

**Integrating Human Rights into Energy and
Environment Programming: A Reference Paper**

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Acronyms

| | |
|--------------|---|
| CESR | Committee on Economic, Social and Cultural Rights |
| DFID | Department for International Development, UK |
| DDC | UNDP Drylands Development Centre |
| GEF | Global Environment Facility |
| SGP | Small Grants Programme |
| ILO | International Labour Organisation |
| IMF | International Monetary Fund |
| NGO | Non- governmental Organisation |
| OHCHR | United Nations Office of the High Commissioner for Human Rights |
| PP10 | Partnership for Principle 10 |
| SIDA | Swedish International Development Co- operation Agency |
| UNDP | United Nations Development Programme |
| WHO | World Health Organisation |

EXECUTIVE SUMMARY

In 1998, UNDP adopted its policy on *Integrating Human Rights with Sustainable Human Development*, recognising that human rights and sustainable development are linked and complementary. This paper explains the relevance of human rights to energy and environment programmes. It introduces the main theoretical issues related to human rights and energy and environment, and identifies the strategic entry points for integrating human rights into programming. Based on the experience of development organisations, the main issues and challenges that arise in adopting a human rights-based approach to programming is also discussed. Following on from this paper, practitioners will need specific practical guidance and tools. The draft checklist included in this paper is such a practical tool.

The human rights standards that relate to energy and environment

Although energy and environment do not feature in a number of the early human rights instruments, there is a growing body of relevant national and international legal doctrine. Treaty supervisory bodies are increasingly recognising the right to environmental protection in their decisions. This is reflected in the growing number of non-binding legal instruments that explicitly refer to the environment. For example, General Comment No. 15 of the Committee on Economic, Social and Cultural Rights, set out in 2002 a human rights-based approach to the sufficiency, safety, and accessibility of water. It sets an important precedent for other environmental rights.

Whilst substantive rights to the environment are not well developed in international law, *procedural* rights offer a direct link between human rights and energy and environment issues. They are widely recognised in a number of human rights instruments, and in the Rio Declaration on Environment and Development. Procedural rights include the rights to information, participation in decision-making, and remedies for discriminatory treatment. They have provided communities and NGOs with an important tool for ensuring sound environmental governance.

National legal systems have done much to apply and develop environmental rights, and are very frequently more advanced than international law. While international environmental law is sometimes applied directly, more often courts have relied on existing Constitutional rights such as the rights to life or health to recognise environmental decisions. This paper includes examples of such court cases.

Integrating human rights into programming

A human rights-based approach to programming sets the achievement of human rights obligations as an *objective* of development programmes and integrates human rights principles into the programming *process*. This approach adds value to energy and environment programme design for a number of reasons. It supports achievement of the Millennium Development Goals, prevents elite capture of energy and environment programmes, and directs attention to the poor and marginalized. It also supports the development of more locally grounded, effective, and sustainable programmes. So too a human rights-based approach demands attention on the wider political, legal and social issues that impede access to natural resources and energy services. Integrating human rights into programming is a good idea both because it legitimates the demands of citizens to environmental protection, and because it is likely to produce better end results for sustainable development.

This paper uses the ‘UN Common Understanding on a Human Rights-Based Approach’ as a guide to integrating human rights into energy and environment programmes. It illustrates how the UN Common Understanding builds upon and demands consistent implementation of elements of good programming practice; for instance, including the most marginalized in equitable service delivery and extending and deepening participation. And importantly, it identifies the new elements that this approach brings to programming practice; for instance, looking at relationships between those who have valid human rights entitlements (right-holders) and those with obligations to respond (duty-bearers).

A growing number of organisations are adopting a human rights-based approach. It has helped them produce real results in protecting biodiversity, improving access to water for all, and channelling and managing conflict over shared natural resources. Yet integrating human rights into programming is not without its challenges. To support participation, extra time and an understanding of the socio-cultural context are required. Many rights, such as gender equality, are resisted by some community members, and this may require nuanced decision-making by programmers. There is a danger too that human rights-based programmes that seek to be more open and participatory may actually open a political space that allows capture by articulate and well-informed elites. Using human rights language tends to make explicit conflicts over shared resources as well as power hierarchies in the country or the community. The advantage, though, is that procedural rights create a framework for addressing these otherwise submerged conflicts. Successful human rights-based programming will ultimately depend on a larger political context, since human rights enshrined in a single project or programme will not be sustainable without outside political support. Attention to both the macro and micro levels of policy is a key to success.

A survey of human rights dimensions in UNDP programming

In general UNDP programmes on environment and energy are moving in a positive direction. Human rights principles and methodologies are increasingly reflected in UNDP’s work. In particular, programmes are taking a broader approach to environment and energy issues with initiatives that specifically address the political and legal issues that impede access to energy and environment resources. A cross-sectoral approach to energy and environment issues is also being taken through linking programmes with livelihood issues. There is scope to develop this integrated approach further. Adopting a broadly conceived access to justice approach could be considered.

Whilst the importance of human rights principles, such as participation and gender equality, is widely recognised within UNDP a more systematic effort to integrate these principles is needed. More progress could also be made in developing a coherent overarching strategy on human rights for UNDP’s work in Energy and Environment.

Specific initiatives on water, energy, and biodiversity have moved a considerable distance toward human rights-based programming. A more deliberate effort to incorporate the principles of the UN Common Understanding in programme design, implementation, and monitoring would help carry forward the progress to date. It would also compliment and reinforce the direction in which UNDP’s Energy and Environment’s Practice area is now heading.

I. INTRODUCTION

In 1998, UNDP adopted its policy on *Integrating Human Rights with Sustainable Human Development*, recognising that human rights and sustainable development are linked and complementary. The policy analysis was filled out in the *Human Development Report 2000*, which focused on human rights and human development. The Report highlighted that human rights are important for two reasons: first, they are intrinsic ends in themselves that all UN actors are bound to promote; secondly, they are powerful tools for achieving sustainable human development.

With a policy and analytical framework in place, work in the UNDP shifted toward effective implementation supported by the *UNDP Training Manual on Human Rights and Sustainable Development* (2000) to develop understandings of human rights principles among UNDP staff. The *UNDP Guidelines for Human Rights-Based Reviews of UNDP Programmes* followed in 2003.¹ UNDP's original policy position on integrating human rights with human development was confirmed in 2005 with the Practice Note on *Human rights in UNDP*. Drawing on the progress made and experiences gained since 1998, the Practice Note provides a framework for mainstreaming human rights into UNDP's work.

The present reference paper forms part of a joint OHCHR-UNDP programme: HURIST (Human Rights Strengthening). The primary purpose of which is to support the mainstreaming and operationalization of human rights into UNDP's key programming areas.² This paper rests within the framework definition of a human rights-based approach to programming as captured in the 'UN Common Understanding on a Human Rights-based Approach to Development Cooperation', and makes it directly relevant to one of UNDP's four practice areas: Energy and Environment Programmes. Following on from this paper, practitioners will need specific practical guidance and tools. The checklist included in this paper could be such a tool, in its present form or revised..

II. HUMAN RIGHTS-BASED APPROACHES TO ENERGY AND ENVIRONMENT PROGRAMMES

Much has been written on human rights-based approaches to development. While governments, international organisations, and NGOs have varied in their approaches, there is consensus on common themes.

- The standards and principles laid down in *national and international human rights instruments* provide the *framework* for development programming: human rights standards and principles help set the *objectives* of programmes whilst also guiding the entire programming *process*.
- A human rights-based approach emphasizes programming that *empowers* people to determine the development process and to be *actively engaged* in it.

¹ UNDP (2003) Human Rights-Based Reviews of UNDP Programmes, Working Guidelines, <http://www.undp.org/governance/docshurist/030617Guidelines.doc>

² HURIST was established in 1998 with the primary purposes to test guidelines and methodologies; identify best practices and learning opportunities; and build capacity for human rights integration in UNDP's key programming areas. For further information on HURIST, please refer to: <http://www.undp.org/governance/hurist.htm>

- Through framing development in terms of human rights the human rights-based approach establishes the existence of *claims* and corresponding *obligations*. Programming thereby focuses on building the *relationship* between individuals and groups with valid claims (*rights-holders*) and state and non-state actors with correlative obligations (*duty-bearers*).

These elements are reflected in the ‘UN Common Understanding’ on a human rights-based approach to development cooperation, as adopted in 2003 at Stamford, USA (see Box 1). While the human rights-based approach is still evolving this ‘Common Understanding’ is a first step in reaching conceptual clarity on a human rights-based approach within the UN and the wider development community.

Box 1: UN Common understanding on a human rights-based approach³

1. All programmes of development co-operation, policies and technical assistance should further the *realisation of human rights* as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights *standards* contained in, and *principles* derived from, the Universal Declaration of Human Rights and other international human rights instruments *guide all development cooperation and programming* in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the *development of the capacities* of ‘*duty-bearers*’ to meet their obligations and/or of ‘*rights-holders*’ to claim their rights.

The human rights principles to guide development programming identified in this agreement are:

- universality and inalienability;
- indivisibility;
- inter-dependence and inter-relatedness;
- equality and non-discrimination;
- participation and inclusion;
- accountability and rule of law.

A human rights-based approach to energy and environment programming builds upon elements of traditional ‘good programming practice’, such as: emphasising the process as well as the outcome of programming; including the most marginalized in equitable service delivery; extending and deepening participation; ensuring local ownership of development processes; and strengthening the accountability of all actors. Yet a human rights-based approach may introduce new elements. For instance, the use of a human rights framework brings a common vocabulary for both expressing the demands of citizens as well as the obligations of the government and other duty-bearers. Both macro level reforms and micro level initiatives are cast in a common policy framework. So too a human rights-based approach demands attention on the asymmetries of power between rights-holders and duty-bearers. It legitimates the demands of citizens while delegitimizing the excuses of the powerful. It may also bring a new dimension to monitoring and evaluation, with the use of common human rights standards and principles to monitor achievements within and across development programmes.

³ The Stamford Inter-Agency Workshop statement of ‘Common Understanding’ on a human rights-based approach to development cooperation: http://www.undg.org/documents/3069-Common_understanding_of_a_rights-based_approach.doc

A. Why Adopt A Human Rights-Based Approach To Energy and Environment Programming?

Given the economic, technical, and political complexity of many energy and environment programmes, it may seem that adding yet another factor is simply a step too far. But experience has shown that going through the steps to integrate human rights brings important benefits to energy and environment programmes.

The principle advantages of adopting a human rights-based approach include:

- *The inter-dependence of human rights and sustainable development.* Human rights and sustainable development are mutually reinforcing. Access to energy and environmental protection are essential to the realisation of basic human rights, including the rights to food, health and even life itself. So too a human rights framework that ensures transparency and empowers citizens to contribute to the management of natural resources will help to achieve energy and environment goals.
- *A framework for addressing conflicting rights and interests.* A human rights-based approach establishes processes and mechanisms to bring conflicting interest and rights, for example the rights claims of present generations for livelihood security versus the inter-generation claims for environment protection, into the open and seeks to resolve them with accessible redress as necessary where rights are violated.
- *Helping achieve the Millennium Development Goals.* A human rights-based approach places people at the centre of development: projects are based on the perceptions, needs, and legitimate claims of people. This leads to the design and implementation of programmes that are more likely to have direct benefits for poverty reduction, education, health, and gender equality. Many of the Millennium Development Goals were based on international human rights standards, particularly in the areas of health and gender equality, so there is a substantial overlap in approach. Working to integrate rights into energy and environment programming will help to make interventions more focused on poor people, and will thus contribute directly to the first MDG on eradicating extreme poverty. Other examples of synergies can be found in the links between the right to clean drinking water and MDG 4 on reducing child mortality. Lastly, environmental and energy rights contribute directly to MDG 7 on ensuring environmental sustainability.
- *More effective and sustainable programmes.* Experience shows that development programmes are more likely to achieve their objectives when individuals are included as active participants rather than passive recipients of development programmes. Programmes are more likely to meet local preferences and needs, use local knowledge and technology, and match local capabilities to sustain the projects. As informed citizens and genuine stakeholders, individuals feel committed to maintaining the programme and to protecting their environment.
- *An integrated approach:* Analysing energy and environment issues through the human rights lens allows for a better understanding of how laws, social norms, traditional practices, and institutional actions positively or negatively affect these issues. This leads to more focused strategic

interventions, which address the structural causes behind energy and environment-related problems.

- *Attention to the poor and marginalized.* Poor and vulnerable groups often suffer disproportionately from environmental degradation and unequal access to energy systems. A human rights-based approach ensures that they are the focus of programming strategy.
- *Preventing “elite” capture of energy and environment programmes.* With its emphasis on broad-based participation and programming that builds the capacity of poor and marginalized groups to claim and exercise their rights, a human rights-based approach prevents elites from capturing both the benefits and process of programmes.
- *Enhances results-oriented management.* Human rights principles and standards helps to clarify and achieve goals while contributing directly to feedback and monitoring systems. A programme based on human rights design is more likely to provide early warning of problems and strengthen the accountability of all actors.

B. What are the Human Rights Standards that Relate to Energy and Environment?

International Human Rights Instruments.

A number of the main human rights instruments were drafted before energy and environment came on to the international development agenda. It is therefore not surprising that early international human rights instruments, such as the Universal Declaration of Human Rights (1948) make no explicit reference to energy and environment. However, environment and energy issues are understood as being implicit in these treaties. Fundamental rights such as the *right to the highest attainable standard of health* - enshrined in the Covenant on Economic, Social and Cultural Rights (1966)⁴ - and the *right to life* - enshrined in the Covenant on Civil and Political Rights (1966) - depend on a clean and healthy environment.

More recently drafted international human rights instruments do specifically mention the value of the environment in their systems of protection. These include:

- *The Convention on the Rights of the Child (1989);*⁵ and
- *The ILO Convention No.169 concerning Indigenous and Tribal Peoples (1989)*

Furthermore, rights to environmental protection have increasingly come to be recognised by the various *Committees* charged with interpreting international human rights standards. *The Human Rights Committee*, established under the Covenant on Civil and Political Rights, has referred to environment issues in its concluding

⁴ This is recognised in Article 12 (2) (b) of the International Convention on Economic, Social and Cultural Rights, which contain a short reference to the improvement of environmental hygiene as a step towards the realisation of the right to health.

⁵ Article 24 of the Convention on the Rights of the Child, which recognises the “right of the child to the enjoyment of the highest attainable standard of health” mandates that State Parties consider the “dangers and risks of environmental pollution”. Article 29 includes the respect for the environment as one of the goals of educational programmes. For the full text of the Convention, see: <http://www.unhcr.ch/html/menu3/b/k2crc.htm>

observations. So too the *Committee on Economic Social and Cultural Rights (CESR)* has clarified the links between the environment and some of the substantive rights enshrined in the Covenant on Economic, Social and Cultural Rights; notably with the *General Comment on the Right to Adequate Food* and the *General Comment the Right to Adequate Housing*.⁶ Importantly, in 2002, the CESR explicitly recognised the human *right to water*. It thereby confirmed the growing consensus that the environment is directly tied to human well-being and to the realisation of human rights (see Box 2).

Box 2: The Right to Water

In November 2002, the Committee on Economic, Social and Cultural Rights, adopted **General Comment No. 15** on the right to water referring to article 11 - the right to health - of the International Covenant on Economic, Social and Cultural Rights. With this General Comment the Committee re-affirmed that water is a precondition of all human rights and indispensable for leading a life in dignity.

General Comment No. 15 defines the sufficiency, safety, affordability and accessibility to water and describes a state's legal responsibility in fulfilling the right. Specifically, General Comment No. 15 defines the right to water as entitling "everyone, on the basis of non-discrimination, to sufficient, safe, physically accessible and affordable water, which is of an acceptable quality for personal and domestic uses."⁷ The provision of water must be adequate for human dignity, life and health.

The essence of the right to water resides in the implementation of the principle that no person may be deprived of enough water to satisfy basic human needs. Regardless of their available resources, all state parties to the International Covenant on Economic, Social and Cultural Rights have an immediate obligation to ensure that the minimum essential level of the right is realised. While not precluding appropriate public/private cost sharing arrangements, no person should be deprived of minimum requirements simply by reason of his or her inability to pay.

The most comprehensive international statement on environmental rights to date is the 1994 *Draft Declaration of Principles on Human Rights and the Environment*,⁸ appended to the Report of the UN Special Rapporteur on Human Rights and the Environment.⁹ The Declaration is divided into four parts:

First, it sets out a series of *general principles*, including the human right to a secure and healthy environment, the right to non-discrimination, and the right to an environment adequate to meet the needs of the present generation without impairing the rights of future generations to meet their needs.

Second, it defines a series of *substantive rights*, including the human right to protection of the environment, the right to safe and healthy water, the right to preservation of unique sites, and the rights of indigenous peoples to land and environmental security.

⁶ In its Comment on the Right to Adequate Food the Committee interpreted the phrase "free from adverse substances" in Article 11 of the Covenant to mean that the state must adopt food safety and other protective measures to prevent contamination through "bad environment hygiene". General Comment 12, E/C. 12/1999/5. The Comment on housing states that "housing should not be built on polluted sites nor in proximity to pollution sources that threaten the right to health of the inhabitants". U.N. CESCR, General Comment 4, U.N. Doc. E/C.12/2000/4 (2000).

⁷ Committee on Economic, Social and Cultural Rights, (November 2002) *General Comment No. 15, the right to water* (art.11 and 12 of the International Covenant on Economic, Social and Cultural Rights), para 2, E/C.12/2002/11

⁸ The full text is reproduced in Appendix C.

⁹ The Report was presented to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its 46th Session, UN Doc, E/CN.4/Sub.2/1994/9

In Part III, the Draft Declaration delineates *procedural rights*, including the right to environmental information, and active participation in environmental decision-making, and the right to effective redress for environmental harm.

The fourth part of the Draft Declaration sets out the *duties* of both individuals and states, including government obligations to disseminate information, facilitate public participation, control harmful activities, monitor and manage environmental use, and provide effective remedies and redress for harm.

The principles set out in the Draft Declaration reflect and build upon the rights found in both national and international law. While the principles focus on the environment, many can be applied or adapted for use in respect of accessible energy programmes.

Although this instrument is non-legally binding, national courts have used the Draft Declaration as a basis for decisions on environment matters. The courts of Columbia, for instance, have cited the Draft Declaration when making decisions on environmental matters. In the case of *Fundepublico v. Mayor of Bugalagrande* (1992), the Court found legal support in the Draft Declaration in deciding in favour for the protection of the fundamental right to a healthy environment.¹⁰

Regional Human Rights Instruments.

At a regional level, both the European and Inter-American human rights systems have recognised environmental rights in their decisions.¹¹ Moreover, two regional *legal* instruments for the protection of human rights contain specific provisions on the right to the environment:

- *The African Charter of Human and People's Rights*, (1981), which proclaims that “all peoples shall have the right to a general satisfactory environment favourable to their development” (Article 24); and
- *The Additional Protocol to the American Convention on Human Rights*, (adopted in San Salvador in 1988) which stipulates that “everyone shall have the right to live in a healthy environment and to have access to basic public services” (Article 11).

National Human Rights Instruments.

More importantly, human rights to natural resources and environmental protection have been recognised in national laws, constitutions, and policies. Presently over 100 constitutions throughout the world guarantee a right to a clean and healthy environment, impose a duty on states to prevent environmental harm, or mention the protection of the environment or natural resources. Moreover, some of this legal provision provides individuals or groups with the right to file legal action to protect the environment or fight against pollution.¹²

¹⁰ Reported in *International Environmental Law Reports Volume 4, International Environmental Law in National Courts*, (2004) Edited by Alice Palmer, Cairo A. R. Robb

¹¹ Many of the decisions are reprinted in Cairo A.R. Robb, ed., *International Environmental Law Reports, volume 3: Human Rights and Environment* (Cambridge: Cambridge University Press, 2001).

¹² Angola, Argentina, Azerbaijan, Belarus, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Cape Verde, Chad, Chechnya, Chile, China, Colombia, Congo, Costa Rica, Croatia, Cuba, Ecuador, El Salvador, Equatorial Guinea, Eritrea (draft), Finland, Georgia, Germany, Ghana, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, India, Iran, Kazakhstan, Kuwait, Laos, Latvia, Lithuania, Macedonia, Madagascar, Malawi, Mali, Malta, Mexico, Micronesia, Mongolia, Mozambique, Namibia,

Whilst there are a limited number of countries that have interpreted and applied these constitutional provisions, litigation based on the right to the environment increasing.¹³ Perhaps the most dramatic developments have been in India, Pakistan, and Bangladesh (see Box 3). Another example is Costa Rica, where the right to ‘a healthy environment’ has been affirmed by the Supreme Court as a human right. Claiming the Constitutional right to a healthy environment, in 1999 an environmental NGO- *Justicia Para la Naturaleza*- filed suit against a trans-national banana company- Geest Caribbean Ltd- for illegally clear cutting a forest near a National Park. The Court decided in favour of the plaintiff and sought to apply natural resource damage assessment techniques to value the loss of biodiversity and ecosystem values.¹⁴ Similarly, in the Philippines, the Supreme Court annulled a number of unsustainable logging licences on the basis of a Constitutional ‘right of the people to a balanced and healthful ecology’.¹⁵

Box 3: Evolution of Substantive Rights in South Asian Legal Systems

Courts in a number of developing countries have evolved rights-based approaches to questions of energy and environmental management. The higher courts in India, Pakistan, and Bangladesh have decided hundreds of cases brought in the public interest relating to environmental protections. The topical coverage of these cases has ranged from mining, forestry, and biodiversity to hazardous wastes, pollution, and construction projects. The Indian Supreme Court, for example, has set out that the right to environmental protection is inherent within the constitutional right to life, and that environmental law principles including access to information, polluter pays, the precautionary principle, and the object of sustainable development should be applied as part of the right to life. In practice, the higher courts in South Asia have recognised substantive rights to environmental protection, and have been willing to use their judicial powers to enforce citizens’ rights where other remedies have failed.

Some of the main lessons of Public Interest Litigation in South Asia are:

- Public interest litigation based on flexible court procedures and an active civil society has probably been the most important vehicle for citizen empowerment in environmental issues
- Environmental rights can be used to enforce statutory and regulatory standards where the bureaucracy has failed to take effective action
- Citizens have been able to call on general rights to environmental protection to fill the regulatory gaps where statutes or standards do not exist. This has been particularly important in cases of quarrying, mining, wildlife protection, air pollution, displacement, and uncontrolled construction or development projects
- General rights to environmental protection have been effective tools for improving the quality of environmental management, but judges need to be careful to integrate their decisions with broader policy frameworks established by the state
- Ambitious court decisions are not always enforced. Decisions that are realistic about the state’s administrative capacity are more likely to be implemented. Citizen mobilisation and media coverage play an important role in ensuring that environmental judgements are followed up with action by the government and private parties.

Source: Boyle & Anderson (1996), Razzaque (2004).

Nepal, Netherlands, Nicaragua, Niger, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russia, Sao Tome and Principe, Saudi Arabia, Seychelles, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Suriname, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Togo, Turkey, Turkmenistan, Uganda, Ukraine, Uzbekistan, Venezuela, Vietnam, Yugoslavia, Zambia.

¹³ For an overview of the different countries that have enshrined the right to the environment in their Constitutions, and the various ways in which they have articulated and justified this right, please refer to the Report of the UN Special Rapporteur on Human Rights and the Environment E/CN.4/Sub.2/1994/9

¹⁴ For more detail on this case, please refer to: <http://www.elaw.org/news/impact/text.asp?id=307>

¹⁵ *Minors Oposa v Factoran* (1993) Available at <http://www.elaw.org/resources/text.asp?ID=278>

At a national level, most cases before courts relating to environment degradation have linked environment issues to **substantive rights**. Invoking fundamental human rights such as the rights to *life, health, self-determination, food, and housing* has provided a powerful base for ensuring state accountability for environmental issues.

Box 4: Using substantive rights for environmental ends

The Right to Health

When invoking the right to health for environment protection, courts have stated that issues related to environmental degradation- such as poor sanitation, pollution, and hazardous waste- directly violate the right to health. In Argentina, a court has stated that environmental harm finds legal coverage in positive law as it prejudices the health of those affected by polluting substances.¹⁶ In the case of *Almada Hugo N v. C. Copetro and others*, the Court considered that in situations of environmental pollution, the right to health is directly affected and threatened.

The Right to Life

Many national courts have recognised that their Constitutional right of life includes the right to a clean and healthy environment in which to live that life. In India the Supreme Court has interpreted the right to life, guaranteed by Article 21 of the Constitution, to include the right to a wholesome environment. To take but one of many dozens of examples, the Indian Supreme Court in the 1996 case of *Vellore Citizens Welfare Reform v. Union of India* found that tanneries in the state of Tamil Nadu had violated citizens' right to life by discharging untreated effluents into agricultural areas and local drinking water supplies.¹⁷

Procedural Rights: linking human rights and environment rights. In the years since the 1994 Draft Declaration on Human Rights and Environment Principles, human rights-based approaches to environmental protection have increased in number and prevalence at the national and local level, supported in large part through programmes to implement *Agenda 21 and Principle 10 of the 1992 Rio Declaration on Environment and Development* (see Box 5).

Box 5: Principle 10 and Agenda 21 of the 1992 Rio Declaration on Environment and Development

The 1992 UN Conference on Environment and Development in Rio de Janeiro formulated the link between human rights and environmental protection largely in *procedural* terms.

Principle 10 of the Rio Declaration states as follows: "Environmental issues are best handled with the *participation* of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate *access to information* concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to *participate in decision-making processes*. States shall facilitate and encourage public awareness and participation by making information widely available. Effective *access to judicial and administrative proceedings*, including *redress and remedy*, shall be provided".

Agenda 21 is the Programme of Action adopted to implement Principle 10. It has 21 Chapters dealing with all aspects of sustainable development including social and economic dimensions (combating poverty and promoting human health), conservation and resource management, major groups (e.g. women, indigenous people, business and unions), and means of implementation (e.g. aid, public awareness, education).

In international law, Agenda 21 and the Rio Declaration fall into the category of 'soft law': they are not directly enforceable in courts and tribunals. Yet though they lack

¹⁶Fabra Adriana and Arnal Eva, Instituto Internacional de Derecho y Medio Ambiente, Review of jurisprudence on human rights and the environment in Latin America, Background Paper No. 6. prepared for Joint UNEP-OHCHR Expert Seminar on Human Rights and the Environment, 14-16 January 2002, Geneva

¹⁷For more detail on this case, please refer to: <http://www.elaw.org/resources/text.asp?ID=199>

legal status, there is a strong expectation that their provisions will be respected and followed by the international community. Furthermore, they reflect emerging principles of international human rights and environmental law.

One of the first 'hard law' texts to explicitly link environment rights and human rights and to recognize the rights of future generations to the environment is the regional **UN/ECE Aarhus Convention**. It stresses the need for citizen's access to information on the environment held by public authorities, participation in environmental decision-making, and access to justice in environmental matters.

Box 6: The UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

The 1998 **Aarhus Convention** establishes that sustainable development can be achieved only through the involvement of all stake-holders, and links government accountability and environmental protection. Developed under the auspices of the United Nations Economic Commission for Europe, the Aarhus Convention codifies various environmental dimensions of the right to information, the right to participation and the right to equal access to judicial and administrative remedies because "adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself."¹⁸

Aiming to ensure the protection of each person's right to live in an environment adequate to his or her health and well being, the Aarhus Convention rests on three pillars. The first requires public authorities to make information on the environment available to the public upon request, generally within one month. Secondly, authorities must provide for public participation when determining whether to permit certain proposed activities. Thirdly, the Aarhus Convention guarantees access to justice in "the process of formulating and implementing policies, laws, and regulations, including.. the process of assessing environmental impact, and the establishment of specific environmental performance standards."¹⁹

Although the Aarhus Convention is a *regional* instrument, its global significance is widely recognised. The Convention entered into force on 30 October 2001 and is open to accession by non-ECE countries, (as yet no non ECE country has signed it).²⁰

At a national level, asserting **procedural rights**, such as the right to *information*, *the right to participation* and *the right to judicial redress*, has provided communities and NGOs with an important tool for ensuring sound environmental governance. These rights are well established in international and national legal instruments. In countries that lack comprehensive environmental laws and resources to implement and enforce those laws, particularly some developing countries, they play an essential role in protecting individuals from environmental damage. They also enable those concerned groups to voice their objections to environment damage and hold governments to account.

While human rights-based approaches to environmental protection are becoming well established, less explicit work has been done to promote rights relating to energy. Yet a rights-based approach to energy is implicit in other policies, and many of the principles and issues are identical to those in the environment area.

¹⁸ U.N. Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (June 25, 1998) (Aarhus Convention), at <http://www.unece.org/env/pp/documents/cep43e.pdf>

¹⁹ *ibid*, at 2.1.4. on 23

²⁰ For practical information on the Aarhus Convention, see "Questions and Answers on the Aarhus Convention", at:

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/03/210&format=HTML&aged=0&language=EN&guiLanguage=en>

Dimensions of State Obligations: respect, protect, fulfil

Under international human rights law, the obligations of governments extend to three dimensions. First, the obligation *to respect* requires states to refrain from interfering with the exercise of the right. Secondly, the obligation *to protect* obliges states to supervise relations between citizens in civil society and to ensure that private parties are respecting the rights of others. The third dimension, the obligation *to fulfil*, requires governments to take appropriate steps, through legislation, policies, budgetary allocations and other measures, to promote the realisation of the rights.

Table 1:
Dimensions of Obligations: Example of Environmental Dimensions to the Right to Health

| | |
|------------------------------|--|
| The right to health | <i>International Covenant on Economic Social and Cultural Rights, Art. 12(2)(b): the right to ‘the enjoyment of the highest attainable standard of physical and mental health’ . . . [including] ‘the improvement of aspects of environmental and industrial hygiene’</i> |
| Obligation to <i>respect</i> | State obliged to refrain from direct injury to human health through poor environmental and industrial hygiene |
| Obligation to <i>protect</i> | State obliged to regulate private actors to ensure that healthy standards of environmental and industrial hygiene are maintained: proper regulatory frameworks and monitoring mechanism to ensure that private actors are behaving the way required by the Covenant are essential. |
| Obligation to <i>fulfil</i> | State obliged to take the necessary measures for the realisation of this right, such as introducing environment and industrial hygiene standards into national legislation to ensure that healthy standards are met. |

C. Integrating Rights into Programming: the UN Common Understanding

The method and scope by which human rights are integrated into environment and energy programming will vary for water, energy and biodiversity, but certain general principles should apply to all. All UN agencies, including UNDP Environment and Energy programmes, will be guided by the three principles set out in the UN ‘Common Understanding’ on the human rights-based approach.²¹ Crucial to effectively integrating human rights into energy and environment practice, is that these three principles are understood and implemented as an ‘integrated, interrelated and mutually reinforcing package’.²²

1. The aim of all programme activities should be to contribute directly to the realization of one or several human rights

As part of the United Nations, UNDP is guided by the UN Charter. As such, it is mandated to respect, protect and promote human rights in all its activities. This should be reflected in UNDP’s energy and environment policies and programmes. Where environment and energy programmes are able to directly further substantive human rights, such as the right to food and the right to health, these issues should be explicitly referred to. Similarly, where programmes further human rights principles, such as participation and equality, through their activities, these issues should be included as programme goals, and using human rights terminology. The international and national legal standards that relate to these human rights should also be referred to (Box 7 provides an example of an environment programme which is framed in a human rights framework). Human rights standards and principles should also be reflected in the *baselines* and *indicators* designed to measure project progress.²³

²¹ The basic elements of the UN Common Understanding have been incorporated into the October 2003 revision by UNDG of the Integrated Guidelines for CCA/UNDAF, and the December 2003 UNDG Guidelines for UN Engagement in PRSP process (www.undg.org)

²² Mr. Sergio Viera de Mello, High Commissioner for Human Rights (May 2003), Opening statement at the *Second Interagency Workshop Implementing a Human Rights-based Approach in the Context of UN Reform*, Stamford USA.

²³ For more information on how to design and use human rights indicators, practitioners can refer to the HURIST publication, “Frequently asked questions on a human rights-based approach to development cooperation”, November 2004.23 Nov. 2004, available at <http://www.undp.org/governance/hurist.htm>

Box 7: Framing a Biodiversity Project Within the Human Rights Framework

A 'Community-based Coastal Resource Management' (CBCRM) project was implemented by **Oxfam UK** in the Philippines. The project addressed the problem of the marginalization and exclusion of small fishers within the country's agriculture sector: this group lacks organisations to represent their interests and are unable to have a voice and participate in governance to determine their development. Moreover, women hold a particularly weak status within this community.

For this project, Oxfam *cited the specific human rights* that it would be helping to realise through its activities, including:

- *The International Covenant on Economic, Social and Cultural Rights*: the right not to be deprived of the means of subsistence, and the right to food; and
- *The Philippine Constitution*: the right to a balanced and healthful ecology; and the right to an equitable distribution of opportunities, income and wealth.

Protecting and asserting *equitable access* to and control of natural resource use was also a prime objective of the project.

The project aimed to build up the fishers' ability to protect their environment and sustainable use natural resources. It also aimed to empower small fishers to advocate for the institutionalisation of CBCRM at the local and national levels.

Steps taken to achieve these aims were: education of rights; advocacy and popular campaigning for just and responsive environmental laws and policies; community organising; and legal services and advice. In supporting popular participation in governance and providing training on good resource management and practices, Oxfam hoped to encourage changes in policies, practices and ideas.

For more information on this project, please refer to:
<http://www.un.or.th/ohchr/issues/rba/oxfamGB.ppt>

2. Human rights standards and principles as a guide to development programming in all sectors and at every phase of the process

Human rights principles should be *systematically* applied during *all* the main phases of the development programming process. That is, the assessment, analysis, planning, implementation, monitoring and evaluation phase. The key human right principles for successful environment and energy programming include: a) participation, b) non-discrimination, equality and attention to vulnerable groups, c) indivisibility and inter-dependence, and d) accountability.

a) Participation

Participation is a basic operational principle of development programmes and projects. It is also a fundamental human right.²⁴ Every person and all peoples have a right to be actively engaged in the development process affecting their lives.

All 'stakeholders' (those people, groups or institutions who have specific rights and interest in the energy and environment project)²⁵ should be, as far as the context will

²⁴ Art. 25 of the International Covenant on Civil and Political Rights, states that: 'every citizen has the right to take part in the conduct of public affairs,... and the right to have access to public service.'

²⁵ This will usually include members of government at a national or local level; civil society, such as NGOs, community groups, indigenous people's organisations, women's groups; the private sector, such as industry associations, major companies, the media; and regional and international agencies, such as multilateral development banks, bilateral development cooperation agencies, and international NGOs.

allow,²⁶ involved in the process relating to its formulation, implementation and monitoring. Human rights law stresses that participation must be ‘active, free and meaningful’: participants must be able to shape and determine the decision-making process, as well as to significantly contribute to the realisation and monitoring of the development programme itself. The principle of participation has consequences for all stages of the development programme cycle from assessment and planning to implementation and evaluation.

Assessment and Planning. The process of assessing the situation and setting programme goals should involve opportunities for all stakeholders in the environment and energy programme to contribute without discrimination. The value of participatory assessment and planning is that it enables the institutional, political and social issues that lie at the root of the environment and energy problem to be identified. By involving stakeholders, programmes also ensure that goals and activities match local needs and priorities. And they guarantee that local skills and resources are available for installing, managing and sustaining the services planned.

There is no set formula for effective public participation. Requirements will depend on the scope, goal and strategy of the project, as well as the participants themselves. When designing participatory methodologies, development practitioners will find the following minimum requirements for effective participation identified in the *Aarhus Convention* useful as guidelines:

- stakeholders will require effective notice of when the participation process is taking place;
- participants will require correct, timely, transparent information (available in simple and non-technical prose) on the environment and energy issues that are being addressed;
- proper procedures must be in place for participation; and
- the outcome of public participation must be appropriately taken into account.²⁷ (UNECE 2000)

Development practitioners have found the following strategies key to successful participation:

- A proper understanding of all the stakeholders involved in the project, with a considered and concrete approach to include the more vulnerable and marginalized among them.
- A phased approach: that is, start modestly, building on existing participation systems; then deepen and focus participation with each iteration of process.
- Appropriate participatory methods for appraising needs and possibilities, dialogue, ranking solutions, forming partnerships, resolving conflicts and reaching solutions.
- Demonstrable results and benefits, especially in the early phases – stakeholders need to be convinced that their investments of time and other resources will have an impact.²⁸

²⁷ World Resource Institute, USA (2002) *Closing the Gap: Information, Participation, and Justice in Decision-Making for the Environment*. For the full text of the Aarhus Convention, see: <http://www.unece.org/env/pp/documents/cep43e.pdf>

²⁸ OECD and UNDP, (2002), *Sustainable Development Strategies, A resource Book*, p. 193

As noted in UNDP's Guide on "Empowering People"²⁹ developing local capacity to participate and building trust and confidence of stakeholders to work together, requires considerable time, effort and patience. But effective participation does become more cost-effective with time. Participation structures can also be employed in subsequent programme strategies.³⁰

The advantage of initial forward looking investment into participation is that it contribute to community "ownership", helps build consensus about the project approach and promotes mutual understanding.³¹ In the energy and environment sector, abiding by this principle is particularly important. It provides one of the only means by which to negotiate trade-offs in an equitable manner among different types of ecosystem use; such as economic development versus environment sustainability.

Implementation. Programmes will support beneficiaries to be actively engaged in the delivery and management of energy and environment related services, as well as in the management of their own natural resources. Special skills training and capacity building for the communities and groups involved in the matter of 'hardware' (technology) and 'soft ware' (particularly management), will be an essential part of this. Partnership strategies with local community organisations has been found to be important.

There is no general rule as to the extent to which programmes should encourage the devolution of authority to local communities and groups. This will depend on the particular situation and project goals. Established property rights and the capacity of locals to manage their systems and natural resources themselves are key to determining the extent to which this will be both a feasible and beneficial strategy.

Monitoring and Evaluation. It is crucial that participation follows through to the monitoring and evaluation stage of the programming process. Not only will this effectively reflect human rights principles, but experience shows that community driven, participatory monitoring and evaluation is usually critical to the project's success. Working closely with communities, civil society, state and non-state institutions to develop baselines and indicators for measuring programme progress will be part of this process.

For guidelines on how to design participatory methodologies, development practitioners can refer to UNDP's "Participatory Evaluation Handbook" designed to brief and to inform UNDP staff promoting participation in UNDP programmes.³²

b) Non-discrimination, equality and attention to vulnerable groups

Non-discrimination and Equality. The twin principles of equality and non discrimination are among the most fundamental elements of the international human rights framework. They are enumerated and elaborated in numerous international human rights instruments beginning with the Universal Declaration of Human Rights.

²⁹ UNDP, (1999) *Empowering People: A Guide to Participation*, at <http://www.undp.org/sl/Documents/Manuals/Empowering/chapter4.htm>

³⁰ *ibid*, p.181

³¹ UNDP, (1999) Global Environment Facility, Small Grants Programme, *Monitoring and Evaluation Framework*

³² UNDP, (1999) *Empowering People: A guide to Participation*, see 'Monitoring and Evaluation of Participation', <http://www.undp.org/csopp/paguide.htm>

Under human rights law, all human beings have equal rights and are entitled to their human rights without any discrimination of any kind, such as ethnicity, colour, sex, language, religion, political or other opinion, national or social origin, disability, property, birth or other status.

Many instances of human rights abuses are related to discriminatory practices and attitudes that deliberately exclude some people or groups of people from the full exercise of their rights. Discrimination may take many forms. It may be codified in law (*explicit* discrimination), and be part of official policy; or it may be found in practice and behaviour (*implicit* discrimination); such as where a remote group cannot access water services because drinking wells provided by the state are too far away. Both explicit and implicit discrimination must be taken into account in the programming process.

Integrating these principles into programming requires a specific effort to *identify the individuals and groups most marginalized and vulnerable* in regards to access to energy services and natural resources; such as women, minorities, migrants, elderly and indigenous groups, persons living with disabilities and persons living with HIV/AIDS. Often it is these groups that suffer disproportionately from environment degradation and poor access to energy and environment services. Using water as an example, it is the elderly, particularly widows and widowers that often are unable to access water services. They are also particularly vulnerable to water-related diseases. Equally, indigenous populations often find themselves entirely outside of the channels of political decision-making and outside formal water and sanitation distribution networks. Developing thoroughly *disaggregated data* by sex, age, origin, ethnicity, religion, property, disability and physical location, is essential in ensuring that these vulnerable groups are identified and their needs addressed.

Once identified, the next step in programming is identifying the specific reasons for why these groups are marginalized. This requires developing an understanding of both the national *political* and *legal framework* as well as the *social and cultural context*.

Wider legal and political issues, such as discriminatory laws, lack of land rights, and corrupt and ineffective institutions, may be the major cause for why these groups are unable to exercise and enjoy their energy and environment related rights. In the case of water services, the discrimination that women suffer in terms of land rights, inheritance, education rights, and access to employment and finance, are prime factors behind their unequal access to these services. In the case of the urban poor, the lack of legal status of slum dwellers in many countries prevents them from being registered on the urban energy system, such as the electricity grid, even if they can afford to pay.

To uncover these issues, development practitioners can ask questions such as: are the land rights of indigenous groups adequately protected in national laws? Do poor people have recourse to judicial or administrative authorities in the case of environmental injustice? Are the environment and energy needs of vulnerable groups included in national policy?

Similarly, social and cultural issues, such as patriarchy, culturally diversity, and power relations can both empower and hinder people from accessing natural resources and energy services. A human rights-based situation analysis makes a specific effort to identify and understand these issues.

Focusing on vulnerable and marginalized groups: Without specific attention to gender issues and social inequalities, programmes can reinforce inequalities and power imbalances. The power and social standing that an individual or group has in a community will often determine the extent to which they are able to take advantage of the opportunities offered to them by projects and programmes. Conversely, energy and environment programmes are often able to empower vulnerable and marginalized groups through their programming activities. For example, in a UNDP run biodiversity project on the Samar Island in the Philippines, the rights of women are being promoted by changing land grants titles to provide ownership of the land by the head of household rather than just the father.³³

Moreover, to redress the systemic or underlying causes for the marginalization of these groups, special measures may be required in the programming process, such as making planning information available in accessible formats or minority languages, affirmative action programmes for women, and focusing programme activities to areas hardest to reach. Focusing on marginalized and vulnerable groups and actively engaging them in the programming process has been shown to improve programme performance.

c) Indivisibility and inter-dependence

Under international human rights law all human rights are indivisible. “All human rights are inherent to the dignity of every person, whether of a civil, cultural, economic, political or social nature. Consequently they all have equal status as rights and cannot be ranked”.³⁴ Human rights are also inter-dependent. The enjoyment of one is dependent on the attainment of the other; for example, the enjoyment of the right to information on environment issues is impossible without a certain minimal realisation of the right to education.

To say that all rights are equal in status does not mean, however, that programming to achieve all rights must take place simultaneously. In the practical world of development programming, it is often necessary to sequence work to start with targeting certain rights rather than others. The priority will depend on the context and the energy and environment issues at hand. It may be important to pay special attention to discrimination issues in ethnically conflicted societies.

Even where decisions are taken to sequence and priorities made, the principle of interdependence prevails in the necessary connections between different types of rights. Many natural resource studies have found that efforts to promote environmental sustainability do not bear fruit until peoples’ livelihoods are addressed.

To effectively integrate the principles of indivisibility and inter-dependence, opportunities to link different programme portfolios need to be exploited. For example, integrating biodiversity issues with livelihood issues or extending projects in governance portfolios to NGO’s and community-based organisations working on environment or energy portfolios.

³³UNDP Mission Report: *Human Rights-Based Review of the UNDP Philippines Country Programme*, May 2004, pp. 58, available at <http://www.undp.org/governance/hurist.htm>, p.58

³⁴ Definition taken from the UN Common Understanding: United Nations (2003) *Report on the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform.*, p. 16, <http://www.humanrights.se/svenska/Common%20Understanding%20FN%202003.pdf>

d) Accountability and the rule of law

Accountability: Accountability and transparency is essential to creating an enabling environment for the realisation of human rights. Emphasising the accountability of all actors whose actions impact the environment and energy sector, both state and non-state actors, is a central element of the human rights-based approach. Simply asserting human rights without supporting effective and precise frameworks to hold duty-bearers accountable will be of little practical use. This is an area where *procedural* rights, such as the right to information, to bring complaints, and to have decisions reviewed by neutral parties, can be especially important.

Moreover, the UNDP as a responsible duty-holder, should adhere to its *Public Information and Disclosure Policy* (which outlines all documents that are to be made available to the public) to ensure full transparency in its programming processes.

The Rule of Law: The rule of law can have a profound impact on the enjoyment of energy and environment-related rights. In states where women do not have rights to property or lack legal rights, they are prevented from accessing formalised services in both rural and urban areas. So too, lack of land rights can prevent access to public water services and other energy services for many of the urban poor living in slums and squatter settlements. In these situations, integrating human rights effectively into state law, policy and practice and establishing the promotion of justice as the aim of the rule of law can play a critical role in redressing these injustices. To ensure that energy and environment programmes achieve long-term and substantive impact, a greater focus on and use of the rule of law is an important part of programming strategy. This has been shown to also lead to the empowerment of poor and marginalized groups.³⁵

For examples of where human rights and the rule of law have helped achieve environmental ends, please refer to Chapt. II B: “What are the human rights standards that relate to energy and the environment?”

3. Contribute to the development of the capacities of ‘duty-bearers’ to meet their obligations and of ‘right-holders’ to claim their rights

Human rights determine the relationship between individuals and groups with valid claims (right-holders) and state and non-state actors with correlative obligations (duty-bearers). One of the main causes preventing the realisation of environment-related human rights is the lack of capacity of duty-bearers to fulfil their obligations and the capacity of right-holders to claim and exercise their rights effectively. Developing these capacities should be a cross-cutting and crucial element in integrating human rights into energy and environment programming.³⁶ It is important to note that a human rights-based approach to programming emphasises the

³⁵ Recognising the important role of the rule of law for human development, a *High Level Commission on Legal Empowerment of the Poor, Poverty Reduction through Improved Asset Security, Formalisation of Property Rights and the Rule of Law*, was launched by the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) in February 2005 to address this issue. UNDP and the UN Economic Commission for Europe (UNECE) are supporting this initiative.

³⁶ UNDP describes capacity development as “those activities which assist individuals, groups and organisations to increase their abilities to perform core functions, solve problems and define and achieve objectives”, Management Development and Governance Division, Bureau for Development Policy, UNDP (1998) *Capacity assessment and development: In a systems and strategic management context* (UNDP Technical Advisory Note No. 3), UNDP, New York

importance of programme activities that build the capacities of *both* the duty-bearer and the claim-holder.

a) Duty-bearers

A human rights-based approach focuses on the responsibility of duty-bearers to meet their international and national obligations. Although national governments are the primary duty-bearers, this responsibility extends to all local institutions and non-state parties, such as private corporations, whose decisions and actions affect eco-systems and the communities that depend on them. Developing the capacity for ‘good governance’ thus becomes a central part of programming strategy.³⁷

Strategies for building the capacity of duty-holders to fulfil their human rights obligations include:

- Promoting at the national level the *ratification of treaties* related to the substantive and procedural environment-related rights and their *incorporation into domestic legislation*, such as Agenda 21.
- Supporting the *implementation* of international treaties and standards related to the environment and energy, as well as national policies and laws. For example through:
 - investing in the *training* of judges and other officials to ensure that they are familiar with the rapidly changing laws related to environmental procedural rights;
 - building the *awareness* of government bodies of their obligations under international environmental law and national law; for example, the UNDP environment project in the Philippines: “Community Based Ecological Solid Waste Management”, deliberately invests in community leaders’ awareness of the national law relating to waste reduction and their responsibility under that law. It also builds the capacity of leaders or local government unities to organize to implement the law.³⁸
 - Supporting the creation of or strengthening existing *monitoring mechanisms* that regulate the implementation of these treaties and standards.
- Strengthening and reforming national and local *institutions* and *policies* that control access to land and natural resources, and that deliver energy and environment-related services; for example through clarifying overall property and user rights to common resources.
- Promoting more *transparent and accountable* energy and environment utilities, both within the state and private sector; for example through:
 - supporting a comprehensive *legal system* that supports public access to environment decision making, includes guarantees on access; defines responsibilities and provides effective redress; and

³⁷ The UNDP defines governance as: ‘The exercise of economic, political and administrative authority to manage a country’s affairs at all levels.... Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable. And it promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision –making over the allocation of development resources’. UNDP (1989) *Integrating Human Rights with Sustainable Human Development*, p. 9

³⁸ UNDP Mission Report: *Human Rights-Based Review of the UNDP Philippines Country Programme*, May 2004, pp. 57-63, available at <http://www.undp.org/governance/hurist.htm>

- ensuring that national environment and energy institutions provide the public with sufficient and easily accessible *information* on these issues.

b). Rights-holders

Crucial to adopting a human rights-based approach to energy and environment programming is creating frameworks to empower right-holders to claim and exercise their energy and environment- related rights effectively.

Strategies for building the capacity of right-holders to claim their human rights include:

- *Education and awareness-raising on rights:* before individuals or groups can assert their rights, it is helpful to raise awareness of environment and energy-related rights, drawing on both local understandings and international and domestic law. Consequently, development practitioners will need to: i) take steps to educate people and communities on their rights; ii) help people and communities understand environment laws relevant to their circumstances; and iii) help people and communities understand how to use the law to their own benefit.
- *Capacity building:* to negotiate effectively with representative bodies and to hold the authorities responsible, training for communities in communication and negotiation skills may be required
- *Supporting civil society organisations:* local grass-roots organisations that protect, represent and involve the interests of poorer residents play a vital role in empowering the poor to claim their rights. Social mobilization and active support for partnerships with local environment and other civil society groups, has been found to be a useful strategy for building the capacity of right-holders to claim their rights and hold energy and environment authorities accountable. In a UNDP Biodiversity Project on the Samar Islands in the Philippines, programme activities and resources focused on training and strengthening local environment NGOs and the awareness of rights among the community. Through this support, NGOs and communities were able to mobilize the population and organize island-wide against mining interests (and their supporters in government). In this way, they won the passage of a presidential decree establishing a national park, and placing a 50-year ban on mining in one province.³⁹

c) Human Rights Monitoring Mechanisms

To better ensure that duty-bearers meet their obligations and that right-holders are able to claim their rights, strategic use of international human rights institutions may be useful. The national reporting process under human rights treaties, complaints mechanisms where available, and the other UN processes including reports by special rapporteurs, can help to enforce human rights at critical moments. This means that development practitioners should be aware of and understand the treaty standards, national reporting process under human rights treaties, and Human Rights Treaty Bodies' recommendations that are relevant to their programmes.

³⁹ UNDP Mission Report: *Human Rights-Based Review of the UNDP Philippines Country Programme*, May 2004, pp. 57-63, available at <http://www.undp.org/governance/hurist.htm>

III. PRACTICAL EXPERIENCE WITH INTEGRATING HUMAN RIGHTS INTO ENERGY AND ENVIRONMENT PROGRAMMING

A growing number of development organisations are integrating human rights into their policies and programmes. These include both major donor agencies, such as DFID and SIDA, as well as international NGOs, such as ActionAid, CARE, Oxfam, Save the Children, and WaterAid.

Based on the experience of these organisations, the practical implications of integrating human rights into energy and environment programming are identified below. The main issues and challenges faced in implementing a human rights-based approach to water, energy and biodiversity is also discussed.

Participation.

i) *Broad-Based Participation*: Development agencies have found that integrating human rights into their work can prove challenging; in particular with regards to the principles of participation. WaterAid, for example, states that sensitive cultural factors such as gender equity, belief systems and local political, social and economic power structures make it hard to achieve broad-based participation in decision-making and community management of shared water resources.⁴⁰ And with time-frames imposed on projects, ensuring cross-cultural representation consistently is sometimes impossible.

Enabling representatives' voices to be heard equally also requires constant vigilance. Often poor and vulnerable groups are not accustomed to or able to express their views from a position of equality. For example, women may not be allowed to sit on village committees, or when present sit silently outside the discussion circle. In such circumstances, development practitioners have found that extra steps are needed to ensure that they receive the input of these groups. Steps may include visiting vulnerable groups at home, developing the capacity of these groups to participate more effectively, and structuring the 'roundtable' to limit the dominance of the powerful.⁴¹

Recognizing that there will often be practical limits to achieving broad-based participation, practitioners will have to work out specific ways for how best to integrate this principle in each given context. To work in environments where power imbalances, inequality and discrimination exist, development practitioners will need negotiation skills, gender sensitivity and understanding of different lifestyles and cultures. Experience show that including all groups, in particular vulnerable groups, in the programming process is "expensive in time, money and human resources but it is an essential investments in achieving sustainable outputs which benefit those people whose need is the greatest".⁴²

⁴⁰ WaterAid, (2000) 'Social conflict and Water; lessons from north-east Tanzania', *Discussion paper*

⁴¹ International Institute for Environment and Development, (2004) 'Reconciling Global and Local Priorities for Conservation and Development', Sonja Vermeulen, *The Millennium Development Goals and Conservation, Managing Nature's Wealth for Society's Health*, Edited by Dilys Roe

⁴² WaterAid, op cit (note 40)

Box 8: Participatory human rights-based analysis, addressing conflicting claims

In the Kileto District, Tanzania, **WaterAid** has been implementing a project to improve water access for residents in the Kileto District through constructing deep boreholes with pump engine schemes, overhead tanks and piped distribution. Kileto District is made up of three main ethnic groups: hunter-gatherers, pastoralists and agriculturalists/ farmers. Competition between the three different ethnic groups in Kileto over water resources is a source of social and political conflict. The power difference between these groups significantly determines their access to water services.

Using a human rights-based approach to programming enabled WaterAid to identify the deeper issues that prevented access to water in Kileto, including power imbalances and exclusion from national policy decisions: For example, the hunter-gatherer communities and pastoralist communities in Tanzania are rarely mentioned in national government policies and are often excluded from policy-making. Moreover, their way of life is seriously threatened by changes in land laws, hunting regulations and land use. Both groups, however, are limited in their ability to engage in national and local debates about their rights due to a lack of formal education, cohesion and organisation. Similarly, lack of knowledge of land rights and processes for application for land had left villagers powerless to prevent the inequitable distribution of their village land. With the loss of their land to rich farmers or rich pastoralists, villagers are deprived of their traditional water sources.

A Human Rights-Sensitive Analysis and Strategy::

- **Participatory methodology:** Through involving each ethnic group in the analysis and assessment stage of the project, WaterAid was able to identify each group's different water needs.
- **Understanding the social context:** Participatory assessment and planning methodology enabled WaterAid to develop an understanding of the power relations that existed between the different ethnic groups and the power imbalances that existed within each group: in particular between men and women, and the rich and poor. By bringing all stakeholders in the water project (including local and national authorities responsible for water policies) into the discussion, WaterAid was also able to improve understanding between each group.
- **Understanding the political and legal context:** Through analysing the political and legal context in which they were working, WaterAid was also able to understand how national policies and legal issues positively and negatively affected the access of these groups.
- **Discussion with all stakeholders:** To explore and understand these issues sufficiently, WaterAid found that considerable time and effort had to be invested in discussions with and between the Kileto partnership management team, field staff, and project communities.
- **Partnership building:** To achieve genuine community management of water services, an important strategy was building partnerships with civil society organisations and training them in the planning and implementation of the programme so that they could achieve autonomy in the future.

http://www.wateraid.org.uk/in_depth/country_programmes/tanzania/13

ii) *'Elite Capture' of Programmes:* There is a danger that in attempting to become more open and participatory, environment and energy programmes can inadvertently become exclusive. By only inviting the main stakeholders to the decision-making table, or only working with existing local leaders (and thereby entrenching existing leadership), the development process remains closed to many other sectors of the public. As highlighted above, often the weaker and more marginalized groups that lack the capacity to organise and advocate for their rights are left out of the process. Yet in the energy and environment sector, children, women, the poor, and other marginalized groups are disproportionately affected by lack of access to natural resources and energy services. It is therefore often important to focus on these groups and to specifically address their needs in programming activities (see Box 6).

Box 9: Focusing on Marginalized Groups

Access to Water Rights for Afro-Brazilians in Mirandiba, Brazil

Mirandiba is a rural municipality located in the *Sertao*, an extremely arid and poor area in North-Eastern Brazil. Lack of water in the region is a historical problem. It affects the whole population. Powerful elites have conditioned water access to clientelistic relations, which allows them to exert great political and economic control over the population. The powerless state of the poor prevents them from exercising their rights and citizenship; particularly in the case of the marginalized Afro-Brazilian community.

In 2002, **ActionAid** Brazil formed a partnership with the only existing NGO in the municipality: Conviver. The aim of the project was to empower poor and marginalized groups to claim and exercise their rights to water through strengthening small farmer organisations; raising awareness of the value of Afro-Brazilian culture; and influencing public policies. Concerted action with the few existing community-based organisations in the municipality, as well as lobbying of local government to democratise public policy-making were the principle strategies used. ActionAid also promoted the empowerment of the Afro-Brazilian community through supporting pro-Afro Brazilian NGOs and the remodelling of an Afro Brazilian Cultural Centre. To improving water supply, the project also focused on building cisterns to capture rainwater and introducing technologies to retain water in the soil.

Conflicts Over Shared Resources.

Human rights in themselves will not resolve the complex issues and difficult policy choices that arise in the energy and environment sector. A particular contentious issue is that of competing claims to scarce resources and service use; for example, the inter-generational right to a balanced and healthful ecology, which demands preservation of forests as an entitlement of all, versus the right to an adequate standard of living of forest dwellers. However, human rights standards and principles provide a useful *framework* in which to acknowledge and address these sensitive issues, negotiate solutions and prevent inevitable grievances spilling over. Human rights principles can help to identify minimum protected interests that should not be bargained away in the course of policy trade-offs; for example, ensuring that the rights of marginalized groups are not arbitrarily sacrificed to those of the majority. Equally, integrating human rights into the programming process will ensure that at the very least, relevant information on the particular environment and energy issue is made available; all those whose rights are at issue have a reasonable opportunity to be heard; and that appropriate mechanisms are in place to resolve grievances and, as necessary, provide redress.

Box 10: Human Rights: a framework in which to resolve conflict over competing claims for shared resources

The World Commission on Dams (WCD) was an independent body sponsored by the World Bank to Review the performance of large dams and make recommendations for future planning of water and energy projects. In 2002 after four years of investigation into dam development projects, the WCD released a final report: *Dams & Development: A new framework for decision-making*.

Throughout the report, the WCD recognises the strong connection between human rights and the environmental impact of dams. It states that given the significance of rights-related issues as well as the nature and magnitude of potential risks for all parties concerned, human rights should be the fundamental reference point in any debate on dams.

Most importantly the WCD states that, in the future, not only dams but the entire development debate requires “a right based approach where recognition of rights and assessment of risks provides the basis for negotiated decisions on dams and their alternatives”. That rights-based approach, according to the WCD, should include a process to assess reparations and environmental restoration as well as development of plans for benefits sharing.⁴³

Challenging Political and Social Contexts.

Adopting a human rights-based approach to programming is challenging when working in countries where general awareness and respect of human rights is poor. States may refuse to recognise their international commitments and lack the political will to protect and enforce the rights enshrined in national law. Similarly, states with repressive regimes, with corrupt and inefficient bureaucracies, and which are dominated by patronage networks will not respond positively to concerns with strengthening accountability institutions and promoting human rights. They may even be overtly hostile to a human rights-based approach.

In these situations, finding ways to implement programmes whilst not compromising human rights principles, or compounding existing power imbalances is challenging. In these sensitive environments, development organisations have found the following strategies useful:

- quiet and committed advocacy: advocacy work, sometimes in public but often behind the scenes, is effective in encouraging practical action and implementation of international human rights instruments;
- building up trust with the government;
- developing relationships with potential allies of the human rights framework in government, community-based organisations, civil society and NGOs;
- working with different donor organisations; and
- taking advantage of existing laws.

In these challenging contexts, the long-term goal should be to work towards grounding human rights standards and principles into national institutions and cultural awareness.

Promoting Human Rights Beyond the Organisational Level.

Integrating human rights into programming goes beyond ensuring that human rights standards are abided by at an organisational level. To effectively reflect a human rights-based approach, development practitioners must actively promote these human rights standards and principles in the country in which they are working. A

⁴³ For further information on this report, please refer to: http://www.dams.org/docs/overview/wcd_overview.pdf

programme may be implemented in a non-discriminatory way, but unless it overtly tackles the problem of discrimination in the wider country context, it is not effectively addressing the issue. To effect long-term and substantive change, programmes need to impact the larger country framework. This is more challenging. Yet a social and political environment conducive for the exercise and enjoyments of rights is essential for efficient service delivery. It will also improve the sustainability of projects.

Building the Capacity of Both the Right-Holders to Claim their Rights and of the Duty-Bearers to Meet their Obligations.

Performance of human rights requires capacities at both levels: those people with human rights entitlements ‘right-holders’ and those people and institutions who have obligations to respond ‘duty-bearers’. Consequently, human rights-based approaches place great emphasis on building the relationships between these two groups. Unless both groups are targeted in programme strategy, with programming focusing on macro-level policy and institutional reform as much as micro or community level work, human rights will go unrealised. When implementing a project in Brazil to gain access to a natural resource, ActionAid found that building the capacity of women to advocate for the introduction of a new municipal law guaranteeing access to natural resources was not enough. Unless the deeper social power issues were addressed and the authorities enabled to put the law into effect, the problem of access remained unchanged (see Box 11).

Box 11: The Struggle of Women in Brazil to Claim their Right to Natural Resources

In the region of Maranhao, Brazil, through a traditional land use right, families were guaranteed the use of the land that they had settled. In this land the farmers cultivated the Babassu tree and the women and children gathered and broke the babassu coconuts. This resource was essential to the families’ survival. Products extracted from the coconuts were used for income generating activities, the nuts were exchanged for basic household products, and the crops were an important part of the families’ subsistence.

After more than 20 years on the land, the families were forced to either leave or submit the land to large scale farmers who had illegally gained ownership of the land. Women were no longer able to access the babassu tree and the new landlords began cutting down the trees so as to increase their pasturelands.

ActionAid supported the women’s fight for the preservation of and free access to the babassu trees. They did this through enabling the mobilisation and organisation of women. Activities included building partnerships with grass root organisations; training the women on participatory methodologies, communication and negotiation skills; and providing guidance in empowerment and rights.

Through effective political and social advocacy, these newly formed organisations were able to achieve the creation of a municipal law: the Free Babassu Law. This law protects the babassu trees and assures free access to the lands where the trees grow. However, with the new law came a new struggle: the fight for enforcement. Before the law the women physically stood up to the landlords, impeding the cutting down of the trees. Now, when the trees are being cut down the women denounce the event to the authorities and have to wait for a response that usually comes too late. This is a result of the existing power relations between landlords and women coconut breakers. Power is in the landlords’ hands. This then enables them to prevent enforcement of the law.

Action Aid is now supporting the women and their organisations in their activities to ensure the implementation of the Babassu law. Activities include the creation of a mechanism of enforcement: the Council of the Environment, guaranteed by the law as well as the organisation of seminars with government authorities.⁴⁴

⁴⁴ Project reported in an ActionAid ‘inhouse’ working document

In certain situations, negotiating, communicating and training of national and local government staff may not be enough. Problems may be inherent in the institutions themselves. To produce long-term and significant changes, a more serious engagement in institution building and reforming may be required. This is likely to be outside the scope of most energy and environment projects. Yet, often there will be other potential partners at local, national and international levels more specialised in advocacy work and ‘governance’ issues that are able to take these issues on.

Energy.

A ‘People-Centred’ Approach: The focus of traditional energy and environment programming has been on technology and science. Integrating human rights into energy projects shifts this focus as project beneficiaries are placed at the centre of the programming process. This leads to a more flexible approach, with projects responding to different local needs, priorities and contexts. Human rights principles such as participation, non-discrimination and equality, and accountability, now provide the basis for judgement about not only what is feasible but also what is right. In designing project strategies, development practitioners will need to make this paradigm shift.

Water.

The Right to Water: Despite water being formally recognised as a human right by the Committee on Economic, Social and Cultural rights in 2002, debates continue over the legitimacy of water as a right in international law. Yet though General Comment 15 does not have the force of law or an international treaty, it does give the right to water legitimate juridical and political status. Moreover, there are a number of non-binding declarations that explicitly address the issue of water. In particular the Stockholm Declaration (1972), the Mar del Plata Action Plan (1977), the Dublin statement (1992), Agenda 21 (1992), the Political Declaration of Johannesburg (2002) and MDG 7.⁴⁵ Together with General Comment 15 these international policy commitments provide legitimate and valuable advocacy tools. They set targets at both the national and international level through which to measure progress, bring attention to government obligations, and empower and mobilise communities to claim the required water services from the local and national authorities.

In countries where the right to water is recognised and enshrined in the constitution, courts have supported and enforced an explicit right to water. In South Africa for example, legal redress has been obtained by the courts for the violation of the Constitutional right to water.

When states have not enshrined the right to water in their national constitutions and they lack the will or resources to implement and respect international environment standards related to water, linking the right to water to fundamental rights, such as the right to health, will be important in achieving accountability. Progressive judiciaries have obtained legal redress on issues affecting the right to water using this approach. In Argentina in 1996 the Children’s Public Defender of Minors filed and won an injunction against the local government for failing to prevent the polluting of an indigenous community’s water supply. The case was won on the grounds that the

⁴⁵ MDG 7 which ensures environmental sustainability affirms that states must halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation.

provincial government neglected its obligation to safeguard the health of the population.⁴⁶

With the increased privatisation of water and energy services, emphasising water as a right will be important in ensuring that governments and private corporations recognise their duty to ensure that everyone has “sufficient, safe acceptable, physically accessible and affordable water for personal and domestic use”.⁴⁷

Biodiversity

i) *Human Rights and Biological Diversity*: Although international human rights instruments make no reference to biological conservation in their treaty provisions, the link between human rights and biodiversity is important. This is reflected in the 1992 Biodiversity Convention (CBD) and the Cartagena Protocol to the Convention. Many elements of the CBD stem from fundamental human rights principles. For example:

- The CBD affirms the need for the *full participation of women* at all levels of policy-making and implementation.
- Article 13 calls for *education* to promote and encourage *understanding* of the importance of conservation of biological diversity.
- Article 14 provides that each contracting party as far as possible shall introduce appropriate environmental impact assessment procedures and, where appropriate, allow for *public participation* in such procedures.
- The Biodiversity Convention under Article 8 (j) calls for the *participation of indigenous and local people* in decisions about sharing their knowledge, innovations and practices concerning conservation and sustainable uses of biological diversity.

These then establish a clear link between biodiversity protection and human rights. Although the CBD and the Cartagena protocol are not part of human rights law, they are part of international law. As such, they are subject to advocacy and judicial decisions. Importantly, with its focus on legal frameworks and strategies to enable states to meet their international obligations, adopting a human rights-based approach is one of the best means of ensuring implementation of the Biodiversity Convention.

ii) *Property Rights*: An area of contention, particularly in the field of biodiversity, is the issue of property rights. Lack of property rights is a cause of environment degradation. Experience shows that ownership and management of natural resources by those groups dependent on them can be an effective strategy for preserving ecosystems.

The human rights agenda does not specifically address the issue of property rights. Yet with its emphasis on community ownership and legal empowerment, a human rights perspective encourages community property rights to natural resources. In addition, experience shows that when communities control and maintain the natural resources that underpin their livelihoods this helps them better exercise and enjoy their human rights.

However, full control of natural resources will not always be the best solution to environmental protection: communities may lack the skills, information and understanding to effectively and responsibly manage these resources. Before assisting

⁴⁶ For full details of this case, please refer to http://www.righttowater.org.uk/code/legal_4.asp

⁴⁷ As enshrined in General Comment 15 of the Committee on Economic, Social and Cultural Rights

groups to formalize their rights to natural resources, development practitioners have found that it is important to ensure that communities are aware of the environmental impact of their actions and are capable of responsibly maintaining their systems. Consequently, training and education will be necessary.

In its experience with land rights issues, DFID has found that to strengthen the land rights of poor and indigenous groups it is necessary to reform the policies and institutions responsible for delivering and monitoring land rights in order to make them more responsive to their needs. These institutions include central government land agencies, local government, traditional authorities, the justice system and local land boards, commissions and tribunals.

Land rights are a complex, contentious and challenging issue. They profoundly impact both environment conservation and access to environment and energy resources; particularly for poor and marginalized groups. For further information and guidance on addressing this issue, practitioners can refer to:

- The 2003 discussion paper on land rights prepared by the Centre on Housing Rights and Evictions (COHRE) for UNDP: *UNDP Policy Note on Land Rights*. The Policy Note is specifically linked to UNDP programming requirements and addresses land issues through the lens of human rights and the right to development.
- In its work on poverty in dryland areas, The *UNDP Drylands Centre (DDC)* has focused on the issue of land rights and land tenure. Papers prepared by the DDC and workshops that address the issue can be found at: <http://www.undp.org/drylands/>
- The *UNDP Practice Note on traditional knowledge protection, access to genetic resources and benefit-sharing*. It provides practical guidance to UNDP staff in addressing these issues, highlighting a variety of legal and non-legal options. Among other things it introduces staff to customary laws and property claims including intellectual property rights in UNDP supported projects.⁴⁸

⁴⁸ UNDP EEG, (2005) *UNDP Practice Note, Traditional Knowledge, Access to Genetic Resources, and Benefit Sharing*

IV. A SURVEY OF HUMAN RIGHTS DIMENSIONS IN UNDP'S ENERGY AND ENVIRONMENT PRACTICE AREA

Programmes and perceptions in UNDP's Energy and Environment Practice area are increasingly echoing human rights principles and methodologies. But there is room to develop this further. This chapter identifies four ways by which this can be achieved. These are: i) a human rights lens for analysis- going beyond technical problems and solutions; ii) capacity building- a two tiered approach; iii) systematically applying human rights principles; and iv) adopting an overall human rights policy.

Many of the recommendations made in this chapter reiterate lessons learned from UNDP practice. Similarly, a more deliberate effort to integrate human rights into energy and environment programming will compliment and reinforce the direction in which this Practise area is now moving.

I. A human rights lens for analysis

Using a human rights lens to analyse and assess environment and energy issues requires an effort to look beyond technical issues and to identify the legal, political, economic, social and structural challenges that often lie at the root of the energy or environmental issue at hand.

UNDP is increasingly recognising the importance of broader **legal and political** issues to its work. This is reflected in the work of the *Drylands Development Centre (DDC)* based in Nairobi, Kenya. Using an integrated approach, combining different professions and disciplines, in dealing with the problem of Drylands, the DDC has identified a number of root causes of poverty in dryland areas. These include land tenure insecurity and inadequate access to and rights over water. As a result, water rights and land tenure are very much a focus of projects.

In the water sector, secure tenure is recognised as the basic reason for why people are not getting access to water. Recognising the importance of governance issues and legal frameworks, UNDP's water strategy is based on effective governance. Initiatives, such as the *Global Water Partnership (GWP)* take a comprehensive approach to water problems and address the political and institutional factors that influence access to water. Notably through the GWP, UNDP is involved in *a Dialogue on Effective Water Governance*, the main purpose of which is to bring stakeholders together to examine the political process that drives water governance systems.⁴⁹ Water Governance is also to be a major theme of the second *World Water Development Report*, to be launched at the 4th World Water Forum in Mexico March 2006.

Efforts such as these that support people and organisations to address underlying issues, such as land rights, intellectual property rights, overexploitation of water resources, and sound environmental governance are encouraging. Yet there is room to apply a more broadly conceived access to justice approach.

In tackling these broader issues there are opportunities for using **human rights arguments** and the **rule of law** as part of programming strategy. For example, the status of water as a right, as confirmed in General Comment 15 of the Committee on

⁴⁹ For more information on this project and the GWP please refer to: http://www.undp.org/wssd/docs/Water_Brochure.pdf

Economic, Social and Cultural Rights,⁵⁰ could provide UNDP with a valuable advocacy tool for holding governments accountable to their international obligations and for empowering right-holders to claim their right to water services.

Procedural rights, such as the right to information and the right to participation, also play an essential role in improving access to modern energy use and sound environmental governance. *The Partnership for Principle 10 Project (PP10)*, of which UNDP is an active member, is a positive initiative in this respect. PP10 is a partnership of governments, international organizations, and civil society groups. It supports implementation of Principle 10 of the Rio Declaration and other international agreements for and commitments to transparent, inclusive, and accountable decision-making at the national level.⁵¹ A recently implemented GEF Medium Sized Programme highlights the important role that procedural rights and environmental law can play in achieving environmental ends (see Box 12).

There is broad scope to make more use of human rights arguments, the rule of law and environmental standards throughout UNDP's Energy and Environment Practice area. Supporting NGOs, communities and marginalized groups ensure that states abide by their political and legal commitments will help achieve energy and environmental ends.

Box 12: Building Environmental Citizenship to Support Transboundary Pollution Reduction in the Danube: A Pilot Project In Hungary and Slovenia, (2000-2001).⁵²

This innovative NGO implemented GEF Medium Sized Programme provided support to government officials and civil society members from Hungary and Slovenia to translate the requirements of the *Aarhus Convention* into effective domestic programmes to facilitate public access to information about Danube pollution.

The programme identified the *legal, institutional and practical obstacles* to the implementation of the Aarhus Convention. These included: inadequate domestic implementing legislation; inadequate training in implementing the existing laws; and inadequate experience in disseminating information to NGOs and the public. The main objective of the programme was to build the capacity of the governments to establish effective legal, institutions and social and practical infrastructure. In doing so the role of NGOs to be actively involved in the efforts to reduce pollution of the Danube would also be reinforced.

Through an 18 month capacity building and technical assistance programme the GEF Programme planned to train key government and NGO stakeholders in developing well functioning public access to environmental information and programmes. Laws and best practices elsewhere were also to be identified; inter-governmental and governmental NGO co-operation strengthened; and appropriate legal, regulatory and policy recommendations in support of public access to environmental information identified and drafted.

II. Stakeholder capacity: a two-tiered approach

A clear strength of UNDP's environment and energy programmes is the emphasis given to bottom-up processes and to empowering communities to manage their own resources. For example the *Community Water Initiative* and the *GEF Small Grants Programme* specifically support non-governmental organizations and community-based organizations. Yet to ensure that institutions and governments are responsive to

⁵⁰ In November 2002, the Committee on Economic, Social and Cultural Rights, adopted General Comment No. 15 on the right to water referring to article 11 - the right to health - of the International Covenant on Economic, Social and Cultural Rights. For further information, see Box 2: on the right to water, p. 12

⁵¹ www.pp10.org

⁵² UNDP Project Document, *Building Environmental Citizenship to Support Transboundary Pollution Reduction in the Danube: A Pilot Project In Hungary and Slovenia, (2000-2001)*, RER/99/G35/a/1g/72

community claims and views, it is important that attention is also given to **macro-level reform**: to the institutions and systems that shape government response. Some programmes have adopted this two-tiered approach. However, more emphasis is needed in building the capacity of institutions (duty-bearers) as well as communities (right-holders). Although the UNDP already runs a large number of governance and institution-building programmes, these are not always linked in a strategic way to human rights claims. Programmes that encourage interaction between civil society, governments and the private sector to jointly address environmental issues, such as the *Equator Initiative*, are particularly positive in this respect.

Box 13: Citizen Report Card for Karachi Management, Karachi Pakistan⁵³

UNDP's Urban Governance Initiative, a regional project based in Kuala Lumpur, addresses a number of urban governance issues. The following project, 'the first field test of a Report Card on Water and Sanitation', aims to improve the capacity of authorities to meet local water needs through community participation in decision-making.

Karachi's water system is under tremendous pressure and poorly managed. As a result many people have to resort to taking unclean water or getting their supply of water illegally: over 60 percent of the water supply in this area is obtained through informal means. The principal reason for why the system does not work well is the absence of dialogue in Karachi between the service providers and the people who use the water services. In April 2002, The Urban Governance Initiative decided to bring all the various stakeholders together to start discussing the issues. The main stakeholders were the local government authorities, development authorities, bulk consumers, katchi abadis (informal settlements) residents, civil society organisations, the private sector and support agencies such as the Asian Development Bank and the World Bank. At the end of the exercise, both citizens and authorities acknowledged that many useful and concrete lessons were learned. The authorities learned that they needed to be more inclusive and transparent in their decision-making process. The process of bringing together the key stakeholders to the table helped clarify the different interests that were at play. Consequently, the stakeholders were able to remedy actual and potential conflicts that existed: the government learned why it was important to bring the *informal settlements into the formal system*; and the citizens helped emphasize the need for *rights-based laws* as compared to rule-based laws regarding water. Moreover, the stakeholders were able to take a first step towards *participatory decision-making* regarding water services.

III. Systematically integrating human rights principles

Human rights principles, such as participation, empowerment, non-discrimination, and gender equality are emphasised in many environment and energy projects. Effectively integrating human rights into programming requires programmes to go one step further: these principles should be **systematically** applied to all programmes and at all programming stages. As experience from UNDP programmes show, this will protect projects from compounding or exacerbating existing inequalities and institutional weaknesses. It will also improve the local benefits and sustainability of projects.

Participation.

A human rights-based approach to environment and energy programming emphasises the importance of broad-based participation throughout the programming process. This echoes the widespread recognition within UNDP that participation is vital to successful programming. However, this principle is not systematically applied to programmes. For example, an independent evaluation of the GEF *Country Dialogues*

⁵³ UNDP, (2003), 'Citizen Report Card for Karachi Water Management', *The Urban Governance Initiative in Kuala Lumpur*, Sivanthi Thanentiran, UNDP Malaysia

Workshops recognised that participation in GEF activities is limited. A recently reviewed GEF project: the India Hilly Hyde project⁵⁴ illustrates this point (see box 14).

Box 14: The importance of broad-based participation for ensuring positive local impacts of environment and energy projects⁵⁵

An independent review of the local benefits of the GEF India Hilly Hyde Project (HHP), found that the main reason for the negative local impacts of the project was the almost complete absence of people's participation in the project.

The HHP was expected to reduce Climate Change by a reduction of Greenhouse Gas, through the substitution of firewood used for cooking and heating with hydro power- which produces electricity. However, the project's assumption that firewood would be substituted by electricity was flawed. After speaking with local people, the programme reviewers found that such substitution would only occur if the price of electricity was cheaper than firewood. As electricity was more expensive, this switch had not occurred. The reviewers concluded that if the people had been consulted at the outset of the project and had been able to make known their preferences, this mistake would have been avoided. And instead, cheap liquid petroleum gas could have been provided.

The lack of public participation in the project also led to the livelihoods of local people being threatened. The commercial interest of more powerful private actors ended up impinging upon the traditional water and land rights of the community.

The report concludes that both capacity building of community organisations and people's participation at all stages of GEF projects is crucial to achieving results and to minimising negative local impacts.

Non-discrimination and attention to vulnerable groups.

An increasing number of programmes are promoting the principle of non-discrimination through their focus on poor and marginalized groups. For example, UNDP's rural energy programme in Nepal specifically targets remote areas unable to access the electricity grid. It emphasises community mobilisation and empowerment in its programming approach. Another positive development is the UNDP-GEF Land Degradation Unit's initiative: *The World Initiative for Sustainable Pastoralism*. The initiative aims to empower and mobilise pastoralist groups; a group that has traditionally been left out of all development processes.

Particularly significant is the current effort by the GEF- Small Grant Programme (SGP) to develop more culturally appropriate and user friendly procedures for securing SGP funding. It is a direct response to the complaint by indigenous groups that the existing funding system was too complex and that their views were often disregarded in the decision-making process. Consequently, a guidance note on increasing access to GEF-SGP funding for indigenous peoples is being developed.⁵⁶ Included in this note is an innovative project that strongly reflects a human rights-based approach: data from the national UNDP Development Report is used to identify communities in poverty and exclusion; these groups are then specifically targeted; and special measures are taken to ensure that these groups are able to actively participate in the project.

⁵⁴ GEF, (July 2004) *India Hilly Hydrel, Local Benefits, Case Study Report*, Stockholm Environment Institute

⁵⁵ Le Groupe-conseil Baastel, (October 2002) *Independent Evaluation of the GEF Country Dialogue Workshops Programme: Evaluation Report*, GLO/98/G34

⁵⁶ UNDP, GEF SGP (2005) *Guidance note on increasing access to GEF-SGP funding for indigenous peoples*

Box 15: Guatemala: Indigenous women as community promoters as part of geographic and thematic focus of country programmes.⁵⁷

In Guatemala the SGP's National Steering Committee (NSC) noted that indigenous Mayan people in the South West of the country had been largely left out of decision-making and had been unable to express their own needs and environment priorities in the development process. As a result in the new National Framework the SGP placed a priority on: targeting communities in extreme poverty and exclusion (indigenous groups and women); and developing specific procedures to facilitate access of these groups.

The first step in the project was to conduct a survey based on data from UNDP's National Development Report to identify the areas most in need. Once the priority municipalities were selected, community-based organisations were proactively contracted and special project formats were designed and developed. In a subsequent training workshop indigenous leaders were trained (32 women and 1 man) to be SGP's 'voluntary promoters' on the specific issues targeted in the programme. These include a gender/work issues and participatory diagnostics of environmental problems. The promoters then returned to their communities to develop a project proposal based on participatory methods.

Some of the key lessons learned from the project were that voluntary promoters were efficient and effective in project proposal development using their own language and respecting local traditions; child care during workshops ensured the full participation of women; in the future the NSC will include new members from indigenous groups to improve their participation in SGP decision-making processes and project evaluation.

In addition, the principle of non-discrimination could be used to help choose local partners with which UNDP works in the field; privileging partners that represent poor and marginalized groups.

Equality.

Gender equality is receiving greater attention in UNDP's energy and environment programmes. A tool kit has been developed to help mainstream gender into energy programmes: "Gender and Energy for Sustainable Development: a Toolkit and Resource Guide", and the UNDP publication: "Generating Opportunities, Case Studies on Energy and Women"⁵⁸ identifies the important links that energy services have on women's lives and provides useful case studies from UNDP programmes to illustrate this. A particularly successful model is the *Mali-Multi functional Initiative*, which focuses on gender and is run by women (see box 16).

Box 16: The Multifunctional Platform Project in Mali⁵⁹

The concept behind the Multifunctional Platform is to enable rural communities- and women in particular, to get out of the energy-poverty trap and to have affordable and sustainable modern energy services.

The Platform consists of a simple diesel engine that can power different tools, such as cereal grinding mills, oil presses, joinery and carpentry tools. It also provides water distribution and lightening. The advantage of the engine is its flexibility; enabling it to meet the different needs of each village. The platform is only provided at the request of women; they determine the type and level for energy services that they are willing and able to pay for; and after training on operating the platform they own and manage the platforms themselves. All major stakeholders monitor the platform and its socio-economic impact at the household and community level.

Some of the main lessons learnt from this initiative are that it breaks a structural cause of gender inequality, namely access and ownership of technology. It also helps women increase rest; reduces income and energy inequality and poverty in rural areas; and contributes to increasing women's empowerment.

⁵⁷ *Ibid*

⁵⁸ UNDP (2001) *Generating Opportunities, Case Studies on Energy and Women*

⁵⁹ UNDP Mali (2004), *Reducing Rural Poverty through Increased Access to Energy Services, A Review of the Multifunctional Platform Project in Mali*

Programmes such as these, that emphasise the inclusion women and give due consideration to gender issues and power relations deserve to be replicated; it is worth nothing that the Multifunctional Platform Project has already been copied in several West-African countries and is moving to East-Africa. Without a gender focus, programmes can compound and even exacerbate gender inequalities. It can also lead to the un-sustainability of projects (see box 17).

Box 17: The importance of women’s participation for the sustainability and overall impact of environment projects- two case studies:

In an independent study to examine the sustainability of an SGP funded programme in Guatemala: “Environment protection at El Paraíso community, Suchitepequez”, the project was found to lack sustainability. One of the main aims of the project was to train leaders on the construction and maintenance of improved stoves. But the training focused only on community leaders and did not involve the families; particularly women. Women complained that they had not been consulted about their cooking needs and practices and that the design of the stoves was flawed. Of the 80 planned stoves, only 31 were built and only 18 are still in use.⁶⁰

A similar study of the SGP funded project in Guatemala: “Natural resources conservation and improvement” found that the project had a high level of sustainability. The project also resulted in significant environmental benefits. The aim of the project was to train the population about the environment, conservation of soils and reforestation and to engage the population in activities in these areas. Women had an ‘outstanding’ attendance in the diverse project activities. The study concluded that the participation of women ‘contributed in a major way to the sustainability of the results and the project’s replicability’.

Inter-dependence and indivisibility of rights.

To effectively integrate the principles of the indivisibility and inter-dependence of rights, an *integrated approach* to programming is required. UNDP’s Energy and Environment Practice Area is moving in this direction. Notably through UNDP’s *Poverty and Environment Initiative (PEI)* that addresses the links between poverty eradication and sound environmental management. With a mandate to emphasise sustainable development GEF programmes are also making an effort to link their programmes with livelihood issues. In an aim to improve the level of direct and tangible gains to local communities and actors in future GEF projects it is currently studying the nature and role of local benefits in GEF programme areas.

Opportunities to link the environment to other programme portfolios could be further exploited. For example, human rights and governance issues could be explicitly linked to the PEI, where these issues are of clear relevance. At Country Office level, joint planning and reviewing of programmes by different UNDP Programme Officers could help identify links between environmental programmes and other programme areas. This would also compliment UNDP’s “Environmental mainstreaming” agenda.

IV. An overall policy on human rights

Though UNDP has adopted an overall policy on human rights, there is not a policy that explicitly addresses human rights in the Energy and Environment Practice area. This is a significant gap. As part of the United Nations, UNDP is bound by the UN Charter obligation to respect, protect and promote human rights. Likewise, linking

⁶⁰ Fundación para la Conservación de los Recursos Naturales y Ambiente en Guatemala, (March 2005) SGP Ex Post Study, *Environment protection at El Paraíso community, Suchitepequez*, Guatemala

human rights and environment is at the heart of UNDP's work in energy and environment since it will lead to greater impact in improving "Human Development".

CONCLUSION

It is clear that there are many positive developments in UNDP's energy and environment programmes. In particular, programmes are taking a broader approach to addressing environment and energy issues. This should be both encouraged and strengthened. In addressing legal and political issues, UNDP staff will also need more support. This reference paper is part of this process.

While major programmes are implicitly furthering human rights principles, these objectives will be most effective if made explicit from the outset. Most significantly, human rights principles need to be systematically applied throughout UNDP's programmes. This does not mean that every human right must be mentioned in every portion of a programme document. But it does mean that human rights principles are considered in the design and implementation of UNDP work. Using the checklist included in this paper will help ensure that this is achieved. Moreover, this reference paper is a first step to adopting a coherent human rights approach in UNDP's energy and environment programmes.

With tight methodologies and goals, developing a human rights-based approach will not occur over night- this will take time and needs to evolve from existing practice. Given that human rights and sustainable development are mutually reinforcing and that the realisation of human rights depends on environment and energy issues, the integration of human rights into energy and environment programmes will benefit UNDP as a whole.

Annex A. Draft Checklist for a Human Rights-Based Approach to Energy and Environment Programming

I. Country Context

| | |
|---------------------------------|--|
| A. Legal Framework | 1. What are the relevant international and regional human rights Conventions and standards in this context? What are the relevant environment and energy Conventions in this context? ex. Aarhus Convention, Kyoto, Biodiversity Convention? |
| | 2. Is the right to the environment enshrined in the Constitution or other national laws? Are substantive human rights related to environment and energy, such as the right to life, the right to health enshrined in the Constitution? |
| | 3. What are the relevant traditional, religious and customary laws in this context? |
| | 4. Do Constitutional provisions provide procedural rights for citizens and NGOs to obtain information participate in decision-making and have access to courts as enshrined in Agenda 21 and Principle 10 of the Rio Declaration? |
| | 5. Are national standards, laws and judicial decisions related to environment and energy issues enforced? What are the main obstacles to enforcing these rights? |
| | 6. What are the indirect laws that affect people's access to and use of environment resources and energy services (ex. property rights, legal status) |
| B. Political Framework | 1. What priority are environment and energy issues given in national and local policy and budget decisions? |
| | 2. What is the level of rights awareness among state officials and the population as a whole? Are human rights principles, accountability, participation, non-discrimination, respected by state officials? |
| C. Stake-Holder Capacity | |
| <u>Right-holders</u> | 1. Who are the <u>right-holders</u> ? Which individuals and groups require access to natural resources and energy services; which groups use these resources and services; which groups are affected by environment issues? |
| | 2. Are right -holders aware of their rights and environment laws and standards enshrined in international and national legislation? |
| | 3. Are there effective civil society organisations to represent right-holders when decisions over resources and services are made? |
| | 4. Do public authorities provide right-holders with access to environmental information, access to decision making affecting the environment, and effective access to justice and remedy? |
| <u>Duty-bearers</u> | 1. Who are the <u>duty-bearers</u> ? Which are the actors or institutions responsible for making and enforcing the rules for using natural resources and for providing energy services? Who resolves disputes over shared natural resources and access to energy services? |
| | 2. At what level or scale: local, regional, national, or international, does the authority over resources and energy services reside? |
| | 3. What are the national and international obligations related to energy and environment that the duty-bearers are supposed to meet? |
| | 4. Do the duty-bearers have the capacity to perform their duties (including authority, data and resources)? |
| | 5. Do government officials (ex. Ministry officials, judges, development planners), know and understand environment laws and standards? |

II. Programme Context

| | |
|----------------------|--|
| A. Goals | 1. What human rights are being supported directly and indirectly by the programme? |
| | 2. Are stakeholders involved in defining programme goals? |
| B. Indicators | 1. Are human rights standards reflected in baselines and indicators? Are qualitative aspects of human rights, such as accountability and empowerment, reflected in indicators? |
| | 2. Are stakeholders involved in designing appropriate indicators to measure programme progress? |

| | |
|--|---|
| C. Human Right Principles | Does programme design and implementation incorporate human rights principles as set out in international and regional Conventions? |
| <u>Participation</u> | 1. Do both duty-bearers and claim-holders participate in the programme design, implementation, and monitoring and evaluation process? |
| | 2. Do stakeholders have the capacity to participate <i>meaningfully</i> in the programme process? (ex. do they have sufficient and accessible information on and understand the energy and environment issues being addressed; do they have experience in participatory processes; do they possess communications and negotiations skills?) |
| | 3. Was there fair and equal representation? |
| | 4. Are strategies included in programming to enable programme beneficiaries to deliver and manage natural resources or energy services themselves? (ex. are they trained in the required technical and management skills?) |
| | 5. Is partnership building with local community organisations developed as part of programming strategy to achieve local implementation? |
| | 6. Are community-based organisations and local NGOs strengthened through the programme? |
| <u>Non-discrimination and attention to vulnerable groups</u> | 1. Has thoroughly disaggregated data been developed to identify the groups most disadvantaged in regards to access to energy and environment services and resources? |
| | 2. Which groups are the most vulnerable to environment degradation/ and or which groups are most disadvantaged in regards to access to clean, affordable and sustainable energy services? |
| | 3. Are steps taken to address the cultural, legal, institutional, and political causes behind why these groups are disadvantaged? |
| | 4. Are vulnerable groups, (ex. the poor, indigenous groups, minorities, women, the old), specifically targeted in programme strategy? |
| | 5. Are these groups actively engaged at all stages of the programming process? |
| <u>Gender Equality</u> | 1. Is gender equality a cross cutting issue? What steps are taken to improve gender equality in the programme? |
| | 2. Are strategies included in programming to improve gender equality? Are women effectively engaged at all stages of the programme process? |
| <u>Accountability</u> | 1. Is the programme process transparent? |
| | 2. Do monitoring and evaluation arrangements of programmes involve stakeholders? |
| | 3. Has the programme established accessible and effective mechanisms for redress? |
| <u>Indivisibility and Inter-dependence of rights</u> | 1. Are energy and environment programmes linked to activities in other programme portfolios where these opportunities exist? |
| D. Right-holders and duty-bearers | Does the programme build the capacity of both the right-holders and duty-bearers? |

Annex B: Bibliography and Resources

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Web-based Resources

| Resource | Web Address |
|---|---|
| 1. Environment and Human Rights | |
| The Access Initiative | http://www.accessinitiative.org/index.htm “A global civil society coalition promoting access to participation, information, and justice in environmental decision-making.” Useful publications, including ten country case studies |
| The Centre for International Environment Law (CIEL) | http://www.ciel.org/Hre/programhre.html The Centre for International Environmental Law (CIEL) is a non-profit organization working to use international law and institutions to protect the environment, promote human health, and ensure a just and sustainable society |
| Centre for International Sustainable Development Law (CISDL) | http://www.cisd.org/ CISDL Promotes understanding, development and implementation of international sustainable development law. The Centre is based at McGill University, Canada. The website provides a useful list of publications on sustainable development law |
| Centro de Derechos Humanos y Medio Ambiente / Centre for Human Rights and Environment | http://www.cedha.org.ar/cedha.htm “An international NGO dedicated to fostering the linkages between the environment and human rights”. Many useful publications, including papers on environment issues and legislation from a human rights perspective |
| Earthrights International | http://www.earthrights.org/index.html An advocacy organisation with information on rights-based campaigning and litigation |
| The Environmental Law Alliance Worldwide (E-LAW) | http://www.elaw.org/ An organisation designed to give public interest lawyers and scientists around the world the skills and resources they need to protect the environment through law. Provides useful case studies on litigation on environment issues from around the world |
| Foundation for International Environmental Law and Development, (FIELD) | http://www.field.org.uk/ A non-governmental organisation bringing together public international lawyers committed to the promotion of environmental protection and sustainable development through law. Provides information about projects in areas including climate change and energy; trade; investment and sustainable development |

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| The World Conservation Union, (IUCN) | http://www.iucn.org/ourwork/ppet/ “IUCN works to apply sound ecosystem management to demonstrate how this is the only way to sustainable livelihoods for those directly dependent on natural resources. IUCN has been actively engaged in restoring ecosystems and regenerating people’s lives, economies and societies.” Its web-site provides databases, assessments, guidelines and case studies prepared by its global membership. |
| Joint OHCHR-UNEP Expert Seminar on Human Rights and the Environment | http://193.194.138.190/environment/index.html Includes useful background papers on the legal dimensions of environmental rights around the world |
| OHCHR: Asia-Pacific | http://www.un.or.th/ohchr/issues/rba/rba.htm Website on the human rights-based approach to development, includes case studies and a wide range of papers from development organisations |
| Joint WaterAid and Rights and Humanity website about the Right to Water | http://www.righttowater.org.uk Provides information on relevant policy commitments and explain the concepts and theories of human rights law with respect to the right to water. |
| World Resources Institutue | http://www.wri.org Provides many publications and reports on a range of environmental subjects, including procedural rights to environment issues. It also provides useful links. |
| 2. Development organisations working in environment and the energy sector with a human rights-based approach | |
| UNDP/OHCHR: HURIST Programme | http://www.undp.org/governance/hurist.htm What UNDP and the UN in general has been doing with the human rights-based approach; useful links to other resources and publications on the Human Rights-Based Approach to Development |
| ActionAid | http://www.actionaid.org/ Provides case studies and research papers on projects implemented through a human rights-based approach |
| Oxfam International | http://www.oxfam.org/eng/ Provides project examples, and research papers on rights and development |
| Care | http://www.care.org/ Supplies project examples and brief reports on responses to natural disasters, sustainable livelihoods etc. |
| WaterAid | wateraid.org.uk Provides research papers on community participation, gender issues, capacity building, advocacy etc. as well as examples of water-related development projects |
| DFID, UK (Department for International Development) | http://www.dfid.gov.uk/ Provides policy papers on environment issues (including water, natural resources, land tenure) and energy. |

ANNEX C:

Draft Declaration of Principles on Human Rights and the Environment (1994)

On 16 May 1994, an international group of experts on human rights and environmental protection convened at the United Nations in Geneva and drafted the first-ever declaration of principles on human rights and the environment.

The Geneva group assembled at the invitation of the Sierra Club Legal Defense Fund--in cooperation with the Association mondiale pour l'école instrument de paix and the Société suisse pour la protection de l'environnement- -on behalf of Madame Fatma Zohra Ksentini, Special Rapporteur on Human Rights and the Environment for the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.

As U.N. Special Rapporteur, Mme Ksentini has since 1989 presided over a study of the connections between human rights and the environment. Mme Ksentini's final report to the Sub-Commission is due in August 1994. The final report will include the Draft Declaration produced at the Geneva Meeting of Experts.

The Draft Declaration is the first international instrument that comprehensively addresses the linkage between human rights and the environment. It demonstrates that accepted environmental and human rights principles embody the right of everyone to a secure, healthy and ecologically sound environment. The Draft Declaration describes the environmental dimension of established human rights, such as the rights to life, health and culture. It also describes the procedural rights, such as the right to participation, necessary for realization of the substantive rights.

The Draft Declaration also describes duties that correspond to the rights--duties that apply to individuals, governments, international organisations and transnational corporations.

Draft Declaration of Human Rights and the Environment:

Preamble

Guided by the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Vienna Declaration and Program of Action of the World Conference of Human Rights, and other relevant international human rights instruments,

Guided also by the Stockholm Declaration of the United Nations Conference on the Human Environment, the World Charter for Nature, the Rio Declaration on

Environment and Development, Agenda 21: Programme of Action for Sustainable Development, and other relevant instruments of international environmental law,

Guided also by the Declaration on the Right to Development, which recognizes that the right to development is an essential human right and that the human person is the central subject of development,

Guided further by fundamental principles of international humanitarian law,

Reaffirming the universality, indivisibility and interdependence of all human rights,

Recognizing that sustainable development links the right to development and the right to a secure, healthy and ecologically sound environment,

Recalling the right of peoples to self-determination by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Deeply concerned by the severe human rights consequences of environmental harm caused by poverty, structural adjustment and debt programmes and by international trade and intellectual property regimes,

Convinced that the potential irreversibility of environmental harm gives rise to special responsibility to prevent such harm,

Concerned that human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations,

THE FOLLOWING PRINCIPLES ARE DECLARED:

Part I

1. Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.
2. All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.
3. All persons shall be free from any form of discrimination in regard to actions and decisions that affect the environment.
4. All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.

Part II

5. All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries.

6. All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems.

7. All persons have the right to the highest attainable standard of health free from environmental

8. All persons have the right to safe and healthy food and water adequate to their well-being.

9. All persons have the right to a safe and healthy working environment.

10. All persons have the right to adequate housing, land tenure and living conditions in a secure, healthy and ecologically sound environment.

11. All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means. All persons have the right to participate effectively in decisions and to negotiate concerning their eviction and the right, if evicted, to timely and adequate restitution, compensation and/or appropriate and sufficient accommodation or land.

12. All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.

13. Everyone has the right to benefit equitably from the conservation and sustainable use of nature and natural resources for cultural, ecological, educational, health, livelihood, recreational, spiritual or other purposes. This includes ecologically sound access to nature.

Everyone has the right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.

14. Indigenous peoples have the right to control their lands, territories and natural resources and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

Indigenous peoples have the right to protection against any action or course of conduct that may result in the destruction or degradation of their territories, including land, air, water, sea-ice, wildlife or other resources.

Part III

15. All persons have the right to information concerning the environment. This includes information, howsoever compiled, on actions and courses of conduct that may affect the environment and information necessary to enable effective public participation in environmental decision-making. The information shall be timely, clear, understandable and available without undue financial burden to the applicant.

16. All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.

17. All persons have the right to environmental and human rights education.

18. All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, developmental and human rights consequences of proposed actions.

19. All persons have the right to associate freely and peacefully with others for purposes of protecting the environment or the rights of persons affected by environmental harm.

20. All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm or the threat of such harm.

Part IV

21. All persons, individually and in association with others, have a duty to protect and preserve the environment.

22. All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.

These measures shall aim at the prevention of environmental harm, at the provision of adequate remedies, and at the sustainable use of natural resources and shall include, *inter alia*,

- collection and dissemination of information concerning the environment
- prior assessment and control, licensing, regulation or prohibition of activities and substances potentially harmful to the environment;
- public participation in environmental decision-making;
- effective administrative and judicial remedies and redress for environmental harm and the threat of such harm;
- monitoring, management and equitable sharing of natural resources;
- measures to reduce wasteful processes of production and patterns of consumption;
- measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for human rights; and
- measures aimed at ensuring that the international organisations and agencies to which they belong observe the rights and duties in this Declaration.

23. States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development.

24. All international organisations and agencies shall observe the rights and duties in this Declaration.

Part V

25. In implementing the rights and duties in this Declaration, special attention shall be given to vulnerable persons and groups.

26. The rights in this Declaration may be subject only to restrictions provided by law and which are necessary to protect public order, health and the fundamental rights and freedoms of others.

27. All persons are entitled to a social and international order in which the rights in this Declaration can be fully realised.