapporteur on the rights of indigenous peoples. The work of the Rapporteur has focused on identifying new trends and challenges that affect the human rights of indigenous people and called attention to the need to reinforce, review and update standards and mechanisms for the effective protection of indigenous peoples’ rights. The work of the Special Rapporteur has identified gaps in implementing the rights of indigenous people that relate to the environment. The annual reports of the Special Rapporteur have referred to deficiencies of mechanisms for consultation, evaluation and monitoring of national and international human rights standards when implementing any development project that “directly or indirectly affects indigenous peoples, their lands, territories, resources and environment, their sacred places and their cultural environment” (E/CN.4/2006/78, para. 49).

52. The Special Rapporteur on the human rights of internally displaced persons has also looked at environmental issues, such as displacement that can be attributed to climate change. The Special Rapporteur has identified five situations causing displacement that can be traced to environmental issues: (a) increased hydro-meteorological disasters (i.e.,

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<sup>5</sup> See, for example resolutions 7/23, 10/4, 16/11, 13/4 and 16/27

<sup>6</sup> See resolutions 7/14, 10/12, 13/4 and 16/27.

hurricanes, flooding or mudslides); (b) environmental degradation and slow onset disasters (i.e., desertification, sinking of coastal zones, or increased salinization of groundwater and soil); (c) sinking of small island States; (d) relocation of people from high-risk zones; and (e) violence and armed conflict due to scarcity of resources such as water or inhabitable land (A/HRC/10/13, para. 22). The Special Rapporteur has noted that States' responsibilities towards internally displaced people include those populations forced to leave their homes owing to natural disasters.

53. With respect to business and human rights, the Council requested the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other stakeholders. The Special Representative noted that companies cited as the top polluters operate, *inter alia*, in the following sectors: pharmaceutical and chemical; food and beverage; retail and consumer products; heavy manufacturing; infrastructure and utility; extractive; and agricultural. These companies were most frequently alleged to have negative consequences for local communities' right to health. More specifically, many companies were alleged to have exceeded the allowed ceiling for the carbon-dioxide production rates. Furthermore, the commentary to the Guiding Principles on Business and Human Rights (A/HRC/17/31) drawn up by the Special Representative explicitly mentions environmental laws as laws that directly or indirectly regulate business respect for human rights.

54. Regarding the right to water, the Special Rapporteur on the human right to safe drinking water and sanitation (formerly independent expert) has produced a number of studies, accompanied by recommendations for relevant parties, which show the connection between the right to water and environmental protection. The work of the Special Rapporteur has also focused on anticipating and proposing solutions to the negative effects that climate change is likely to generate *vis-à-vis* the sustainability of the world's water resources, its purification and the provision of sanitation. For instance, the concept of availability, accessibility, affordability, acceptability and quality of rights provides important guidelines that policymakers can use as they seek to design and implement measures to prevent and mitigate the damaging effects of climate change.

55. In summary, human rights charter-based bodies have considered in various ways the relationship between human rights and the environment, including the various resolutions they have adopted and the mandates established under special procedures. Much effort has gone into identifying linkages between human rights and environment and the outcomes of such efforts provide valuable guidance to States and other actors. However, part of this material is dispersed and there is a need for consolidation. Similarly, a focal point on environment and human rights could provide valuable input to the various procedures addressing the environmental dimensions of their respective mandates.

## **VIII. Environment in the work of the human rights treaty bodies**

56. The environment has also featured in the work of the human rights treaty bodies. Both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee have found that the rights under their respective jurisdictions are multilayered and interconnected and that their realization depends heavily on healthy environmental conditions. The present chapter briefly examines the general comments and concluding observations emanating both committees that address environmental issues.

57. In general comment No. 4 (1991) on the right to adequate housing, the Committee on Economic, Social and Cultural Rights interpreted the right to adequate housing to

include such elements as accessibility, habitability and adequate location, generally requiring that housing should not be built on environmentally polluted sites.

58. The Committee has also clarified the linkages between environmental safety and the realization of the right to adequate food. In general comment No. 12 (1999) on the right to adequate food, the Committee stated that the realization of the right to adequate food requires the State party to adopt “appropriate economic, environmental and social policies”. These policies are crucial to ensuring that food is “free from adverse substances” resulting from contamination through inadequate environmental hygiene. It is also important to note that climate change, the productivity of land, and other natural resources were also mentioned in general comment No. 12, and that these elements are inextricably linked to environmental health of soils and water.

59. In general comment No. 14 (2000) on the right to the highest attainable standard of health, the Committee on Economic, Social and Cultural Rights elaborates on the right to health and its underlying determinants, including a clean environment. The International Covenant on Economic, Social and Cultural Rights itself includes text pertaining to issues of environmental and industrial hygiene in the workplace. In this connection, the promotion of “social determinants of good health”, such as environmental safety, help control and prevent infectious diseases. Lastly, general comment No. 14 calls on States parties to formulate national policies with the objective of “reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline.”

60. The Committee on Economic, Social and Cultural Rights has acknowledged that there is a human right to water, which is vital to human dignity, and the realization of human rights, particularly the right to an adequate standard of living articulated in article 11 of the Covenant (general comment No. 15 (2002) on the right to water). In general comment No. 15, the Committee explicitly linked the right to water to environmental concerns, observing that adequate water supplies are those which are “free from micro-organisms, chemical substances and radiological hazards” as well as having “an acceptable colour, odour and taste for each personal and domestic use”. Thus, enjoyment of the right to adequate water depends on the environmental purity of the water.

61. Another important area linking human rights and environment is cultural goods and services that relate to the environment. The Committee on Economic, Social and Cultural Rights has stated in general comment No. 21 (2009) on the right of everyone to take part in cultural life that the availability of cultural goods is necessary for the realization of the right to take part in cultural life. Among many cultural goods and services are “nature’s gifts” and States parties are obligated to protect “nature’s gifts” from degradation and destruction in order to honour the right to cultural life. Indigenous peoples also have the right to “act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage”, which includes their understanding of plants and animals and genetic resources. This right requires States parties to respect the principle of “free, prior and informed consent” of indigenous communities.

62. The Human Rights Committee has also contributed to clarifying certain dimensions of the human rights and environment linkage. For example, its case law on indigenous peoples’ rights, including the right to enjoy their own culture, has been key to the elaboration of standards for effective consultations.<sup>7</sup> Similarly, its recent general comment No. 34 (2011) on article 19 explicitly recognizes the right of access to information, which is

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<sup>7</sup> See, for example, *Ominayak and the Lubicon Lake Band v. Canada*, communication No. 167/1984, 26 March 1990; *Apirana Mahuika et al. v. New Zealand*, communication No. 547/1993, 27 October 2000.

central to enabling communities to learn about the environmental risks they are exposed to and to adopt the necessary preventive measures.

63. In summary, both the Committee on Economic, Social and Cultural Rights and the Human Rights Committee have strongly contributed to clarifying aspects of the environmental dimension of human rights. Nevertheless, new aspects of this relationship require further work, such as the climate change and human rights interface.

## **IX. Extraterritorial dimensions of human rights and the environment**

64. The extraterritorial dimensions of the human rights and environment interface provide fertile ground for further inquiry, particularly in relation to transboundary and global environmental issues. The linkage between human rights and the environment raises the question whether human rights law recognizes States' extraterritorial obligations. The present chapter illustrates the most important issues relating to States' extraterritorial obligations, in regard to environmental issues and explores the contours of human rights law as it evolves toward recognition of the extraterritorial obligations of States.

65. The extraterritorial dimension of the human rights and the environment linkage is evident in the area of transboundary environmental harm. Such harm arises where environmental degradation results in the impairment of rights of people outside of the territory of the State where the damaging activity occurs. One country's pollution can become another country's environmental and human rights problem, particularly where the polluting media, like air and water, are capable of easily crossing boundaries.

66. The extraterritorial problem raised by transboundary environmental harm also extends to global pollution issues, such as the concentration of greenhouse gases in the atmosphere leading to dangerous climate change and marine dumping, which may affect areas beyond national jurisdiction such as the high seas.

67. Additionally, extraterritorial concerns may arise where States fail to adequately regulate transnational corporations and other business entities, incorporated or otherwise, having substantial business operations in their territories which cause environmental harm in the countries where they operate. Often, environmental harm resulting from the activities of transnational corporations occurs in developing countries lacking effective means of monitoring and enforcing compliance with environmental laws and regulations. Failure by a State to regulate, by action and omission, indirectly causes environmental degradation beyond its territory.

68. Important progress has been made towards the recognition of the extraterritorial obligations of States in human rights law, particularly in the area of economic, social and cultural rights. This progress is particularly important where human rights obligations are related to environmental degradation.

69. Perhaps the key question with regard to the extraterritorial dimension of human rights and environment is the spatial scope of application of human rights law instruments. The universality of human rights proclaimed in the Universal Declaration of Human Rights has inspired the development of a number of legally binding treaties codifying State obligations to protected rights. Such international human rights law instruments have varying approaches to jurisdictional limitations on the spatial scope of application and extraterritorial reach of States' obligations. Some human rights treaties contain provisions that specify jurisdictional limitations on States' obligations. For example, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the American Convention on Human Rights

contain jurisdictional limitations formulated differently. On the other hand, a number of international human rights instruments do not incorporate jurisdictional limitations on their spatial scope of application. The International Covenant on Economic, Social and Cultural Rights, the African Charter on Human and Peoples' Rights, and the American Declaration of the Rights and Duties of Man contain no provisions specifying jurisdictional limitations on State's obligations. Moreover, elements of extraterritorial obligations in the field of economic, social and cultural rights – and children's rights and the rights of persons with disabilities – can also be grounded in obligations to perform international cooperation and assistance that are explicitly recognized in the respective international human rights instruments.

70. Another important question that arises in relation to the extraterritorial dimension of human rights and environment is the extent to which international environmental law principles can inform the application of human rights instruments. The duty to prevent transboundary environmental harm, for example, is widely recognized as an element of customary law. In its case law, the European Court of Human Rights has resorted to this principle where environmental damage has crossed boundaries.

71. An indication of the increasing attention paid to extraterritorial obligations is the adoption in September 2011 by a consortium comprising academic institutions, non-governmental organizations and human rights experts – including some special procedure mandate holders – of the Maastricht principles on extraterritorial obligations of States in the area of economic, social and cultural rights at a conference that took place in Maastricht, Netherlands. The principles detail the status of the extraterritorial dimension of human rights law in the area of economic, social and cultural rights, while at the same time contributing to the progressive development of that dimension.

72. Lastly, the recognition of the extraterritorial obligations of States allows victims of transboundary environmental degradation, including damage to the global commons such as the atmosphere and dangerous climate change, to have access to remedies. Those who are adversely affected by environmental degradation must be able to exercise their rights, irrespective of whether the cause of environmental harm originates in their own State or beyond its boundaries and whether the cause of environmental harm lies in the activities of States or transnational corporations.

73. In summary, there have been important efforts to clarify States' human rights extraterritorial obligations, including with respect to environmental degradation. The evolution of human rights law in this area has been influenced by principles and tools employed in the environmental protection regime. However, further guidance is needed to inform options for further development of the law in this area.

## **X. Conclusions and recommendations**

**74. Since the United Nations Conference on the Human Environment held in Stockholm in 1972, the relationship between human rights and the environment has received increased attention from States, international institutions and civil society.**

**75. The Human Rights Council has observed that sustainable development and the protection of the environment can contribute to human well-being and the enjoyment of human rights. Several human rights instruments concluded since the Stockholm Conference have included explicit references to the environment or recognized a right to a healthy environment. Similarly, numerous environmental instruments explicitly articulate their objectives in terms of protection of human health, the environment, and the common heritage of humankind. In addition, a significant number of States**

have incorporated environmental rights and responsibilities into their national constitutions.

76. The Human Rights Council has also observed that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights. In this connection, the human rights treaty bodies have addressed the environmental dimensions of the rights protected under their respective treaties, for example, in general comments, decisions concerning individual petitions and concluding observations. Similarly, regional human rights monitoring bodies and courts have clarified the environmental dimensions of protected rights, including the rights to life, health, property, private and family life and access to information.

77. Furthermore, the Human Rights Council has noted that human rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection, promoting policy coherence, legitimacy and sustainable outcomes. In this regard, over the last three decades, human rights mechanisms have contributed to clarifying the linkages between human rights and the environment. The United Nations human rights charter-based bodies in particular have contributed to elucidating certain elements of the linkage between human rights and the environment through the adoption of resolutions that provide guidance to States and international organizations. In addition, several special procedures established by the former Commission on Human Rights, the former Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Human Rights Council, for example, concerning environment, toxics, food, water, housing, extreme poverty and indigenous peoples, have contributed to clarifying and strengthening the human rights and environment linkage.

78. While much progress has been made in elucidating the complex and multifaceted relationship between human rights and environment, the dialogue between the two fields of law and policy has still left a number of questions open. The theoretical discussions on the relationship between human rights and environment raise salient questions concerning, *inter alia*, the need for and the potential content of a right to a healthy environment; the role and duties of private actors with respect to human rights and the environment; and the extraterritorial reach of human rights and environment. Similarly, such questions arise regarding the operationalization of international human rights obligations as how to implement a rights-based approach to the negotiation and implementation of multilateral environmental agreements; and how to monitor the implementation of human rights treaties that recognize the right to a healthy environment or interconnected rights. These questions and other pending challenges lead to the following recommendations.

79. The Human Rights Council may consider paying special attention to the relationship between human rights and the environment through the appropriate mechanisms. These may include, *inter alia*, the establishment of a special procedure on human rights and the environment, the organization of a high-level panel or a call for further or more specific studies on the issues at hand. More focused attention on human rights and the environment would provide the Human Rights Council with detailed analysis of the key issues and gaps that arise in the relationship between human rights and environment. This analysis and information generally is key to enable the Human Rights Council to provide guidance to the international community in regard to the pressing human rights challenges facing humanity in the twenty-first century, including the recognition of a general right to a healthy environment.

80. The mechanism chosen by the Human Rights Council could also serve to further strengthen and clarify the relationship between human rights and the



**environment, and to systematize the work of special procedures, treaty bodies and regional human rights courts and monitoring bodies on the issue. In addition, it could provide guidance to the implementation of principles relating to the extraterritorial obligations of States, particularly in the area of environmental protection.**

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