



General Assembly

Distr.: General
24 December 2012

Original: English

Human Rights Council

Twenty-second session

Agenda item 3

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

Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox

Preliminary report

Summary

This report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment is submitted to the Human Rights Council in accordance with Council resolution 19/10.

The first report of the Independent Expert is intended to place the mandate in a historical context, present some of the outstanding issues relevant to the relationship between human rights and the environment and describe the current and planned programme of activities. The Independent Expert notes that the relationship between human rights and the environment has been the subject of serious, sustained attention in many different forums. Although some fundamental aspects of the relationship are now firmly established, the Independent Expert explains that many issues related to the obligations that human rights law imposes regarding environmental protection need greater study and clarification. Therefore, the first priority of his mandate is to provide greater conceptual clarity to the application of human rights obligations related to the environment. He intends to take an evidence-based approach to determining the nature, scope and content of these obligations. To inform his work, the Independent Expert will actively consult and seek input from a wide spectrum of relevant stakeholders.

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I. Introduction

1. In its resolution 19/10, adopted on 22 March 2012, the Human Rights Council decided to appoint an Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, with a mandate to:

(a) Study the human rights obligations, including non-discrimination obligations, relating to the enjoyment of a safe, clean, healthy and sustainable environment;

(b) 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;

(c) Make recommendations that could help with the realization of the Millennium Development Goals, especially Goal 7 (ensuring environmental sustainability);

(d) Take into account the results of the 2012 United Nations Conference on Sustainable Development and contribute a human rights perspective to follow-up processes; and

(e) Take into account a gender perspective by, inter alia, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities.

2. Resolution 19/10 requests the Independent Expert to submit a report, including conclusions and recommendations, to the Council at its twenty-second session and to report annually thereafter. It also requests the Independent Expert to consult with and take account of the views of a wide range of stakeholders, including Governments, international bodies, national human rights institutions, civil society organizations, the private sector and academic institutions. Moreover, the resolution provides that the Independent Expert shall work in close coordination, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Human Rights Council, as well as other relevant United Nations bodies and human rights treaty bodies.

3. On 6 July 2012, the Council appointed Professor John H. Knox as the Independent Expert.¹ His mandate formally began on 1 August 2012.

4. In accordance with the mandate, the Independent Expert has begun his work by conducting extensive consultations with States, international organizations, human rights bodies, environmental and human rights civil society organizations, legal experts, and other special procedures on the substance of the mandate and how best to carry it out. Consultations have been arranged in Geneva, Washington and Nairobi. Subject to the availability of voluntary contributions, the Independent Expert plans to convene additional multi-stakeholder consultations in the near future, including in Latin America and Asia. He also plans to employ other means of receiving views from stakeholders, including through surveys.

5. For assistance in the legal research required by the mandate, the Independent Expert intends to draw on pro bono research and advice from legal practitioners and scholars. He has received very helpful offers of such assistance and would welcome additional help from legal experts, in particular from developing countries.

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6. In his future reports, the Independent Expert will respond to each of the elements of the mandate in greater detail. This first report is intended only to place the mandate in a historical context, present some of the outstanding issues and describe the current and planned programme of activities.

II. The evolution of environmental rights

7. Environmental rights – that is, rights understood to be related to environmental protection – are late arrivals to the body of human rights law. The drafters of the seminal human rights instrument, the 1948 Universal Declaration of Human Rights, did not include environmental rights. Nor, at the time, did the national constitutions to which the drafters looked for inspiration. The silence was understandable. Although humans have always known of our dependence on the environment, we were only beginning to realize how much damage our activities could cause to the environment and, as a result, to ourselves. Efforts to mitigate environmental degradation were then still in their infancy.

8. As scientific knowledge of the environment has grown over the succeeding decades, so has our awareness of the importance of safeguarding it. From the 1960s to the present, the modern environmental movement has transformed our relationship with the environment. Virtually every State in the world has enacted domestic laws aimed at reducing air and water pollution, regulating toxic substances and conserving natural resources, among other goals. At the international level, States have negotiated a vast number of agreements to address environmental challenges, including trade in endangered species, conservation of biological diversity, transportation and disposal of hazardous substances, marine pollution, depletion of the ozone layer and climate change.

9. In short, environmental concerns have moved from the periphery to the centre of human efforts to pursue economic and social development. Since the early 1990s, the international community has repeatedly emphasized that development must be sustainable and, in particular, must protect the environment on which present and future generations depend. In the words of the Rio Declaration on Environment and Development, adopted at the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it” (principle 4). Goal 7 of the Millennium Development Goals is to ensure environmental sustainability, including by integrating principles of sustainable development into country policies and programmes, and reversing the loss of environmental resources.² In June 2012, at the United Nations Conference on Sustainable Development, States again renewed their commitment “to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations”.³

10. With the rise of a stronger environmental consciousness came calls for formal recognition of the importance of environmental protection to human well-being. These calls often sought expression in the language of human rights. This is unsurprising, even inevitable. Human rights are grounded in respect for fundamental human attributes such as dignity, equality and liberty. The realization of these attributes depends on an environment that allows them to flourish. At the same time, effective environmental protection often depends on the exercise of human rights that are vital to informed, transparent and

² Other targets include reducing biodiversity loss, halving the proportion of people without access to safe drinking water and basic sanitation, and improving the lives of at least 100 million slum dwellers.

³ United Nations Conference on Sustainable Development resolution I “The future we want”, contained in its report, A/CONF.216/16, para. 1, endorsed by the General Assembly in its resolution 66/288.

responsive policymaking. Human rights and environmental protection are inherently interdependent.

11. The recognition of the close relationship between human rights and the environment has principally taken two forms: (a) adoption of an explicit new right to an environment characterized in terms such as healthy, safe, satisfactory or sustainable; and (b) heightened attention to the relationship to the environment of already recognized rights, such as rights to life and health.⁴

A. A right to a healthy environment

12. As the importance of environmental protection has become clearer, many countries have added explicit environmental rights to their constitutions. In 1976, Portugal became the first country to adopt a constitutional “right to a healthy and ecologically balanced human environment”. Since then, more than 90 States have adopted similar rights in their national constitutions.⁵ About two thirds of the constitutional rights refer to health; alternative formulations include rights to a clean, safe, favourable or wholesome environment.⁶ Some States have included more detailed rights, such as rights to receive information and to participate in decision-making about environmental matters.

13. At the regional level, human rights agreements drafted after the 1970s have also included such rights. The 1981 African Charter on Human and Peoples’ Rights provides that “all peoples shall have the right to a general satisfactory environment favorable to their development” (art. 24) and the 1988 Additional Protocol to the American Convention on Human Rights states that “everyone shall have the right to live in a healthy environment” (art. 11, para. 1). In 2003, the African Union adopted the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which states that women “shall have the right to live in a healthy and sustainable environment” (art. 18) and “the right to fully enjoy their right to sustainable development” (art. 19). The 2004 Arab Charter on Human Rights includes a right to a healthy environment as part of the right to an adequate standard of living that ensures well-being and a decent life (art. 38). Similarly, the Human Rights Declaration adopted by the Association of Southeast Asian Nations in November 2012 incorporates a “right to a safe, clean and sustainable environment” as an element of the right to an adequate standard of living (para. 28 (f)). Although the European human rights system does not include an explicit right to a healthy environment, the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), drafted under the auspices of the United Nations Economic Commission for Europe, refers to “the right of every person of

⁴ A great deal of scholarship has addressed human rights and the environment. Good overviews are provided by the analytical study prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), A/HRC/19/34 and Corr.1, which the Council noted with appreciation in Resolution 19/10, and a joint report prepared by OHCHR and the United Nations Environment Programme (UNEP) for the 2012 United Nations Conference on Sustainable Development, entitled “Human Rights and the Environment: Rio+20”. A detailed survey of the entire field is *Environmental Protection and Human Rights*, by Donald K. Anton and Dinah L. Shelton (Cambridge University Press, 2011).

⁵ See David Richard Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, Toronto, UBC Press, 2012).

⁶ For the remainder of this report, the phrase “right to a healthy environment” includes the various alternative formulations of such a right.

present and future generations to live in an environment adequate to his or her health and well-being” (art. 1).⁷

14. In contrast to these developments at the national and regional levels, no global agreement sets out an explicit right to a healthy (or satisfactory, safe or sustainable) environment.⁸ Were the Universal Declaration to be drafted today, it is easy to imagine that it would include a right recognized in so many national constitutions and regional agreements. At the same time, it must be acknowledged that the United Nations has not taken advantage of subsequent opportunities to recognize a human right to a healthy environment. The instrument that comes the closest may be the 1972 Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), whose principle 1 states that: “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”. The 1987 report of the World Commission on Environment and Development (A/42/427), which brought forward the concept of sustainable development, included legal principles drafted by an experts group, the first of which declared, “all human beings have the fundamental right to an environment adequate for their health and well-being”.⁹ Rather than adopt this language, however, the 1992 Rio Declaration 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” (principle 1). Nor have the later conferences on sustainable development in Johannesburg in 2002 and Rio de Janeiro in 2012 proclaimed a right to a healthy environment.

15. In the United Nations human rights bodies, the most sustained attention to the possible adoption of such a right came in the early 1990s. In 1990, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed Fatma Zohra Ksentini as its Special Rapporteur on human rights and the environment. Her final report (E/CN.4/Sub.2/1994/9), in 1994, included draft principles on human rights and the environment drawn up by a group of experts, stating that everyone has “the right to a secure, healthy and ecologically sound environment” and listing a number of related rights, including rights to freedom from pollution, to protection and preservation of the air, soil, water, sea-ice, flora and fauna, to safe and healthy food and water, and to information concerning the environment (*ibid.*, annex I).

16. Although the Human Rights Commission considered the report, it did not adopt or endorse the draft principles or appoint a Special Rapporteur itself. The Commission and Council, as well as other United Nations human rights bodies and mechanisms, have continued to study the interaction of human rights and the environment, but their attention has been directed primarily at the relationship of the environment with already recognized

⁷ It may also be noted that the European Committee of Social Rights has interpreted the right to protection of health in article 11 of the European Social Charter to include the right to a healthy environment. See complaint No. 30/2005, *Marangopoulos Foundation for Human Rights v. Greece*, decision on the merits (2006), para. 195.

⁸ Articles 1 of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, on the right of self-determination, provide that “all peoples may, for their own ends, freely dispose of their natural wealth and resources” and “in no case may a people be deprived of its own means of subsistence”. But this language speaks more to the relationship of a people with its natural resources than to a human right to a healthy environment. The International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child do refer to the environment in the context of specific rights, as the next section explains.

⁹ In 1990, in its resolution 45/94, the General Assembly adopted a softened version of this language: “all individuals are entitled to live in an environment adequate for their health and well-being.”

human rights. In other words, they have concentrated not on proclaiming a new right to a healthy environment, but rather on what might be called “greening” human rights – that is, examining and highlighting the relationship of existing human rights to the environment.

17. This effort, as well as similar efforts in other forums, has identified two sets of rights closely related to the environment: (a) rights whose enjoyment is particularly vulnerable to environmental degradation; and (b) rights whose exercise supports better environmental policymaking. At the risk of oversimplification, many of the rights in the first category – that is, those at risk from environmental harm – are often characterized as *substantive* rights, while many of the rights in the second category – those whose implementation supports stronger environmental policies – are often considered *procedural* rights. Examples of the former are rights to life, health and property; examples of the latter are rights to freedom of expression and association, to information, to participation in decision-making and to effective remedies. The next two sections of the present report describe the developing awareness of the environmental aspects of each of these sets of rights.

B. Human rights vulnerable to environmental harm

18. The recognition that environmental harm can interfere with the full enjoyment of human rights is not new; it dates from the very beginning of the modern environmental movement. In the 1968 resolution deciding to convene the Stockholm Conference, the General Assembly, in the preamble of its resolution 2398 (XXIII), noted its concern about the effects of “the continuing and accelerating impairment of the quality of the human environment ... on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as developed countries”. And the first paragraph of the proclamation of the 1972 Stockholm Declaration states that “both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself” (para. 1).

19. In a real sense, all human rights are vulnerable to environmental degradation, in that the full enjoyment of all human rights depends on a supportive environment. However, some human rights are more susceptible than others to certain types of environmental harm. In recent years, in addition to reaffirming the general point that “environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights” (res. 16/11, preamble), the Human Rights Council has identified environmental threats to particular rights. To give three examples, it has: affirmed that illicit traffic in, and improper management and disposal of, hazardous substances and wastes constitute a serious threat to a range of rights, including the rights to life and health;¹⁰ underlined that climate change has a wide range of implications for the effective enjoyment of human rights, including the rights to life, health, food, water, housing and self-determination;¹¹ and recognized that “environmental degradation, desertification and global climate change are exacerbating destitution and desperation, causing a negative impact on the realization of the right to food, in particular in developing countries”.¹²

20. The Human Rights Council has also led other human rights bodies and mechanisms within the United Nations system to examine in more detail the effects of environmental

¹⁰ Commission on Human Rights res. 2005/15; Council res. 9/1, 12/18, 18/11. See also Vienna Declaration and Programme of Action, para. 11.

¹¹ Council res. 7/23, 10/4, 18/22. It has also held two panel discussions, in 2009 and 2012, that have elaborated on those implications.

¹² Council res. 7/14, 10/12, 13/4.

degradation on human rights. For example, at the request of the Council, the Office of the High Commissioner for Human Rights (OHCHR) conducted a study in 2008–2009 on the effects of climate change on the enjoyment of human rights (A/HRC/10/61). The study concluded that climate change will pose direct and indirect threats to many rights, including: the rights to life and food, as a result of malnutrition and extreme weather events; the right to water, as a result of melting glaciers and reductions in snow cover; and the right to the highest attainable standard of health, as a result of malnutrition, extreme weather, and an increasing incidence of malaria and other diseases that thrive in warmer weather. The study noted that rising sea levels caused by global warming threaten the very existence of small island States, which has “implications for the right to self-determination, as well as for the full range of rights for which individuals depend on the State for their protection” (para. 41). In December 2009, before the Copenhagen meeting of the parties to the United Nations Framework Convention on Climate Change, the special procedure mandate holders issued a joint statement drawing attention to the dangers that climate change presents to the enjoyment of human rights.¹³

21. Special procedures have further analysed the effects of environmental degradation on human rights. One mandate, in particular, was created to examine the human rights effects of a specific environmental problem: the illicit disposal of hazardous substances and waste in developing countries. Since 1995, the special rapporteurs appointed to carry out this mandate have identified many human rights that may be infringed by such toxic dumping, including not only the rights to life and health, but also “such fundamental rights as the right of peoples to self-determination and permanent sovereignty over natural resources, the right to development, the rights to ... adequate food and safe and healthy working conditions, freedom of expression, the right to form and join trade unions, the rights to strike and to bargain collectively, the right to social security and the right to enjoy the benefits of scientific progress and its applications”.¹⁴

22. Other special procedures have drawn the connections between environmental harm and impairment of the rights within their mandates. The following are a few of many possible examples. The former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context informed the 2002 World Summit on Sustainable Development that “the realization of the right to adequate housing loses its meaning unless processes are put into place to ensure that people and communities can live in an environment that is free from pollution of air, water and the food chain”¹⁵ and the current Special Rapporteur has issued a detailed report on the effects of climate change on the right (A/64/255). The Special Rapporteur on the human right to safe drinking water and sanitation has carefully examined the effects of climate change on those rights.¹⁶ The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has underscored that the right extends to the underlying determinants of health, such as safe water, adequate sanitation, and healthy environmental conditions generally (A/62/214, para. 104).¹⁷ The

¹³ Joint statement of the special procedure mandate holders of the Human Rights Council on the United Nations Climate Change Conference (Copenhagen, 7–18 December 2009).

¹⁴ Report submitted by the Special Rapporteur on toxic waste on adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, E/CN.4/2001/55, para. 58.

¹⁵ Statement by Mr. Miloon Kothari, Special Rapporteur on adequate housing at the World Summit on Sustainable Development, Johannesburg, South Africa, 30 August 2002.

¹⁶ Climate Change and the Human Rights to Water and Sanitation: Position Paper. Available from www.ohchr.org/Documents/Issues/Water/Climate_Change_Right_Water_Sanitation.pdf.

¹⁷ This is also the position of the Committee on Economic, Social and Cultural Rights (see general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4).

Special Rapporteur on the right to food has emphasized that agricultural productivity depends on the services rendered by ecosystems (A/HRC/13/33/Add.2, para. 21) and his most recent report focuses on the impact of the destruction of the world's fisheries on the right to food (A/67/268).

23. Some global human rights treaties explicitly refer to environmental threats to human rights, particularly the right to health. The Convention on the Rights of the Child states that environmental pollution poses “dangers and risks” to nutritious foods and clean drinking-water, which Parties are required to take appropriate measures to provide in the course of pursuing full implementation of the right of the child to the highest attainable standard of health (art. 24, para. 2 (c)).¹⁸ Similarly, article 12, paragraph 2 (b) of the International Covenant on Economic, Social and Cultural Rights provides that the steps Parties must take to achieve the full realization of the right to health “shall include those necessary for ... the improvement of all aspects of environmental and industrial hygiene”. The Committee on Economic, Social and Cultural Rights has interpreted this phrase to comprise, inter alia, “the requirement to ensure an adequate supply of safe and potable water and basic sanitation; [and] the prevention and reduction of the population’s exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”.¹⁹

24. Finally, the regional human rights tribunals have contributed a great deal of jurisprudence to the relationship of human rights and the environment. In a series of carefully reasoned decisions, the African Commission on Human and Peoples’ Rights, the European Court of Human Rights, and the Inter-American Commission and Court of Human Rights have found that environmental harm can give rise to violations of rights to life,²⁰ health,²¹ property²² and privacy,²³ among others.

C. Human rights vital to environmental policymaking

25. The human rights whose enjoyment can be affected by environmental harm are not the only rights directly relevant to the environment. Another approach to clarifying the

¹⁸ To the same end, the Convention requires Parties to take appropriate measures to ensure that all segments of society are supported in the use of basic knowledge of environmental sanitation (art. 24, para. 2 (e)).

¹⁹ Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 15. Interestingly, the Committee entitled its paragraph on article 12, paragraph 2 (b), “The right to healthy natural and workplace environments”.

²⁰ E.g., African Commission on Human and Peoples’ Rights, communication No. 155/96, *Social and Economic Rights Action Center v. Nigeria (Ogoniland Case)*, decision, para. 67; European Court of Human Rights, *Öneryildiz v. Turkey* (application No. 48939/99), Judgement, 30 November 2004, para. 118; Inter-American Commission on Human Rights, report on the situation of human rights in Ecuador, document OEA/Ser.L/V/II.96 doc. 10 rev. 1.

²¹ E.g., European Committee of Social Rights, complaint No. 30/2005, *Marangopoulos Foundation for Human Rights v. Greece*, para. 221.

²² E.g., Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Series C No. 172, judgement of 28 November 2007, paras. 95, 158; *Indigenous Community of Yakye Axa v. Paraguay*, Series C No. 125, judgement of 17 June 2005, para. 143, 156; Inter-American Commission on Human Rights, *Maya Indigenous Community of the Toledo District v. Belize*, case 12.053, report No. 40/04, document OEA/Ser.L/V/II.122, doc. 5 rev. 1, para. 153.

²³ E.g., European Court of Human Rights, *Fadeyeva v. Russia* (application No. 55723/00), judgement of 9 June 2005, para. 134; *Taşkın and others v. Turkey* (application No. 46117/99), judgement of 10 November 2004, para. 126; *López Ostra v. Spain* (application No. 16798/90), judgement of 9 December 1994, para. 58.

relationship of already recognized rights with the environment is to identify rights whose implementation is vital to environmental policymaking. In general, these are rights whose free exercise makes policies more transparent, better informed and more responsive.²⁴ They include rights to freedom of expression and association, rights to receive information and participate in decision-making processes, and rights to legal remedies. When directed at environmental issues, the exercise of such rights results in policies that better reflect the concerns of those most concerned and, as a result, that better safeguard their rights to life and health, among others, from infringement through environmental harm.²⁵

26. Procedural rights are protected by many human rights instruments. For example, rights of freedom of expression, freedom of peaceful assembly and association, participation in government and effective remedies for violations of rights are recognized in the Universal Declaration (arts. 7, 8, 19, 20 and 21) and elaborated on in the International Covenant on Civil and Political Rights (arts. 2, 19, 21, 22 and 25), both of which also make clear that the rights are not subject to discrimination.²⁶ Even though these instruments do not explicitly address environmental issues, they undoubtedly encompass the exercise of the rights for environmental ends.

27. Another important instrument in this regard is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which sets out, inter alia: rights to meet peacefully to promote and protect human rights; to seek and obtain information about human rights, to disseminate information about human rights and to draw attention to whether they are observed in practice; to have effective access to participation in government; and to benefit from remedies for human rights violations, including by having complaints of such violations promptly reviewed by independent and competent legal authorities and receiving redress. Again, these rights apply no less to human rights defenders seeking to exercise them for the protection of the environment than they do for other purposes protective of the full enjoyment of human rights.

28. In practice, environmental human rights defenders have proved to be especially at risk when trying to exercise these rights. The Special Rapporteur on the situation of human rights defenders has reported (A/HRC/19/55) that she receives many communications concerning environmental activists, “including those working on issues related to extractive industries, and construction and development projects; those working for the rights of indigenous and minority communities; women human rights defenders; and journalists” (ibid., para. 64). Environmental rights defenders face a high risk of killings, attacks, assault, threats and intimidation from both State and non-State actors (ibid., paras. 64–92). Needless

²⁴ To be clear, these are not the only types of rights whose fulfilment may benefit environment policymaking. As noted below, environmental rights may also give rise to *substantive* standards to inform and guide environmental policies. And the implementation of some rights, such as the right to sanitation, may have direct environmental benefits. See report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, A/HRC/12/24, para. 35.

²⁵ See Council resolution 16/11, preamble (“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”); A/HRC/19/34, para. 8 (“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”).

²⁶ See also Human Rights Committee, general comment No. 34 (2011) on article 19 (freedom of opinion and expression) of the International Covenant on Civil and Political Rights (stating in paragraph 18 that article 19, paragraph 2, of the Covenant “embraces a right of access to information held by public bodies”).

to say, the primary effect of these human rights violations is felt by the individuals and communities who suffer from them. But the violations also have secondary effects on the environment that the individuals were trying to protect and on all of those whose full enjoyment of human rights depends upon that environment.

29. The procedural rights that support environmental protection may be found in sources other than human rights instruments. One of the most often-cited sources is principle 10 of the 1992 Rio Declaration, which states:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

30. Principle 10 has been influential in the development of international and domestic environmental law and policy. The clearest example may be the Aarhus Convention, which sets out detailed obligations with respect to access to information, public participation and access to justice in environmental matters.

31. Although principle 10 does not characterize access to information, opportunity to participate in decision-making and access to legal remedies as human rights, there are obvious parallels between those norms and those of human rights law. More explicitly, the Aarhus Convention does describe access to information, participation and remedies as rights, and provides that each Party shall guarantee them, in accordance with the terms of the Convention, “in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” (art. 1).

32. Similarly, although the Rio Declaration does not refer to principles of non-discrimination in the exercise of procedural rights, it does emphasize the role of certain vulnerable groups, including women, youth, indigenous people and people under oppression, in environmental policymaking (principles 20–23). The Aarhus Convention includes a clear requirement of non-discrimination, stating that within the scope of the Convention, “the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile” (art. 3, para. 9). Again, there are strong similarities to requirements of non-discrimination in human rights law. The final outcome of the 2012 United Nations Conference on Sustainable Development (A/CONF.216/16, para. 1, resolution I “The future we want”) connects non-discrimination more explicitly to human rights norms in its treatment of gender equality, citing the Convention on the Elimination of All Forms of Discrimination against Women and stating the resolve of the State participants to “unlock the potential of women as drivers of sustainable development”, including by repealing discriminatory laws and ensuring equal access to justice and legal support (*ibid.*, paras. 236 and 238).

33. The procedural rights of indigenous peoples have received detailed recognition in international instruments. International Labour Organization (ILO) Convention No. 169 (1989) concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries includes a general requirement that governments consult with the peoples concerned whenever giving consideration to measures that may affect them directly (art. 6). More specifically, it provides for the assessment of environmental impacts of proposed development activities and makes clear that the rights

of indigenous peoples to the natural resources pertaining to their lands include the right to participate in “the use, management and conservation of these resources” (art. 15; also arts. 7 and 14). Similarly, the United Nations Declaration on the Rights of Indigenous Peoples recognizes the right of indigenous peoples to participate in decision-making on matters that would affect their rights and provides that States shall consult with the indigenous peoples concerned to obtain their free, prior and informed consent before adopting and implementing measures that may affect them, particularly with respect to projects involving the development, use or exploitation of natural resources (arts. 18, 19, 29 and 32).

III. Framing the issues

34. As this brief description of the evolution of environmental rights makes clear, some aspects of the relationship between human rights and the environment are now firmly established. To highlight two: first, as many human rights bodies at the global, regional and national levels have recognized, environmental degradation can and does adversely affect the enjoyment of a broad range of human rights, including rights to life, health, food and water. Second, the exercise of certain rights can and does benefit environmental policymaking, resulting in better environmental protection and, as a consequence, greater protection of the human rights that may be threatened by environmental degradation. These protective rights include rights of free expression and association, rights of information and participation, and rights to remedy. They have been affirmed in a wide range of international instruments, including environmental as well as human rights agreements.

35. The *obligations* that human rights law imposes regarding environmental protection are less clearly understood. In the words of resolution 19/10, “certain aspects of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment require further study and clarification”. To provide that study and clarification is a principal focus of this mandate. To that end, the Independent Expert will rely not only on research, but also, in accordance with the terms of the mandate itself, on the views of interested stakeholders, including Governments, international bodies, national human rights institutions, civil society organizations, the private sector and academic institutions. Until that work is completed, it would be premature to draw general conclusions about the human rights obligations relating to the environment.

36. Nevertheless, it may be helpful to frame some of the issues that are likely to arise in the course of this study, including those concerning: the relationship between human rights obligations and best practices; the connections between substantive and procedural rights and duties; vulnerable groups and non-discrimination; human rights obligations relating to transboundary and global environmental harm; the application of human rights norms to non-State actors; and the relationship between a right to a healthy environment and other human rights. It is important to emphasize that this list is far from exhaustive. Nor is the study of these issues by the mandate certain to address all of these aspects in detail; its content will depend on the results of the consultations and research to come.

A. Human rights obligations and best practices

37. As the previous chapter of the present report illustrates, the relationship between human rights and the environment has become the subject of serious, sustained attention in many different forums, including United Nations human rights treaty bodies, special procedures, regional human rights bodies, international conferences on sustainable development, multilateral environmental agreements, domestic legislatures and courts, and academic studies. This diversity of perspectives demonstrates the importance that international organizations, States, civil society organizations and scholars place on these

issues and their relevance to a wide range of actors in the fields of human rights and environmental policymaking.

38. At the same time, the multitude of relevant forums makes the study of human rights obligations pertaining to the environment conceptually challenging. The development of this field has been rapid and widely dispersed, but it has also been highly fragmented. Although the various bodies engaged in the process of developing and implementing a rights-based approach to environmental policy occasionally look to one another for guidance, they often have different sources of authority, different audiences and different mandates. For example, the increasing attention devoted by treaty bodies and special procedures to environmental issues, while highly valuable, is necessarily focused on particular rights or problems. While the opinions of a regional human rights tribunal are of great importance for States within the region, the relevance for countries outside it may be less clear. The use of environmental rights in domestic law varies from State to State and may not always shed light on the scope of the rights at the international level. Moreover, the application of human rights law to environmental issues has often developed on a case-by-case basis. In sum, while there is no shortage of statements on human rights obligations relating to the environment, the statements do not come together on their own to constitute a coherent set of norms.

39. Nevertheless, as the previous chapter also indicates, the human rights and environmental bodies that have examined these issues do seem to have reached some areas of convergence in their approaches. Wherever possible, the independent expert will seek to find such areas with respect to human rights obligations. In that respect, he will be guided by the language of resolution 19/10. By requesting study of the human rights obligations relating to the environment and a compilation of best practices in the use of human rights obligations to improve environmental policymaking, in consultation with interested actors in all areas, the resolution encourages the Independent Expert to examine the use of rights-based approaches to environmental protection through a wide lens. Human rights obligations relating to the environment may fall along a spectrum, from duties that are generally binding on all States, to those that bind a smaller number of States that have accepted them through regional agreements or that have adopted them in their own constitutions or other laws. Obligations that bind only some States may nevertheless be worthy of consideration by other States as possible best, or good, practices.²⁷

B. Substantive and procedural rights and duties

40. In examining the obligations pertaining to the human rights vulnerable to environmental degradation, perhaps the most basic set of issues concerns the substantive and procedural content of those obligations. One interesting development in this respect concerns possible links between substantive rights and procedural duties. Some human rights bodies have, in effect, closed the circle between the (largely substantive) rights that are most likely to suffer environmental harm, and the (largely procedural) rights whose implementation helps to ensure environmental protection. In order to safeguard the environment from the types of harm that violate the first set of rights, they have concluded that States have obligations to respect and ensure the second set of rights.

²⁷ The Independent Expert agrees with the statement of the then Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation that “rarely can a practice be qualified as best and that the concept of good practices is preferable” (A/HRC/10/6, para. 34, footnote 37).

41. Much of this analysis has come from the regional human rights tribunals. For example, the African Commission on Human and Peoples' Rights has said that Government compliance with the spirit of the rights to health and to a satisfactory environment in the African Charter must include "ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities".²⁸ In a series of cases construing the right to privacy, the European Court of Human Rights has similarly held that States must follow a decision-making process that includes "appropriate investigations and studies", gives the public access to information, and provides those concerned effective legal remedies.²⁹ In construing indigenous and tribal property rights, the Inter-American Court of Human Rights has stated that the State must consult with the community regarding any proposed concessions or other activities that may affect their lands and natural resources, ensure that no concession is issued without a prior assessment of its environmental and social impacts and guarantee that the community receives a reasonable benefit from any such plan if approved. With respect to "large-scale development or investment projects that would have a major impact", the State must do more than consult; it must obtain the community's "free, prior, and informed consent, according to their customs and traditions".³⁰

42. Making this connection can create a kind of virtuous circle: strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to life, health, property and privacy. The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of other human rights.

43. To be clear, a relationship of this type between substantive rights and procedural duties does not preclude the possibility of other human rights obligations relevant to environmental protection. Obligations to respect procedural rights obviously have legal bases separate from any such obligations arising from environmental threats to substantive rights. And environmental rights may also give rise to certain minimum *substantive* environmental standards that apply regardless of whether procedural requirements are followed. For example, the Committee on Economic, Social and Cultural Rights, in its general comment No. 15 (2002) on the right to water, has construed the right to health as encompassing "taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions ... States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes" (para. 8). The scope and content of the substantive components of environmental rights like these also require further study.

²⁸ African Commission on Human and Peoples' Rights, *Ogoniland Case*, para. 53.

²⁹ *Taşkin v. Turkey*, para. 119.

³⁰ Inter-American Court of Human Rights, *Saramaka People v. Suriname*, paras. 129 and 134. The Special Rapporteur on the rights of indigenous peoples has also explained in a report to the Council, in the context of extraction of natural resources from indigenous land, that requirements of consultation and consent help to safeguard indigenous peoples' substantive rights, including rights to property, health and culture (A/HRC/21/47, paras. 49 and 50).

C. Vulnerable groups and non-discrimination

44. As the Council has recognized in its resolution 16/11, “environmental damage is felt most acutely by those segments of the population already in vulnerable situations”. Resolution 19/10 instructs the Independent Expert to apply a gender perspective by, *inter alia*, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities,³¹ and it is clear that women and children are among the groups vulnerable to environmental harm. The special procedures and OHCHR have identified other groups as well. For example, the then Independent Expert on the question of human rights and extreme poverty pointed out in a report to the General Assembly (A/65/259) that “environmental degradation disproportionately affects those living in extreme poverty” (para. 37). The then representative of the Secretary-General on the human rights of internally displaced persons highlighted in a report (A/HRC/10/13) “normative gaps in the current legal framework for protection of those displaced by the effects of global warming” (para. 22). And the OHCHR report on climate change (A/HRC/10/61) emphasized that, in addition to creating large numbers of migrants, climate change will particularly affect other vulnerable groups, including women, children and indigenous peoples (paras. 42–54).

45. Indigenous peoples are at particular risk from many kinds of environmental damage because of their cultural and economic dependence on environmental resources. As the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has explained in a report (A/HRC/15/37, para. 71), “in recognition of the special ties that indigenous peoples maintain with the natural habitats of the territories in which they live, international standards widely acknowledge indigenous peoples’ ‘right to the conservation and protection of the environment’ and of the ‘productive capacity of their lands or territories and resources’ ([United Nations] Declaration [on the Rights of Indigenous Peoples], art. 29.1) and at the same time call for the adoption of ‘special measures ... for safeguarding’ their environment (ILO Convention No. 169, art. 4.1)”.³² In 2011, the Special Rapporteur³³ concluded that “the implementation of natural resource extraction and other development projects on or near indigenous territories has become one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights” (A/HRC/18/35, para. 57).

46. Although the environmental threats to vulnerable groups are coming into sharper focus, the applicable human rights obligations are still not always as clear as they should be. Issues include the scope and application of duties of non-discrimination, as well as duties relating to special procedural and substantive rights reflective of the groups’ vulnerable situation.

³¹ As the father of three daughters, the Independent Expert understands the importance of such a perspective.

³² More generally, article 7, paragraph 4, of the Convention requires Governments to “take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit”.

³³ Mandate had by then changed to Special Rapporteur on the rights of indigenous peoples.

D. Human rights obligations relating to transboundary and global environmental harm

47. Many environmental problems involve transboundary harm. In the words of the 2011 OHCHR report on human rights and the environment, “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” (A/HRC/19/34, para. 65). Such problems have given rise to much of international environmental law, from bilateral and regional agreements on cross-border air and water pollution to multilateral environmental agreements on global challenges such as marine pollution, ozone depletion and climate change.

48. The application of human rights law to transboundary and global environmental harm requires consideration of questions regarding the extraterritorial reach of human rights norms. Those questions are often complex, not least because human rights treaties employ varying language to define the scope of their application. Recent years have seen heightened attention to the extraterritoriality of human rights obligations,³⁴ but there is still a need for more detailed clarification (see A/HRC/19/34, para. 64). These issues are of particular importance in the environmental context, in the light of the number and intensity of transboundary and global environmental threats to the full enjoyment of human rights.

E. Human rights obligations and private actors

49. Another set of issues concerns the application of human rights obligations to environmental harm caused by non-State actors, including businesses. In a review of the scope and pattern of more than 300 alleged corporate-related human rights abuses, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises found in a report (A/HRC/8/5/Add.2, para. 27) that “nearly a third of cases alleged environmental harms that had corresponding impacts on human rights ... In these cases, various forms of pollution, contamination, and degradation translated into alleged impacts on a number of rights, including on the right to health, the right to life, rights to adequate food and housing, minority rights to culture, and the right to benefit from scientific progress”. The report noted that the environmental concerns were raised with respect to all business sectors, including heavy manufacturing, pharmaceutical and chemical companies, and retail and consumer products.

50. In principle, the obligations of States to protect human rights from infringement from private actors extends to infringement from environmental harm, as many human rights bodies have explained.³⁵ However, the specific application of such obligations in the environmental context needs closer examination. In that respect, the “Protect, Respect and

³⁴ E.g., Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (28 September 2011).

³⁵ E.g., Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 23; African Commission on Human and Peoples’ Rights, *Ogoniland Case*, para. 57; European Court of Human Rights, *Hatton v. United Kingdom* (application No. 36022/97), judgement of 8 July 2003, para. 98; *López Ostra v. Spain*, para. 51; OEA/Ser.L/V/II.96 doc. 10 rev. 1.

Remedy” Framework and the Guiding Principles on Business and Human Rights will be particularly helpful.³⁶

F. The relationship between existing human rights and a right to a healthy environment

51. Some cross-cutting issues that arise in almost all of the above contexts concern the relationship between the two approaches to environmental rights described in the second chapter of this report – that is, the relationship between efforts to recognize a single, overarching right to a healthy environment and efforts to “green” existing human rights by identifying their environmental implications. That the two approaches are not inconsistent with one another seems apparent from their simultaneous use in many national and regional legal systems. But many aspects of their relationship remain unclear.

52. Possible relationships include: that the two approaches are separate from one another; that the definition and content of the right to a healthy environment are informed by experience with greening existing human rights; and that the right to a healthy environment may be derived from one or more existing rights, as it is in the Arab Charter and the Human Rights Declaration of the Association of Southeast Asian Nations. Here, too, further study may produce greater clarity.

G. Other issues

53. The issues briefly described above are not the only ones raised by this mandate. Other issues that deserve closer examination include those concerning: the potential rights of future generations; the application of human rights obligations to especially pressing environmental challenges, including climate change, armed conflict and the environmentally displaced; and, last, but not least, the relevance of human rights to protection of non-human aspects of the environment. One of the longest-standing criticisms of a human rights-based approach to environmental protection is that it is likely to ignore important aspects of the environment that are not readily reducible to human needs and interests. As the mandate proceeds, it will be necessary to bear in mind not only the potential, but also the possible limits, of looking to human rights for environmental standards.

IV. Planning the programme of activities

54. The first priority of the mandate is to provide greater conceptual clarity to the application of human rights obligations related to the environment. The Independent Expert intends to take an evidence-based approach to determining the nature, scope and content of the obligations. He plans to spend much of his time in the next year compiling such evidence, with a view to mapping the obligations in as much detail as possible. He will seek to highlight areas of coherence in the development of the obligations. Where coherence may not exist, he will be alert to the possibility of describing gaps and suggesting ways that the law may be developing to fill them.

³⁶ See report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31.

55. To inform his work, he will hold a series of consultations, to the extent that funding sources permit, devoted to particular sets of thematic issues. To facilitate widespread participation, he will seek to hold the consultations in different regions of the world. The Nairobi consultation in February 2012 begins this process with a focus on procedural rights and duties. Later consultations should address the rights of vulnerable groups, substantive rights and obligations, and duties relating to transboundary and global harm, as well as other issues. He will also seek the views of interested stakeholders through alternative methods, such as surveys.

56. As part of the consultations' examination of human rights obligations relating to the environment, they will also seek to identify, promote and exchange views on best (or good) practices relating to the use of such obligations to inform, support and strengthen environmental policymaking, in accordance with the mandate, with the eventual aim of leading to a compilation of such practices. The Independent Expert also intends to undertake country missions, including at least one in 2013, to further inform his study of human rights obligations and good practices. As time and funding allow, he will also attend conferences and expert meetings related to human rights and the environment.

57. As the human rights obligations and good practices become more clearly identified, the Independent Expert will draw on them in carrying out two other elements of the mandate: making recommendations that could help the realization of the Millennium Development Goals, especially Goal 7 on ensuring environmental sustainability; and contributing a human rights perspective to follow-up processes to the 2012 United Nations Conference on Sustainable Development.

V. Conclusions and recommendations

58. **In the last two decades, the relationship of human rights and the environment has received much attention. Some fundamental aspects of that relationship are now firmly established, but many issues are still not well understood. Clarification of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment is necessary in order for States and others to better understand what those obligations require and ensure that they are fully met, at every level from the local to the global.**

59. **At this preliminary stage in the work of the mandate, it may be too early for recommendations. The Independent Expert does have two requests, however, of all States and other interested stakeholders. First, he asks for continuing support and feedback as he goes forward. In particular, he welcomes comments and reactions to this report.**

60. **Second, he urges States and other stakeholders to remember that the lack of a complete understanding as to the content of all environmentally related human rights obligations should not be taken as meaning that no such obligations exist. Indeed, some aspects of the duties are already clear. Perhaps most obviously, otherwise applicable human rights obligations are not lessened merely because the environment is concerned.**

61. **For example, States' fundamental obligations to refrain from arbitrary deprivation of life and to undertake due diligence to protect against the deprivation of life by non-State actors do not become inapplicable merely because the deprivation involves the environment. Similarly, States' obligations regarding freedom of expression and association apply fully to those seeking to exercise those freedoms for the purpose of improving environmental protection. Environmental defenders have human rights just as others do but, as the Special Rapporteur on human rights**

defenders explained in her report last year, they may be more at risk than most for exercising them. To echo her words, States should recognize the important work carried out by human rights defenders working on land and environmental issues in trying to find a balance between economic development and environmental protection, should not tolerate their stigmatization and should ensure prompt and impartial investigations into alleged violations of their rights.³⁷

62. More generally, States should continue to take account of all of the decisions and recommendations from the many other forums, from international conferences to special procedures to regional human rights tribunals, which are actively developing and implementing the human rights norms relevant to environmental protection. The present mandate is intended to increase understanding of those norms, but it is important to remember that they are not frozen in place while this mandate proceeds. On the contrary, their development will, and should, continue to flourish in the years to come.

³⁷ Report of the Special Rapporteur on the situation of human rights defenders, paras. 123–126, A/HRC/19/55.