

Access Rights as Human Rights

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of the Declaration on the application of Principle 10
of the Rio Declaration on Environment and Development
in Latin America and the Caribbean

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Thank you very much for the opportunity to speak to you today about the relationship of human rights law to the access rights set out in Principle 10 of the Rio Declaration.

The process that you have started towards the formulation of an instrument on the application of Principle 10 in Latin America and the Caribbean is a very important one. It has also attracted attention in other parts of the world. Last week, I spoke at a conference on human rights and the environment sponsored by the Asia-Europe Foundation, which includes participants from governments, civil society, and academics from countries across both continents. Many of the questions there were about application of the Rio Declaration. The Asian participants were particularly interested to learn about the careful, step-by-step progress that Latin American and Caribbean governments are making towards a new regional agreement.

In my time today, I would like to place this effort in a broader context. In particular, I will explain how implementing Principle 10 access rights is critical to fulfilling obligations relating to the environment under human rights law.

In March 2012, the United Nations Human Rights Council decided to appoint an Independent Expert on human rights and the environment, with a three-year mandate to clarify the application of human rights obligations to environmental protection, and to identify views on best practices in the use of such obligations.

I was appointed to this position in July 2012, and began work last fall. Since then, I have conducted research, visited countries, and held regional consultations. For example, together with the UN Environment Programme, I held a regional consultation in July in Panama, and visited Costa Rica in August.

My next report, which I will present to the Human Rights Council in March 2014, will map the human rights obligations relating to the environment, as they have been clarified by human rights and environmental bodies, including regional systems such as the Inter-American

Court and Commission. Although that report is not completed, many aspects of that relationship are already clear.

I would like to emphasize three aspects, in particular.

First, it is absolutely clear that the realization of human rights depends on a healthy environment that allows people to enjoy their rights. Human rights bodies around the world have repeatedly stated that environmental harm can interfere with the human rights to life, health, and property, among many other rights. The Inter-American human rights system has been a leader in this regard.

Second, States have often codified the relationship of human rights and the environment by adopting an explicit right to a healthy environment. One way that they have done this is through adoption of a right to a healthy environment in their national constitutions. More than 90 countries around the world have done this, and many of these countries are in Latin America or the Caribbean. Many regional human rights agreements also recognize such a right, including the 1988 (San Salvador) Protocol to the American Convention on Human Rights.

There are many advantages to adopting a right to a healthy environment. It sends a signal, to the public, to government agencies and to all other stakeholders, that protection of the environment is at the same level of importance as other fundamental human rights. It opens up new avenues for legal implementation through legislative and judicial action. And it may help to provide a basis for international cooperation in the protection of the environment.

I want to emphasize, though, that even without an explicit recognition of a right to a healthy environment, States have obligations under human rights law to protect the environment in order to safeguard other human rights, including rights to life and health.

And that brings me to my third point. One of the most important ways that human rights law relates to environmental protection is by supporting effective environmental policy-making. In this respect, the rights to information, to participation in decision-making and to effective remedies are critical. The exercise of these rights makes environmental policies more transparent, better informed and more responsive to those most concerned.

They also help to ensure that environmental protection safeguards substantive rights such as rights to a healthy environment, to life, and to health. Therefore, some human rights bodies have, in effect, closed the circle between the substantive rights that are most likely to suffer environmental harm, such as rights to a healthy environment, to life, and to health, and the 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.

Making this connection can create a kind of virtuous circle: strong compliance with these duties to provide access to information, participation, and remedies produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to a healthy environment, 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 human rights.

As you know, the international community has recognized the importance of such procedural rights in environmental instruments. Principle 10 of the Rio Declaration emphasizes that each individual should have access to environmental information, the opportunity to participate in decision-making, and access to legal proceedings and remedies.

But the point I want to stress is that such rights are also supported and protected by human rights law. 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 of Human Rights (arts. 7, 8, 19, 20 and 21) and elaborated 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.

The 1948 American Declaration of the Rights and Duties of Man also recognizes these rights, as does the American Convention on Human Rights. Specifically, the American Convention on Human Rights recognizes the right to freedom of expression (art. 13), rights of freedom of assembly and association (arts. 15, 16), the right to participate in government (art. 23), and the right to effective recourse to courts for protection against acts that violate fundamental human and constitutional rights (art. 25).

It should be noted that human rights bodies, including the Inter-American Court of Human Rights in the *Claude Reyes* case, have concluded that “the right to freedom of thought and expression includes “not only the right and freedom to express one’s own thoughts, but also the right and freedom to seek, receive and impart information and ideas of all kinds.” ¶ 76 These instruments were drafted before the rise of the modern environmental movement, so it is not surprising that they do not refer to the environment explicitly. But there is no doubt that they encompass the exercise of these rights for environmental ends, and the Inter-American human rights system has applied them in that context.

It is important, then, when thinking about the conceptual framework for a regional agreement on access rights, to make sure to place it in this broader context – that is, to make clear that the protection of access rights implements human rights obligations. Regional bodies obviously have some discretion as to how best to implement these human rights obligations. The Aarhus Convention illustrates one possible way to do this, but it is not the only conceivable approach. Just as regional human rights bodies vary in some respect from region to region, so may regional efforts to implement access rights.

Nevertheless, Aarhus has turned out to be of great value in the strengthening of domestic rights to access. And it is important to note that it does so on the basis of a clear link with human rights law. Its Article 1 states the objective of the Convention as follows:

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, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

I would like to note two other points that human rights law also helps to clarify.

First, a fundamental principle of human rights law is non-discrimination. It is clear that these access rights must be provided on a basis that does not discriminate against individuals based on their race, nationality, gender, religion, and so on. It would be important for any regional instrument in this respect to emphasize the importance of non-discrimination.

At the same time, individuals in particularly vulnerable situations may need additional protections under human rights law. Much of the work of the Inter-American Commission and Court in this respect have related to the rights of indigenous people, which are particularly vulnerable to environmental threats because of their close relationship with and dependence on natural resources.

Second, it is important to underscore the need to protect the rights of environmental human rights defenders. 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.” ¶ 64. Environmental rights defenders face a high risk of killings, attacks, assault, threats and intimidation from both State and non-State actors.

Needless 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.

An important human rights instrument to take into account in considering the rights of environmental human rights defenders is the UN 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.

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.

Let me close by thanking you again for the opportunity to speak today, and by congratulating you on your effort to strengthen implementation of these access rights. Stronger access rights will result in environmental policies that better reflect the concerns of those most concerned and, as a result, that better safeguard their rights to a healthy environment, to life and to health, among others, from infringement through environmental harm and to sustainable development.