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**Human Rights Obligations to Protect the Environment**

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 I would like to begin by thanking UNITAR, Yale, UNEP, UNDP, World Resources Institute, and all those who made this conference possible. I also want to thank all of the participants in this conference. It is a great honor to be addressing so many people who have studied and participated in the application of human rights norms to environmental issues. I look forward to hearing more about your work over the next two days.

This conference comes at a very interesting moment in the development of the field of human rights and the environment. For a long time, environmental issues have been on the fringe of human rights law, and human rights have been on the fringe of environmental policy.

As is well known, the 1948 Universal Declaration of Human Rights does not include a right to environmental protection. Neither do the two principal human rights agreements, the 1966 Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. Even today, no UN treaty recognizes a human right to a healthy environment. This wasn’t because Eleanor Roosevelt, the first chair of the United Nations Human Rights Commission, forgot about the environment! It’s because the instruments were drafted before the dawn of the modern environmental movement.

Among international environmental instruments, the one that comes closest to including a right to a healthy environment is the Stockholm Declaration, adopted at the 1972 United Nations Conference on the Human Environment, the first major international environmental conference. The Declaration states: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

Even this language does not refer explicitly to a *human* right, although perhaps the missing word is implicit. However, twenty years later, in 1992, the UN Conference on Environment and Development adopted another Declaration, the Rio Declaration, which drops the reference to rights completely. Principle 1 states: Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” “They are *entitled* to” may be linguistically equivalent to “they have a *right* to,” but the different language avoids making a clear connection with human rights.

 About the same time, the United Nations Human Rights Commission, the intergovernmental body that had drafted the Universal Declaration and the Covenants, refused to adopt a proposed Declaration on Human Rights and the Environment.

 Nevertheless, the idea that human rights and the environment are relevant to one another never disappeared. Gradually, the relationship between them and strengthened and become clearer. Now, it is fair to say that what was once the fringe has become the mainstream.

This shift is evident in many ways. Let me mention just a few.

First, at the national level, more than 90 countries now include a right to a healthy environment in their constitution. Others recognize environmental protections on the basis of other rights, such as rights to life and health. And even more recognize a right to a healthy environment in regional human rights agreements. Taken together, the countries that have recognized such a right constitute most of the countries in the world.

Second, every regional human rights agreement adopted since the early 1980s includes a right to a healthy environment. With the adoption of the ASEAN Human Rights Declaration in November 2012, the right has been recognized in treaties or declarations in Africa, Europe, Latin America, the Middle East and, most recently, Southeast Asia.

Third, human rights bodies have developed an environmental jurisprudence. Regional tribunals such as the Inter-American Court of Human Rights have held that environmental harm can violate human rights other than a right to a healthy environment, rights such as rights to life, health, and property. Similarly, United Nations human rights treaty bodies have applied their treaties to environmental issues, again drawing on rights such as rights to life and health.

Fourth, more and more civil society organizations are actively using human rights norms to address environmental issues. Ten years ago, a relatively small number of organizations, such as the Center for International Environmental Law, Earthjustice, and AIDA, were pioneers in this area. Today, it has again become mainstream. Large human rights organizations such as Human Rights Watch and Amnesty International routinely address environmental issues, as these recent reports reflect, and environmental organizations such as Greenpeace regularly use the language of human rights. As Kumi Naidoo, the Executive Director of Greenpeace International recently said, “Let’s break down the artificial barriers that have so long separated the human rights, environmental, and development communities. We face common threats. But there are common solutions.”

 And, of course, academics now devote a great deal of attention to the study of human rights and environment! I keep a list of publications in the field on my website. It is by no means complete, but it’s now nearly 20 single-spaced pages of books and articles, most of which have been published in the last five years.

A final example of the mainstreaming of human rights and the environment is the decision of the United Nations Human Rights Council – the successor to the Human Rights Commission -- to appoint an independent expert on the subject. Often the Council appoints special rapporteurs to oversee and encourage compliance in particular areas. For example, there are special rapporteurs on the right to food, on the rights of indigenous peoples, on human rights defenders, among many others. Occasionally, the Council decides to appoint an independent expert to clarify the law in an area. Recent examples include John Ruggie, who was appointed to study how human rights applies to business, and Catarina de Albuquerque who was asked to examine the right to water.

The United Nations did not take the lead in bringing human rights and the environment together. But it did take notice of these developments at the national and regional levels. And in March 2012, the Human Rights Council decided to appoint an independent expert on human rights and the environment to a three-year mandate.

It gave the independent expert two main tasks:

o to clarify the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; and

o to identify, promote and exchange views on best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking, [especially in the area of environmental protection,] and, in that regard, to prepare a compendium of best practices . . . .

I have the honor of having been appointed to that position the following July.

I tackled the first task first. With the assistance of a dedicated team of scholars and pro bono attorneys, we conducted the most thorough survey yet undertaken of decisions and statements of all major human rights bodies on environmental issues, at both the global and the regional level. The idea was to take an evidence-based approach to the question of what are the human rights obligations relating to the environment, by looking to see exactly what human rights bodies have said about such obligations.

There turned out to be a lot to review! We prepared 14 reports, each of which addresses one source or set of sources, including global human rights bodies such as the UN treaty bodies and special rapporteurs, regional human rights tribunals, and international environmental instruments. In March of this year, I presented the conclusions of this mapping project to the Human Rights Council.

I am now working on the second task: the identification of good practices in the use of such obligations to support environmental policy-making. Over the last two years, I have met with representatives of civil society, academics, officials of governments and international organizations around the world. I also sent out a questionnaire to governments, civil society, and international organizations asking for examples of good practices, and have received dozens of responses.

My goal is to produce an easily searchable online database with examples of good practices around the world. This conference will greatly help in this respect. I expect to learn much more about such good practices over the next two days, from all of you!

In the remainder of my time today, I will give my views on what a human rights perspective can bring to environmental policy-making, based principally on the mapping project and the consultations. I will be very interested to hear where you agree or disagree with me, based on your own experiences.

I see **four primary benefits** of a human rights perspective.

o First, it focuses attention on the ways that environmental harm prevents individuals and communities from living lives of dignity, equality, and freedom.

o Second, human rights norms set out clear procedural requirements for environmental policy-making.

o Third, human rights law includes minimum substantive standards that environmental policies must meet.

o Finally, human rights institutions may provide remedies for environmental harm.

Let me discuss each of these benefits in more detail.

Virtually every human rights body has now held or stated that environmental harm can interfere with universally recognized human rights, such as rights to life, health, and an adequate standard of living. They have held that environmental harm interferes with these rights in countless ways.

Sometimes the links between environmental harm and human rights are direct, as in the case of the oil pollution of the Ogoni region in Nigeria. Nigeria is the largest producer of crude oil in Africa, accounting for between 2 and 3 percent of oil production worldwide. Most of the oil is extracted from the delta of the Niger River. The oil was taken by Royal Dutch Shell (in a joint venture with the Nigerian government), which in 2013 was the largest company in the world, with revenues of nearly 500 billion dollars.

The oil development caused environmental degradation to the land of the Ogoni, an ethnic population of about 1 million. After a thorough study, the UN Environment Programme found that much of the land in the delta is contaminated. Oil has penetrated five meters underground, polluting not only surface water but also underground sources of drinking water. One community, for example, was found to have wells with the level of benzene 900 times safe levels. UNEP stated that the clean-up could last 25 to 30 years, and urged Shell and Nigeria to start a fund with one billion dollars, to cover the first five years.

The effects of this kind of large-scale environmental pollution prevent the full enjoyment of the communities’ rights to water, health, and life. Moreover, the former Nigerian government repressed the Ogoni when they complained about the effects of the pollution – displacing them from their villages, arresting their leaders, and even hanging nine of their leaders in 1995. It is not difficult to see the connections between environmental harm and human rights violations in cases like this.

However, sometimes the links are more indirect. This is Male, the capital of the Maldives. Composed of small islands in the Indian Ocean, the Maldives has an average height above sea level of less than two meters. As we now know, emissions of greenhouse gases around the world contribute to global warming, which in turn causes glaciers to melt and oceans to warm. As a result, sea levels are expected to will rise between one-half and one meter by 2100. An increase of one half meter would inundate 15% of Male’, the most populous island in the Maldives, by 2025, and flood half of it by 2100.

As you can see from this picture, the Maldivians have no high ground to which they can escape. Rising sea levels threaten many of the Maldivians’ human rights. About half of the housing in the islands is located within 100 meters of the shoreline, so “even partial flooding of the islands is likely to result in drowning, injury, and loss of life.” Flooding and the resulting loss of land also interferes with the rights to health, property, housing, and water.

By framing these harms in terms of their effects on recognized rights, human rights can change the rhetorical terms of debate. Often, environmental harm is treated as a matter merely of cost-benefit analysis. Human rights requires us to consider it in light of its effect on the rights of individuals to live lives of dignity, freedom, and equality.

But human rights norms do more than that. **The second benefit of a human rights perspective is that it sets out procedural rules for environmental policy-making.**

In our exhaustive study of what human rights sources have said about the environment, one of the clearest conclusions is that States have obligations under human rights law in relation to environmental policy-making. Specifically,

o They have duties to assess environmental impacts, to make environmental information public, to facilitate public participation in environmental decision-making, and to provide effective remedies for environmental harms.

These points may look familiar! They are reflected in the Rio Declaration’s Principle 10, as well as other places in international environmental law. But, to paraphrase an old advertisement, they are not just good ideas; they are the law. Human rights bodies have stated that these procedural requirements are necessary to fulfill States’ duties to protect the rights to life, health, an adequate standard of living, and so forth from environmental harm.

In order to protect those rights from environmental harm, States must examine the possible effects of projects before they implement them; they must make information public, especially to affected groups; and they must give the public access to the decision-making process.

These duties may be heightened with respect to those in vulnerable situations, including women, children, and indigenous people. There are many examples of how indigenous groups, for example, are at greater risk of environmental harm. To mention just one, last September a study reported that illegal gold mining in Peru has caused mercury contamination of rivers and lakes, which results in indigenous children having levels of mercury more than five times the WHO safe levels.

Human rights instruments set out obligations specific to indigenous peoples, including: a duty to recognize their rights in the territory that they have traditionally occupied, and generally a duty not to allow resource extraction within their territory without their free, prior and informed consent.” (A/HRC/24/41, para. 27).

Human rights law also makes clear that States have duties to protect everyone’s rights of expression and association in relation to environmental issues. In particular, States have duties with respect to environmental rights defenders – that is, those who put themselves forward on behalf of theirs or others’ rights. States must:

o protect them when they are subject to threats

o refrain from restricting the performance of their work

o conduct effective investigations of any violations against them.

Unfortunately, these duties are often breached. The UN Special Rapporteur on the situation of human rights defenders has said that those working on land rights and natural resources are the second-largest group of defenders at risk of being killed, and that their situation appears to have worsened since 2007. She has described the extraordinary risks, including threats, harassment, and violence, faced by those defending the rights of local communities when they oppose projects that have a direct impact on natural resources, the land or the environment.

Just this summer, Global Witness published a comprehensive study of killings of environmental defenders. It reported that between 2002 and 2013, 908 people were killed because of their work defending environmental and land rights, an average of more than one a week for over a decade. Global Witness also made clear that the situation is worsening. “Three times as many people were killed in 2012 than 10 years previously, with the death rate rising in the past four years to an average of two activists a week.”

The killings are spread around the globe, affecting many countries. But as bad as these numbers are, they understate the scale of the problem. There are many challenges to gathering accurate data on the situation of environmental activists. They often operate in remote areas, and their deaths are not always widely reported. Global Witness took a conservative approach, only including deaths that had been reported and that were in connection with the protection of environmental and land rights.

Moreover, the rates of investigation and conviction are extremely low. For the 656 of the 908 deaths, there is no information about the suspected killers. In another 208 cases, there is limited information, but no name. In only 44 of the murders have the alleged killers been named, and in only 6 cases – not even 1% -- have the murderers been tried and convicted.

It is easy to become lost in the numbers here. I want to take a moment to recall some of these people whose efforts to protect the environment cost them their lives.

In May 2011, **José “Zé Cláudio” Ribeiro da Silva** and **Maria do Espírito Santo** were shot to death in Brazil. Their crime? They had fought for years to protect the rainforest, following in the footsteps of Chico Mendes, an earlier environmental defender who was also killed because of his work.

In April 2012, **Chut Wutty** was shot and killed in Cambodia, where he led efforts to expose illegal logging. He was shot while he was escorting two journalists near a protected forest in Koh Kong province.

In May 2012, **Margarito Cabal** was killed in the Philippines. He was opposing a hydro-electric mega dam that would submerge 22 villages. He was the thirteenth environmentalist killed in the Philippines in the previous two years.

In May 2013, **Jairo Mora Sandoval**, a 26-year-old conservationist trying to protect sea turtles, was killed on the Atlantic coast of Costa Rica, apparently by poachers.

In September 2013, **Adelinda Gomez Gaviria** was killed in Colombia. She opposed gold mining because of its harm to the environment and to the livelihoods of peasant farmers. A month before her death, she received a telephoned death threat: “stop messing around with this mining thing, it’s risky and you’re going to get yourself killed.”

Murder is the gravest threat faced by environmental human rights defenders, but it is not the only one. They are also subject to harassment, violence, and detention.

To give just one recent example, **Yevgeny Vitishko** became famous in February 2014 because of the Winter Olympics in Sochi, Russia. He isn’t an athlete or a coach; he is an environmentalist who co-wrote a report on the environmental harm caused by the Sochi Olympics. Just before the games began, government officials arrested him and sentenced him to 15 days in prison for the common, but very rarely punished, crime of swearing in public. He was later sentenced to three years in prison for violating parole on a sentence of spray painting graffiti on a fence built arguably illegally in a protected area.

I know that many of you know from personal experience how dangerous it can be to advocate for environmental protection, or just to raise questions about proposed projects. So I am not bringing you news by telling you that activists are often in danger for trying to bring attention to environmental issues. But what I can tell you is that human rights law makes indisputably clear that they have the right to speak out against environmental abuses, and States have the obligation to protect them.

**A third benefit of a human rights perspective is that it sets out minimum substantive standards that environmental policies must meet.**

To be clear, a human rights approach does not take the place of detailed environmental regulation. But it can help to clarify the standards that the regulation must meet. The study I conducted for the Human Rights Council also examined *substantive* standards, as interpreted by human rights bodies. It concluded that States have duties to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights.

The obligation to protect human rights from environmental harm does not require the cessation of all activities that may cause any environmental degradation. For example, the European Court of Human Rights has held that 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.

But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights. In the *Ogoniland* case, the African Commission on Human and Peoples’ Rights cited the enormous environmental harm to the rights of those in the Niger delta region in finding that “the care that should have been taken”, including by taking reasonable measures to prevent pollution and ecological degradation from oil production, “was not taken.”

In deciding whether a balance is reasonable, national and international health standards may be particularly relevant. Another relevant factor in deciding whether an environmental law meets human rights obligations is whether it is retrogressive. States are also obligated not to discriminate in their environmental laws and policies. The right to equal protection under the law, which is protected by the Universal Declaration of Human Rights (art. 7) and many human rights agreements, includes equal protection under environmental law.

After a State has adopted environmental standards into its law, it should implement and comply with those standards. As the European Court has stated: “Regulations to protect guaranteed rights serve little purpose if they are not duly enforced.” Interpreting the African Charter of Human and Peoples’ Rights, the Court of Justice of the Economic Community of West African States has held that it is not enough to adopt measures “if these measures just remain on paper and are not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or ensuring accountability, with the effective reparation of the environmental damage suffered.”

These requirements apply not only to harm caused by governments,but also to harm from corporations and other private actors. As John Ruggie, the Special Representative of the Secretary-General on business and human rights explained, “the State duty to protect against non-State abuses is part of the very foundation of the international human rights regime. The duty requires States to play a key role in regulating and adjudicating abuse by business enterprises, or risk breaching their international obligations” (A/HRC/4/35, para. 18).

Such abuses can include environmental harm that infringes human rights. The Special Representative reviewed 320 cases of alleged corporate-related human rights abuses and found that nearly one third of the cases alleged environmental harm that affected human rights, including the rights to life, health, food and housing. (A/HRC/8/5/Add.2, para. 67).

The Guiding Principles on Business and Human Rights, which Ruggie drafted and which the Human Rights Council endorsed in 2011, provide that States are required to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises,” including by “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (A/HRC/17/31, principle 1). The Guiding Principles also make clear that corporations themselves have a responsibility to respect human rights.

Human rights bodies have emphasized the importance of States’ obligations in this respect. The African Commission has stated that “Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties”, and has held that by allowing oil companies “to devastatingly affect the well-being of the Ogonis”, the State had “fallen short of the minimum conduct expected of governments.” The Inter-American Commission on Human Rights has stated that “effective enforcement of the environmental protection measures in relation to private parties, particularly extractive companies and industries… is essential to avoid the State’s international responsibility for violating the human rights of the communities affected by activities detrimental to the environment.” And the European Court has held that States are obligated to take positive steps to protect against environmental harm to the right to private and family life, whether the pollution was caused by governmental or private action.

**The fourth benefit of a human rights approach is that, under some circumstances, human rights institutions may provide remedies for environmental harm.**

From the Universal Declaration of Human Rights onward, human rights agreements have established the principle that States should provide for an “effective remedy” for violations of their protected rights. Human rights bodies have applied that principle to human rights infringed by environmental harm.

At the domestic level, a rights-based approach may open new avenues for relief. For example, after Costa Rica amended its constitution in 1994 to add a right to a healthy and ecologically balanced environment, its Supreme Court has issued dozens of decisions implementing that right. It has opened the cause of action very broadly, to allow any person to file a case regarding a constitutional right without a lawyer, with no filing fees, in any language, at any time, on any day of the year and in any form, including handwritten notes. Furthermore, it allows individuals to bring actions on behalf of the public interest, including in the interest of environmental protection. Few States have gone this far, but many States have taken similar steps.

Of course, as we know, domestic remedies are often unavailable or ineffective. However, a human rights approach may help to support other avenues of relief. Although the United Nations does not have an international human rights court, some regions do.

And the UN does have treaty bodies that can oversee compliance with their terms. In some cases, they can receive communications from individuals alleging violations.

In addition, the special rapporteurs appointed by the Human Rights Council can receive such communications. Many of these rapporteurs receive communications directly related to the environment, including the Special Rapporteurs on water, food, toxic substances, human rights defenders.

So far, I have focused on the strengths of a human rights-based perspective on environmental protection. But there are also questions about such a perspective. I will briefly address three of the most common questions:

 1 – Is a human rights perspective on the environment universally accepted?

 2 – Are human rights mechanisms effective in protecting rights against environmental threats?

 3 – Are human rights too limited in scope to address environmental issues?

On the first question, there’s no doubt human rights are often honored more on paper than in practice. But, as I explained earlier, a human rights perspective on the environment is now far more widely accepted than ever before, by domestic courts, regional tribunals, and the United Nations.

Let me give you another example of its acceptance by governments at the United Nations. At its March session, the Human Rights Council adopted a resolution in response to my report, which states in part:

“human rights law sets out certain obligations on States which are relevant to the enjoyment of a safe, clean, healthy and sustainable environment”

“the enjoyment of the corresponding human rights and fundamental freedoms can be facilitated by assessing environmental impacts, by making environmental information public, and by enabling effective participation in environmental decision-making processes”

“a good practice includes adopting, strengthening and implementing laws and other measures to promote and protect human rights and fundamental freedoms in the context of environmental legislation and policies.”

The resolution was adopted by consensus by the 47 members of the Human Rights Council, including Brazil, China, Cuba, France, Germany, India, Indonesia, Japan, Kenya, Korea, Mexico, Pakistan, Philippines, Russia, Saudi Arabia, South Africa, the United Kingdom, and the United States of America.

Moreover, human rights is starting to have a place at the table in international environmental forums as well. The Cancun Agreements, adopted by the FCCC Conference of the Parties (COP) in December 2010, quote language from a 2009 Human Rights Council resolution recognizing that “the adverse effects of climate change have a range of direct and indirect implications for the effective enjoyment of human rights.” And they emphasize that Parties should, in all climate change related actions, fully respect human rights.

On the second question, the lack of effectiveness is certainly a real problem. I don’t want to overstate the strength of the remedies offered by human rights bodies, especially at the international level. International human rights bodies do not have the power to order States to comply, and they are often overburdened. But the bodies that do exist may be able to shed a light on allegations, and increase the pressure on governments to respect their obligations. And a human rights perspective may open other avenues of relief. For example, when there is international financing from World Bank or other international financial institutions, it may be possible to pursue remedies through its Inspection Panel. It may be possible to file complaints with National Contact Points of OECD member countries, and of course to use human rights rhetoric in lobbying and publicity campaigns.

As for the third question, that human rights are limited in scope: It’s true that human rights law has traditionally had a vertical orientation – that is, it primarily sets out duties of States towards those within its territory. But in this respect, human rights law may be changing, and in particular it may have much to learn from international environmental law. From the U.S.-Canada *Trail Smelter* arbitration in the 1930s to the present day, international environmental law has been concerned about transboundary harm. Its experience may be of value in moving human rights law towards a more diagonal approach, where States have obligations to those outside their territory but affected by their actions.

Finally, while it’s undeniably true that human rights focus attention on human issues, I would not claim that a human rights perspective is the only way of looking at environmental protection. Humans share this planet, and other species and ecosystems have intrinsic value beyond their value to us. Human rights are not the only perspective on environmental protection, but they are an indispensable perspective.

Let me conclude by thanking you again for being here today. I am happy to answer any questions I can, and I look forward to a fascinating conference.