

Report of the Joint OHCHR-UNEP Meeting of Experts on Human Rights and the Environment

14-15 January 2002

Chair: Judge Thomas Mensah

Joint Rapporteurs: Professor Philippe Sands and Ms. Adriana Fabra

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A. INTRODUCTION

1. In its decision 2001/111, the Commission on Human Rights invited the High Commissioner for Human Rights and the Executive Director of the United Nations Environment Programme (UNEP) to consider the organization of a joint seminar to review and assess progress achieved since the United Nations Conference on Environment and Development (UNCED) in promoting and protecting human rights in relation to environmental questions and in the framework of Agenda 21. In adopting the decision 2001/111, the Commission noted the forthcoming World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa.
2. Pursuant to this decision, the High Commissioner and the Executive Director convened a Joint Seminar to review and assess progress achieved since UNCED in promoting and protecting human rights in relation to environmental questions. The Seminar was held in Geneva on 16 January 2002 in collaboration with the concerned international institutions and agencies and taking into account the views of concerned States. Funding for the Seminar was provided by a voluntary contribution of the Government of the Swiss Confederation. The Report on the Seminar to the Commission on Human Rights is contained in document E/CN.4/2002/109.
3. In preparation for the Joint Seminar, the High Commissioner and the Executive Director organized a Meeting of Experts on Human Rights and the Environment on 14-15 January 2002. The purpose of the Meeting of Experts was to facilitate the work of the Seminar by providing an expert assessment and review of progress achieved since UNCED as foreseen in the decision of the Commission on Human Rights. As an outcome of their two-day meeting, the Experts provided the Seminar with a set of Conclusions. A copy of these Conclusions appears as Annex A to this report.
4. The Meeting of Experts was attended by 27 specialists in the field of human rights and the environment. They came from all regions of the world and represented a wide range of backgrounds and expertise (government, international organizations, non-governmental organizations (NGOs), academia and the judiciary). A list of the Experts appears as Annex B to this report.
5. The High Commissioner opened the Meeting. Judge Thomas Mensah of Ghana served as chairperson, a role he fulfilled also for the Seminar on January 16. Professor Philippe Sands and Ms Adriana Fabra served as Rapporteurs for the Meeting.
6. The work of the Meeting of Experts was organised on the basis of the following agenda: :

Session 1.	Introduction and theoretical framework
Session 2.	Review of the past decade
Session 3.	Linkage of human rights and the environment in the decision-making of international agencies
Session 4.	Linkage at the national level in normative terms
Session 5.	Information, participation and access to justice: the model of Aarhus
Session 6.	Human rights and environmental issues in the context of sustainable development
Session 7.	Human rights, the environment and indigenous populations
Session 8.	Obstacles to linking human rights and the environment
Session 9.	Drafting of the Preparatory Meeting's output document

7. The Meeting of Experts had before it the following background documents commissioned by OHCHR and UNEP from independent consultants. These papers are available at <http://www.unhchr.ch/environment>:

Background Paper No. 1: “Human Rights and Environment Issues in Multilateral Treaties Adopted between 1991 and 2001”, by Professor Dinah Shelton (USA)

Background Paper No. 2: “Human Rights and the Environment: Jurisprudence of Human Rights Bodies”, by Professor Dinah Shelton (USA)

Background Paper No. 3: “The Intersection of Human Rights and Environmental Issues: A review of institutional developments at the international level”, by Adriana Fabra (Spain)

Background Paper No. 4: “Human Rights and the Environment: the national experience in South Asia and Africa”, by Dr Jona Razzaque (Bangladesh).

Background Paper No. 5: “Information, Participation and Access to Justice: the Model of the Aarhus Convention”, by Jonas Ebbesson (Sweden)

Background Paper No. 6: “Review of jurisprudence on human rights and the environment in Latin America”, by Adriana Fabra and Eva Arnal, Instituto Internacional de Derecho y Medio Ambiente (Spain)

8. Each session of the Meeting was opened by one of the Experts providing a brief introduction to the topic, before the floor was opened for comment and debate. During the introductory segment, Professor Andrew Clapham (Special Advisor to the High Commissioner) and Professor Philippe Sands (Rapporteur and Expert) provided brief introductions to (respectively) the human rights and the environmental sides of the debate. At the end of the two Meeting the Experts produced a set of Conclusions which served as the basis for the discussion during the Seminar. Officers from both the OHCHR and UNEP manifested their hope that such Conclusions might also be useful in guiding the work in the field of human rights and the environment in their respective organizations.
9. This Report provides an overview in summary form of the main areas discussed during the Meeting of Experts. It is intended to reflect the content and tenor of the matters discussed, including the different views put forward by participating Experts on the principal issues. However, it does not seek to transcribe in full or reflect the totality of all contributions, but rather aims to distil the central elements of the discussion. Any errors or misrepresentations are attributable to the Rapporteurs.
10. Debate amongst the Experts at the Meeting revolved around the analysis of three sets of issues:
 - a) **Progress made since UNCED** at the international, regional and national levels. In particular, the Experts reviewed developments in multilateral environmental agreements (MEAs) since 1992; the activities and jurisprudence of global and regional human rights bodies; and the activities of international organizations and agencies. The Experts also examined developments that have occurred at the national level, in particular through constitutional law, legislation, administrative practices and decisions, and the case law of municipal courts.

- b) **Theoretical and methodological aspects**, particularly regarding points of convergence and divergence between human rights law and environmental law; the added value of having a substantive right to the environment; and the meaning and concept of such a right or, more broadly, of a linkage between human rights and environmental protection.
 - c) **Practical considerations**, particularly on policy implications of implementing the linkage between human rights and the environment and on the specific institutional and procedural mechanisms that would assist to its implementation and enforcement.
11. These sets of issues are evidently closely interwoven, but the distinction between theoretical and practical approaches to the issue of human rights and the environment was apparent throughout the Meeting. Some Experts perceived the importance of defending the existence of a substantive right to the environment, as well as explaining the rationale behind such existence, while other positions emphasized the significance of focusing on how a linkage between the field of human rights and the environment – regardless of its legal or moral formulation – could be put into practice.

B. REVIEW OF PROGRESS ACHIEVED IN PROMOTING AND PROTECTING HUMAN RIGHTS IN RELATION TO ENVIRONMENTAL QUESTIONS

12. The Meeting of Experts reviewed, with the assistance of the background papers, developments in promoting and protecting human rights in relation to environmental questions in the context of international treaties, in the jurisprudence of international human rights bodies, and in the practice of international organizations. Special attention was paid to the 1998 *Aarhus Convention on Access to Information, Public Participation and Access to Justice* as an interesting development in the field of both human rights and the environment. Such a review, called for by the Commission on Human Rights, provided a useful basis for discussions at the Meeting, and for the Experts' conclusions.

Developments in international law

13. Professor Dinah Shelton presented the content of her two Background Papers (Papers No. 1 and No. 2, above) on how the issue of human rights and the environment has been addressed in multilateral treaties and in the jurisprudence of human rights bodies in the last decade. Professor Shelton noted that the review of treaties focuses mainly on environmental agreements, while discussion of jurisprudence refers primarily to human rights bodies. The reason for that is mostly historical, explained by the fact that there have been fewer human rights treaties adopted since 1992, while in the environmental field much standard-setting is still being carried out. On the other hand, and for the same reason, there is a richer body of case law in the field of human rights.
14. Summarising her findings and providing some statistics on **multilateral agreements**, Professor Shelton explained that although there is some repetition of provisions from one treaty to another, the broader picture shows much variation. Repetition is particularly noticeable regarding recognition in environmental treaties of procedural aspects of environmental rights (namely, right to information, right to participation in decision-making processes, and rights to remedies). Principle 10 of the Rio Declaration has influenced recent developments and thus most treaties after 1992 include some provision

on guaranteeing access to environmental information. Approximately 13 treaties include participatory rights and 13 treaties incorporate rights to remedy, particularly regarding civil liability regimes. Only a few agreements are beginning to include substantive rights, and usually this is mainly at the regional level or in specific agreements that deal with particularly vulnerable groups.

15. With regard to **case law**, most developments in the promotion and protection of human rights in relation to environmental questions have occurred in the context of human rights bodies, particularly in the European Court of Human Rights, the Inter American Court of Human Rights, and the UN Human Rights Committee. They have addressed a broad range of rights potentially violated as a result of environmental problems, from the right to life or to health, to the rights to privacy or the rights of minorities. Some rights, such as the right to property, have been limited by the need to achieve a balance with the environmental rights of others. No case law has so far addressed the right to an environment of a specific quality because there is no treaty provision that provides for such an actionable right, with the exception of one case in the African Commission of Human Rights, where the right to the environment has been formulated as a substantive right.
16. The Experts noted that developments in the last decade had explicitly or implicitly acknowledged the linkage between human rights and environmental protection, particularly with regard to procedural rights. Some observed that these developments have been fostered by the rise of the notion of sustainable development. Although the right to environment had been more generally understood -- particularly in its first formulations -- as a procedural right, it was possible to move forward at the international level and provide it with a substantive content. Experts agreed that the Draft Declaration of Principles on Human Rights and the Environment, annexed to the 1994 Final Report of the UN Special Rapporteur on Human Rights and the Environment, was an important document of reference, which should be taken into account when considering future developments on the matter.
17. Other Experts did not find reason to be excessively optimistic about these developments, given that violations of human rights deriving from situations of environmental degradation were numerous, as well as the abuses of the civil rights of environmental defenders. Professor Philippe Sands, in his presentation, recalled that international courts continue to have difficulties in giving substantive effect to important developments in international environmental law. Recalling the concept of sustainable development, he described a few examples where courts had not been able to look at emerging international norms in a holistic, balanced and integrated way that responded to the linkages between human rights, the environment, and development.

On the Aarhus Convention

18. Professor Jonas Ebbesson provided an introduction to the content of the *1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, adopted in the framework of the UN Economic Commission for Europe (UNECE). This convention, which entered into force for all ratifying States last 30 October 2001, guarantees access to information, to remedies, and public participation as legal rights that citizens can claim against their states. Some of the most significant contributions of the Convention are:

- establishing a maximum of one month for government agencies to deliver environmental information after the date of the request;
 - specifying that participation of civil society in decision-making processes (such as environmental impact assessments) needs to be *effective*; and
 - extending the rights to information and to participation to all interested citizens -- not only to those who are affected directly by a certain environmental provision.
19. Professor Ebbesson considered that the Aarhus Convention provided an interesting model that could be followed in other countries and regions of the world. This view was shared by several other Experts. He recalled that this international agreement is open to the signature of non-UNECE States.
20. The debate on **procedural rights** highlighted the risk of falling, with the development of new legal rules such as those contained in the Aarhus Convention, into *pro forma* participation, devoid of content. But certain mechanisms could be put in place to facilitate the full exercise of such procedural rights. In this regard, Experts referred to the need of having enforcement mechanisms that would be adequately designed, and that the necessary financial means be put in place to this end, while taking into account the differing levels of development in different countries. A way to avoid the risk of *pro forma* participation could come through the guarantee of a *substantive* right to the environment.

Developments in the practice of international organizations and agencies

21. Ms. Adriana Fabra presented some conclusions from her review of the activities of nearly 30 international organizations and UN bodies (see Background Paper No. 3 above):
- a. No international organization or UN agency whose competence is not related to the field of human rights recognizes or expressly addresses the right to a healthy environment. However, it is interesting to note that some UN bodies, when directly consulted about the right to the environment have directly or indirectly acknowledged the existence of such right. This does at least indicate that some international bodies are not closed to the idea of a substantive right to the environment.
 - b. Most international organizations and agencies establish a linkage between human rights and environmental protection as a means, or justification, to carry out their objectives.
 - There is widespread recognition of the rights to access to environmental information and of participation in decision making. Most bodies have incorporated some more or less developed tools to ensure the realization of these rights.
 - Several international organizations address explicitly the issue of environmental protection in relation to certain human rights that are in their field of competence, such as the right to healthy or the right to food.
 - c. When formulating any linkages between human rights and the environment, international bodies frequently introduce a reference to sustainable development, or simply to “development”, particularly regarding activities intersecting with Agenda 21.

22. Although international bodies have extended the establishment of specific departments and policies to deal with such levels of convergence, there is still an apparent shortage of coordination between organizations and agencies, and thus a missed opportunity of enhancing the practical linkages between human rights and the environment. Attention should be paid to differing understandings of certain concepts, such as access to information or participation, which do have not received yet a uniform meaning.
23. In the discussion, Experts considered possible ways in which international institutions could be strengthened and their performance improved in the field of human rights and the environment. In particular, there was broad support for the view that international organizations could be helped so they would: (a) determine clearly which are the participatory mechanisms, and which are the issues that they need to be consulted on; (b) when discussing access to information, clarify which type of information is relevant, as some of the information provided is not always what is needed; (c) establish indicators on human rights and the environment, so the effectiveness of their policies could be assessed; and (d) provide for remedial procedures.
24. Representatives of OHCHR and UNEP, as well as Experts, stressed that the organization of the Joint Seminar on Human Rights and Environment was a significant development, and an excellent example of institutional co-operation between the OHCHR and UNEP. Such a joint initiative was perceived to be a fine opportunity to take their work in the field further, and together.

Developments in domestic law

25. Justice Bhagwati presented developments in domestic law and particularly in the case law of South Asian countries. Papers by Dr. Jona Razzaque, on jurisprudential developments in South Asia and Africa (see Background Paper No. 4, above) and by Ms. Adriana Fabra and Ms. Eva Arnal on case law in Latin America (see Background Paper No. 6, above) complemented his presentation. Justice Bhagwati described the rich body of case law developed in the last years, particularly in developing countries, where linkages have been made repeatedly between the need to protect the environment and the guarantee of a wide range of human rights, such as the rights to life, to health or to environmental information. He pointed out the important role of the judiciary in establishing such linkages, even in legal systems where there was no constitutional recognition of the right to the environment.
26. Justice Bhagwati and other Experts noted the significant number of States which now recognize the right to the environment in their constitutions, as well as the significant developments in norm formulation since the 1970s, which have been accelerating since then.

C. THEORETICAL AND METHODOLOGICAL ASPECTS RELATED TO THE LINKAGE BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

Differences and similarities between human rights and environmental law

27. As possible similarities between these two fields of law, Professor Clapham pointed out that in both human rights and environmental law:

- international treaties are often the first point of reference for lawyers, as they focus on treaty-based rights;
- there is a concern not only about the obligations of states that have ratified those treaties, but also about how private actors intervene;
- the state has positive obligations to protect rights within its jurisdiction; and
- implementation mechanisms seem to be very similar (supervision through reporting, individual complaints, and inter-state responsibility claims).

As an example of the gradual convergence of these two spheres, he recalled the Secretary-General's Global Compact Initiative, and particularly the levels of institutional convergence that this initiative is leading to, such as the collaboration between the OHCHR, UNEP and the ILO.

28. Professor Clapham went on to highlight the differences between human rights and environment norms. Human rights norms are formulated in terms of **rights** of individuals, while environmental law generally speaks of **obligations** of states. If the latter obligations were formulated instead as rights, they could not be taken away from the people. Another significant difference is that in the field of human rights field states are reluctant act against other states to protect the rights of citizens of those other states. In environmental law, however, it is not so rare to find complaints against other states (it is perhaps perceived as a "state interest" to defend the environment). Another expert noted that while environmental law and human rights share a preoccupation with the issue of responsibility, causation is often easier to establish in respect of human rights violations than environmental damage.

29. Following on from Professor Clapham's observations, Professor Dinah Shelton, in concluding her presentation on the review of the past decade, put forward a number of thought-provoking considerations about the differences between human rights and environmental law:

On the potential differences in human rights and environmental instruments:

- a. Does it make a difference whether environmental problems arise in human rights fora or vice-versa? Are we going to see differences of approach that require a study of these differences ?
- b. Generally, environmental agreements take a preventive and precautionary approach while human rights bodies take a remedial approach.

On the right to information:

- a. What is the scope of the right to information? Is it the state's duty to simply provide the information or does it have to acquire environmental information and then disseminate it? A recent decision by the European Court of Human Rights (the *Guerra case*) established that there is no duty to collect information, but only to disseminate what the government already knows. This is different from what we see in environmental agreements.
- b. The right to information, as regulated in environmental agreements, applies without an individual having to prove a specific interest, while in human rights agreements most instruments require that there be a victim of a human right violation. What does the term "victim" mean in the context of environmental harm? Who has the right to complain? Who has the right to information?

Sustainable development as a factor of convergence

30. As phrased by the Chairman, human rights and environmental law provide different paths to attain the same objectives. The Experts generally agreed that, despite their methodological differences, and regardless of whether a substantive right to the environment merited international recognition, both disciplines provided many levels of convergence that deserved further study and regulation. First, as illustrated in the Reports of the UN Special Rapporteur on Human Rights and the Environment in the early 1990s (and in many other sources), enjoyment of human rights is a precondition for much of environmental protection, and environmental protection is also a precondition for the enjoyment of many human rights.
31. Second, and in addition to what case-law and real-life situations tell us, there is an additional factor of convergence: the notion of **sustainable development**. This factor, and particularly as it relates to the issue of **poverty**, emerged during the Meeting of Experts as being particularly central to the debate –particularly taking into account the mandate of the Commission on Human Rights and the upcoming WSSD. As stated by Professor Sands in his presentation, support for the concept of sustainable development reflects a desire to understand and give effect to the connections between different societal objectives. Today it is not possible to protect human rights without guaranteeing adequate development; and, in turn, it is not possible to ensure development if it does not consider the conservation of natural resources. And this question also takes us necessarily to the consideration of the future, and thus to the rights of future generations (which have started to be considered in municipal and also in international case law).
32. Dr. Davinder Lamba offered an explanation of the way in which the issue of sustainable development fits into the human rights and environment debate. He envisaged a link through the notion of "elementary human functionings" and the minimal core obligations that the State should have to guarantee such basic functionings – which would amount, using human rights language, to the realization of human dignity. For these elementary human functionings to be ensured, the three constituents, or primary functions, of ecosystems should be attained: 1) provisioning of goods and services; 2) regulating life support activities; and 3) enriching with the symbolic value of the ecosystem. One needs to think of poverty reduction in terms of ensuring such basic human functionings; a

notion that would require a new look at the human rights minimum core obligations of all human rights covenants.

A next step in the path of convergence: a substantive right to the environment

33. Is there a benefit (over and above what already exists) in developing a substantive right to an environment of a given quality? This question was addressed repeatedly by Experts, the majority of whom appeared to favour the explicit recognition of such a right at the international level, although an important minority considered that such recognition may not be necessary or desirable in the view of many States. In this regard the Experts raised some questions as to the policy implications and difficulties related to its enforcement, which will be addressed later in this report.
34. First, the Experts acknowledged that a substantive right to the environment had been recognized in a significant number of state constitutions as well as in the case law of domestic courts (see Background Papers No. 4 and No. 6, above). Thus, there was no question about this right being tangible in many countries and working its way into international discourse. Some Experts warned that the development of such an abstract concept, that would portray a holistic approach to the subject (“doing everything at once”), could cause some difficulties. It could, in particular, lead to a danger of losing analytical coherence and diminishing policy effectiveness. However, when considering this, one should also take into account the fact that the experience from domestic jurisdictions indicates that environmental rights have been *used* and the outcome has not been “disastrous” (“legal systems have not collapsed, the environment has not been destroyed, and human rights systems have not fallen to pieces...”). Rather, the outcome has enhanced both environmental protection and a broad spectrum of the realization of human rights.
35. A number of Experts argued strongly in favour of the general recognition of a right to a healthy environment. It was explained that a specific environmental right was necessary in part to add consistency to the protection of environmental interests. Although these interests had been protected through a wide range of human rights, the sort of interests protected in different countries has varied a great deal. Enforcement of a right to the environment could facilitate the work of many actors, particularly human rights and environmental activists, and in turn also solve some of the problems relating to the divergence between environmental and human rights law explained above. This right could build a bridge between these two legal communities. The explicit recognition of a right could make its implementation more effective and allow for a more speedy and effective development of jurisprudence. However, such right would work best if supplemented by environmental concepts.
36. The issue of the relationship between substantive rights and procedural rights also arose during the discussions. These categories of rights were not considered to be contradictory, but as mutually necessary and reinforcing.
37. When attempting to describe the content of a substantive right to the environment, Experts raised the question of the nature of this right, particularly whether it should be considered a fundamental human right. According to some Experts this would solve part of the current discrepancy regarding the hierarchy of laws in domestic legal systems,

given that in some states the right to the environment is a constitutional right, while in others it is not. This could permit the “globalization” of a holistic approach. It was also pointed out that this right has both individual and collective dimensions (the latter being particularly relevant when addressing environmental rights in relation to sustainable development).

Substantive environmental rights and the rights of indigenous peoples.

38. One session of the Meeting of Experts was devoted to addressing the issue of human rights and the environment in relation to indigenous peoples. Debate over the need for recognition of substantive environmental rights becomes particularly pertinent when addressing the rights of these communities, who are particularly dependent on, and close to the environment. Professor Erika-Irene Daes and Ms. Kati Eriksen illustrated the specific instances of the linkages between human rights and the environment with regard to indigenous peoples. Professor Daes referred to the existing legally binding conventions that address the specific environmental threats faced by indigenous peoples, as well as other developments, such as the 1993 Draft Declaration on the Rights of Indigenous Peoples, the Convention on Biological Diversity and the non-binding Rio Declaration and Agenda 21. Professor Daes stressed that in order to protect their human rights, indigenous peoples need to exercise fully their right to self-determination and their collective rights to have control over their land and natural resources, as well as over their environmental security and their own development.
39. Ms. Eriksen (from the Saami Council) explained the relationship between indigenous peoples and mother earth, and emphasized the importance of guaranteeing their right to self-determination and to ownership, possession and use of traditional territories. Given that some Experts had some doubts regarding the use of the concept of the right to self-determination, Professor Daes explained that this concept has been extensively addressed in the literature, and clarified that it is not a question of separatism.
40. Some Experts manifested their disappointment over how little progress had been made on the matter of the rights of indigenous peoples and considered that the 1993 Declaration should be completed and that governments should be urged to take responsibility for the protection of their rights.

Other key issues

41. Experts recalled the special vulnerability of **environmental activists** who try to carry out their work in countries where basic civil and political rights are denied. They also raised the issue of human rights and environmental abuses in situations of **armed conflict**. Under both circumstances, recognition of a substantive right to the environment would prove to be particularly useful.

D. IMPLEMENTATION OF THE LINKAGE BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT: POLICY IMPLICATIONS AND INSTITUTIONAL AND PROCEDURAL MECHANISMS

42. Regardless of whether a *linkage* was to be illustrated between human rights and environmental protection, or whether a *substantive right* to the environment was to be proposed, the Experts agreed that special attention needed to be paid to questions concerning implementation and enforcement. In this regard, Experts raised questions about the political viability of implementing such levels of convergence, as well as the most appropriate mechanisms for implementation and enforcement.

Policy implications

43. Are policies to address these questions feasible and politically acceptable? Particularly considering the issue of sustainable development as one possible sphere for the convergence of human rights and the environment, the importance of incorporating into this debate questions related to economic development was stressed. Among several issues, Experts referred to placing the entitlement of productive assets in the hands of the poor, linking the debate to the process of creation of wealth, introducing different forms of valuation, considering this issue also in terms of affordability for states, and researching further the linkages between human rights and the right to development. Some Experts warned against using market institutions to address these issues, as these institutions look at the environment as a commodity and it is necessary that they respect the integrity of ecosystems. With regard to the issue of affordability, it was considered that the progressive realization of economic, social and cultural rights demonstrated the affordability of human rights.

44. Attention was also drawn to difference between developed and developing countries. While it was important to foster a global approach to the issue of environmental rights, if developing countries were required to manage resources in a way compatible with sustainable development they needed the necessary financial means.

45. Another factor to take into account when considering options to take the issue of human rights and the environment further is the need to **sensitize** decision-makers, the citizenship and, very importantly, the judiciary. Some Experts recalled that environmental issues are a very low priority in the national curricula – even more so than human rights issues, and that there is a need for education and capacity building. If we link this deficit with poverty, and thus with the inferior access of people in developing countries to education, there is a clear imbalance in the levels of awareness of human rights. Experts recalled that inferior economic means are also a barrier to bringing successful legal actions.

46. The **judiciary** – particularly in municipal courts – has shown remarkable leadership in establishing linkages between human rights and the environment, thus even transforming key aspects of society. Given the important role to be played by the judiciary in this field, awareness-raising is crucial, but also reform of the administration of justice in some countries where the independence of the judiciary is not guaranteed. On the general role of the judiciary, some Experts raised questions on whether their action should be subject to some limitations. Would it be always appropriate for judges to intervene in the absence

of regulation or action by government? Would the role of the judiciary amount at times to interference in the work of public administration?

47. Throughout the Meeting of Experts (and particularly when discussing the convergence of human rights with the environment in terms of *duties*), the Experts recalled that the **private sector**, and particularly corporations, should be held responsible for actions that contributed to the violation of environmental rights. Specific instruments should be designed to hold non-state actors accountable for these issues, such as the UN human rights guidelines for corporations. Other Experts recalled that with instruments already available much could be done by enhancing their application.

Implementation and enforcement

48. Experts agreed on the need to devote special efforts to providing adequate implementation mechanisms to reinforce these rights. One issue was to determine whether it was sufficient to strengthen human rights procedures or actually to develop new instruments. Action on all fronts seemed the best option, and a broad catalogue of initiatives was suggested.
49. First, among the first steps should be **education and awareness-raising** at all levels, but particularly to the citizenship, so it is aware of its rights, and to sectors concerned with the administration of justice (including prosecutors and lawyers). It is important to emphasize enforcement in the linkages; to draw attention to the benefits of using a human rights based approach to having better environment, and at the same time sensitize the human rights community about the importance of acknowledging that environmental rights are more than corollaries of existing human rights.
50. Second, efforts should be made to strengthen **linking concepts**. While there was support for developing the notion of an environmental right and incorporating it into the international human rights system, Experts were aware of the difficulties of achieving this objective in the short term. Professor Anderson, in his presentation, proposed that a linkage could be established through “**mid-range concepts**”, something in between abstract rights and detailed rules of environmental planning. Notions such as “environmental entitlements” developed by UNDP could prove to be very useful to this end. Nevertheless Experts perceived a benefit in materializing such linkages in international legal instruments and suggested that the following initiatives deserve further consideration:
- a. Revitalising the 1994 Draft Declaration of Principles on Human Rights and the Environment, or if need be issuing a new **international declaration** on human rights and the environment. Some Experts had a special interest in seeing a declaration on the environmental right to participation. To this end, other existing instruments could be useful, such as IUCN’s Draft Covenant on Environment and Development;
 - b. Some suggested that a **convention** on the matter could be drafted, and that there were good reasons in favour of transforming declaratory norms on environment and sustainable development into binding rules;
 - c. Adding a provision to the **Universal Declaration of Human Rights**. The same could be done at the regional level, particularly in the framework of the European

Convention for the Protection of Human Rights and Fundamental Freedoms, where there was already a previous initiative to do so.

51. The Experts agreed on the importance of establishing **institutional linkages**, not only between human rights and environmental organizations, but also involving development institutions and even other organizations. Once again, the simple mechanisms of holding a meeting such as the one convened by the OHCHR and UNEP on a regular basis could contribute considerably to breaking down some of the cultural barriers between these different epistemic communities. Emphasis was placed on the importance of taking the issue to the WSSD.
52. With regard to **dispute settlement** mechanisms, the Experts acknowledged the lack of any specific international jurisdiction for the protection of the environment and environmental rights. While human rights mechanisms provided for an adequate avenue of redress, Experts also considered the adequacy of establishing alternative mechanisms such as:
 - a. the introduction of complaints procedures in environmental agreements;
 - b. extension of standing to sue, at both the domestic and the international levels, to claim protection of certain rights relating to the environment, especially participation and information; and
 - c. establishment of new mechanisms, such an ombudsperson – particularly considering current initiatives to this end at the domestic level. This institution could be based on the role of a single individual or take the form of a commission that, for example, would take complaints.
53. There was a generalized agreement over the need to make **financial resources** available. Lack of resources could clearly be a barrier to the exercise of human rights.

Obstacles and opportunities

54. From their different perspectives, the Experts agreed that possibly the best way to move ahead was to achieve a balance between addressing the legal regulation of these linkages and fostering operational collaboration; in strengthening both the theoretical and the practical aspects, while taking into account the specific conditions of each political and institutional environment.
55. As a conclusion to the Meeting of Experts, Professor Anderson offered a reflection on the obstacles to linking human rights and the environment that needed to be overcome:
 - a. The human rights community and the environment community are **different communities**. Although there is a danger of developing an “us” -vs- “them” dialogue, this obstacle could be overcome, particularly through encounters such as this Meeting of Experts on Human Rights and the Environment.
 - b. There is a *de facto* **institutional separation** between these two communities, having different mechanisms, different staffs, etc.
 - c. Existing international **treaties and national laws largely fail to make the link** between human rights and the environment, and are even hostile to such a link. They were drafted by the different epistemic communities at a time when the links between

the two areas were little understood. For example, environmental treaties do not envisage procedural rights because protection of the environment was perceived as the domain of bureaucrats.

- d. Current **procedural concepts** may provide an obstacle to the defence of environmental concerns, for example about allowing for standing to sue. It is thus necessary to rethink procedures in some respects.
- e. Separation of legal regimes depending on the field they address can constitute a barrier to accessing justice at times. It is necessary to **develop concepts** that will facilitate linkages between those conceptual systems, for example through the incorporation of concepts such as sustainable development.
- f. Addressing human rights and environmental issues together increases the **complexity** of factors and issues to take into consideration. It is difficult for individuals to have so many concepts in their minds at once without a robust framework; for example, it is more work to think of the complex interactions between poverty, the environment and human rights, than it is to think simply about human rights. Because of that, people involved in these regimes need to be encouraged that going through the extra work to grapple with the complexity does produce good results and is worth the effort, even if it may take more time.
- g. There is a degree of **scepticism** that needs to be faced: many human rights lawyers are sceptical of environmental claims (are environmental claims really a part of human rights?); environmental lawyers think that environmental rights could disrupt environmental policy; environmental administrators are hostile to environmental rights because they feel they could interfere with their carefully modulated policies, and are concerned about judges getting in the midst of environmental policy-making and causing disruption. Finally, there is also the view that environmental rights would place a barrier to growth and development. These views need to be taken into account, but each one of them could be responded to with the benefit of experience.
- h. Even where the linkages are made on paper, there are problems of **application**. Constitutional rights exist but have not been energized into application. There are two problems: one of supply and one of demand. The capacity of a government to supply effective environmental protection is limited in many countries. This problem could be addressed somehow in a linked way from both the human rights and the environment side: On the other hand, one should recall the constraints of effective demand for the realization of environmental rights.

Annex A

Conclusions of the meeting of Experts on human rights and the environment 14-15 January 2002

Introduction

1. In accordance with Decision 2001/111 of the UN Commission on Human Rights, the United Nations High Commissioner for Human Rights and the Executive Director of the United Nations Environment Programme jointly organized a one-day Expert Seminar on Human Rights and the Environment (16 January 2002). This Seminar was preceded by a two-day Preparatory Meeting of Experts (14-15 January 2002). The object of the meeting and seminar was to review and assess progress achieved since the 1992 United Nations Conference on Environment and Development (UNCED) in promoting and protecting human rights in relation to environmental questions and in the framework of Agenda 21.
2. During the two-day Meeting participants reviewed progress made since UNCED at the international level. In particular, they examined multilateral environmental agreements developed since 1992; considered the activities of global and regional human rights bodies and the jurisprudence that some of them have developed; and assessed the activities of international organizations and agencies. Experts at the meeting also examined the developments that have occurred at the national level, in particular through constitutional law, legislation, administrative practices and decisions, and the case law of municipal courts.
3. These sets of national and international developments indicate the close connection between the protection of human rights and environmental protection, in the context of sustainable development. They reflect the growing interrelationship between approaches to ensuring human rights and environment protection, as well as the synergies that have developed between these previously distinct fields.

Review

4. The meeting of Experts recognized that since 1992 important developments have occurred at the national and international levels. These indicate a growing inter-connectedness between the fields of human rights and environmental protection. The overall context for these developments is the concept of sustainable development, which requires that different societal objectives be treated in an integrated manner.
5. The Experts noted in particular that the linkage of human rights and environmental concerns, approaches and techniques is reflected in developments relating to procedural and substantive rights, the activities of international organisations, and in the drafting and application of national constitutions.
6. The Experts found that at the national and international levels Principle 10 of the Rio Declaration (on access to information, participation and effective remedies) has played an important role in fostering connections between human rights and environmental approaches. The Experts observed that multilateral agreements at the global and regional

level have developed Principle 10 of the Rio Declaration by establishing mechanisms for the exercise of procedural rights, in particular the right to environmental information and to public participation in decision-making. This was reflected, for example, in the 1998 Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, which aims to provide effective means for the exercise of procedural rights in the field of the environment. Other international developments, for example treaties dealing with civil liability regimes, have developed mechanisms of redress for individuals in relation to environmental and related harms.

7. At the global level, some human rights treaties included the value of the environment to their systems of protection, such as the Convention on the Rights of the Child and ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. The Experts noted that at the regional level, the African Charter on Human and Peoples' Rights and the Protocol of San Salvador to the American Convention on Human Rights expressly recognize the right to live in a healthy or satisfactory environment. Similarly, a number of environmental treaties embody human rights approaches.
8. From a review of the decisions of international treaty bodies (including courts and commissions), the Experts noted that in the last decade there has been a substantial body of case-law and decisions that recognise the violation of a fundamental human right as the cause, or result, of environmental degradation. A significant number of decisions at the national and international levels have identified environmental harm to individuals or communities, especially indigenous peoples, arising as a result of violations of the rights to health, to life, to self determination, to food and water, and to housing. Particularly in the European system, a clear connection had been made between a violation of the right to privacy and home life and the right not to be subject to pollution, including the right to know whether pollution is likely to affect a particular individual or community.
9. Many international organizations and UN agencies have also addressed the connection between human rights and the environment in their organizational structures and activities, particularly through the adoption of policies that favour access to environmental information and public participation in their procedures, but also through their policies aimed at sustainable development and poverty alleviation.
10. At the national level, the right to a healthy environment (or a related formulation) has been formally recognized in most national constitutions enacted since 1992. In many constitutions this right permits individuals or groups to file legal actions to protect the environment or fight against pollution. Over the past ten years there has been a growing domestic case-law indicating the potential role that environmental rights may have for achieving practical protections. That case-law may also be relevant for international jurisprudence.
11. The Experts also noted the progress which has made in the context of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, the UN Sub-Commission for the Promotion and Protection of Human Rights, and the Commission on Human Rights, towards understanding the interconnections between human rights and environmental protection, particularly through the work of the Special Rapporteur on Human Rights and the Environment, and currently the work of Special Rapporteur on Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights.

Assessment

12. The Experts recognised that respect for human rights is broadly accepted as a pre-condition for sustainable development, that environmental protection constitutes a pre-condition for the effective enjoyment of human rights protection, and that human rights and the environment are interdependent and inter-related. These features are now broadly reflected in national and international practices and developments.
13. The Experts noted the broad recognition that poverty is at the centre of a number of human rights violations and is at the same time a major obstacle to achieving sustainable development and environmental protection. A rights-based approach can enhance the impact of policies and programmes at the national and international levels on this matter. In this regard, the Experts noted with concern that in certain jurisdictions individuals and groups associated with the protection and promotion of human rights and the environment were being prevented from carrying out their legitimate activities.
14. In relation to procedural matters, the Experts noted that broad recognition of the linkage between human rights and the environment since UNCED has come through the development of Principle 10 of the Rio Declaration on Environment and Development. States and international organizations are increasingly recognizing the rights of access to information, public participation, and access to justice. A notable example of such progress was the entry into force of the 1998 Aarhus Convention. The Experts recognised the need for further developments in this respect, including through the adoption of new international legal instruments (at regional levels or, some suggest, the global level) to provide effectively for rights of access to information, public participation in decision-making, and access to justice.
15. In relation to substantive matters, a growing body of case law from many national jurisdictions is clarifying the linkages between human rights and the environment, in particular by: 1) recognizing the right to a healthy environment as a fundamental human right; 2) allowing litigation based on this right, and facilitating its enforceability in domestic law by liberalizing provisions on standing; 3) acknowledging that other human rights recognized in domestic legal systems can be violated as a result of environmental degradation. The Experts recognised the important role that the judiciary (national and international) can play in this regard, and emphasized the need to sensitize and provide further training to judges, lawyers and public officials.
16. The Experts noted the particular lessons which may be gained from the experiences of indigenous peoples, which appear particularly relevant to a broader understanding of the relationship between human rights and the environment. In this regard the Experts noted the particular importance of the principle of self-determination and the rights associated with the ownership, possession and use of traditional lands, territories and resources.

Views of the Experts

17. During the course of the two-day meeting, the Experts put forward suggestions for future developments.

18. The Experts recognised that normative links between the human rights and environmental fields need to be reinforced, beyond existing guarantees provided in national and international instruments and practices. Specifically, and in the context of the forthcoming World Summit on Sustainable Development:
- a. With regard to procedural and substantive rights there is a need:
 - to enhance public awareness, especially in the corporate sector, of the connections between human rights protection and environmental protection, and
 - to ensure that persons promoting the protection of human rights and the environment are not penalized, persecuted or harassed for their activities.
 - b. There is a need for more certainty and consistency at the national and international levels respecting procedural (participatory) rights, *inter alia* by:
 - the adoption of new instruments, mechanisms and procedures to implement Principle 10 of the Rio Declaration, and
 - facilitating and improving rights of access to information, effective participation in decision-making and access to justice and other remedies in national and international fora and instruments, and
 - creating greater awareness of the need to avoid merely pro-forma provisions on participation (especially in national systems).
 - c. With regard to substantive rights, further steps need to be taken to:
 - affirm the link between human rights and environmental protection as an essential tool in the eradication of poverty and achievement of sustainable development;
 - treat economic, environmental and human rights norms in an integrated manner, and develop legal and other concepts and techniques for achieving such integration;
 - recognize the environmental dimension in the effective enjoyment of human rights protection and promotion and the human rights dimension in environmental protection and promotion, in part by developing rights-based approaches to environmental protection and promotion of sustainable development;
 - support the growing recognition of a right to a secure, healthy and ecologically sound environment, either as a constitutionally guaranteed entitlement/right or as a guiding principle of national and international law;
 - emphasize the responsibility of private actors and develop effective mechanisms to prevent and redress environmental degradation, including remedies for victims, in national and international instruments in the field of environment and human rights;
 - consider more broadly the catalogue of substantive human rights which can be marshalled to assist in achieving environmental protection, with particular reference *inter alia* to the rights of indigenous peoples' and other vulnerable groups; and
 - identify and move to correct gaps and limitations in substantive protections, with a view to strengthening international instruments and further normative developments aiming at consistency and equality in the application of minimum standards of environmental protection within the framework of human rights protection.

- d. With regard to institutional arrangements, the linkage between human rights and the environment is in need of reinforcement. This could be achieved by:
- Ensuring that environmental bodies and procedures are fully aware of the increasing environmental role played by human rights bodies and procedures, and that human rights bodies are fully aware of the increasing human rights role played by environmental institutions and procedures;
 - Ensuring greater emphasis on environmental protection in the work of human rights bodies and procedures, particularly by encouraging closer engagement of UNEP in the work of the human rights treaty bodies, and the closer engagement of OHCHR in the work of the secretariats to multilateral environmental agreements;
 - Establishing a formal institutional relationship between OHCHR and UNEP with a view to strengthening the links and connections between human rights and environmental issues;
 - Co-ordinating efforts between OHCHR and UNEP and operational and financial institutions in appropriate aspects of their respective activities, including by:
 - exchanging information, sharing expertise, and enhancing arrangements for monitoring and reporting systems;
 - developing arrangements for assisting capacity-building (including technical cooperation) to promote an integrated approach to human rights and environmental protection, especially in the developing countries;
 - promoting programmes to sensitize decision makers, including public officials, legislators and members of the judiciary, as to the need to develop a sense of commitment to the protection of human and environmental rights and to adopt more holistic approaches for integrating the requirements of sustainable development in the interpretation and application of national and international norms for the protection of those rights and sustainable development concepts;
 - enhancing mechanisms for receiving and addressing citizens' complaints in the field of human rights and the environment;
 - Impressing on governments and civil society the need to include in the information they provide to the human rights mechanisms specific references to environmental factors;
 - Publishing the results of the Seminar, including on the OHCHR and UNEP web-sites.
- e. The OHCHR and UNEP should seek to ensure that the subject of human rights and the environment be fully addressed at the upcoming World Summit on Sustainable Development in Johannesburg, and that appropriate steps are taken at the Summit to promote and protect human rights and environment following the Summit.

Annex B
List of participants in the expert meeting

1. Anderson, Michael, Professor, British Institute of International and Comparative Law, London, UK
2. Asenjo, Rafael, Dr, Centro de Estudios para el Desarrollo , Santiago, Chile
3. Baechler, Günther, Dr, Swiss Agency for Development and Cooperation, Bern, Switzerland
4. Lador, Yves, Mr, EarthJustice, Geneva, Switzerland
5. Bhagwati, P. N., Justice, New Delhi, India
6. Daes, Erica Irene, Prof, , Chairperson of the UN Working Group on Indigenous Populations, Athens, Greece.
7. de Botero, Margarita Marino, Mrs, Colegio Verde de Villa de Leyva Corporació, Bogota, Colombia
8. du Bois, Francois, Professor, University of Cape Town, Cape Town, South Africa
9. Ebbesson, Jonas, Prof, Stockholm University, Stockholm, Sweden
10. Eriksen, Kati, Ms, Saami Council, Oslo, Norway
11. Fabra, Adriana, Ms., Instituto Internacional de Derecho y Medio Ambiente, Barcelona, Spain
12. Hassan, Parvez, Dr, Hassan & Hassan, Lahore, Pakistan
13. Kamto, Maurice, Professor, University of Yaoundé, Cameroon
14. Kiss, Alexandre, Prof, Centre du droit de l'environnement (CDE), Strasbourg, France
15. Kravchenko, Svitlana, Professor, Lviv State University, Lviv, Ukraine
16. Lamba, Davinder, Mr., Mazingira Institute, Nairobi, Kenya
17. Mensah, Thomas, Judge, International Law of the Sea Tribunal, London, UK
18. Mischenko, Vera, Ms., Ecojuris Institute, Moscow, Russian Federation
19. Momtaz, Djamchid, Professor, University of Tehran, Tehran, Iran
20. Oposa, Antonio, Professor, University of the Philippines, Manila, The Philippines
21. Ouhachi-Vesely, Fatma-Zohra, Mme, UN Special Rapporteur on Human Rights and Toxic Waste, Vienna, Austria
22. Razzaque, Jona, Dr, Environmental Law Foundation, London, UK
23. Sands, Philippe, Professor, University of London, London, UK
24. Sfeir-Younis, Alfredo, Dr, World Bank, Geneva, Switzerland
25. Shelton, Dinah, Professor, University of Notre Dame, USA
26. Szekely, Francisco, Dr., Subsecretario de Planeación de la Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), Mexico City, Mexico
27. Taillant, Daniel, Mr., Centro de Derechos Humanos y Medio Ambiente, Buenos Aires, Argentina.