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**Human Rights Obligations to Protect the Environment**

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Thank you very much for the invitation to speak today. It is an honor to be here.

The previous speakers have described the frameworks for human rights on the one hand, and sustainable development on the other. In my talk, I will describe how those two frameworks come together.

At the outset, you might ask: Why combine these two areas? What does a human rights perspective add to environmental policy? A human rights perspective has four primary benefits.

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

Second, human rights law set outs procedural requirements for environmental policy-making.

Third, it includes minimum substantive standards that environmental policies must meet.

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

Let me discuss each of these benefits in more detail. **First, from the beginning of the modern environmental movement, in the late 1960s, it has been clear that environmental harm can interfere with the full enjoyment of human rights.**

One way to express this relationship is through a right to a healthy environment. Over 90 countries have adopted such a right in their national constitutions, including Indonesia and the Philippines. But the right is not included in every national constitution or human rights treaty. Many human rights instruments are based on the 1948 Universal Declaration of Human Rights, which does not mention the environment.

Even without an explicit right to a healthy environment, human rights law is relevant to environmental protection. Environmental harm can threaten many human rights that are recognized in the Universal Declaration and other human rights instruments, such as rights to life, health, and an adequate standard of living. The ASEAN human rights declaration of 2012, for example, states that the right of every person to an adequate standard of living includes not only rights to food, housing, and water, but also the right to a safe, clean and sustainable environment.

Environmental harm interferes with these rights in countless ways, including:

o Dumping toxic waste

o Large-scale mining

o Massive oil exploitation that pollutes rivers and aquifers

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 third largest delta in the world. The oil was taken by Royal Dutch Shell (in a joint venture with the Nigerian government).

The oil development caused massive environmental degradation to the land of the Ogoni, an ethnic population of about 1 million. Oil is valuable but it is also messy. One of the basic lessons of environmental policy is that those who reap the benefits of industrial activity are often not the same people as those who bear its costs. An evaluation by the UN Environment Programme [2011] described the massive effects of the oil pollution. For example, oil is found five meters underground. One of the effects is to contaminate drinking water. One community, for example, was found to have wells with the level of benzene 900 times safe levels. UNEP states that the clean-up could last 25 to 30 years. It recommends that Shell and Nigeria start a fund with one billion dollars, to cover the first five years.

The effect of this degradation of the natural environment is to prevent the full enjoyment of the communities’ rights to water, health, and life. Moreover, the African Commission on Human and Peoples’ Rights found that 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

These are obvious human rights violations, but sometimes the links are more indirect. For example, the emissions of greenhouse gases around the world contribute to global warming, which in turn leads to melting glaciers, rising sea levels, and threats to those who live in coastal regions, among many other areas.

For example, the Maldives, which is composed of small islands in the Indian Ocean, has an average height above sea level of less than two meters. Sea levels will rise between 0.5 and 1 meter by 2100. An increase of 0.5 meter would inundate 15% of Male’, the most populous island in the Maldives, by 2025, and flood half of it by 2100.

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.

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

I was appointed by the United Nations Human Rights Council in July 2012 to a three-year mandate as an independent expert on human rights and environment. That mandate requests me to study and clarify the human rights obligations relating to the enjoyment of a healthy environment. I conducted an exhaustive study of human rights sources, including human rights treaties, regional human rights bodies, and environmental instruments. I reported on the results to the Human Rights Council two months ago.

One of the clearest conclusions of the study is that States have obligations under human rights law in relation to environmental policy-making. Specifically, they have duties to assess environmental impacts, to make environmental information public, and to facilitate public participation in environmental decision-making.

These are not just good ideas! They are the law – obligations described by human rights bodies charged with overseeing compliance with States’ obligations under human rights treaties. The bodies have stated that these steps are necessary to fulfill States’ duties to protect the rights to life, health, an adequate standard of living, and so forth.

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 groups 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.

States have specific duties 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 also makes clear that States have duties to protect everyone’s rights of expression and association in relation to environmental issues. 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.

Global Witness has reported that between 2002 and 2013, 908 people were killed because of their work defending environmental and land rights, an average of one a week for over a decade. And 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.”

Even worse, these numbers almost certainly 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.

The participants at this meeting are well aware of these dangers. To name some recent examples from this region:

o In January 2012, Sombath Samphone, a leading environmentalist in Laos, disappeared after participating in a public forum where farmers shared their experience of land seizure.

o The same month, Wisut Tangwittayaporn was shot and killed in Phuket, Thailand, in response to his coverage of land grabs.

o In April 2012, Chut Wutty was shot and killed in Cambodia while escorting two journalists investigating illegal logging in Koh Kong province

o Also in 2012, Dinh Dang Dinh was sentenced to 12 years in prison by the Vietnamese government for a series of articles he wrote on government corruption in bauxite mining.

So I am not bringing you news by telling you that activists and journalists 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.” Similarly, the European Court has decided cases in which it held that States failed to strike a fair balance between protecting rights from environmental harm and protecting other interests.

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**. The expert body charged with overseeing compliance with the International Covenant on Economic, Social and Cultural Rights has strongly discouraged retrogressive actions with respect to fulfilment of the rights protected by the International Covenant, in light of the obligation in the Covenant to move as expeditiously as possible towards full realization of the rights. If States do take retrogressive measures, then they have the burden of proving that they first carefully considered all alternatives, and that the measures “are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party’s maximum available resources” (para. 32).

States are 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 must 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, 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 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 were endorsed by the Human Rights Council 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. In either case, “the applicable principles are broadly similar.”

**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.

For example, the Special Rapporteur on the situation of human rights defenders has stated that States must implement mechanisms that allow defenders to communicate their grievances, claim responsibilities, and obtain effective redress for violations, without fear of intimidation (A/68/262, paras. 70–73). The Guiding Principles on Business and Human Rights require States and corporations to provide for remedies for human rights abuses.

International environmental instruments also support an obligation to provide for effective remedies. Principle 10 of the 1992 Rio Declaration states: “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

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.

Some States in this region have taken similar steps. In the Philippines, the Supreme Court has issued important decisions applying the constitutional right to a healthy environment to timber harvesting (1993, Minors Oposa), and to Manila Bay (2008). In 1999, the Concerned Residents of Manila Bay, a group of fourteen young environmental advocates, filed a complaint against the Metropolitan Manila Development Authority, and the Department of Environment and Natural Resources for the cleanup of pollution in Manila Bay. In 2008, the Supreme Court affirmed lower court decisions ordering the defendants to clean up the bay, holding that:

“Even assuming the absence of categorical legal provisions specifically prodding [defendants] to clean up the bay, they . . . cannot escape their obligation to future generations of Filipinos to keep the waters of Manila Bay clean and clear as humanly possible. Anything less would be a betrayal of the trust reposed in them.

The Supreme Court also announced plans (in 2008) to create a system of environmental courts, which would be staffed by judges with special expertise. And in 2010, it announced special rules for environmental cases, to make it easier to bring suit to enforce environmental rights. Also created new type of civil action, called write of kalikasan (nature), which authorizes any person to bring legal action asking court to order cessaition of harmful environmental activities.

And here in Thailand, the Supreme Court has ruled that the 1997 constitution recognized rights and duties in preservation of environment. Under the 2007 constitution, the Supreme Administrative Court halted dozens of major projects at a petrochemical hub due to violations of constitutional provisions related to health and environmental protection.

Often domestic remedies are unavailable or ineffective. But a human rights approach may help to support other avenues of relief.

At the international level, although the United Nations does not have an international human rights court, it does have treaty bodies that can oversee compliance with their terms. In some cases, they can receive communications from individuals alleging violations. The Human Rights Council appoints special rapporteurs that can receive such communications, many of whom have mandates related to the environment. For example, Special Rapporteurs on water, food, toxic substances, human rights defenders.

I don’t want to overstate the strength of these remedies. The international bodies do not have the power to order States to comply, and they are often overburdened. It is also unfortunate that there’s no regional human rights body with jurisdiction over southeast Asia.

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 when there is international financing from World Bank or other international financial institutions, it may be possible to pursue remedies through their Inspection Panels or other oversight mechanisms.

The linkages between human rights and the environment are being used more and more frequently. They were almost unknown 20 years ago, and still quite rarely used a decade ago. That has changed. The regional bodies, the human rights treaty bodies, the Special Rapporteurs are all engaged with these issues now. So are governments and civil society at the national and local level. Countries with environmental clauses in their constitutions are seeing increased numbers of cases. And human rights are increasingly being cited in environmental debates.

Many challenges remain. One particular challenge is people often don’t know how they can use human rights to address environmental issues. I hope this conference will help to change that.

Let me conclude by thanking you for all that you do to support human rights and the environment. It is no exaggeration to say that you are making the world a better place for all of us. I am happy to answer any questions I can, and I look forward to a fascinating conference.