



*Empowered lives.  
Resilient nations.*

# ENVIRONMENTAL JUSTICE

## COMPARATIVE EXPERIENCES IN LEGAL EMPOWERMENT

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## FOREWORD

Environmental justice is an emerging development issue that can contribute to fighting legal discrimination, eliminating poverty and reducing inequality. UNDP's new Strategic Plan (2014-2017) lays out a vision for assisting developing countries with reform of legal and regulatory frameworks so that the poor, indigenous groups and local communities have secure access to natural resources (including land, water and forests), and that the benefits arising from the sustainable use of biodiversity and ecosystem services are shared in a fair and equitable way, consistent with international instruments and national legislation. On this basis, UNDP is taking a holistic approach that is in line with national priorities, to integrate sustainable land, water and forest management, and conservation and sustainable use of biodiversity, into mainstream development policy and decision-making.

As laid out in the 2012 Rio Declaration, sustainable development can be achieved when green growth, which is the combination of economic and environmental strands, complements 'inclusive growth', the nexus of the economic and social strands, underpinned by a human-rights based approach. UNDP is working to help countries identify so-called 'triple win policies' that capitalize on synergies across an integrated sustainable development framework. Responding to the demand for generating knowledge that adopts the spirit of 'triple win policies', this comparative experiences analysis of environmental justice trends is a joint endeavor between UNDP's governance and environment and energy expertise and capacities.

'*Environmental Justice – Comparative Experiences in Legal Empowerment*' outlines the key challenges and innovations arising around the world as communities pursue an agenda of justice based on the inclusive and sustainable use of natural resources and the environment. It does so from the perspective of legal empowerment of the poor, an approach that emphasizes rule of law, systems of justice and inclusion in attacking the structural causes of poverty. The paper examines experiences from different regions, comparing how countries have addressed environmental rights in their constitutional, legal and policy frameworks and captures how civil society and community' initiatives are advocating for and implementing change on this front. The insights from this work can help to support increased engagement by UNDP, in partnership with other UN and development actors, to strengthen environmental justice responses, and contribute to South-South exchange and knowledge transfer among policy makers, civil society and key stakeholders that are driving policy and legal change within their countries. It will surely be a useful reference for national partners, sustainable development practitioners and UN Country Teams.

Patrick Keuleers  
Director a.i  
Democratic Governance Group  
UNDP



Nik Sekhran  
Officer in Charge  
Energy and Environment Group  
UNDP



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# INTRODUCTION

Global dialogues around the Sustainable Development Goals (SDGs) in the context of the post-2015 development agenda and the UN Conference on Sustainable Development (Rio+20) highlight that in the twenty first century our ability to sustain development will hinge on two converging threats to humanity - rising inequality between and within nations, and the complex risks from environmental change as we continue to surpass the Earth's planetary boundaries.<sup>1</sup>

In a world of stark and growing inequality, ecosystem services and natural resources can be of great benefit to achieving goals of inclusion and poverty reduction. But too often the critical ecosystem services the planet provides us suffer from mismanagement and lack of effective governance. Meanwhile, as critical ecosystem functions and resource security decline, it is the poor who bear little responsibility but who suffer the most, with impacts on lives and livelihoods.<sup>2</sup> Around the world the poor suffer disproportionately from more frequent and severe storms, floods and droughts, health impacts of toxic pollution, and insecurity of access to productive resources such as arable land, freshwater and sustainable energy.

As the world seeks responses to converging risks from inequality and environmental change, attention is placed on the role of improved governance for sustainable development. The way in which ecosystems and natural resources are currently governed often results in multiple deprivations, marginalization, and structural inequality. In many contexts "environmental degradation generates further poverty by the exhaustion of natural resources and creates prejudice to the exercise of basic rights."<sup>3</sup> Poor and vulnerable communities suffer from various forms of environmental injustice, often unable to fight back and reverse trends which keep them mired in a state of exclusion. Without a paradigm shift in how natural resources and the environment are valued and governed, inequality will deepen and post-2015 development goals will be threatened, if not reversed. Of particular importance are ways legal and institutional innovations can empower the poor to challenge and reverse declining levels of natural capital and ecosystem services.

The concept of environmental justice has arisen in this context: a mechanism of accountability for the protection of rights and the prevention and punishment of wrongs related to the disproportionate impacts of growth on the poor and vulnerable in society from rising pollution and degradation of ecosystem services, and from inequitable access to and benefits from the use of natural assets and extractive resources. In 1992, the Rio Declaration in Principle 10 declared "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."

Bearing in mind that the post-2015 development agenda will be a sustainable development agenda, it is important to highlight the role of the rule of law and access to justice in natural resource management. For UNDP, inter-generational equity is of great importance, and justice systems have a key role to play in ensuring environmental sustainability.

Helen Clark, UNDP Administrator, *Lecture at University of Auckland Law School, the Role of the Rule of Law and Access to Justice in Development, 2014*

<sup>1</sup> UN (2013) *Breaking Down the Silos: Integrating Environmental Sustainability into the post-2015 Agenda*, Report of the Thematic Consultation on Environmental Sustainability in the post-2015 Development Agenda, New York.

<sup>2</sup> See Rob Nixon (2011), *Slow Violence and Environmentalism of the Poor*, Harvard University Press, Cambridge.

<sup>3</sup> IUCN (2007), *Human Rights and the Environment: Overlapping Issues*, IUCN, Gland, 1. Also see UNHRC (2011), *Study on human rights and the environment*, Report of UN High Commissioner for Human Rights, 19th Session of Human Rights Council, UN Doc. A/HRC/19/34. Geneva

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Taking action to make this principle a reality is more important today than ever before. At its core, environmental justice is about legal transformations aimed at curbing abuses of power that result in the poor and vulnerable suffering disproportionate impacts of pollution and lacking equal opportunity to access and benefit from natural resources. This applies both to vulnerable parts of society today, and how unsustainable use of resources and ecosystem services can create risks for securing equity and justice for future generations.

Around the world citizens seek to engage the rule of law as a means to reverse the impacts of growth on social and ecological well-being. Beyond mere revisions of strategies and regulations, empowering the poor requires broad systemic changes to laws and institutions that help overcome exclusion of the poor from their right to a healthy environment and support equal opportunity to access and benefit from natural resources. Improved governance is seen as a force to regulate social, environmental and economic trade-offs in the process of development, and supporting an enabling environment of institutions that engender 'triple win' solutions for goals of sustainability, inclusion and resilience.<sup>4</sup>

This comparative experiences paper outlines for national partners, sustainable development practitioners and UN Country Teams key challenges and innovations arising around the world as communities pursue an agenda of justice based on the inclusive and sustainable use of natural resources and the environment. It does so from the perspective of legal empowerment of the poor, an approach that emphasizes rule of law, systems of justice and inclusion in attacking the structural causes of poverty.<sup>5</sup> For UNDP, legal empowerment is a fundamental approach in responding to the call of the United Nations and civil society in the SDG in post-2015 and Rio+20 processes for rights-based development solutions. The UNDP Strategic Plan (2014-2017) commits the organization to promoting "legal reform to fight discrimination and address emerging issues, such as environmental justice," and to "assisting with the reform of legal and regulatory frameworks so that the poor, indigenous populations and local communities can have secure access to natural resources (including land, water and forests) as well as to ensure that benefits arising from the sustainable use of biodiversity and ecosystem services can be shared in a fair and equitable way, consistent with international instruments and national legislation."

What follows is an overview of experiences from regional and country cases showing how accountability-driven movements and actions by national governments and judiciaries, civil society and other stakeholders are catalyzing legal and policy responses for the goals of environmental justice. This builds on the background papers and discussions held during an inter-regional UNDP Workshop on Legal Empowerment and the Environment convened as a mini-forum of the 2012 Global South-South Expo, Energy and Climate Change: Inclusive Partnerships for Sustainable Development in Vienna.

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<sup>4</sup> 'Triple win' solutions in the sustainable development context covers economic, social and environmental 'pillars' to be thought of as synergistic and integrated stands that 'lend' themselves to inter-weaving and linkages. For more information, see <http://www.undp.org/content/dam/undp/library/Cross-Practice%20generic%20theme/Triple-Wins-for-Sustainable-Development-web.pdf>

<sup>5</sup> See UN (2009) *UN Secretary-General Report on Legal Empowerment and Poverty Eradication (A/64/133)*, New York. See also UN (2008) *Making the Law Work for Everyone*, Commission on the Legal Empowerment of the Poor, New York.

## OVERVIEW OF GENERAL TRENDS

Many communities around the world face growing pressures from resource security and rising levels of pollution, posing risks to lives and livelihoods and exacerbating often long-standing systems of structural inequality. In the absence of effective means to enforce their rights, the poor lack effectively access to and benefits from the natural resources they host, or to challenge the impacts of pollution on their health and welfare, and that of future generations.

The 2011 Human Development Report highlighted the costs of ignoring social-environmental interdependencies: chronic and structural poverty and income inequality, disempowerment and exclusion from decision-making, and a lack of agency among citizens and communities.<sup>6</sup> In particular, it raised attention to various multidimensional aspects of poverty, and how multiple forms of deprivation are closely connected to the nature of ecosystem services, natural resource access and benefit-sharing, and pollution impacts on health and welfare. Vulnerabilities that exist among the poor often express themselves in specific ways based on gender, age, ethnicity, livelihood, rural/urban contexts, among others.

Poor and vulnerable groups contribute little to environmental problems, suffer disproportionate burdens and impacts, and are the least able to mobilize against the lack of accountability and empowerment that often characterizes situation of environmental injustice. The urban poor suffer from disproportionate impacts of toxic pollution on their health and welfare, with the cases below highlighting the severity of acute pollution risks as well as the more systemic and long-term impacts of chronic toxicity to land, air and water. The rural poor, often suffer from lack of access to the myriad opportunities that exist from productive use of natural assets and extractive resources related for example to forests, minerals and energy, while the potential for a more inclusive and sustainable model of resource-based development is squandered from one commodity boom to the next.<sup>7</sup>

Poverty and environmental degradation are the result of market failures as well as public policy failures. Lack of access to justice and rule of law is a key barrier to transformative change. Environmental justice is one means to combat this, calling for the legal and social empowerment of the poor, and freedom from the inequities that result from entrenched and unsustainable forms of resource use. A legal empowerment perspective focuses on putting in place increased access to justice and responsive institutions, enhanced accountability in decision-making over natural resources and the environment, and empowering vulnerable groups such as indigenous peoples and women who together make up the majority of those living in extreme poverty. It also engages with and benefits from a contextual analysis of various political-economy factors driving situations of environmental injustice, systemic impacts of corruption and the central role of the private sector in generating, preventing or remedying social and environmental risks.

Environmental justice movements are driving a shift in policy orientation towards legal regimes that recognize ecosystem services and natural assets as public goods, empower systems of accountability, and expand public access to remedy as foundations of sustainable development.<sup>8</sup> For poor and vulnerable communities, the

Understanding the links between environmental sustainability and equity is critical if we are to expand human freedoms for current and future generations. The remarkable progress in human development over recent decades... cannot continue without bold global steps to reduce both environmental risks and inequality.

*Human Development Report 2011 Sustainability and Equity: A Better Future for All*

<sup>6</sup> UNDP (2011) *Human Development Report: Sustainability and Equity: A Better Future for All*. Palgrave MacMillan, New York.

<sup>7</sup> See Paul Collier (2010). *The Plundered Planet: Why We Must and How We Can Manage Nature for Global Prosperity*. Oxford University Press, UK.

<sup>8</sup> Kishan Khoday and Leisa Perch (2012), *Green Equity: Environmental Justice for Inclusive Growth*, Policy Research Brief No.19, International Policy Center for Inclusive Growth (IPC-IG), Brasilia.

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benefits of a legal empowerment approach go well beyond reform of individual laws and regulations, seeking rather a shift from a political-economy of exclusion and ecological decline to a system of governance conducive to their full participation in decision-making over natural resources and the environment.<sup>9</sup>

The cases explored below evidence a number of common challenges, lessons learned and good practices in the ways societies are pursuing an environmental justice agenda and catalyzing adaptations in legal and institutional systems. Emerging from these cases are three key areas for policy responses namely: normative approaches to environmental rights and access to justice; social accountability and green movements at the grass roots level; and customary law and legal pluralism for empowering ecological and social diversity.

### *Normative Approaches to Environmental Rights and Access to Justice*

The importance of rights-based approaches to sustainable development has been highlighted in **global normative frameworks** for many years. Principle 1 of the 1972 Stockholm Declaration states that people have “the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being and we bear a solemn responsibility to protect and improve the environment for present and future generations”. Principle 10 of the 1992 Rio Declaration further states that “each individual shall have appropriate access to information concerning the environment ... and the opportunity to participate in decision-making processes. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” More recently *The Future We Want* Outcome Document (2012) notes that “broad public participation and access to information and judicial and administrative proceedings are essential to the promotion of sustainable development. Sustainable development requires the meaningful involvement and active participation of regional, national and sub-national legislatures and judiciaries, and all major groups.”

Today, 140 countries incorporate environmental protections in their constitutions, including in some cases, the rights of future generations. In legal systems where a specific environmental right does not exist, general constitutional rights such as the right to life have been interpreted by some courts to include environmental rights.

In measuring progress on environmental justice at the **local level**, a key trend has been the rise of national frameworks that express peoples’ environmental rights. For example, at the time of the first Rio Summit in 1992, around 60 countries had constitutional provisions on environmental matters, but by the time of the Rio+20 Summit in 2012, this more than doubled, with 140 Constitutions today incorporating environmental principles. This includes 19 countries in Latin America and the Caribbean and 32 in Africa. Of the 140 constitutions with environmental principles in them, 92 contain substantive rights, 30 procedural rights, 83 impose an individual duty related to the environment, and 140 impose a duty on the government to address environmental protection.<sup>10</sup>

The integration of environmental principles at the constitutional level also has broader political value, recognizing at the highest level the links between environmental change and social justice and catalyzing broader legal and regulatory reforms. Equally important has been the growth of laws and regulations which seek to expand citizen access to due process of law, increasingly with a specific focus on decisions concerning the environment. Many national laws and regulations flow directly from commitments under multilateral

<sup>9</sup> See UNDP (2012) *Institutional and Contextual Analysis Guidance Note*, Oslo.

<sup>10</sup> Andrew Long (2012), *Constitutional Environmental Law and Other Legal Protections for Sustainable Development*, Background Paper for the UNDP Workshop on Legal Empowerment and the Environment, November 2012, Hofburg Palace, Vienna, 4.

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environmental agreements and many such provisions, whether constitutional or regulatory, are now a critical foundation from which communities seek access to justice. On a more granular level, the emergence of mandatory environmental and social safeguards in global environmental funds such as the Global Environment Facility, the Adaptation Fund, and the Green Climate Fund, is expected to further enhance environmental justice for stakeholders with respect to projects and programmes in developing countries.

An equally important and interrelated trend has been the role of judicial mechanisms in increasing access to remedy in environmental matters, seen in many countries as a check and balance against other branches of government. Public interest litigation, class action lawsuits and the ability to represent future generations are a few judicial innovations. Another type of response has been to establish specialized tribunals, as undertaken in other areas such as trade or labour disputes. It is estimated that over 350 specialized environmental courts and tribunals now exist in 40 countries providing greater public access to environmental dispute resolution and remedy.<sup>11</sup> While many countries are experimenting with specialized green courts and tribunals, the value of such approaches is not necessarily universal as it is very dependent on the specific political-institutional context that defines the judicial system. Tribunals are in some contexts seen as adding value to the judicial system, as a specialized setting for deliberations where panelists hold technical knowledge as a basis for more informed judgments relative to general judges. They are also valued in some contexts as a way of reducing case backlogs that exist in the general judicial system, a major impediment to accessing justice in many countries. However, in other contexts, specialized or green tribunals might be considered as a costly option.

### *Social Accountability and Green Movements at the Grass Roots Level*

The world has experienced in recent times a rise in social protests related to natural resource use and pollution, with countries seeing higher expectations from society for the accountable and participatory use of the environment as a public good. As **civil society** movements rise against growing environmental impacts on human well-being, **communities** often turn to the rule of law and systems of rights including those noted above for solutions. However, they also confront the fact that in many ways systems of law function within broader political economies, are distant and inaccessible, and have often been complicit in creating the very problems communities are facing. Furthermore, even where such normative systems do pursue environmental goals, these often remain at the periphery of development processes in the country and in tension with dominant forces that reinforce rather than challenge current systems of inequity and unsustainability.

Social accountability refers to a form of accountability that emerges through actions by citizens and civil society organizations aimed at holding the state to account, as well as efforts by government and other actors [media, private sector, donors] to support these actions.

*UNDP (2010), Fostering Social Accountability: Guidance Note*

To overcome such challenges, environmental justice movements call for systemic change at the core of development policy, to move to forms of development that overcome rather than reinforce problems of environmental change and social injustice. Social accountability is at the heart of this process, where rights and duties are established between citizens and state institutions that have an impact on peoples' lives.<sup>12</sup>

<sup>11</sup> George Pring & Cathy Pring (2009), *Greening Justice: Creating and Improving Environmental Courts and Tribunals*, World Resource Institute, Washington DC, at xi.

<sup>12</sup> UNDP (2010), *Fostering Social Accountability: From Principle to Practice*, New York, 8.

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The role of environmental justice movements in catalyzing systems of accountability and transforming institutions has gained increasing recognition in recent times, touching on the growing gaps between rich and poor within countries, as well as features of environmental degradation and inequity that span North-South boundaries, as the environmental justice movement grows as a transnational force.

Environmental justice leaders have emerged across the global South, such as the GROOTS movement for women and community empowerment over natural resources in Kenya, Wangari Maathai's Green Belt Movement focused on women's environmental rights, Saro-Wiwa's environmental justice campaigns in Nigeria, Accion Ecologia and related movements in South America, local uprisings in Egypt's Nile Delta against toxic impacts on the poor, or movements to integrate environmental rights and new sustainable development oriented institutions in post-revolutionary Tunisia.

Civil society and grass roots community groups are using and developing critical legal empowerment tools to promote environmental justice, such as enhancing legal knowledge and literacy within affected groups, developing paralegal support mechanisms to inform communities and monitor decision-making and norm-setting, as well as organizing to promote constitutional and legal reform and pursue precedent-setting public interest litigation at national and local levels. An important force for change has been the emergence of **community paralegals** focused on environmental justice who advise local communities on rights related to natural resource and the environment, and ways the legal and judicial systems can be harnessed to achieve goals of accountability.

### *Customary Law and Legal Pluralism: Empowering Ecological and Social Diversity*

In pushing for legal empowerment, environmental justice movements often challenge dominant systems and global understandings of the environment-development balance, and systems of rights and justice. This is particularly the case in traditional and indigenous communities where cultures and ways of life are uniquely tied to the environment, and which have faced especially harsh forms of alienation and environmental dispossession for centuries.<sup>33</sup> Standing as the poorest and most socially excluded communities in the world, indigenous and tribal communities also host much of the planet's remaining reserves of natural resources

A central feature of tribal and indigenous history is the process of social exclusion suffered for generations, often intimately connected to the process of exploiting the environment, as the appropriation of natural resources by State and corporate actors are a driving force historically in the disempowerment of tribal and indigenous peoples. These peoples have been affected by displacement, toxicity, and resource degradation. In many instances, their relationship with and understanding of the natural environment has meant that environmental degradation was accompanied by profound socio-cultural loss and damage. Thus, working towards synergies among global, national and local norms and the diversity of indigenous and tribal worldviews on nature and justice will be critical for environmental justice.

The livelihood of the poor and marginalised is dependent on means and occupations based on local resources, social and cultural traditions and the economic environment. In this context, legitimacy based on local social and cultural traditions as distinct from legality based on the formal law and policy becomes quite important... Bridging this gap is only possible by engaging the customary and informal norms and systems of a specific local context.

*UNDP (2014), Legal Empowerment Strategies at Work: Lessons in Inclusion from Country Experiences*

<sup>33</sup> UN (2009). *State of the World's Indigenous Peoples*. New York.

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Before the modern environmental movement took shape in the late 1960s and early 1970s, the longstanding dominant paradigm was that of modernization: the environment was a 'state of nature', a set of resources to be mastered and efficiently exploited for the sake of wealth and progress. In Asia, Latin America and Africa the efficient exploitation of ecosystems by imperial powers and subjugation of the traditional and indigenous societies which inhabited them became identified with the pursuit of modernity and civilization. This understanding of nature became dominant and universalized through the process of colonization and decolonization and has had enduring impacts on traditional and indigenous communities around the world.

The process of legal transformation from traditional land and resource relationships towards modern natural resource governance has been a seminal factor shaping the state of the environment and inequity for indigenous and tribal communities. Customary laws and traditional governance regimes have shaped the nature of resource use for generations, and while holding many limitations and problems as well, they stand as a potentially important tool in the fight against environmental degradation and exclusion. Far from static, indigenous and tribal systems and norms which engage challenges of resource use and environmental protection have evolved and adapted over time, with important points of intersection between formal and informal systems in most countries.

An environmental justice perspective takes into account a contextual analysis of historical injustices and exclusion faced by indigenous and tribal communities and recognizes traditional conceptions of nature and justice still exist in indigenous and tribal communities. These are reflected on a daily basis in local, traditional norms and informal and hybrid systems of justice and governance which determine rights and decide on contested claims related to land and natural resource use within the community. Expanding social and environmental justice and rights for indigenous and tribal peoples recognizes that rather than being victims of the past, communities are agents of change in their own right, with their own vision for the future of development and the natural resources which they host.

**The obligation to respect, protect and fulfil human rights, including through the provision of justice and legal remedies, extends to formal and informal systems alike. Both types of justice systems can violate human rights, reinforce discrimination, and neglect principles of procedural fairness... Informal justice systems can provide avenues for the delivery of justice and the protection of human rights, particularly where formal justice systems lack capacity, and informal systems can enjoy widespread community legitimacy and support.**

*UNDP, UNICEF, UN Women (2012), Informal Justice Systems: Charting a Course for Human Rights-Based Engagement*

Many standard legal frameworks, while holding the aura of universality, need adaptation to local constructs of nature and society and to be appropriately integrated with local tribal and indigenous society and decision-making processes. The tensions between formal laws and policy on the use and ownership of land and resources with customary, indigenous and traditional systems of resource governance emerge as a prime example. Recognizing the contextual nature of legal development in different communities helps achieve a more people-centered form of environmental and social justice. Empowering traditional and customary forms of law and justice in this context means creating new hybrid solutions between global and local approaches to environmental sustainability and justice, engaging the diversity of society as a foundation for sustainability.

## REGIONAL & COUNTRY PROFILE

### ASIA & THE PACIFIC

The Asia-Pacific region hosts the world's largest emerging economies, accompanied by a rapid growth in industrial pollution and demand for natural resources, both placing serious burdens on globally critical ecosystems and creating risks to sustaining the region's hard-won results in poverty reduction. As the environmental justice movement grows, rights-based approaches to use of natural resources and the environment are making their way into legal reforms. A series of legal and institutional measures have arisen to increase access to remedy and justice in environmental matters, enhance levels of accountability within decision-making processes, and empower local traditional communities through recognition of historic claims and customary norms on the use of natural resources and the environment.

**India** is the world's largest democracy and one of its largest emerging economies. It also has the largest concentration of people living in extreme poverty and in recent years has experienced a surge of environmental justice movements as the pressures of growth make themselves felt on communities and ecosystems. India's judiciary has evolved a special role in this process. Historically, the entry point for environmental claims was through two legislative provisions: Article 21 of the Constitution on the Right to Life; Article 48-A (4) of the Directive Principles of State Policy (1976), which notes that the "State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country", and Article 51-A(g) of the Indian constitution on the fundamental duties of every citizen of India, which states that "it shall be the duty of every citizen of India ... to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."<sup>14</sup>

Over the years, the Supreme Court has spoken out for the impacts of industrialization on the ordinary citizen through a series of cases attempting to strike a balance between growth, equity and sustainability. This followed a series of incidents where the poor were disproportionately impacted by industry, including the Bhopal tragedy of 1984. By 1991, alongside the launch of India's neo-liberal reforms and its pathway to re-emergence as a global economic power, the Supreme Court declared that "issues of environment must and shall receive the highest attention from this court."<sup>15</sup> In *Subhash Kumar v State of Bihar*, the Supreme Court observed that "[t]he right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life."<sup>16</sup> This landmark interpretation by the Supreme Court set the foundation for the expansion of rights-based approaches to challenging environmental impacts of growth.



Women working at a brick factory in West Bengal, India.  
Photo: Partha Pratim Saha. UNDP Picture This Photo Contest.

<sup>14</sup> R. Sharma, 'Green Courts in India: Strengthening Environmental Governance?' (2008) 4(1) *Law, Environment and Development Journal*, 50.

<sup>15</sup> *Tarun Bharat Sangh, Alwar v Union of India*, Supreme Court of India, Judgment of 11 October 1991, 1992 Supp (2) SCC 448.

<sup>16</sup> *Subhash Kumar v State of Bihar*, AIR 1991 SC 420.

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This was followed by a series of citizen and NGO lawsuits where the Courts upheld citizens' rights to clean air<sup>17</sup> and clean water.<sup>18</sup> Courts in Bangladesh, Pakistan, and Nepal also came to recognize broad environmental rights in similarly worded provisions.<sup>19</sup> Beyond its successes in re-interpreting the substantive core of constitutional rights to address environmental justice, India also has spearheaded procedural innovations including Public Interest Litigation (PIL), allowing groups of citizens to file lawsuits claiming broad societal harms and inequities from environmental change. India is home to thousands of NGOs that advocate environmental justice on behalf of the poor and vulnerable, carrying forward the Gandhian ethic of civil disobedience and the enduring spirit of the Chipko 'tree huggers'.<sup>20</sup>

As India's economy continues to emerge and as pressures on equity and ecosystems grow, calls have arisen in recent years for further expansion and deepening of systems of access to remedy, leading in 2010 to passage of the *Green Tribunal Act*, meant to catalyze the emergence of a nation-wide system of local tribunals over environmental matters.<sup>21</sup> The idea of a system of green tribunals first arose in 1996 in *Indian Council for Enviro-Legal Action v Union of India*, where the court stated that a system of green tribunals with jurisdiction over civil and criminal aspects of environmental claims could help achieve expediency of justice, establish panels of experts to resolve highly technical cases, and help reduce large caseloads faced by the general courts.<sup>22</sup> The Green Tribunal Act now sets the foundation for the emergence in coming years of the world's largest network of local environmental tribunals, expected to increase citizen access to environmental justice.<sup>23</sup>

Another priority has been to recognize the plight facing India's Adivasi (tribal) population. Of the over 260 million people living below the poverty line in India, 70 million are tribals, partially or wholly dependent on forests and occupying 60% of India's forested areas.<sup>24</sup> Access to environmental justice is particularly important in relation to access to and benefit sharing from natural resources, with most of India's extractive resources located in the 'tribal belt' across central and northeastern India, where tribal communities host highly-valued minerals but also experience India's lowest rankings on the Human Development Index (HDI). Recent years have seen a rise in tribal protests against expansion of state-corporate mining interests into tribal areas.<sup>25</sup>

The 2006 Forest Dwellers (Recognition of Forest Rights) Act was passed to address the historical injustice experienced by tribals and establishes a new process to recognize rights to forest land and resource use.<sup>26</sup> The landmark Act acknowledges the social function of natural resources in tribal peoples' lives, and encourages community-based management through inclusion of tribal peoples in conservation measures. It also calls for prior informed consent (PIC) before forest lands can be acquired by the State for extractive or other resource development projects. Village councils (gram sabhas) are delegated the power to oversee the process of

<sup>17</sup> *M.C. Mehta v Union of India*, Supreme Court of India, Judgment of 12 May 1998, (1998) 6 SCC 60 & Judgment of 18 November 1998, (1998) 9 SCC 589; *M.C. Mehta v Union of India*, Supreme Court of India, Judgment of 16 April 1999, (1999) 6 SCC 9; *Murlis. Deora v Union of India*, Supreme Court of India, Judgment of 2 November 2001, (2001) 8 SCC 765.

<sup>18</sup> *A.P. Pollution Control Board v Prof. M.V. Nayadu (Retd.) & Ors*, Supreme Court of India, Judgment of 27 January 1999, (1999) 2 SCC 718; *Mrs. Susetha v State of T.N. & Ors.*, Supreme Court of India, Judgment of 8 August 2006, (2006) 6 SCC 543; *Narmada Bachao Andolan v Union of India*, Supreme Court of India, Judgment of 18 October 2000, (2000) 10 SCC 664.

<sup>19</sup> Tim Hayward (2005), *Constitutional Environmental Rights*, Oxford University Press, New York, 206.

<sup>20</sup> Kishan Khoday and Usha Natarajan (2012) 'Fairness and International Environmental Law from Below: Social Movements and Legal Transformation in India' *Leiden Journal of International Law*, Volume 25 Edition 2, Netherlands.

<sup>21</sup> Law Commission of India (2003), *186th Report on Proposal to Constitute Environment Courts*, New Delhi. (September 2003)

<sup>22</sup> *Indian Council for Enviro-Legal Action v. Union of India* (1996) 3 SCC 212, 252.

<sup>23</sup> Lin T, Wang C, Chen Y, Camacho T, Lin, F (2009), *Green benches: Learning from environment courts of other countries?* Asian Development Bank (ABD), Manila, p. 9-10

<sup>24</sup> S. Patnaik, *Can Tribals Continue to Depend on Forests?*, International Conference on Poverty Reduction and Forests, Bangkok, 3-7 September 2007.

<sup>25</sup> Center for Science and Environment (2011) *Sharing the Wealth of Minerals*, New Delhi, 3.

<sup>26</sup> Ministry of Tribal Affairs (2006), *Scheduled Tribes and Forest Dwellers (Recognition of Forest Rights) Act*, New Delhi.

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recognizing tribal rights claims, and to ensure goals of forest conservation.<sup>27</sup> While still far from reaching its stated goals, the Act has triggered a number of new cases in recent years led by tribal communities. One example has been the Vedanta case, involving a planned bauxite mine by the private sector in the Niyamgiri Hills in Odisha State, considered a biodiversity hotspot and sacred grounds for the Dongria Kondh tribal group. The project was cancelled owing to strong protests and a finding of lack of compliance with social and environmental requirements.

**China** is the world's fastest growing major economy and has been witness to surging demand for natural resources and rising impacts from pollution on ecosystem services and social welfare. A spirit of accountability has emerged in society with individuals and communities increasingly demanding access to justice and human rights in environmental matters. As the environmental impacts of rapid growth continue to take their toll on social health and welfare, a key challenge for China has been to craft new policies and systems to prevent and manage new conflicts between local government, the private sector and communities.

In 2009 China's State Council issued China's first National Human Rights Action Plan. Of significance, Section 1 (7) on Environmental Rights states that the goal of the Action Plan is to uphold "the principle of harmonious development between man and nature and the rational exploitation and utilization of natural resources. China will take an active part in international cooperation in an effort to create an environment favorable for human existence and sustainable development and build a resource-conserving and environment-friendly society to guarantee the public's environmental rights" and to strengthen "the rule of law in the sphere of environmental protection to safeguard the public's environmental rights and interests."<sup>28</sup> A related development has been the rise of over 47 environmental courts and tribunals at the local level across the country, largely in China's industrial eastern provinces. Examples of normative expression through regulation include the 2006 Measures for Public Participation in Environmental Impact Assessments, a 2006 Regulation on Public Participation in Environmental Appraisals and 2007 Measures on Open Environmental Information. Taken together these measures show some level of progress in expanding public access to information and participation in environmental decisions.

A key trend in recent years has been the growth of internet based social media and discourse through websites and blogs, as well as the rise of local community organizations demanding a stronger voice in decision-making. China has seen the rise of thousands of environmental NGOs, and a surge of environment related protests. 2011 for example saw one of China's largest protests in recent times of any kind, the Dalian PX mass protest over toxic pollution in northeast China. This was one among hundreds of protests over the environmental impacts of growth led by communities across the country in recent years. Recent years have seen the rise of the All China Environment Federation (AFED), a government-affiliated social organization.<sup>29</sup> This serves as an umbrella for local NGOs across the nation and has developed since its inception a specialized focus on environmental justice in response to community claims around industrial centers where toxic impacts have been a major call to action.

In 2009 AFED achieved an important step forward in the quest for environmental justice when it successfully filed China's first-ever PIL cases in the Wuxi Environmental Court and the Qingzhen Environmental Court.<sup>30</sup> In the Wuxi Environmental Court, AFED was successful in settling its pollution case against the Jiangyin Port Container Company, while in Qing Zhen Environmental Court, AFED was successful in its claim based upon fifteen years of administrative inaction by the local Bureau of Land and Resources. The process of establishing environmental

<sup>27</sup> Khoday and Natarajan supra.

<sup>28</sup> State Council of China (2009) *National Human Rights Action Plan*, Beijing.

<sup>29</sup> Yuming Wang (2012), *Legal Empowerment through the All China Environmental Federation Environmental Rights Safeguarding Initiative*, Presentation to the UNDP Workshop on Legal Empowerment and the Environment, November 2012, Hofburg Palace, Vienna.

<sup>30</sup> Ibid.

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courts and tribunals in China has also been an experiment in jurisdiction with courts in cities like Guiyang, Qing Zhen, Wuxi and Yunnan taking an integrated approach by including jurisdictions over civil, criminal and administrative matters.

Concerns have also arisen over impacts of resource development initiatives on the poor and minority communities in China's west, now a core element of environmental justice challenges in China. Western China covers nine provinces and autonomous regions, and dozens of municipalities, covering 60% of Chinese territory, with a population over 370 million (25% of the national total). The region is increasingly vital to sustaining national growth, hosting 80% of China's total water supplies, 50% of China's mineral reserves, and the majority of China's coal and natural gas reserves.<sup>31</sup> In Western China, environmental justice invokes two foundational principles of the State noted in the 1982 Constitution; equal protection under the law, and the duty of the State to ensure rational use of natural resources for the public good. Of particular importance are China's Western Development Strategy and its 'Go West' policy aimed at connecting 'less-developed' minority regions to the benefits of rapid industrialization in the East. This includes the risk of western migration of heavily polluting industry as greater regulation and adaptation to environmental justice concerns arise in the east of the country, alongside a new surge of investments into the West, particularly in Autonomous Regions such as Tibet and Xinjiang where vast reserves of extractive resources attract global and local investors.

Xinjiang is host to a large share of China's coal reserves along with a significant share of its oil and gas reserves, which are critical to China's continued economic rise, while Tibet hosts the source waters of the Yangtze and Yellow Rivers and holds vast copper and minerals reserves. In recent years Tibet has experienced tense situations among protesting communities and monks against local corporate actors and officials related to mining developments, sometimes alongside sacred sites. Some such protests such as in Nagchu Prefecture have led to delays or stoppage of planned mining developments. A series of grievances are also increasingly being expressed in Xinjiang province, where local minority communities claim unequal benefits from use of natural resources and unequal protection against pollution from heavy industry. As a result of rapid growth of investments and industry, and fears of a 'race to the bottom' as ventures head West to less regulated areas, Tibet and Xinjiang have experienced levels of increasing citizen demands for access to and benefit sharing from resources as well as legal measures to prevent toxic impacts on the poor and vulnerable.

In the **Philippines**, environmental justice is a guaranteed state policy affiliated to Section 16, Article II of the 1987 Constitution which states that "the State shall protect and advance the right of the people to a balanced and healthy ecology in accordance with the rhythm and harmony of nature."<sup>32</sup> In applying this provision, the seminal landmark case was *Oposa v. Factoran* decided in 1993, in which the petitioners were a group of minors, represented by their parents.<sup>33</sup> The petitioners filed a class suit for themselves, for others of their generation, and for the succeeding generations. They wanted to stop deforestation by asserting that specific permits granted by the Government to license holders to cut trees in the country's forests violated the right of citizens to a balanced and healthy environment. The petitioners asked that the Government be ordered to cancel all existing licenses in the country and desist from granting and renewing new ones.

The Supreme Court in *Oposa* ruled that minors could file a class action lawsuit, for themselves, others of their generation and for future generations. This was the first time globally that future generations were recognized as

<sup>31</sup> State Council of China (2000) *Development Strategy for Western China*, Beijing

<sup>32</sup> Dennis Baldago (2012), *Promoting the Right to a Balanced and Healthful Ecology: Environmental Justice in the Philippines*, Background Paper to the UNDP Workshop on Legal Empowerment and the Environment, November 2012, Hofburg Palace, Vienna, 4.

<sup>33</sup> Ristroph, 205-08 cited in Long, 25. See G.R. No. 101083, July 30, 1993, 224 SCRA 792, 802-803.

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having standing to bring claims, and the first time that environmental rights of future generations had been considered and upheld by a country's apex court, and to this day serves as a milestone in the process of granting access to justice in environmental matters and upholding environmental rights. The Philippine Supreme Court has explicitly invoked the interests of future generations in other cases as well, most notably *Metro. Manila Dev. Auth. v. Concerned Residents of Manila Bay*, in which the court described an "obligation to future generations of Filipinos to keep the waters of Manila Bay clean and clear as humanly possible."<sup>34</sup>

In addition to a number of other legal cases and policy responses in the years that followed, a notable landmark was the establishment of new Environmental Courts. Through the lead role of the Supreme Court, a decision was enacted in 2008 designating 117 trial courts as 'green courts' with intended special competency and jurisdiction to oversee cases concerning the environment.<sup>35</sup> This was followed in 2009 with a national forum on Environmental Justice and Upholding the Right to Balanced and Healthy Environment, convened by the court and partners to explore further means of empowering the poor through systems of environmental justice. The 2009 Environmental Justice forum was organized to validate new draft Rules of Procedure for Environmental Cases seen as a legal innovation to further support the goal of environmental justice. In 2010, the Court approved new Rules of Procedure for Environmental Cases, regarded as the first of its kind in the world and a significant reform in support of access to justice in environmental matters by the poor. The Rules also adopted the *Oposa* approach with a broad interpretation of the doctrine of legal standing towards future generations.

A citizen's suit provision in the Rules was enacted to empower communities to ask for suspension or stoppage of destructive activities that threaten communities rights to a healthy environment. This was coupled with a new procedure, the Writ of Kalikasan (nature) enacted to empower the Supreme Court and/or the Court of Appeals to issue temporary or permanent orders to protect the environmental rights of communities, where a threatened damage is of such magnitude that it prejudices the environment of two or more cities or provinces.<sup>36</sup> To ensure the effective implementation of the new rules, the Supreme Court also launched a capacity building initiative covering all duty-bearers and claim-holders in the realm of environmental justice, including judges, clerks of courts, prosecutors, law enforcement, NGOs, civil society and community representatives.

Among other things the rules specifically aim to advance the constitutional rights of citizens to a healthy and balanced environment and to provide a simplified, speedy, and inexpensive procedure for increased access to environmental justice. To complement institutional responses and build knowledge and capacity, a sourcebook on environmental justice entitled "*Access to Environmental Justice: A Sourcebook on Environmental Rights and Legal Remedies*" was issued in 2011 alongside a "*Citizen's Handbook on Environmental Justice*."<sup>37</sup> A process was also commenced to develop a roadmap for further strengthening the implementation of environmental justice in the country. This included a review of environmental justice experiences in the criminal justice system and the state of implementation of the Rules of Procedure on Environmental Cases and the status of the cases submitted to designated 'green courts' nationwide.<sup>38</sup>

The Asia-Pacific region stands as a dynamic context for the evolution of environmental justice challenges and responses. Re-emerging at the center of global growth, the region has seen the dramatic rise of civil society movements as issues of equity and sustainability arise, institutional and legal innovations in response to the call for greater access to participation and remedy, and attempts to strengthen the nexus between traditional norms

<sup>34</sup> Baldago, 8. See *Metro Manila Development Authority v. Concerned Residents of Manila Bay*, G.R. Nos. 171947 – 48, Dec. 18, 2008, 574 SCRA 661.

<sup>35</sup> Ristroph, 181-195 cited in Long, 25.

<sup>36</sup> Baldago, 10. See also Ristroph, 199-200 cited in Long, 26.

<sup>37</sup> Baldago, 10.

<sup>38</sup> Ibid.

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of resource use and formal systems for environmental governance. These challenges and innovations are important to learn from and scale-up in the region itself. Meanwhile as the region rises in importance in the global economy, these new experiences and lessons will be of great value to both government and civil society actors around the world.

### SUB-SAHARAN AFRICA

In Sub-Saharan Africa, the natural resource sector is arguably the largest driver of environmental justice claims and actions, with a surge of extractive sector activity leading to a dramatic transformation of landscapes, pressures on arable land, destruction of ecosystems critical to rural livelihoods, and creation of highly toxic forms of air and water pollution which create lasting challenges to human health and ecosystem services. Africa hosts about 30% of the planet's mineral reserves, including 40% of its gold, 60% of its cobalt and 90% of platinum group minerals.<sup>39</sup> Relatively unconstrained executive power, strong incentives for private investment and powerful interests by external entities in extracting African resources have converged to create rapidly growing challenges of environmental sustainability and social equity.

Environmental provisions began appearing in constitutions of African nations in the early 1990s, and have spread across the region since then. Today approximately 32 African nations have constitutional provisions related to the environment, albeit suffering often from lack of effective institutional capacities to ensure implementation.<sup>40</sup> In support of local action are also a number of regional policies promoting environmental rights and justice. The African Charter on Human and Peoples Rights for example was the world's first regional human rights treaty to explicitly recognize a right to live in a healthy environment, with Article 24 calling Member States to ensure that, "all peoples shall have the right to a general satisfactory environment favorable to their development." While the African Court on Human and Peoples Rights has yet to rule in any cases involving this right, influence has been seen in various national court decisions.

Furthermore, in 2011 a set of regional guidelines were also issued by the African Commission on Economic, Social and Cultural Rights requiring that States ensure "strict controls of the use and pollution of water resources for industrial purposes, and especially of extractive industries in rural areas." And in 2012, in advance of the Rio+20 Conference on Sustainable Development, the African Commission on Human and Peoples' Rights issued Resolution 224 on a Human Rights-Based Approach to Natural Resources Governance stating that "the State has the main responsibility for ensuring natural resources stewardship with, and for the interest of, the population." This is also reflected in a Mineral Resources Development Policy also passed by the Economic and Social Commission for West Africa the same year to promote prior, free and informed consent (PIC) and protection of customary resource rights, community access to information and participation, and access to systems of justice



*Children collecting water in Pokot region northwestern Kenya.  
Photo: Kai-Otto Melau. UNDP Picture This Photo Contest.*

<sup>39</sup> African Union and UNECA (2011). *Minerals and Africa's Development 2011 Report*. Addis Ababa.

<sup>40</sup> Boyd, 149 cited in Long, 16.

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and remedy. The demands of environmental justice movements have in many cases pushed an evolution beyond standard forms of resource governance, to a more rights-based, accountability-driven perspective. Natural resource developments are the site of intense social and political contestation, and the way countries adapt legal regimes will define in many ways the future of development in the region.

In **South Africa**, environmental justice is often seen an extension of the nation's revolutionary anti-apartheid struggle.<sup>41</sup> Apartheid era policies had created various forms of environmental injustice related to control over land and natural resources, lack of access to environmental services, and disproportionate impacts from industrial toxicity. Many of the structural causes of these injustices have remained in the post-apartheid era, owing to underlying systemic dynamics connected to the nature of resource governance, and the long-standing legacy of toxics from heavy industry, such as mercury poisoning of workers and communities, health impacts from asbestos mining, and waste dumping next to poorer townships.

In the post-apartheid era, the opening up of South African politics created space for rethinking issues related to the use of natural resources and the communities that relied on them. A debate resulted in environmental injustices emerging as an integral part of the country's post-apartheid reconstruction vision. A major step was catalyzed by the Environmental Justice National Forum (EJNF), a nationwide umbrella organization established in the 1990s to coordinate activities of environmental organizations engaged in social and environmental justice.<sup>42</sup> EJNF played a lead role in the process to formulate Article 24 in the new Bill of Rights of 1996, which notes that "Everyone has the right (a) to an environment that is not harmful to their health or wellbeing, and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that (i) prevent pollution and ecological degradation (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development." Although Article 24 provision has yet to be tested in court, it holds the promise to be among the broadest constitutional environmental rights in the world.<sup>43</sup>

A key focus of attention for application of this provision and others has been around the extractive sector. South Africa hosts some of the richest coal mines in the world, with a string of closed mines leaving behind toxic legacies and long-term risks for human health and the environment. The country also hosts some of the world's largest gold mines and confrontations among communities and industry have escalated over community rights and pollution faced by both communities and workers. A particular problem has been trends of silicosis among gold miners, a life-threatening disease caused from inhaling silica from gold. In recent times, thousands of gold miners have joined forces to initiate a class action lawsuit against the companies in question on grounds of environmental health violations, what could well be the largest class action to date on the African continent. The movements took root after South Africa's highest court ruled in 2012 that miners had the right to sue mining companies for compensation in addition to that covered by a state compensation fund. In addition to victims' compensation, the class action could set a legal precedent in the country for the use of the class action mechanisms as a tactic in achieving goals of environmental justice.

West Africa has also experienced a surge of extractive sector investment with related social and environmental risks. **Côte d'Ivoire** for example has seen highly publicized environmental justice claims over alleged toxic waste dumping in the energy sector. One landmark case focused on the ship Probo Koala, chartered by Dutch-based shipping company which was owned by one of the world's largest oil and commodity trading firms. It was alleged

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<sup>41</sup> David MacDonald (2004) *Environmental Justice in South Africa*, Juta Academic, South Africa, 2-5.

<sup>42</sup> Ibid

<sup>43</sup> Long, 7.

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that after being refused entry to various other countries, the company offloaded large amounts of toxic waste at the port of Abidjan, and that a local contractor further dumped the materials at twelve sites around the city, resulting in deaths of dozens of persons and injury of thousands more. In 2007, the company settled with the Cote d'Ivoire government for nearly US\$200 million for cleanup costs and a pledge not to prosecute the company. In testimony to the rising power of social movements for environmental justice a surge of community protests followed and in 2008 one of Africa's largest class action lawsuits was launched in London by almost 30,000 citizens. The company took action in recent times, seeking to avoid a full trial by opting instead to provide a large undisclosed settlement to the communities.

**Nigeria** has likewise been an important venue in the fight for environmental justice in the extractive sector. As in other top oil-exporting countries, energy exports account for the majority of public revenues and large social movements have arisen in recent years to address social and environmental risks. One expression of this has been the plight of local indigenous peoples in the Niger Delta, with increasing community claims of redress for toxic impacts and alleged rights abuses. The Ogoni are one among many indigenous communities in southeast Nigeria, rising to prominence in the environmental justice movement after a massive campaign against large oil multinationals in the Delta, under the umbrella of the Movement for the Survival of the Ogoni People (MOSOP).

In the 1990s, under the leadership of environmentalist activist Ken Saro-Wiwa, MOSOP presented to the government a draft law for indigenous autonomy, calling for a greater voice in control of natural resources and in protecting the environment. Through assessments of the area inhabited by the Ogoni, it became clear that decades of oil production had made the once fertile soil of the Niger Delta largely unusable for agriculture, alongside broader trends of land degradation and toxicity of groundwater reserves with hydrocarbons and carcinogens such as benzene. Claims of environmental justice included a call for measures to compensate past social and environmental damage as well as to mitigate against future risks. After years of confrontation with resource companies and the government, in 1995 Ken Saro-Wiwa faced trial by a military court and after a guilty verdict was handed along with eight Ogoni leaders. In 1996, his family filed three lawsuits in the US under the Alien Tort Statute, which allows civil actions for egregious torts committed overseas.

The claims focused on complicity of multinational resource corporations in alleged rights abuses against the Ogoni people and after more than a decade of counter measures in the courts by defendants, court hearings began only recently in 2009. After commencement, the companies quickly moved to settle, offering a historic US\$15.5 million out-of-court settlement to the family of Ken Saro-Wiwa, human rights and environmental justice activists, and as capital to a Trust Fund. Another critical companion case led by Nigerians against multinational energy firms under the Alien Tort Statute has been the *Kiobel* case where the Court in some ways narrowed the scope of accountability against private actors under the Act.

In **Kenya**, with the majority of the country characterized as drylands, forested and arable land has come under increasing pressure and competition. The emergence of collective organization took inspiration from the late Dr. Wangari Maathai, one of the world's leading environmental justice figures and founder of the Green Belt Movement calling for non-violent, civil disobedience to move towards women empowerment and more sustainable use of natural resources for the poor. Through her leadership and courage, Dr. Maathai helped set the foundations for expansion of bottom-up community actions in Kenya and across Africa. The women-led efforts she inspired helped enhance access of the poor to forest, land and water resources, and enhance the role of local conservation institutions and the general public in achieving goals of equity and sustainability. One legacy of such efforts has been the emergence of community paralegals across Kenya who help fight injustice

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through local organizing, community legal education, advocacy and litigation.<sup>44</sup> The groups advise the community on natural resource related rights and ways the legal system be harnessed to achieve goals of environmental justice and accountability.

One specific movement has been GROOTS, a national movement of grassroots community-based, self-help groups that together brought about a network of community land and natural resource watchdogs. These grassroots women-led mechanisms preserve, monitor and guard against unauthorized use of land and resources including land disinheritance, land grabbing and their resolution by local decision-makers and traditional adjudicators.<sup>45</sup> With the help of GROOTS, women and youth also document physical locations and quantities of public land reserves through geographic positioning systems (GPS). The information collected is used to empower communities to safeguard land and resources under the threat of conversion, to protect their role as public goods linked to riparian watersheds, land and water needed for public hospitals and school, or public areas intended for aesthetic and recreation value.

Also central to environmental justice issues in Kenya has been the role of traditional and customary law and forms of decision-making. In many African countries, goals of environmental justice in indigenous and tribal communities is closely dependent on empowering age-old systems of unwritten, customary laws and systems of justice, systems that have served as the bedrock of traditional societies across the region for millennia. Community decision-making over natural resources and the environment often relies on the role of the council of tribal elders in designating use of a given resource, for example in limiting the right of community members to fell trees, rights of pastoralists to graze on certain tracks of land, or management of limited use regimes for protection of forests, rivers and mountains as sacred sites. The move to craft environmentally just legal responses would benefit from building on formal approaches while also empowering community norms and traditional systems that continue to govern resource use, integrating these approaches in creative ways.<sup>46</sup>

**Ethiopia** has emerged as one of the region's fastest growing economies and as its demands for energy and natural resources grow so too do the external implications of its growth. Among various issues, the rapid expansion of hydro-dams is a trend in Ethiopia and across the African region, that will shape many environmental justice concerns in the future. Following many years of slower growth in dam construction owing to high profile social and environmental risks, the re-emergence of large-scale financing for low-carbon sources of energy has led to a surge of new plans for hydro power expansion, with hundreds of large dams being planned. Very little of the region's hydro potential is used at the present, while converging needs for food, water and energy security grow.

One high profile initiative in Ethiopia is the Gibe III Dam now under construction on the Omo River. Once completed it would stand as Africa's highest dam, the world's fourth largest hydropower project, and would generate power for both local demands and generate revenue from exporting power to neighbouring countries such as Kenya and Sudan. Meanwhile various social and ecological risks have been identified including for the biodiversity and indigenous livelihoods surrounding Lake Turkana, 90% of whose waters originate in the Omo. The world's largest desert lake, and one of the planet's oldest, it has been estimated that Lake Turkana supports

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<sup>44</sup> Esther Mwaura-Muiru, *Informal Justice System and Legal Empowerment Approaches in Addressing Environmental Issues*, Background Paper to the UNDP Workshop on Legal Empowerment of the Poor and Environmental Justice, November 2012, Hofburg Palace, Vienna.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

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over 500,000 livelihoods in the area and provides ecosystem services critical to fish, domestic animals and agriculture.<sup>47</sup>

Another example is the Renaissance Dam, rising on the upper reaches of the Nile River Basin. Once completed in 2015, it will be the largest hydro power facility in Africa, possibly producing more electricity than Egypt's Aswan Dam further downstream on the Nile.<sup>48</sup> Issues of environmental justice will likely emerge for the poor in downstream neighbouring countries such as Sudan and Egypt whose populations rely on steady flows for agriculture as well as their own hydro power plants. While engaging in discussions with downstream states, Ethiopia also moved to form a 2012 Cooperative Framework Agreement (CFA) among five upper-Nile countries, Ethiopia, Kenya, Uganda, Rwanda and Tanzania, and has proposed an International Panel of Experts to assess the dam's risks to downstream users. Local and international legal issues could emerge in this context, both with regards issues of access to resources and environmental impacts within Ethiopia, and issues related to equitable sharing of water flows among upstream and downstream communities.

Across Africa, development pathways are being increasingly shaped by rising global demand for natural resources. But in the midst of higher commodity prices and corporate profits, the gap is growing between industrialists and market speculators, and rural communities which live on a treasure of natural assets but often fail to benefit from them, while also suffering the toxic legacies of rapid extractive sector growth. New regional and local policy innovations are arising in response to growing civil society calls for change and increasing use of legal and judicial channels as a means of social accountability and remedy. Included in this are attempts to harness the benefits of local tradition and custom in new legal and policy frameworks. Unless new forms of governance and rights-based approaches are scaled up, a new wave of resource-based development projects are likely to have lasting impacts on people and the environment across the region. This brings risks not only for achievement of development goals for the current generation, but also for the prospects of achieving and sustaining development results for the region's future generations.

## LATIN AMERICA AND THE CARIBBEAN

A major driver of environmental justice claims in Latin America and the Caribbean has been the surge of extractive sector investments meant to serve rising local and global demands. Across the region, energy and mineral resources are playing a central role in development trends, with Mexico, Peru, Chile, Argentina and Brazil hosting 22% of global investment in the minerals sector for example.<sup>49</sup> Chile stands as the world's largest copper producer and Bolivia hosts the world's highest lithium reserves. In Brazil, the developing world's highest iron ore producer, mineral production reached a record high of US\$50 billion in



*An indigenous girl in rural area, Peru.  
Photo: Adam Erdossy. UNDP Picture This Photo Contest.*

<sup>47</sup> Mark Capchanga, *Ethiopia's Controversial Gibe III Mega-Dam*, Think Africa Press, 16 January 2013.

<sup>48</sup> Haydar Yousif, *Ethiopia's Renaissance Dam: A Mega-Dam with Potentially Mega-Consequences*, Think Africa Press, 3 December 2012.

<sup>49</sup> Kishan Khoday and Leisa Perch (2012), *Social Accountability in Natural Resource Management*, Discussion Note 91, International Policy Center for Inclusive Growth (IPC-IG), Brasilia

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2011, with iron ore providing 80% of total export value, while in Peru, GDP tripled since 2000 with mining accounting for 60% of exports.

Meanwhile for many Small Island Developing States (SIDS) in the Caribbean, new offshore exploration ventures are arising with prospects for new development revenues, along with various risks to coastal ecosystems and livelihoods. As the social and ecological footprints of extractive sector ventures grow, environmental justice movements have likewise expanded across the Latin America and the Caribbean region. A special focus has also been on impacts on the poor from climate change, driven by concerns over the disproportionate vulnerabilities faced by those who make a livelihood in agriculture, fisheries and tourism sectors. Estimates suggest that low-lying Caribbean countries could spend as much as 20 per cent of their GDP on coping with climate change, with impacts potentially transforming entire communities in some countries.<sup>50</sup>

Converging with trends of resource-based development is the unique social backdrop of the region. Many countries in the region host a large proportion of indigenous populations, with issues of natural resource use and environmental sustainability often arising as part of broader contextual challenges of social exclusion. In the five countries where the largest national shares of indigenous populations exist (Bolivia, Ecuador, Guatemala, Mexico and Peru), environmental justice movements have arisen alongside scaled-up investments and activity in the extractive sector, aimed at supplying rising demands within the region and globally.

There are 19 countries in Latin America and the Caribbean with constitutional provisions related to environmental protection.<sup>51</sup> Portugal and Spain were among the world's first countries to use constitutional language on the right to a healthy environment, setting these principles in their Constitutions in the 1970s.<sup>52</sup> Their vision also influenced Latin American countries, some of which have likewise emerged as first movers in some ways among developing countries. In the application of environmental justice in Latin America, countries have engaged in a dynamic process in which regional and national courts draw upon each other to support judgments over environmental rights.<sup>53</sup> Part of the region's special context is the role of the Inter-American Court on Human Rights and the Inter-American Commission on Human Rights (IACHR), both of which have issued recommendations and decisions in support of environmental justice.<sup>54</sup>

In the 2007 case of *Saramaka People v. Suriname*, the Court addressed logging and mining concessions on Saramaka territory that were awarded by the Government of Suriname without full and effective consultation. In its ruling for the Saramaka indigenous people, the Court outlined three safeguards to be abided by in order to avoid inflicting future social and environmental injustices on indigenous peoples and their resources: effective consultations, including prior and informed consent (PIC), sharing of benefits from resource development initiatives; and effective use of socio-environmental impact assessments and mitigation measures.<sup>55</sup> More recently, the IACHR 144<sup>th</sup> Session in 2012 included a case on the Human Rights Situation of Persons Affected by the Extractive Industries in the Americas, which touched on the critical nexus between environmental justice and natural resource governance.

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<sup>50</sup> Michael MacLennan and Leisa Perch, *Legal Empowerment of the Poor and Environmental Justice in Latin America and the Caribbean: Issues and Challenges*, Background Paper to the UNDP Workshop on Legal Empowerment of the Poor and Environmental Justice, November 2012, Hofburg Palace, Vienna.

<sup>51</sup> Long, 16.

<sup>52</sup> Boyd, at 214 cited in Long, 17.

<sup>53</sup> Hayward, 203-05.

<sup>54</sup> Boyd, 96-98 cited in Long, 16.

<sup>55</sup> MacLennan and Perch, 23.

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In **Ecuador**, the Constitution was amended in 2008 in order to address the Rights of Nature. Article 1 of the section on Rights of Nature states that “Nature, or Pachamama, where life is reproduced and exists, has the right to exist, persist, maintain and regenerate its vital cycles, functions and evolutionary processes.” This coupled with other provisions provides for the first time a constitutionally-recognized existential right of nature independently of the utilitarian value to humanity. It stands in contrast to the standard human-centered conceptions of justice and rights, and also serves as a political landmark in the ability of the environmental justice movement to introduce indigenous worldviews into the highest normative frameworks of the state.<sup>56</sup> A variety of considerations have made the enforcement of this broad environmental right elusive in the context of growing pressures to expand extractive sector activities,<sup>57</sup> although the Constitutional Court has invoked the provision in upholding a lower court ruling that production of leaded fuel violated federal law and in concluding that degradation of a national park threatened citizens’ rights.<sup>58</sup>

In **Chile**, the Supreme Court affirmed the right to a healthy environment in the case of *Pedro Flores v. Corporación del Cobre, Codelco*, related to challenges of copper mine contamination.<sup>59</sup> The same provision also served as the basis for the court’s ruling in the *Trillium* case, which overturned the government’s approval of a massive international logging contract.<sup>60</sup> Aside from the large and global nature of the contract at issue, the court’s ruling was notable for its decision that environmental rights are actionable even when claimants have not suffered direct injury.<sup>61</sup> In **Mexico**, a 2012 General Law on Climate Change now stands as one among a handful of climate laws in the developing world which addresses climate change from the perspective of the poor. It establishes a comprehensive, cross-sectoral legal framework to coordinate national, state and local initiatives to address climate change, while also setting forth in Article 2, the law’s principal objective “to guarantee the right to a healthy environment.”<sup>62</sup> In the case of *Carlos Roberto Mejía Chacón* in **Costa Rica**, the Supreme Court invoked the rights of future generations, finding that “although man has the right to use the environment for his own development, it has also the obligation to protect it and preserve it so that future generations can use it.”<sup>63</sup> Similarly, courts in Argentina, Chile, Columbia, and Guatemala have also highlighted the importance of future generations in interpreting constitutional environmental provisions.

In **Peru**, recent years have seen a surge of community protests over planned mining investments, largely focused on potential environmental impacts on health and livelihoods including the right to clean water. Major protests in 2011 led to a number of deaths among protestors and cancellation of two mega-projects, the Tia Maria copper project by Southern Copper, the world’s second-biggest copper mining company, and the US\$4.8 billion Conga gold-copper project, Peru’s biggest such investment.<sup>64</sup> By the end of 2011 Peru was forced to enact a State of Emergency owing to the heightened level of social disruption. Peru has drafted a new Law on Prior Consultation for Indigenous Peoples meant to increase citizens’ access to information and participation in decision-making and to an effective remedy.

<sup>56</sup> Kishan Khoday and Leisa Perch (2012), *Green Equity: Environmental Justice for Inclusive Growth*, Policy Research Brief No.19, International Policy Center for Inclusive Growth (IPC-IG), Brasilia, 4.

<sup>57</sup> See also Martin, P. L. (2011). *Global Governance from the Amazon: Leaving oil Underground in Yasuni National Park, Ecuador*. *Global Environmental Politics* 11 (4).

<sup>58</sup> May & Daly, 395 cited in Long, 5.

<sup>59</sup> *Ibid*, 333.

<sup>60</sup> The Trillium Case, Decision No. 2.732-96, Sup. Ct. of Chile (1997); cited in May & Daly, 333.

<sup>61</sup> May & Daly, Or, at 392 (Const. Ch. III, Art. 19(8) (1980) cited in Long, 6.

<sup>62</sup> <http://www.idlo.int/Publications/MexicoClimateChangeLWB.pdf> cited in MacLennan and Perch, 17.

<sup>63</sup> Adriana Fabra and Eva Arnal, *Review of Jurisprudence on Human Rights and the Environment in Latin America*, available at: <http://www2.ohchr.org/english/issues/environment/envIRON/bp6.htm>.

<sup>64</sup> Khoday and Perch, 8.

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As the risks to development from environmental change and resource extraction become clear, a particular priority in the region has been given to the use of indigenous autonomy regimes, legal frameworks specially tailored to recognise the unique history of indigenous peoples, their customary rights of ownership or access to resources, and the existence of customary laws on resource use. Through such regimes indigenous peoples seek not only to secure access to and benefits from natural resources, but also to reshape paradigms of law and development, bridge legal epistemologies and make natural resource governance more socially accountable.

In **Bolivia** a proposed Framework Law of Autonomies and Decentralisation is a far-reaching model that would deepen indigenous autonomy in the public administration of natural resources among other areas. In **Nicaragua** rights to ownership of ancestral lands and resources are enshrined in statutes that establish autonomous regions in coastal areas of the country. Related efforts also took shape to forge indigenous institutions at local levels. Furthermore, the Nicaraguan constitution, via forms of autonomy and self-determination, provides indigenous groups rights to decision-making over the use of natural resources.<sup>65</sup> In **Brazil**, indigenous lands have been recognized in the Constitution since the late 1980s, establishing indigenous peoples as original owners of land in Brazil, which remains a strong source of related rights to natural resources.<sup>66</sup> This is complemented by the *Estatuto do Índio* or Statute of the Indian. The constitution defines indigenous lands as being “used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, in accordance to their habits, customs and traditions.”

Responses across the region align closely with the unique social and cultural context of Latin America and the Caribbean, recognizing that rather than being a thing of the past, indigenous systems for use of natural resources and the environment exist in parallel to and often intersect with modern state systems, with a growing need to find connections between traditional and formal concepts and systems of justice and nature. Meanwhile beyond systems of law and justice, indigenous communities across the region seek not only to prevent social and environmental risks, but also to reshape basic paradigms of resource-based development and overturn some of the disfunctions of the modernist legal order which have served to perpetuate rather than correct the impacts of growth on society. The commonly shared contexts of indigenous peoples across the region provide important insights into the evolving nature of environmental justice from local and transnational perspectives.

### THE ARAB REGION

The Arab region is the most food import dependent and water scarce region of the world, and many of the region’s obstacles to more inclusive development revolve around the nature of the energy sector.<sup>67</sup> Issues of land use, water sharing, access and benefit-sharing from energy development, and impacts of toxic waste have been community grievances across the region for many years. Control over natural resources and the environment has been central to state legitimacy



*Planting olive trees in the Occupied Palestinian Territories.  
Photo: UNDP/ Steve Sabella*

<sup>65</sup> Cunningham, M. K. (2009). *Laman Laka: If I Have It You Have It, If You Have It I Have It*. Poverty in Focus No. 17, 8 in MacLennan and Perch, 23.

<sup>66</sup> MacLennan and Perch, 27.

<sup>67</sup> UNDP (2011) *Arab Development Challenges Report: Towards the Developmental State in the Arab Region*, Cairo.

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and power in the Arab region, shaping the nature of governance and influencing how sovereignty and statecraft function. As the systemic transition across the region proceeds, following the historic series of uprisings in 2011, and as countries craft new social compacts for development, the equitable and sustainable use of natural resources will emerge as a key issue of contention. In a region with the world's lowest levels of per capita arable land and water security, hopes of empowerment and equality are often closely intertwined with the use of scarce and precious natural assets.

The promotion of access to environmental rights and justice dates back many years in the Arab region. Aligning itself to the principles expressed at the Rio Earth Summit, the 1991 Arab League Declaration on Environment and Development recognized the importance of access to information, participation in decision-making and remedy concerning the environment. Issues around the use of natural resources and the environment have also been expressed in a number of constitutions across the region, including in Egypt, Iraq, Oman, Morocco, Qatar, Saudi Arabia, Sudan, Syria and Yemen.<sup>68</sup> While theoretically providing a basis for legal action, most countries have faced challenges in applying the rule of law and social accountability mechanisms to implement constitutional provisions on use of natural resource and the environment.

Civil society has historically faced various barriers to claiming environmental rights and advocating goals of environmental justice. As such there is a lack of significant judicial cases or decisions on environmental rights and justice in the Arab region. While many important challenges of environmental impacts on the poor exist across the region, which could be prevented or mitigated by enhanced legal and judicial measures, countries have for the most part not been successful in translating the principles of environmental justice into action. But as changes to paradigms and mechanisms for governance and accountability emerge across some countries in the region, many in civil society have also been pushing forward the environmental justice agenda within broader agendas for change. A legal empowerment approach could support the role of civil society in pursuing goals of accountability and transformational change for the sake of a more sustainable future for the region.

**Tunisia** was the nation that sparked initial calls for change in the autumn of 2010 with the commencement of the Arab uprisings. After elections and various processes to consolidate its post-revolutionary gains, Tunisia has been engaged in a national debate over the basic constitutional regime. An intensive process of legislative drafting for the new constitution could set an important landmark in the region for issues of environmental rights and justice. By engaging with civil society and NGOs such as the Network for Nature and Development in Tunisia and the Eco-Constitution Group, the recently adopted Constitution of 2014 contains several critical articles that promote environmental justice.

Article 44 on Water states that "the right to water shall be guaranteed. Conservation and the rationale use of water is a duty of the State and society" while Article 45 states that "the state guarantees the right to a healthy and balanced environment and the right to participate in the protection of the climate. The state shall provide the necessary means to eradicate pollution of the environment." Section Six establishes a new Commission for Sustainable Development and for the Rights of Future Generations and contains Article 129 which states that "the Commission for Sustainable Development and For the Rights of Future Generations shall be consulted on draft laws related to economic, social and environmental issues, as well as development plans. The Commission may give its opinion on questions related to areas of responsibility. The Commission shall be composed of members with competence and integrity, who will undertake their missions for a single six-year term." Tunisia now sets a new baseline in the region for ways to address issues of environmental rights and justice,

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<sup>68</sup> Boyd, at 53-57 cited in Long 17.

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incorporating the principle of protection for future generations, the right to a stable climate change, as well as establishing a constitutionally established institution charged to promote effective implementation of the environmental rights.

In **Egypt**, the Constitution had provisions related to equitable and sustainable use of natural resources and the environment, until its suspension during the post-revolution transition period since 2011 after which a number of transitional constitutional frameworks have arisen in its place. Before its suspension, Article 18 of the Constitution stated that “natural resources of the State belong to the people, who have a right to their revenues. The State is committed to preserving such resources for future generations and putting them to good use.” Article 69 further stated that “all individuals have the right to a healthy environment. The State shall safeguard the environment against pollution, and promote the use of natural resources in a manner that prevents damage to the environment and preserves the rights of future generations.” But even when these provisions were the law of the land, few progressive lawsuits or court decisions emerged on these matters, and the judiciary had a limited role as a check against executive and private power, as was the case elsewhere across the region.

The context in Egypt shifted dramatically in 2011 with start of a far-reaching systemic transformation, resulting from mass social protests across the country and with consequences that are still unclear three years on. In addition to the core social movements taking place at the time across the country with calls for ‘bread, freedom, social justice, and human dignity’, protests over environmental issues also emerged. In the port city of Damietta for example, an economic hub in Egypt’s Nile Delta, communities took to the streets in the autumn of 2011 confronting local government and the private sector over toxic impacts from a fertilizer plant on health and fisheries-based livelihoods, and plans for expansion in 2012.

When expansion plans moved forward in November 2011, communities took the streets, with the winds of transformational change across Egypt at their back. Clashes erupted with security forces, and the Government ordered the temporary closure of the plant. A public committee was then established to investigate the alleged toxic impacts of the plant, finding a lack of any serious risks from the facility for local residents or their environment. A court case was further brought by the citizens of Damietta to have the facility’s closure maintained and, after several months of deliberation, the court issued a decision finding that no significant risks existed from plant operations and recommending that operations resume.

One of Egypt’s more intense social protests in 2011, the incident in Damietta led to the death of protestors, but it also brought the issue of environmental justice to the fore in terms of the need to engage long-standing local concerns of the public over greater access to information, participation in decision-making and remedy concerning the environment. While overarching political and economic changes remain at the core of Egypt’s transition process, local concerns over resource security and environmental change are likely to increase in attention in coming years given their linkage to basic issues of livelihoods for the poor. Other recent examples of environmental justice movements include advocacy by the Egyptian Initiative for Personal Rights on the risks to rural poor farmers from new natural gas ‘fracking’ plans in the country’s Western desert, aimed at bolstering energy security in a time of rising fragility of traditional sources of local energy supply in the Sinai and rapidly rising regional demands for natural gas.

Last but not least, the **Occupied Palestinian Territories (oPt)** poses a unique and particular challenging context for issues of environmental justice. Serious concerns about access by the poor to sustainable forms of energy and water, as well as the disproportionate impacts of pollution on the poor have been raised in recent years.

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Continuing barriers to addressing these concerns have hampered efforts to raise quality of life, especially in Gaza, and the ability to achieve and sustain basic development goals.

Poor and vulnerable communities in the oPt have suffered historically from lack of access to energy, a major barrier to establishing a functioning economy and achieving basic development goals. While lacking sub-surface reserves of oil or gas, potentials exist for expansion of solar power in the oPt to create a future of energy independence and autonomy. Alongside important initiatives currently underway by the UN, NGOs and community groups, various institutional barriers have existed to scaling-up such solutions for the benefit of the poor, which need to be overcome.

Meanwhile large offshore energy reserves raise the potential for overcoming legal and institutional barriers to resource use and improving development outcomes in oPt. This includes the large 'Marine Gas' reserve identified off the coast of Gaza in recent years, alongside several other notable reserves off the coasts of Israel and Lebanon. The reserves off the coast of Gaza would be sufficient to transform the oPt economy both in terms of securing a sustainable source of energy for the local economy for decades to come, but also in generating significant level of energy export revenues to fuel development goals. While the off-shore reserve could well be within Economic Exclusive Zone (EEZ) range or as continental shelf range guided by the United Nations Convention on the Law of the Sea, the oPt has faced barriers in accessing this area for development given its status as an occupied territory lacking full rights and entitlements derived from sovereign statehood. As the process continues to unfold towards greater autonomy and statehood, issues of sovereignty over natural resources, a basic principle of international law, and related legal measures needed to make full use of energy and other natural assets, will be central features of empowering the poor in the oPt.<sup>69</sup>

Waste and pollution problems have also had a serious impact on Palestinians in the Occupied Territories, including siting of waste dumps and flows of transboundary air and water pollution. Processing of electronic and other solid waste in oPt suffers from risks owing to lack of safety and protections. As in other countries, legal measures are currently inadequate to effectively regulate the transport and management of toxic waste in a manner which protects the poor and vulnerable from long-lasting health impacts, which in turn hold back their ability to achieve improved development indicators and can lead to harmful inter-generational impacts.

Perhaps the most crucial environmental justice issues facing Palestinians is the lack of equitable access to water. Palestinians have access to only 320 cubic meters per person per year, one of the highest levels of water scarcity in the world, owing to both physical scarcity as well as more contextual factors, including asymmetry of power between Israel and the oPt which share a common aquifer.<sup>70</sup> Palestinians lack access rights to the Jordan River, leaving them fully dependent on limited and dwindling groundwater resources. Specifically in Gaza, most water from the Coastal Aquifer, Gaza's only source of fresh water, is seen as too polluted for consumption due to overuse and contamination. It could even be unusable in the not too distant future unless urgent measures are taken. Achieving environmental justice with regards water can benefit from lessons from other regions on institutional decentralization, integrated water resources management and stakeholder participation, while adapting such approaches to the specific political and legal context for water governance in the oPt.<sup>71</sup>

<sup>69</sup> See General Assembly Resolution 1803 (XVII) on *Permanent Sovereignty over Natural Resources*, UN Doc A/5217 (1962). See also Chimni, B.S. (1998) *The Principle of Permanent Sovereignty Over Natural Resources: Toward a Radical Interpretation*, 38 Indian J. Int'l L. 208; Nico Shrijver (1997), *Sovereignty over Natural Resources: Balancing Rights and Duties*, Cambridge University Press; and Abi-Saab, G. (1991) *Permanent Sovereignty over Natural Resources and Economic Activities*, in *International Law: Achievements and Prospects*, Mohamed Bedjaoui (eds).

<sup>70</sup> UNDP (2006) *Human Development Report – Beyond Scarcity: Power, Poverty and the Global Water Crisis*, Pallgrave MacMillan, New York, 216. See also UNDP (2009) *Palestinian Human Development Report – Investing in Human Security for a Future State*, New York, 89-99.

<sup>71</sup> UNDP (2013), *Water Governance in the Arab Region: Managing Scarcity and Security*, New York, 60-61.

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Across the Arab region, the social compact for decades has been defined by a balance between state controls over natural assets on the one hand and the provision of social welfare benefits on the other.<sup>72</sup> However, as countries and communities proceed in a new era of governance reforms and relations between state and civil society, an opportunity exists to craft a new paradigm of development, with leaders increasingly recognizing that sustainable human development is about more than charity and social welfare policies, it is fundamentally about justice and social accountability.<sup>73</sup> Higher expectations have emerged for more transparent, accountable and participatory use of natural resources and the environment as a public good, combating corruption, preventing the squandering of natural wealth, and preserving natural capital for future generations. With resource security rising as a top threat to human security, the success of a transition to more just forms of resource use will in many ways define the future of development for the Arab region.

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<sup>72</sup> Kishan Khoday (2011), *Sustainable Development as Freedom: Energy, Environment and the Arab Transformation*, Poverty in Focus No.23, UNDP, New York.

<sup>73</sup> Anand and Sen (1994), *Sustainable Human Development*, UNDP, New York.

## CONCLUSIONS AND THE WAY FORWARD

The Rio+20 outcome document entitled *The Future We Want* underscored the importance of an “institutional framework for sustainable development which responds coherently and effectively to current and future challenges and efficiently bridges the gap in the implementation of the sustainable development agenda” and recognizes that “effective governance at local, sub-national, national and global levels representing the voices and interests of all is critical for advancing sustainable development.” It further emphasizes “that broad public participation and access to information and judicial and administrative proceedings are essential” and that “[s]ustainable development requires the meaningful involvement and active participation of regional, national and subnational legislatures and judiciaries, and all major groups: women, children and youth, indigenous peoples, non-governmental organizations, local authorities, workers and trade unions, business and industry, the scientific and technological community, and farmers, as well as other stakeholders, including local communities, volunteer groups and foundations, migrants and families as well as older persons and persons with disabilities.”<sup>74</sup>

While the science of resource insecurity and environmental change has well elaborated the ‘why’ and ‘what’ of many sustainable development challenges for the poor, there has been less analysis of governance challenges with regards the ‘how’ - including legal and judicial institutions and regulatory frameworks that address the environmental plight of the poor. In addressing implementation gaps, discussions around Rio+20 and the SDGs in the post-2015 process place particular emphasis on the role of governance, the rule of law and integrated policy responses.

There are many calls to strengthen the focus of development policy and practice on the role of rights and justice in achieving and sustaining development results. In recent years the world has seen the rise of civil society as a transformative global force, now a critical agent of change on the path to a more inclusive and sustainable future. Around the world a major barrier to achieving sustainable development goals is that existing governance systems and mechanisms are not sufficient to address the complex multi-disciplinary challenges of sustainable development across economic, social and environmental domains. Without a paradigm shift in how natural resources and the environment are valued and governed, inequality will deepen and the achievement of post-2015 development framework will be threatened, if not the progress to date reversed.

Environmental justice has arisen as a core element in this agenda for change. Governments and civil society movements around the world are now crafting new development policies, laws and institutions that can help mitigate or prevent the disproportionate impacts from growth on the poor while catalyzing the positive benefits that can arise from sustainable resource use. Environmental justice is being used by communities and Governments as a means of addressing the distributional impacts of toxicity on the poor and vulnerable, as well as social dimensions of the challenge that have led to divergent development results between rich and poor, between and within countries.

It is important to better understand the contextual, political-economy factors that Governments and communities face in responding to the call for more sustainable and equitable development. There is increasing recognition by countries across the South that enhanced legal institutions and processes play a key role in managing trade-offs and catalyzing triple-wins across economic, social and environmental priorities. Another key lesson is that the success of such measures hinges on the ability to adapt governance responses to a diversity of social, normative and ecological contexts. Understanding the evolving synthesis between global and local norms and systems will be critical to understanding the future of environmental justice principles.

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<sup>74</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/66/288&Lang=E](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E), Paragraphs 43 and 44. Last accessed on June 03, 2014.

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Key conclusions, and potential areas for further policy and capacity development programming, are encapsulated in the below table.

<p><b>Environmental justice as a rights-based and gendered framework for development</b></p>	<p>As countries chart new pathways to sustainable development, a priority has emerged for development of rights-based frameworks to achieve goals of environmental sustainability and equity for the poor in the use of natural resources and the environment. Environmental justice has arisen as an important framework for achieving this goal, with women’s community groups, environmental justice leaders and civil society movements catalyzing adaptations to legal systems and institutions. Opportunities are arising to further empower women, national leaders and civil society as a transformative force for sustainable development goals. This includes a need for capacity development, and building global networks of dialogue, expertise and knowledge sharing.</p>
<p><b>Innovations to national legal and justice systems are emerging around the world</b></p>	<p>The world’s constitutions now engage the right to healthy environment or broader principles on the need for equitable use of natural resources and the environment, including the rights of future generations. The right to development is increasingly seen in need of balance within planetary boundaries. Relatedly, the emergence of specialized courts and tribunals, increased use of class action law suits and public interest litigation are expanding access to justice for the poor in environmental matters. Still at an embryonic stage, further analysis is needed on the challenges and successes that will emerge in these systems, with capacity development assistance needed to support effective implementation of rights-based systems, new constitutional regimes and legal and judicial reform efforts aimed at increasing access to environmental justice for the poor and sustainable governance of the environment.</p>
<p><b>Incorporate legal and social accountability mechanisms in government systems to empower the voice of the poor</b></p>	<p>To empower the poor and engage the voice of socially excluded segments of society in decision-making over use of natural resources and the environment, legal regimes need to incorporate social accountability mechanisms. In particular, enhanced check and balance mechanisms between government, the private sector and civil society, are needed to rebalance often asymmetrical power relations. These should include expanding systems for access to information and participation in decision making process, and enhancing legislative oversight mechanisms. A particularly important focus is for scaling up and capacity development in the area of community and civil society organization and watchdog functions, as well as financial support for community paralegal services that help protect the poor from toxic impacts and enhance access to and benefit sharing from natural resource use.</p>
<p><b>Enhance institutional and contextual analysis with an environmental justice perspective</b></p>	<p>Overcoming barriers to environmental justice goals also hinge on our ability to understand the various contextual political-economy factors that drive conditions of social exclusion, resource insecurity and environmental change. For poor and vulnerable communities, the benefit of a legal empowerment approach goes well beyond reform of individual laws and regulations, aspiring rather to change development thinking and policy, and shift from a political-economy of exclusion and ecological decline to a system conducive to their full participation in decision-making over natural resources and the environment. Institutional and contextual analysis can map the political-economy barriers to and opportunities for change.</p>

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<b>Special attention is needed towards indigenous and tribal communities, and community norms and justice systems</b>	A special focus is required on indigenous and tribal communities, as they remain the most excluded communities globally while often hosting critical natural assets involved in resource-based growth. While pushing their agenda for change and turning to rule of law and rights-based approaches for greater participation in decision-making, indigenous and tribal peoples also confront the fact that in many ways systems of law have been complicit in the very problems they seek to redress. Expanded use of indigenous autonomy regimes recognises that indigenous communities are agents of change with value in finding hybridity among formal and informal systems of law and justice. Working towards synergies among global, national and local norms and the diversity of indigenous and tribal systems and worldviews on nature and justice will be critical for environmental justice.
<b>Integration of rights-based environmental justice approaches in the work of the private sector</b>	With the rapidly growing role of the private sector in resource governance, a need exists to integrate rights-based environmental justice approaches and principles into investment decision-making processes and industrial ventures to mitigate social and environmental risks to communities. This includes addressing issues of equity and sustainability within resource development contracts between governments and the private sector, corporate transparency and access to information by the public, and effective means of compensation for damage to ecosystem services.
<b>Build on knowledge sharing and south-south cooperation platforms to advance environmental justice</b>	An opportunity exists for new South-South knowledge sharing platforms to engage emerging innovations on ways to develop integrated legal and institutional responses for environmental justice. This can build on positive and negative experiences and lessons from developing countries, and support scaling-up of environmental justice solutions.

A transformational shift to sustainable development will not generate economic, social and environmental triple wins unless it is underpinned by the necessary constituency in civil society, effective governance institutions and the political will to bring about change. Putting in place institutions that address environmental justice concerns of the poor is no easy feat, but countries can build on and scale-up good practices and lessons learned that are beginning to emerge. This comparative analysis supports this process, exploring challenges and innovations around the world in moving to more environmentally-just forms of development. An opportunity exists for sharing such innovations among countries, as environmental justice leaders from across the South become agents of change both locally and globally. This transnational constituency for change can be the source of new principles and approaches to environmental justice. The future we want is not just greener; it is also more equitable, fair and just.

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## FURTHER READINGS

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**Cover Photo:**

*A woman rows home from the market, Kuin River, South Kalimantan, Indonesia. Photo: Agus Susanto (AGC) UNDP Picture This Photo Contest.*

**Contact Information:**

Kishan Khoday, Arab States ([kishan.khoday@undp.org](mailto:kishan.khoday@undp.org)) & Shelley Inglis, Global ([Shelley.inglis@undp.org](mailto:Shelley.inglis@undp.org))

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United Nations Development Programme  
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