Introduction to Human Rights and the Environment

About the course
This 3-hour self-paced course was developed by the UN Institute for Training and Research (UNITAR) based on its course “Human Rights and Environmental Protection for Sustainable Development”, which is organized in three weeks and amounts to 35 learning hours. The original course has been developed in close cooperation with the UN Special Rapporteur on Human Rights and Environment, Prof. John Knox, and contents were authored by several subject-matter experts, including contributions from UNITAR, UNDP and UN Environment. UNITAR has adapted the course's contents and the instructional design to this shorter version, aligning the methodological approach to self-paced learning.

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Introduction to Human Rights and the Environment

This 3-hour self-paced course has been developed under the InforMEA Project. InforMEA is steered by the MEA Information and Knowledge Management (IKM) Initiative with the support of UN Environment and the European Union. The MEA IKM initiative currently includes 43 international and regional legally binding instruments from 18 Secretariats hosted by four UN organizations and the International Union for Conservation of Nature (IUCN).

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ORGANIZATIONS

UN FAO UNESCO UNECE IUCN

GLOBAL TREATIES

UNFCCC Convention to Combat Desertification UNCCD CITES RAMSAR ITPGRFA CMS

UN Environment Programme

EU
Module Objectives

At the end of this lesson you will be able to:

- Explain how environmental harm can interfere with the enjoyment of human rights.
- Determine how the exercise of human rights can help promote environmental protection.
- Present an overview of the major international and regional human rights instruments, cases, and institutional frameworks.
LESSON 1.1
Protecting the Environment using a Human Rights Approach

This lesson examines the connection between human rights and the environment, and presents the main substantive and procedural human rights obligations used to protect the environment, including access to information, public participation, and access to justice.

Learning Objectives

At the end of this lesson you will be able to:

- Explain how environmental harm can interfere with the enjoyment of human rights.
- Describe the benefits that human rights perspective provides for environmental protection.
- Present the main substantive and procedural human rights obligations used to protect the environment.

Introduction

A healthy and clean environment is necessary to fulfil individual's human rights to life, health, water, food, work, culture, development, access to information, and participation. For example:

- When the environment is damaged by development projects that destroy land for farming and growing food, people go hungry or become ill and their basic human rights to food, health, and an adequate standard of living are violated;

- When a government fails to involve local communities in decision making, for instance regarding a construction plan or other infrastructural development in their area, the communities’ right to participation and right to information are being violated.

The first recognition of the close relationship between human rights and the environment was in 1972 at the Stockholm Conference on the Human Environment (the Stockholm Conference), where a Declaration was proclaimed stating that ‘[everyone] 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 being.’ The Declaration further noted the ‘solemn responsibility to protect and improve the environment for present and future generations’.
The first connection that can be empirically assumed between human rights and the environment is that a healthy and adequate environment is necessary to fully enjoy human rights. In this way, the environment is treated as a pre-condition or pre-requisite for the satisfaction of a wide spectrum of human rights such as life, health, food, privacy and freedoms, such as freedom of information and political participation, association and expression, as well as cultural rights.

Although there is growing international dialogue and debate on human rights and environmental concerns, with some recognition of the close relationship between them, there is yet no international consensus on the legal status of the environment in international human rights law.

Human rights perspective provides three benefits for environmental protection and sustainability:

- It shows how environmental harm can and does interfere with the values that human rights are designed to protect, that is the ability of every human being to live a life of dignity, freedom, and equality;
- Human rights law clarifies and guides governments in their obligations in respect of environmental protection and provides both procedural and substantive obligations the government should follow in pursuing environment policy;
- Human rights’ institutions set out new forums through which claims can be brought for environmental harm.

### Protecting the Environment using a Human Rights Approach:
**Substantive and Procedural Human Rights Obligations**

#### Substantive Human Rights Obligations

The former UN Human Rights Commission and the current Human Rights Council have consistently recognized that environmental violations “constitute a serious threat to the human rights to life, good health and a sound environment for everyone.”

The right to life, article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant on Civil and Political Rights (ICCPR), is “non-derogable” and foundational, because without it, all other rights would be devoid of meaning. The UN Human Rights Committee has said that it is a right that should not be interpreted narrowly and that States should take positive measures to guarantee it, including measures to reduce infant mortality and to increase life expectancy. The right to life can be affected by environmental disasters and more long-term environmental degradation, which produce life-threatening diseases.
The right to adequate food is part of the broader right to an adequate standard of living, which also includes housing and clothing, and the distinct fundamental right to be free from hunger, which is closely linked to the right to life.

The Committee on Economic, Social and Cultural Rights (CESCR), the body of experts appointed to oversee compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR), considers that the core content of the right to adequate food implies the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.

These rights are internationally guaranteed, but cannot be enjoyed in a degraded environment.

**Procedural Human Rights Obligations**

The enjoyment of human rights depends on environmental protection, in turn, environmental protection depends on the exercise of certain human rights, such as the rights to information (article 19 of the UDHR and article 19 of the ICCPR), public participation in decision-making (article 21 of the UDHR and article 25 of the ICCPR) and access to justice (article 2 para. 3(a) of the ICCPR).

Allowing those potentially affected to participate in decision-making processes concerning harmful activities may prevent or mitigate the threatened harm and contribute to public support for environmental action. In the event the activity goes forward and harm is suffered, access to justice can provide for restoration or remediation of the damaged environment.

**Access to Information**

Access to environmental information is a prerequisite to public participation in decision-making and to monitoring governmental and private-sector activities.

The rights to information and participation, and their particular importance for both human rights and environment matters, are well reflected in the international legal framework, in both human rights law (article 19 of the UDHR and article 19 of the ICCPR) and environmental law. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), signed in Aarhus, Denmark, on 25 June 1998 under the auspices of the United Nations Economic Commission for Europe in 1998, takes a very comprehensive approach to the recognition of the importance of the right to information and public participation.

**Public Participation**

Public participation allows for those most impacted by environmental degradation to speak and influence the decisions that will impact their basic human rights, such right to life and health. Participation is also critical to the effectiveness of law. The process by which rules emerge, or how proposed rules become norms and norms become law, is a matter of legitimacy, and legitimacy in turn affects compliance.
As with the right to information, the right to public participation is widely expressed in human rights instruments (article 21 of the UDHR and article 25 of the ICCPR). Many times the right to public participation overlaps with the access to information. For example, public participation is guaranteed by articles 6 to 8 of the Aarhus Convention.

**Access to justice**

The right of access to justice is expressed in article 2 paragraph 3(a) of the ICCPR, which guarantees victims of human rights violations an effective remedy. This has been interpreted to include environmental wrongs that adversely affected human rights.

There are two aspects to the right to a remedy: access to justice and substantive redress. Access to justice requires the existence of independent and impartial bodies with the capacity to afford redress after a hearing, which respects due process guarantees.

While the ICESCR has no provision comparable to article 2(3) of the ICCPR, it has been argued that the rights it recognizes also require that remedies be available for victims of violations. The Committee on Economic, Social and Cultural Rights has noted, for example, that any person or group victim of a violation of the right to health should have access to effective judicial or other appropriate remedies at both the national and international levels and should be entitled to adequate reparation.

**Lesson Reviews**

- The first recognition of the close relationship between human rights and the environment was in 1972 at the Stockholm Conference on the Human Environment.

- Although there is growing international dialogue and debate on human rights and environmental concerns, there is yet no international consensus on the legal status of the environment in international human rights law.

- The environment is treated as a pre-condition or pre-requisite for the satisfaction of a wide spectrum of human rights such as life, health, food, privacy and freedoms, such as freedom of information and political participation, association and expression, as well as cultural rights.

- Human rights perspective provides three benefits for environmental protection and sustainability: 1) it shows how environmental harm can and does interfere with the values that human rights are designed to protect; 2) human rights law provides both procedural and substantive obligations the government should follow in pursuing environment policy, and 3) human rights’ institutions set out new forums through which claims can be brought for environmental harm.

- The right to life can be affected by environmental disasters and more long-term environmental degradation, which produce life-threatening diseases.

- If the enjoyment of human rights depends on environmental protection, in turn, environmental protection depends on the exercise of certain human rights, such as the rights to 1) information, 2) public participation in decision-making, and 3) access to justice.
LESSON 1.2


This lesson describes the core human rights instruments and other international instruments that underlined the linkages between Human Rights and environment

Learning Objectives

At the end of this lesson you will be able to:

- Provide a background on the interface between human rights and environmental issues, identifying early recognitions, at the international level, of these linkages and relationship.

- Present an overview of the major international human rights instruments.

- Identify the most prominent articles of the different instruments.

The UN Human Rights System: *International Legal and Institutional Framework*

Recent international human rights instruments explicitly recognize linkages between human rights and the environment, particularly in the context of the right to food, the right to health, and indigenous rights to property, natural resources, and culture.

Older human rights treaties drafted and adopted before environmental protection became a matter of international concern often do not include explicit references to environmental issues, but protect interests directly affected by environmental degradation.

Human rights treaty-bodies and the regional human rights mechanisms have repeatedly interpreted these instruments in a manner that recognizes the environmental dimension of these protected rights. They include the rights to life, health, an adequate standard of living, food, water, housing, self-determination and means of subsistence, among others.
The United Nations Charter

The UN Charter sets out the purposes of the UN, including the protection of human rights, maintenance of international peace and security, as well as promotion of economic and social co-operation.

Article 55 of the Charter requires states’ commitments to promote:

- higher standards of living, full employment, and conditions of economic and social progress and development;
- solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Although environmental issues are not expressly mentioned in the UN Charter, these social and economic provisions lay the foundation for the elaboration of human rights to incorporate environmental protection.

The Universal Declaration of Human Rights (UDHR)

The core international human rights instruments are the Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly in 1948, and the two human rights Covenants of 1966 and their protocols (collectively known as the International Bill of Human Rights).

The 30 articles of the UDHR proclaim the fundamental rights which equally apply to all human beings. Many of its provisions are reasserted in several international legal instruments, and the UDHR is generally regarded as declaratory of customary law.

The UDHR does not expressly reference the environment, but it does proclaim human rights that are dependent on a healthy environment for their realization. These include, inter alia, the right to life (Article 3), the right to participate in cultural life (Article 27), and the right to a standard of living adequate for the health and well-being of individuals and their families, including food, clothing, housing and medical care and social services (Article 25).

The UDHR also articulates procedural rights fundamental to the protection of all human rights as well as environmental interests. These include a right to an effective remedy for acts violating the fundamental rights (Article 8), a right to a fair and public hearing (Article 10), the freedom to seek, receive, and impart information and ideas (Article 19), and the right to take part in government (Article 21).
The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) details the basic civil and political rights of individuals and groups.

Its Committee has indicated that state obligations to protect the right to life can require positive measures designed to reduce infant mortality and protect against malnutrition and epidemics, which clearly implicate environmental protection.

Article 27 of the ICCPR reafﬁrms the rights of minorities to their own culture. This has been interpreted to require legal protection for particular ways of life negatively impacted by changes to the natural environment, including such traditional activities as ﬁshing or hunting. The Covenant protects other civil and political rights, such as the right to liberty of movement and freedom to choose residence, the rights of children to special protection, and the right to be free from inhuman or degrading treatment. Environmental degradation can impact these rights through destruction of actual and potential residences, disproportionate impacts on the health and welfare of children, and injury and displacement causing signiﬁcant mental anguish and suffering.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) describes the basic economic, social, and cultural rights of individuals and groups.

In 2000, its Committee issued General Comment No. 14 on “Substantive Issues arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights.” Article 12, paragraph 4 states that “the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinates of health, such as...a healthy environment.”

In 2002, the CESCR adopted General Comment No. 15 on the right to water. Article 1 states that “The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”

In 2010, through Resolution 64/292, the UN General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realization of all human rights.

The Vienna Declaration on Human Rights

The Vienna Declaration and Programme of Action were adopted by consensus at the 1993 World Conference on Human Rights.

The Declaration acknowledges that “the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.” It recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.
The Stockholm Declaration

Following a proposal by the Government of Sweden, the General Assembly decided to convene the first international meeting to discuss environmental concerns, through its resolution 2398 of 1969. The Conference on the Human Environment was held in Stockholm in 1972.

Principle 1 of the Stockholm Declaration underlines 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."

Principle 21 of the Stockholm Declaration has emerged as the customary description of the relationship between State sovereignty and international obligations in the field of international law. It provides that States have the sovereign right to exploit their own resources, but also have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of their national jurisdiction.

After Stockholm, environmental scholars and activists began to consider human rights in a more instrumental fashion, identifying those rights whose enjoyment could be considered a prerequisite to effective environmental protection. They focused in particular on the procedural rights of access to environmental information, public participation in decision making, and access to justice and remedies in the event of environmental harm.

Other International Recognition of Human Rights and Environment Linkages:

The World Commission on Environment and Development

In 1983, the General Assembly voted to create the World Commission on Environment and Development, an independent body linked to but outside the UN system, and later more commonly known as the Brundtland Commission.

The conclusions of the Brundtland Report stressed the need for an integrated approach to development policies and projects that, if environmentally sound, should lead to sustainable economic development in both developed and developing countries.

The Report emphasized the need to give higher priority to anticipating and preventing problems. It defined sustainable development as development that meets present and future environment and development objectives and concluded that without an equitable sharing of the costs and benefits of environmental protection within and between countries, neither social justice nor sustainable development can be achieved.
The Rio and Johannesburg Summits

Subsequent key UN conferences on environment and sustainable development, notably the 1992 Rio Earth Summit (Rio Declaration and Agenda 21), the 2002 World Summit on Sustainable Development (Johannesburg Summit), and the Millennium Summit, reflected on the relationship between human rights and environment.

In 1992, the UN convened a second global conference on the environment in Rio de Janeiro, Brazil - the UN Conference on Environment and Development. The Rio Declaration on Environment and Development that emerged from the Conference recognized the right to development in Principle 3, and was clear in Principle 4 that “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.”

The Rio Declaration also recognized the critical role of procedural human rights in sustainable development, specifically public participation, access to information and access to judicial remedies. Principle 10 of the Declaration emphasized this in providing for the participation of all concerned citizens with appropriate access to information, and the opportunity to participate in decision-making processes. It also states the need for provision of effective access to judicial and administrative proceedings, including redress and remedy.

The States that participated in the 2002 World Summit on Sustainable Development agreed to “reaffirm commitment to the Rio Principles, the full implementation of Agenda 21 and the Programme for the Further Implementation of Agenda 21.”

The 2005 UN World Summit Outcome Document, resulting from a follow-up summit regarding the Millennium Declaration and Millennium Development Goals, reaffirmed that sustainable development constitutes a key element of the overarching framework of the UN activities and defined sustainable development in terms of three interdependent and mutually reinforcing pillars:
Lesson Reviews

- Recent international human rights instruments explicitly recognize linkages between human rights and the environment, particularly in the context of the right to food, the right to health, and indigenous rights to property, natural resources, and culture.

- The UN Human Rights System includes:
  1) the United Nations Charter,
  2) the Universal Declaration of Human Rights,
  3) the International Covenant on Civil and Political Rights,
  4) the International Covenant on Economic, Social and Cultural Rights,
  5) the Vienna Declaration on Human Rights, and
  6) the Stockholm Declaration.

- The core international human rights instruments are the Universal Declaration of Human Rights (UDHR) and the two human rights Covenants and their protocols (collectively known as the International Bill of Human Rights).

- Many of the UDHR’s provisions are reasserted in several international legal instruments, and the UDHR is generally regarded as declaratory of customary law. Even if it does not expressly reference the environment, it does proclaim human rights that are dependent on a healthy environment for their realization.

- Aside from the UN Human Rights System, there exist other international recognition of human rights and environment linkages, mainly:
  1) the World Commission on Environment and Development (Brundtland Commission),
  2) the 1992 Rio Earth Summit,
  3) the 2002 World Summit on Sustainable Development (Johannesburg Summit), and
  4) the Millennium Summit.
LESSON 1.3


This lesson describes the regional human rights system and institutional framework throughout the prism of environmental protection.

Learning Objectives

At the end of this lesson you will be able to:

- Present an overview of the major regional human rights instruments, cases, and institutional frameworks.
- Identify the most prominent articles of the different instruments.

Beginning in the 1980s, the linkages between human rights and the environment have been enshrined in binding regional agreements.

African Human Rights Instruments

- The 1981 African Charter on Human and Peoples' Rights (ACHPR or Banjul Charter) contains several provisions related to environmental rights:
  - Article 24 explicitly states that “all peoples shall have the right to a general satisfactory environment favorable to their development.”
  - Article 21 provides that “all peoples shall freely dispose of their wealth and natural resources” and adds that this right shall be exercised in the “exclusive interest of the people.”
  - Article 16 guarantees to every individual the right to enjoy the best attainable state of physical and mental health. Article 7 addresses procedural rights and provides that "every individual shall have the right to have his cause heard." Both of these rights are relevant in the environmental context, given the links between environmental quality and human health, and the role of procedural rights in protecting environmental rights.
African Human Rights Instruments: Cases

Article 24 of the Banjul Charter and other treaty provisions have led to important jurisprudence on the content of environmental rights. The African Commission on Human and Peoples’ Rights has decided cases concerning pollution and the exclusion of indigenous peoples from their lands set aside for nature preserves. It has concluded that the right to environment is a justiciable right that must be integrated into and balanced with the right to development.

- In the landmark Ogoniland case, the African Commission on Human and Peoples’ Rights concluded that “an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.”

- In the Endorois decision, the African Commission for Human Rights and Peoples’ Rights recognized that the connection between the Endorois people and the land they once lived on were directly related to their human rights, including the rights to freely practice religion, culture, development, dispose of natural resources and property.

The European Convention on Human Rights and its Protocols

The 1950 European Convention on Human Rights focuses on individual liberties, including civil and political rights and freedoms in Europe. Fourteen protocols have been added to the Convention. These protocols have added rights to the Convention, but are only binding on States that have signed and ratified them.

The Convention does not expressly link human rights and the environment, but the European Court of Human Rights has on many occasions determined that environmental degradation can interfere with the enjoyment of protected rights.

The European Social Charter


The Charter provides a number of provisions that may depend on consideration of the quality of the natural environment for their effective implementation. For example, article 3 provides for the right to safe and healthy working conditions. On its face, this provision would seem to cover hazards caused by degradation or pollution of the natural environment, such as exposure to hazardous substances in the course of employment.
In Europe, jurisprudence has further developed the linkages between human rights and environment in the context of economic activities. Human rights courts and tribunals have given effect to various human rights linked to environmental protection through reference to international environmental principles, standards and norms, as well as provisions in the European Convention, including right to life, right to respect for private and family life, right to a fair hearing and the right to property under Protocol 1.

- In its Öneryildiz v. Turkey judgment the European Court referred to the Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment and the Convention on the Protection of the Environment through Criminal Law despite the fact that the majority of member States, including the respondent State, had neither signed nor ratified the two Conventions. In this case, the Court also recognized that the State has an obligation to provide deterrence against threats to life including environmental harms.

- Using environmental standards, the European Court has given some indications of the quality of environment required to comply with the European Convention’s substantive guarantees. In the first major decision involving environmental harm as a breach of the right to private life and the home, guaranteed by Article 8, the European Court held that severe environmental pollution may affect individuals’ “well-being” to the extent that it constitutes a violation of Article 8.

Pollution does not need to reach the point of affecting health, if the enjoyment of home, private and family life are reduced and there is no fair balance struck between the community’s economic well-being and the individuals effective enjoyment of guaranteed rights.

**American Convention on Human Rights**

The 1969 American Convention provides substantive and procedural rights which can be related to environmental protection, including the rights to life, humane treatment, fair trial, freedom of expression and access to information, property, participation in government, and judicial protection have all been discussed by its Commission or the Court, and have been found to be relevant in cases involving environmental degradation.

The rights to personal liberty, privacy, and equal protection may also be relevant to cases of environmental degradation, by analogy with the Commission’s and Court’s decisions involving similar provisions in the American Declaration of the Rights and Duties of Man.
Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)


- Article 11 proclaims that “everyone shall have the right to live in a healthy environment and to have access to basic public services”. It also affirms that Parties shall promote the protection, preservation and improvement of the environment.

- Article 10 recognizes the right to health, and stipulates that Parties must adopt certain specified measures in order to provide the highest level of physical, mental and social well-being, with particular regard for those who are made more vulnerable due to poverty. Article 12 recognizes a right to food, and Article 14 provides for a right to the benefits of culture. Each of these rights could be implicated by environmental degradation.

American Convention on Human Rights: Cases

The case law of this regional system has contributed considerably to recognizing the rights of indigenous peoples relating to environmental and natural resources.

In a country report on Ecuador, the Inter-American Commission referred generally to the obligation of the State to respect and ensure the rights of those within its territory and the responsibility of the government to implement the measures necessary to remedy existing pollution and to prevent future contamination which would threaten the lives and health of its people, including through addressing risks associated with hazardous development activities, such as mining.

National Frameworks

Over 100 constitutions in the world now include a state obligation to protect the environment or a right to a safe, healthy, ecologically balanced (or other adjective) environment. In this way, national governments are becoming more proactive in engaging the environment to protection mechanisms in the domestic level.
Lesson Reviews

- Beginning in the 1980s, the linkages between human rights and the environment have been enshrined in binding regional agreements.

- The African Charter on Human and Peoples’ Rights (Banjul Charter) contains several additional provisions related to environmental rights.

- The African Commission on Human and Peoples’ Rights has decided cases concerning pollution and the exclusion of indigenous peoples from their lands set aside for nature preserves. It has concluded that the right to environment is a justiciable right that must be integrated into and balanced with the right to development.

- The European Convention on Human Rights does not expressly link human rights and the environment, but the European Court of Human Rights has on many occasions determined that environmental degradation can interfere with the enjoyment of protected rights.

- The American Convention provides substantive and procedural rights which can be related to environmental protection. the Protocol of San Salvador expressly links human rights and the environment.

- The case law of the American system has contributed considerably to recognizing the rights of indigenous peoples relating to environmental and natural resources.

- Over 100 constitutions in the world now include a state obligation to protect the environment or a right to a safe, healthy, ecologically balanced (or other adjective) environment.
Module Objectives

At the end of this lesson you will be able to:

- Describe the procedural and substantive human rights obligations relating to the protection of the environment.
- Identify international human rights tribunals and other human rights bodies and actors that play a role in the protection of the environment.
- Identify the human rights obligations relating to the protection of vulnerable groups from environmental harm.
LESSON 2.1

Procedural Obligations Relating to the Environment

This lesson will describe the three core procedural rights relating to environmental policy-making: rights of information, public participation (including rights of free expression and association); and access to remedy. The lesson will explain how these rights have roots both in human rights instruments and in environmental instruments, such as Principle 10 of the Rio Declaration.

Learning Objectives

At the end of this lesson you will be able to:

- Identify the three main procedural obligations that States have to protect against the types of environmental harm that may infringe on the enjoyment of human rights.

- Explain the normative bases of these obligations.

Introduction

Environmental harm can interfere with the enjoyment of a vast range of human rights, including rights to life (article 3 of the UDHR) and article 6 of the ICCPR), health (Article 25 of the UDHR and article 12 of the ICESCR), property (article 17 of the UDHR), food (article 25 of the UDHR and article 11 of the ICESCR), water (CESCR, General Comment 15, para.2), and housing (article 25 of the UDHR and article 11 of the ICESCR).

To protect against the types of environmental harm that may infringe on the enjoyment of human rights, States have several procedural obligations, including:

- to assess environmental impacts of proposed actions and to make environmental information public;

- to facilitate public participation in environmental decision-making, including by protecting the rights of freedom of expression and association; and

- to provide for effective remedies for environmental interference with the enjoyment of human rights.

These obligations translate into rights for individual. Rights-holders have thus the rights to:

a) Assess environmental information;

b) Participate in environmental decision-making; and

c) Access remedies caused by environmental harm.
Obligation to Assess Environmental Impacts and Make Information Public:
The right to seek, receive, and impart information is included in the right of freedom of expression (Universal Declaration of Human Rights, art. 19).

Human rights bodies
Human rights bodies have made clear that to protect the enjoyment of human rights from environmental harm, States should provide access to environmental information. As part of that access, States have affirmative duties to provide for the assessment of the potential impacts of proposed projects and policies that may interfere with the enjoyment of human rights.

In its General Comment No. 15 on the right to water, the CESCR, stated that individuals should be given full and equal access to information concerning water and the environment (para. 48).

International environmental instruments
International environmental instruments also support the right to environmental information.

Principle 10 of the 1992 Rio Declaration states: “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... States shall facilitate and encourage public awareness and participation by making information widely available.”

Environmental treaties
Many environmental treaties, such as the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (art. 15), the Stockholm Convention on Persistent Organic Pollutants (art. 10), and the United Nations Framework Convention on Climate Change (art. 6(a)), require environmental information to be provided to the public.

The Aarhus Convention, includes particularly detailed obligations on access to information public participation and justice.
**Bali Guidelines**


The Bali Guidelines consist of 26 voluntary guidelines that assist States to implement their commitments to Rio Principle 10. They expand on what access to information, as well as the other access rights, should include to be effective.

**On a national level**

Many States have adopted strong laws providing for access to environmental information. Some, such as South Africa and Norway, have even adopted constitutional provisions relating to access to information. At the statutory level, Chile’s environmental framework law (Law No 20.417) sets out a comprehensive framework for access to environmental information.

**International financial institutions**

With respect to environmental assessment in particular, the World Bank and other international financial institutions almost always require environmental assessment of all projects that they finance.

**Obligation to Facilitate Public Participation:**

The general right of public participation is recognized in the Universal Declaration of Human Rights (article 21) and the International Covenant on Civil and Political Rights (article 25). In addition, this right is closely tied to the human rights of freedom of expression and association.

In a broad context, this right includes the right to vote and the right to be represented by elected officials. In the environmental context, it includes the right to participate in environmental decision-making.

Many international environmental instruments recognize the importance of public participation in environmental decision-making, including the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the United Nations Convention to Combat Desertification, and the United Nations Framework Convention on Climate Change. At the regional level, the Aarhus Convention - Principle 10 of the 1992 Rio Declaration states that “Environmental issues are best handled with participation of all concerned citizens, at the relevant level,” and that “each individual shall have...the opportunity to participate in decision-making processes.”
The Bali Guidelines make clear that “the public concerned” means “the public affected or likely to be affected by, or having an interest in, the environmental decision-making.” They also note that “non-governmental organizations promoting environmental protection and meeting any requirements under national law should be deemed to have an interest.”

The 2012 United Nations Conference on Sustainable Development, also known as the Rio+20 Conference, recognized that “opportunities for people to influence their lives and future, participate in decision-making and voice their concerns are fundamental for sustainable development.”

States have obligations to refrain from violating the rights of free expression and association directly and to protect the life, liberty and security of individuals exercising those rights. The United Nations Special Rapporteur on the situation of human rights defenders has found that human rights defenders working on land rights and natural resources are the second largest group of defenders at risk of being killed (A/HRC/4/37), and that their situation is getting worse (A/68/262).

Global Witness, a civil society organization, reported in 2014 that over 900 environmental and land-rights activists had been killed over the previous decade, and that the rate of reported murders was increasing.

Obligation to Provide for Effective Access to Remedies:

The duty to provide access to legal remedies is well established in human rights law (article 8 of the UDHR and article 2 paragraph 3 of the ICCPR). Based on this principle, human rights bodies have emphasized that States should establish and maintain legal systems that provide remedies for human rights violations related to environmental harm.

At the regional level:

- The European Court of Human Rights has stated that individuals must “be able to appeal to the courts against any decision, act or omission where they consider that their interest or their comments have not been given sufficient weight in the decision-making process.”

- The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have made clear that the American Convention on Human Rights requires states to provide access to judicial recourse for all claims alleging that human rights violations resulting from environmental harm.

- The Court of Justice of the Economic Community of West African States has stressed that States need to hold accountable corporations that infringe on human rights through oil pollution, and then to ensure that there is an “adequate reparation” or an adequate remedy and payment for the victims.
Some environmental treaties also establish obligations for States to provide remedies in specific areas when environmental harm has occurred. For instance, the United Nations Convention on the Law of the Sea requires States to ensure that there is recourse available in their legal systems for damage caused by marine pollution.

Principle 10 of the Rio Declaration states: “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” To have effective access to justice, “States should provide broad interpretation of standing in proceedings concerned with environmental matters.”

The Bali Guidelines provide that the proceedings should be fair, open, transparent and equitable, and not prohibitively expensive; that they provide a range of effective remedies, including interim and final injunctive relief and compensation and restitution, as appropriate; that decisions are timely and effectively enforced; and that the public has adequate information about the procedures and that the resulting decisions are publicly available.

Lesson Reviews

- The right to seek, receive, and impart information is included in the right of freedom of expression (Universal Declaration of Human Rights, article 19).

- Principle 10 of the 1992 Rio Declaration supports the right to environmental information. The Bali Guidelines consist of 26 voluntary guidelines that assist States to implement their commitments to this principle.

- The Aarhus Convention includes detailed obligations on access to information, public participation and access to justice.

- Many States have adopted strong laws providing for access to environmental information. South Africa and Norway have even adopted constitutional provisions relating to access to information.

- The general right of public participation is recognized in the Universal Declaration of Human Rights (article 21) and the International Covenant on Civil and Political Rights (article 25).

- States have obligations to refrain from violating the rights of free expression and association directly and to protect the life, liberty and security of individuals exercising those rights.

- The duty to provide access to legal remedies is well established in human rights law (article 8 of the UDHR and article 2 paragraph 3 of the ICCPR). Based on this principle, States should establish and maintain legal systems that provide remedies for human rights violations related to environmental harm.
LESSON 2.2

Substantive Obligations Relating to the Environment

This lesson will describe the substantive obligations of States to adopt and implement legal frameworks to uphold human rights through environmental protection. It will explain that while States have some discretion to decide how to balance environmental protection with other societal interests, the discretion is not unbounded.

Learning Objectives

At the end of this lesson you will be able to:

- Explain the States substantive obligation to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights.

- Analyze State discretion in deciding how to strike a balance between environmental protection and other societal goals, as well as its limits.

- Illustrate how human rights bodies have construed the substantive obligations of States to protect against environmental harm.

The General Obligation of States to Protect Human Rights against Environmental Harm:

Environmental harm may threaten a very broad spectrum of human rights, including the rights to life and health. The content of States’ specific obligations to protect against environmental harm therefore depends on the content of their duties with respect to the particular rights threatened by the harm. Those duties may vary from right to right.

States have general obligations to respect and ensure rights under: the *ICCPR* (art. 2, para. 1), the *Convention on the Rights of the Child* (art. 2, para. 1) and the *American Convention on Human Rights* (art. 1), to take steps towards the full realization of the rights recognized in the *International Covenant on Economic, Social and Cultural Rights*, to secure the rights in the *European Convention on Human Rights* (art. 1), and to recognize and give effect to the rights in the *African Charter* (art. 1).

When environmental harm threatens or infringes the enjoyment of a right protected by one or more of these agreements, States’ general obligations relating to the right (e.g. to respect and ensure it, or to take steps towards its full realization) apply with respect to the environmental threat or infringement.
The European Court of Human Rights has held that States have a primary duty to put in place a legislative and administrative framework that protects against and responds to infringements of the right to life as a result of natural disasters and of dangerous activities, including the operation of chemical factories and waste-collection sites. The Inter-American Commission on Human Rights has urged States to adopt environmental protection measures in order to comply with their obligations to protect rights, including the rights to life and health.

The Obligation to Protect Against Harm from Private Actors:

According to the Special Representative of the Secretary-General on business and human rights, “the State duty to protect against non-State abuses is part of the very foundation of the international human rights regime. The duty requires States to play a key role in regulating and adjudicating abuse by business enterprises, or risk breaching their international obligations” (A/HRC/4/35, para. 18).

The Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in 2011 state that States are required, inter alia, to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises,” including by “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (A/HRC/17/31, principle 1).

The Guiding Principles also make it clear that States have an obligation to provide for remedies for human rights abuses caused by corporations, and that corporations themselves have a responsibility to respect human rights.

Many other human rights bodies have explicitly connected States’ duty to protect against human rights abuses by non-State actors to such abuses caused by pollution or other environmental harm. In the context of the right to water, the Committee has made it clear that the duty to protect extends to adopting and enforcing effective measures to restrain third parties from infringing the right through pollution of water sources (General Comment No. 15, paras. 23 and 44(b)).

On a regional level

- The African Commission on Human and Peoples’ Rights has stated that “Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties”.

- The Inter-American Commission on Human Rights has stated that “effective enforcement of the environmental protection measures in relation to private parties, particularly extractive companies and industries...is essential to avoid the State’s international responsibility for violating the human rights of the communities affected by activities detrimental to the environment.”

- The European Court of Human Rights has held that States are obligated to take positive steps to protect against environmental harm to the right to private and family life, whether the pollution was caused by governmental or private action.
Factors Relevant to Whether a State Has Struck a Reasonable Balance:

The obligation to protect human rights from environmental harm does not require the cessation of all activities that may cause any environmental degradation. The European Court of Human Rights has held that States have discretion to strike a balance between environmental protection and other issues of societal importance, such as economic development and the rights of others. However, the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.

In deciding whether States have reached such a “fair balance,” human rights bodies take into account several factors:

- Whether the environmental law or action in question has resulted from a decision-making process that meets relevant procedural obligations. These obligations would include:
  - Whether the process has included prior assessment of proposals with potential significant environmental effects on the enjoyment of human rights;
  - Whether the public has been able to have access to relevant environmental information;
  - Whether affected members of the public have been able to participate in the decision-making process; and
  - Whether the rights of freedom of expression and association have been respected;

- Whether it is in accord with national and international health standards;

- Whether it is non-retrogressive (if States do take deliberately retrogressive measures, then they have the burden of proving that they first carefully considered all alternatives, and that the measures “are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party’s maximum available resources”);

- Whether the law or action is discriminatory;

- Whether it is effectively implemented.

Obligations Relating to Transboundary Environmental Harm:

Many grave threats to the enjoyment of human rights are due to transboundary environmental harm. This raises the question of whether States have obligations to protect human rights against the extraterritorial environmental effects of actions taken within their territory.

One challenge is that human rights instruments address jurisdiction in different ways. Some, such as the UDHR and the African Charter, contain no explicit jurisdictional limitations, and the ICESCR may even provide an explicit basis for extraterritorial obligations (art. 2, para. 1). Other treaties, including the ICCPR, the Convention on the Rights of the Child, the European Convention on Human Rights and the American Convention on Human Rights, limit at least some of their protections to individuals subject to or within the jurisdiction of the State, leaving it unclear how far their protections extend beyond the State’s territory.

Many human rights bodies have not addressed extraterritoriality in the context of environmental harm.
Many human rights bodies that have addressed the issue do indicate that States have obligations to protect human rights, particularly economic, social and cultural rights, from the extraterritorial environmental effects of actions taken within their territory.

The CESCR has interpreted the ICESCR as requiring its parties “to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries” (General Comment No. 15, para. 31), and has stated that parties should also take steps to prevent third parties within their jurisdiction, such as their own citizens and companies, from violating the rights to water and health in other countries (General Comment No. 15, paras. 23, 33 and 44). Several special rapporteurs have adopted similar interpretations (the Special Rapporteur on the right to food and the Special Rapporteur on extreme poverty and human rights, as well as the Special Rapporteur on the human right to safe drinking water and sanitation).

Other sources, such as the Special Representative of the Secretary-General on business and human rights, have taken a more restrictive view of the scope of extraterritorial human rights obligations. The Special Representative also stated that “there is increasing encouragement at the international level... for home States to take regulatory action to prevent abuse by their companies overseas”, and urged States to do more to prevent corporations from abusing human rights abroad (A/HRC/8/5, para. 19).

Lesson Reviews

- States are required, among other things, to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises”. States also have an obligation to provide for remedies for human rights abuses caused by corporations, and that corporations themselves have a responsibility to respect human rights.

- The obligation to protect human rights from environmental harm does not require the cessation of all activities that may cause any environmental degradation. The European Court of Human Rights has held that States have discretion to strike a balance between environmental protection and other issues of societal importance, such as economic development and the rights of others. However, the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights.

- In deciding whether States have reached such a “fair balance,” human rights bodies take into account several factors:
  1) whether the environmental law or action in question has resulted from a decision-making process that meets relevant procedural obligations,
  2) whether it is in accord with national and international health standards,
  3) whether it is non-retrogressive,
  4) whether the law or action is discriminatory;
  5) whether it is effectively implemented.

- Many grave threats to the enjoyment of human rights are due to transboundary environmental harm. This raises the question of whether States have obligations to protect human rights against the extraterritorial environmental effects of actions taken within their territory. One challenge is that human rights instruments address jurisdiction in different ways.
LESSON 2.3

Obligations relating to the Marginalized and those in Vulnerable Situations

This lesson addresses the principles of equality and non-discrimination in the application of environmental policies and also the heightened obligations States may owe to members of certain groups and those who are marginalized and whose human rights are particularly vulnerable to environmental degradation.

Learning Objectives

At the end of this lesson you will be able to:

- Explain the principle of equality and non-discrimination and the right to equality and the right to non-discrimination in international human rights law.

- Identify State obligations to those who are marginalized and in vulnerable situations.

- Understand that those obligations stem from their obligations to uphold the right to equality and the right to non-discrimination.

Introduction:

The principle of equality and non-discrimination is firmly anchored in international human rights law (Articles 1 and 2 of the Universal Declaration on Human Rights).

The principle of equality and non-discrimination is one of seven principles whose importance has been clarified by the UN human rights treaty bodies and United Nations experts. When the principles of accountability, equality and non-discrimination, participation, transparency, empowerment, sustainability, and international cooperation are implemented together, it can be said that one has comprehensively adopted a “human rights-based approach.”

In the context of environmental policy making this means States may have heightened obligations to those who are marginalized and in vulnerable situations to ensure their obligations to uphold the rights to equality and non-discrimination are met.
The human rights principle of equality and non-discrimination – State obligations under international human rights law:

Discrimination is multi-faceted and not only in State and public structures but also in civil society in general. To a greater or lesser extent, discrimination may thus affect the way people are treated in all spheres of society such as education, employment, access to health care, housing, social services, politics, the administration of justice and law enforcement, the penitentiary system, and in environmental policy making.

Even during times of emergency (State of Emergency), when States may request to derogate certain obligations, States can never derogate their obligation not to discriminate. The right to not be discriminated against is a non-derogable right.

These fundamental legal requirements oblige States to refrain from discriminatory actions, to take proactive steps to guarantee equality (not just in law, but in policy and practice), to be vigorous in ensuring that measures and approaches that appear to be neutral do not in reality have a discriminatory effect, and in certain contexts to actively recognize and take account of difference through temporary special measures.

State obligations to those who are marginalized and in vulnerable situations and the rights to equality and non-discrimination:

This lesson does not aim to be exhaustive in the following categories and recognizes that there are also other categories of groups and people in vulnerable situations, such as, ethnic groups, religious groups, LGBTI, etc.

Women
This lesson does not aim to be exhaustive in the following categories and recognizes that there are also other categories of groups and people in vulnerable situations, such as, ethnic groups, religious groups, LGBTI, etc.

Indigenous Peoples
Indigenous peoples are at greatest risk from many kinds of environmental degradation and exploitation because of their cultural and economic dependence on environmental resources. As the Special Rapporteur on Human Rights and the Environment says, “because of the close relationship that indigenous peoples have with nature, they can be uniquely vulnerable to environmental degradation.”

The Special Rapporteur on the rights of indigenous peoples has described in detail the obligations of States to protect against environmental harm to the rights of indigenous peoples:

- States have a duty to recognize the rights of indigenous peoples with respect to the territory that they have traditionally occupied, including the natural resources on which they rely;
States are obliged to facilitate the participation of indigenous peoples in decisions that concern them;

States must provide for an assessment of the environmental impacts of development activities on indigenous lands before they are authorized;

States must guarantee that the indigenous community affected receives a reasonable benefit from any such development;

States must provide access to remedies, including compensation, for harm caused by the activities.

**Children**

The rights of children may be particularly affected by environmental degradation. In all actions concerning children, including those taken by administrative authorities and legislative bodies, “the best interests of the child shall be a primary consideration”.

Article 24, paragraph 2(c) of the Convention on the Rights of the Child provides that States Parties shall pursue full implementation of the right of the child to the enjoyment of the highest attainable standard of health and, in particular, shall take appropriate measures “to combat disease and malnutrition... through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.”

In its General Comment No. 15 (2013), the Committee stated that under article 24.2(c), “States should take measures to address the dangers and risks that local environmental pollution poses to children’s health,” should “regulate and monitor the environmental impact of business activities that may compromise children's right to health, food security and access to safe drinking water and to sanitation,” and should “put children's health concerns at the centre of their climate change adaptation and mitigation strategies” (paras. 49, 50).

The Convention states that the States Parties agree that the education of the child shall be directed, inter alia, to “the development of respect for the natural environment” (art. 29, para. 1(e)).

**Persons with disabilities**

Persons with disabilities often encounter discrimination and exclusion on a daily basis. This means pervasive exclusion from development programmes and funds, as well as all areas of economic, political, social, civil and cultural life, including employment, education and healthcare.

Article 5 of the Convention on the Rights of Persons with Disabilities (CRPD) on equality and non-discrimination is crucial in informing inclusive policies on emergency situations, including the provision of reasonable accommodation. States parties must ensure close consultation with, and the active involvement of, organizations of persons with disabilities in the development, implementation and monitoring of emergency-related legislation and policies (art. 4.3).
States’ duties under article 9, on accessibility, are indispensable to ensure that persons with disabilities are not excluded during situations of risk and humanitarian emergency, especially regarding information and alert mechanisms.

The CRPD applies throughout the continuum of humanitarian emergencies, whether in situations of conflict, foreign occupation or natural disaster. The Convention applies to all persons with disabilities, regardless of their legal status or nationality.

Lesson Reviews

- The principle of equality and non-discrimination is firmly anchored in international human rights law (Articles 1 and 2 of the UDHR).

- The principle of equality and non-discrimination is one of seven principles whose importance has been clarified by the UN human rights treaty bodies and United Nations experts.

- States have an obligation to apply the principles of equality and non-discrimination to all policymaking, including environmental policy making. In the context of environmental policy making, States may have heightened obligations to those who are marginalized and in vulnerable situations to ensure their obligations to uphold the rights to equality and non-discrimination are met.

- Even during times of emergency, States can never derogate their obligation not to discriminate.

- Indigenous peoples are at greatest risk from many kinds of environmental degradation and exploitation because of their cultural and economic dependence on environmental resources.

- The rights of children may be particularly affected by environmental degradation. In all actions concerning children, including those taken by administrative authorities and legislative bodies, “the best interests of the child shall be a primary consideration”.
Module Objectives

At the end of this lesson you will be able to:

- Identify, analyze and compare good examples of national laws and public policies for the protection of the environment under a human rights approach.

- Determine the elements that make these good examples successful practices.

- Review good examples of national public policy that would contribute to the protection of the environment.
LESSON 3.1

Constitutional Rights to a Healthy Environment

This lesson will give examples of constitutions that have incorporated a right to a healthy environment and describe the benefits of such rights for furthering a national policy for a human rights-based approach to environmental protection.

Learning Objectives

At the end of this lesson you will be able to:

- Explain the value of adopting the right to a healthy environment.
- Distinguish between the explicit right to a healthy environment and derivative or implicit environmental rights derived from other constitutional rights

Introduction:

Although no global international agreement has explicitly recognized a right to a healthy environment, over 90 national constitutions now recognize some form of the right. About two-thirds of these constitutional rights refer to health, and one-quarter refer to the right in terms of an ecologically balanced environment; alternative formulations include rights to a clean, safe, favorable or wholesome environment.

Many subnational governments also recognize rights to a healthy environment, even if the right is not recognized in their national constitutions. For example, despite the absence of a right to a healthy environment in the national constitution of the United States, several states within the United States, including Hawaii, Illinois, Massachusetts, Montana and Pennsylvania, have adopted the right in their state constitutions.

Including an environmental right at the constitutional level can contribute to environmental protection in several respects:

- The adoption of a constitutional right to a healthy environment can have important symbolic value, raising the profile and importance of environmental protection as compared to competing interests such as economic development, and helping to counteract the labeling of pro-environment individuals and groups as anti-development or acting against the greater interests of the State;
- The adoption of a constitutional environmental right can lead to the enactment of stronger environmental statutes and regulations to fulfill the constitutional commitment;
If it is enforceable in domestic courts, a constitutional right to a healthy environment can create opportunities for better access to justice and accountability in environmental matters, providing a safety net to protect against gaps in environmental statutes and regulations; and

Studies suggest that States with constitutional environmental rights have better environmental performance.

The constitutional right to a healthy environment arises in two primary ways: either the right is explicitly adopted in a national constitution, or it is implied or derived by courts from other constitutional rights, such as rights to life or health. The second category can be called “derivative” or “implied” environmental rights. In addition, many constitutions include procedural rights, such as rights to information, that are explicitly linked to the environment.

**An Explicit Constitutional Right to a Healthy Environment:**

In 1976, Portugal became the first state to adopt an explicit constitutional right to a healthy environment. Article 66 of Portugal’s constitution provides: “Everyone has the right to a healthy and ecologically balanced environment and the duty to defend it.” Soon thereafter, in 1978, Spain adopted Article 45(1) of its constitution, which states: “Everyone has the right to enjoy an environment suitable for the development of the person, as well as the duty to preserve it.”

In the succeeding decades, more than 90 other States have adopted the right into their national constitutions.

<table>
<thead>
<tr>
<th>Europe</th>
<th>Albania, Andorra, Armenia, Belarus, Belgium, Bulgaria, Croatia, Czech Republic, Finland, France, Georgia, Greece, Hungary, Latvia, Macedonia, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovak Republic, Slovenia, Spain and Ukraine.</th>
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<tr>
<td>Latin America and the Caribbean</td>
<td>Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela.</td>
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<tr>
<td>Asia</td>
<td>Azerbaijan, East Timor, Indonesia, Iran, Iraq, Kyrgyzstan, Mongolia, Nepal, Philippines, South Korea, Thailand, Turkey and Turkmenistan.</td>
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<tr>
<td>Africa</td>
<td>Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Cote d’Ivoire, Congo (Brazzaville), Congo (Democratic Republic), Egypt, Ethiopia, Gabon, Guinea, Kenya, Malawi, Maldives, Mali, Mauritania, Mozambique, Niger, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa, Sudan, Togo and Uganda.</td>
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</tbody>
</table>
Notable exceptions include Australia, Canada, Japan, and the United States, all of which still have a comprehensive set of domestic environmental laws and regulations. A constitutional environmental right is not, therefore, necessary for strong environmental protection. But it is clear that it can and often does help to provide a legal basis for strong environmental protection.

Two leading examples of the adoption and implementation of environmental rights into national constitutions are from Costa Rica and France:

- In 1994, Costa Rica amended its Constitution to state: “Article 50. Every person has the right to a healthy and ecologically balanced environment, being therefore entitled to denounce any acts that may infringe the said right and claim redress for the damage caused. The State shall guarantee, defend and preserve that right. The Law shall establish the appropriate responsibilities and penalties.”

- France adopted an Environmental Charter in 2004, and it took effect on the constitutional plane in 2005. It has the same high legal status as the 1789 Declaration of the Rights of Man and the preamble to the 1946 Constitution. France thus placed environmental rights and principles on the same level as the civil and political rights recognized by the 1789 Declaration and the economic, social and cultural rights set forth in the preamble to the 1946 Constitution.

**Derivative Constitutional Rights to a Healthy Environment:**

**The Right to Life**

Courts in about 20 countries have ruled that the constitutional right to life includes an implicit right to a healthy environment.

- In Subhash Kumar v. State of Bihar, the Supreme Court of India observed that the “right to life is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution free water and air for full enjoyment of life.” In 1995, the Supreme Court of India expanded upon its earlier articulation of the right, stating that “the right to life: encompasses within its ambit the protection and preservation of the environment, ecological balance, freedom from pollution of air and water, and sanitation, without which life cannot be enjoyed.”

- In Godawari Marble, the Supreme Court of Nepal found that “since a clean and healthy environment is an indispensable part of a human life, the right to a clean, healthy environment is undoubtedly embedded within the Right to Life.”

**The Right to Health**

The WHO defines the environment as “all the physical, chemical and biological factors external to a person, and all the related behaviors.” In this context, health is intrinsic to the right to a healthy environment. As such, some courts have found a derivative right to a healthy environment to be implied by a constitutional right to health. Article 32 of Italy’s constitution states: “The Republic safeguards health as a fundamental right of the individual and as a collective interest.”
In 1990, Italy’s Constitutional Court ordered that “environmental protection must take priority over economic considerations when acceptable limits for human health are exceeded.”

There are also instances in which the implicit right to a healthy environment is not exclusive to either the right to life or health, but rather derives from both. Colombia’s Constitutional Court expresses this possibility, stating, “[t]he right to a healthy environment cannot be separated from the right to life and health of human beings.”

**The Constitutionalization of Procedural Rights:**

Procedural rights and obligations are an integral component of the human rights law relating to the environment. They are also reflected in many international environmental instruments, including the 1992 Rio Declaration (Principle 10). Principle 10 is significant because it influenced the integration of procedural rights into state constitutions by providing an international benchmark against which national standards could be measured.

Procedural rights are most often constitutionalized in three forms: rights to information, to participation, and to remedy:

- Article 50 of Ukraine’s Constitution contains a right to environmental information, stating, “Everyone is guaranteed the right of free access to information about the environmental situation ... and also the right to disseminate such information.”

- Section 67 of Thailand’s constitution is a representative example, requiring an environmental assessment and public participation proper to government approval of any project that “may seriously affect ... the community in quality of the environment, natural resources, and health.”

- Article LXXIII of Brazil’s constitution states that “any citizen has standing to bring a popular action to annul an act injurious to the public patrimony or the patrimony of an entity in which the State participates... to the environment.”

**Those in Vulnerable Situations:**

In addition to procedural rights, constitutional protections for many specific types of vulnerable groups, such as women, children, the disabled, migrant workers, and indigenous peoples also exist:

- States like South Africa have established specific provisions that explain the scope of the constitutional right to a healthy environment in light of special protections for women. In 1998, the South Africa’s National Environmental Management Act “establish[ed] the right of the public to be consulted before the environment can be harmed and require[ed] that women and other vulnerable and disadvantaged groups be helped to ensure their involvement in decisions about their environment.”

- Children are uniquely vulnerable to the impacts of environmental degradation, in part “because their organs and their immune systems are still developing, . and they absorb more pollutants than adults because of their smaller body weights.” As such, some constitutions explicitly call for the provision of a healthy environment for children. Article 34 of El Salvador’s constitution
specifically identifies the need to protect children, stating: “Every child has the right to live in familial and environmental conditions that permit his integral development, for which he shall have the protection of the State.”

- While there is little evidence of constitutional environmental provisions that explicitly reference migrant workers, courts have found implicit protections for migrant workers through derivative rights to a healthy environment, such as the fundamental right to health. In India, courts give special “attention [to] ‘dangerous job[s]’ and workers, particularly migrant workers and other vulnerable people’s health and safety.”

- Environmental degradation can both lead to and exacerbate certain disabilities. To provide fundamental protections for this vulnerable group, the Constitution of Uganda features both a right to a healthy environment and specific protections for disabled persons. Article 39 of the Ugandan Constitution states: “Every Ugandan has a right to a clean and healthy environment,” and Article 35(2) provides that “Parliament shall enact laws appropriate for the protection of persons with disabilities.”

- Indigenous peoples often have a particularly close relationship with the environment, which makes them particularly vulnerable to environmental harm. In Bolivia and Ecuador, indigenous peoples played a crucial role in constitutional environmental reforms:

  - Article 30 Section 2.10 of Bolivia’s Constitution declares the right “[t]o live a healthy environment, with appropriate management and exploitation of the ecosystems.” Section 2.15, requires indigenous peoples right to consultation;

  - Article 57(7) of Ecuador’s constitution features a free, prior, informed consent provision, that must take place “within a reasonable period of time, on the plans and programs for prospecting, producing and marketing nonrenewable resources located on their lands and which could have an environmental or cultural impact on them.”
Lesson Reviews

- Over 90 national constitutions now recognize some form of the right to a healthy environment.

- Including an environmental right at the constitutional level can contribute to environmental protection in several respects:
  1) in raising the profile and importance of environmental protection as compared to competing interests such as economic development,
  2) in leading to the enactment of stronger environmental statutes and regulations to fulfill the constitutional commitment;
  3) in creating opportunities for better access to justice and accountability in environmental matters, and
  4) in enhancing environmental performance

- The constitutional right to a healthy environment arises in two primary ways: either the right is explicitly adopted in a national constitution, or it is implied or derived by courts from other constitutional rights, such as rights to life or health.

- Procedural rights and obligations are reflected in many international environmental instruments, including the 1992 Rio Declaration (Principle 10) which provided an international benchmark against which national standards could be measured.
LESSON 3.2

Good Practices in Procedural and Substantive Environmental Protection

This lesson will provide examples of national laws and public policies that safeguard and facilitate the rights to information, public participation, freedom of expression and association, and effective remedy, in the environmental context. It will also provide examples of national laws and public policies that contribute to the substantive achievement of environmental protection.

Learning Objectives

At the end of this lesson you will be able to:

- Provide examples of national laws and public policies that safeguard and facilitate the rights to information, public participation, freedom of expression and association, and effective remedy.

- Provide examples of international practices, national laws and public policies relating to the protection of groups particularly vulnerable to environmental harm.

What are good practices?

Although there is no agreed definition on “good practices”, a review of several definitions used in the UN system generally points to actions which are:

1) in compliance with international human rights laws and principles;
2) have contributed to the enjoyment of human rights and freedoms;
3) have proven their effectiveness through demonstrable and sustainable results and evidence of positive impact; and
4) have the potential to be successfully adopted and replicated in other contexts.

How to identify a good practice? These are the elements

(1) Integration of human rights principles: the practice integrates equality and non-discrimination, full and effective participation, transparency, accountability, empowerment, etc.;

(2) Impact/effectiveness: the practice makes a positive impact and attained its objective(s);

(3) Sustainability: the result of the practice is socially, culturally, economically and environmentally sustainable over time (e.g., lasting change of attitude and behavior);
Examples of Good Practices in Procedural Environmental Protection:

1) **(Aarhus) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters**

The Aarhus Convention is a regional instrument on the rights to access of information, participation, and access to justice, enshrined in Principle 10 of the 1992 Rio Declaration. Adopted in June 1998, the Aarhus Convention sets out detailed procedural requirements on the rights of access to information, participation, and justice.

The obligations in the Convention are imposed on public authorities as well as bodies performing public administrative functions, including privatized bodies having public responsibilities in relation to the environment and under the control of public authorities.

2) **Right to participation: Public Participation in Environmental Impact Assessment Procedures**

Most States have adopted environmental impact assessment (EIA) laws, in accordance with principle 17 of the Rio Declaration, which states that “environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.”

India amended its EIA law in 2006 to require a public consultation period once a draft EIA is prepared under the law. Public consultation consists of a public hearing and a period for written presentations/comments from the concerned public and provides a legal space for them to come face-to-face with the project proponent in the presence of regulatory bodies and express their concerns. Since 2006, the government has organized 565 public hearings.
Module 3 | Implementation of a Human Rights Approach to Environmental Protection

3) **Right of access to remedies: National Human Rights Commission of Thailand: Koh Kong Sugar Plantation Case**

The National Human Rights Commission of Thailand (NHRCT) received a complaint in January 2010 from Community Legal Education Center (CLEC), a Cambodia-based organization, regarding alleged human rights violations in the Koh Kong sugar cane plantation in Cambodia. The allegations included that a Thai company, through its Cambodian subsidiaries, acted unlawfully. Alleged human rights violations included the use of forced evictions, killing of livestock, threats and serious intimidation to community members, and the loss of food security.

The NHRCT designated its Subcommittee on Civil and Political Rights to investigate. The Subcommittee found that the NHRCT had jurisdiction to examine the alleged violations and to facilitate a resolution of the matter.

The Subcommittee also found that the Thai company was involved in the activities in Koh Kong and that evidence “allows for a reasonable belief that human rights principles and instruments were breached in this case.” The Subcommittee identified breaches of the rights to life and to self-determination in particular. The Subcommittee also identified “a failure to uphold the people’s right to development, which includes their right to participate in, contribute to, and enjoy economic, social, cultural and political development, and through which most other human rights and fundamental freedoms can be fully realized.”

**Substantive Environmental Protection:**

*Implementation of Constitutional Environmental Rights:*

In *Mendoza Beatriz Silva and Others v. National Government of Argentina and Others* in regards to damages suffered (2008), a group of concerned residents of the Matanza-Riachuelo River basin filed a complaint against the national government, the province and city of Buenos Aires as well as private companies, based in part on the constitutional right to a healthy environment, seeking compensation for damages from pollution of the basin, stoppage of contaminating activities, and a remedy for collective environmental damage.

After providing initial rulings in 2006 requiring the government to conduct an environmental assessment and in 2007 ordering the government to establish a comprehensive clean-up and restoration plan for the river, the Court issued a comprehensive final ruling in 2008, in which it identified three main objectives for the clean-up effort and ordered the defendants to undertake a wide range of remedial actions.

The objectives set by the Court for the clean-up programme included the improvement of the quality of life for the inhabitants of the basin and the environmental restoration of all the river basin’s components.
Substantive Environmental Protection Jurisprudence:  
The Constitutional Chamber of the Costa Rica

The Constitutional Chamber of the Costa Rican Supreme Court has actively implemented the constitutional right to a healthy environment. Since 1995, much of the case law of the Constitutional Chamber has concerned the application of article 50 of the Constitution, which sets forth the right to a healthy environment. It reviewed issues of constitutionality in environmental matters on 85 occasions between 1989, when the Chamber was established, and 2012, and it reached findings of unconstitutionality 36 times, or 42 per cent of the total.

It has defined the scope of article 50 broadly, transcending basic or primary protection of environmental components, such as water, to include factors relating to the economy, tourism, farming and other activities. It has held that the right requires not only that the State refrain from direct violations, but also that it protect against violations from others, emphasizing the State’s role as the guarantor for the protection and safeguarding of the environment and natural resources.

The Chamber has also derived from the right to a healthy environment the principle of in dubio pro natura, which means that if there is a lack of certainty about whether activities might cause serious and irreparable damage, the Government should refrain from the activities.

The Chamber has also emphasized the importance of procedural rights in the environmental context, stating that the guarantee of a right to a healthy environment includes the design and implementation of procedural mechanisms that establish effective access to the protection of the right.

Innovative Implementation: the Finnish example

Section 20 of the Constitution of Finland establishes a right to a healthy environment. Among other things, it places the responsibility for protecting the environment on the collective, stating that “Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.”

A program developed by the Ministry of Environment seeks to promote the collective responsibility provision in section 20. In 2014, the Ministry launched a nation-wide competition for a wide spectrum of actors, including institutions, corporations, individuals and communities, to make commitments related to their own actions and sustainability.

The Ministry provides a guidance document on how to develop and register commitments online and establish indicators to monitor their implementation. The document provides examples of different commitments, and describes various categories of objectives to which they relate, such as promoting well-being or improving transparency of decision-making.
LESSON 3.3

Good Practices in the Protection of those Vulnerable to Environmental Harm

This lesson provides an overview of groups particularly vulnerable to environmental harm, as well as sheds light on good practices relating to the protection of women, children, indigenous people, migrants and internally displaced persons.

Learning Objectives

At the end of this lesson you will be able to:

- Provide examples of international practices, national laws and public policies relating to the protection of groups particularly vulnerable to environmental harm, including indigenous peoples, the extremely poor, women, children, and other marginalized groups.

- Identify tools and mechanisms needed to design, finance and implement this type of practice.

Good practices relating to the protection of women:

1) Gender-sensitive approaches and tools adaptation to climate change

The *Gender, Climate Change and Community Based Adaptation Guidebook* introduces advice and tools on how to take gender-sensitive approach to planning and implementing adaptation projects and programmes.

The ‘gender-responsive budgeting’ is a tool that can be used to ensure that programme and project budgets are based on the recognition that the needs of women and men, while sometimes the same, can also be different, and that, when they are different, allocations should reflect this.

2) Feminist Participatory Action Research programme of the Asia Pacific Forum (Philippines)

The Feminist Participatory Action Research (FPAR) programme of the *Asia Pacific Forum on Women, Law and Development* is a good practice in empowering women to participate in policy debates over climate change.

Together with local partner organizations, the Asia Pacific Forum helps women in rural, indigenous and urban poor communities to document their own experiences by setting their own research agenda, conducting the research themselves and advocating for change as a result.
In the Philippines, one community has passed a resolution to prevent the use of destructive fishing practices after conducting its own research on the issue, and now requires individuals to adhere to strict fishing and hunting schedules. Women in other communities have mobilized to call for the regulation of local logging and the implementation of reforestation measures.

**Good practices relating to the protection of children:**

1) **United Nations Children’s Fund (UNICEF)**

The United Nations Children’s Fund (UNICEF) is partnering with countries to try to reduce the effects of climate change and environmental degradation on children’s rights.

- In Burundi, UNICEF is implementing Project Lumière, which enables community groups to purchase bicycle pedal-powered generators and LED lights that can provide light for a household for up to 10 days. Access to energy protects child health and safety by reducing harmful emissions from the burning of kerosene and firewood in homes, and by providing light at night for children to study.

- In Zambia, UNICEF’s Unite4Climate programme has trained over 1000 young people to be Climate Ambassadors. Ambassadors have undertaken a number of activities, including training peers on the causes and potential solutions to climate change, hosting radio shows on climate change, creating a model for a floating school in an area of Zambia at-risk to intense flooding, and meeting with leaders on the global stage to explore youth perspectives on climate policy.

2) **Improving participation of children and children’s awareness**

NGOs organize the competition for the *Children’s Environment and Health Action Plan for Europe (CEHAPE)* awards to highlight and reward good practice in children’s environment and health. The first competition was launched in 2006 and the second competition in 2010 at World Health Organization’s European Region Ministerial Conference on Environment and Health. Some of the cases awarded are:

- In Belgium, primary schools improved their indoor air quality. Children’s awareness of indoor air quality was raised through games, songs and the use of a child-friendly CO2 monitor that turns red when the air is poor;

- In Tajikistan, students developed a PC-based manual to promote activities to make their schools more environmentally friendly: cleaning them up, recycling waste, distributing clean water, providing low-cost heating and making posters. The incidence of diarrheal diseases has dropped and recycling covers the costs of the actions.
Good practices relating to the protection of indigenous people:

1) Legislations on protection of indigenous people and their participation

The county of Finnmark, located in the northeast of Norway, is the ancestral land and home of Norway’s indigenous Sami people. After many years of legal uncertainty about the management and use of natural resources in Finnmark, the Norwegian Parliament adopted the Finnmark Act in 2005, through a process of consultation with the Sami Parliament.

The purpose of the Act is to “facilitate the management of land and natural resources in the county of Finnmark in a balanced and ecologically sustainable manner for the benefit of the residents of the county and particularly as a basis for Sami culture, reindeer husbandry, use of non-cultivated areas, commercial activity and social life.”

The Act further recognizes that “through prolonged use of land and water areas, the Sami have collectively and individually acquired rights to land in Finnmark.”

2) Initiatives by indigenous organizations

The Australian National Indigenous Climate Change (NICC) project is a forum established in 2008 by indigenous leaders to provide dialogue between corporate representatives, indigenous peoples and other experts about issues, risks and opportunities associated with climate change and participation in carbon markets.

The NICC Project established a working group, composed of indigenous peoples, climate change experts, and corporate representatives, to carry out its programmes. It is overseen by a Steering Committee of indigenous leaders.

Good practices relating to the protection of migrants and internally displaced persons:

Monitoring and data collection

In order to legislate laws and to establish national policy to protect the vulnerable population, it is necessary to monitor the impact of environmental harm on certain community and in relation to migration, whether those impacts may result in displacement of those populations.

In Petén, Guatemala, additional questions on migration and the environment were added to a Demographic and Health Survey (DHS) in 1999. Since 1970s, the department of Petén, located in the north of Guatemala, experienced severe deforestation and also experienced substantial in-migration from elsewhere in Guatemala.

The questionnaire included modules of questions on migration history and experience of the household head in coming to the Petén, migration within the department after arriving, future migration intentions, sources of family sustenance, land use and attitudes toward the environment.