

HUMAN RIGHTS & ENVIRONMENT IN THE RIO+20 UN CONFERENCE ON SUSTAINABLE DEVELOPMENT

As the Rio+20 UN Conference on Sustainable Development in June 2012 nears, the international community is once more faced with the challenge of integrating a complex array of environmental, social and economic issues within the umbrella of sustainable development. Addressing the challenge of integration in Rio+20 cannot ignore the efforts at integration of human rights and environment in the context of sustainable development, as those linkages have become increasingly established in international law. Similarly, effective implementation of the Rio+20 Conference depends on a rights-based approach to sustainable development.

The objective of the Rio+20 Conference is to secure renewed political commitment for sustainable development, assess the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development, and address new and emerging challenges. Rio+20 focuses on two main themes: (a) green economy in the context of sustainable development and poverty eradication, and (b) the institutional framework for sustainable development.

Rio+20's green economy theme focuses primarily on the intersection between environment and economy. This intersection was explored in depth in the 1992 Earth Summit in Brazil, and led to the recognition of sustainable development as the key concept capable of integrating environment and development. In his Grotius Lecture in 2009, Achim Steiner, Executive Director of the UN Environment Program, elaborated on the term "green economy" to describe an "economic system that recognizes the properties of healthy ecosystems as the backbone of economic and social well being and as a precondition for poverty reduction."

Rio+20's institutional framework theme focuses on the institutional and governance arrangements necessary for sustainable development. In the aftermath of the 1992 Earth Summit, the UN General Assembly established the Commission on Sustainable Development to ensure effective follow-up of the Earth Summit. Also, the Rio Declaration on Environment and Development that emerged from the Earth Summit identified access to information, public participation and access to justice as central elements of environmental governance (Principle 10).

The objectives and both themes of Rio+20 directly concern human rights and environment issues. The theme of green economy, as Steiner has put it, involves elaborating on the "growing recognition of a fundamental link between ecosystem services and human rights." The theme of institutional framework for sustainable development presents the opportunity to clarify and expand the linkages between governance and procedural rights such as access to information, transparency, public participation, access to justice, due process and accountability. The two themes of Rio+20 thus provide an opportunity for the international community to reinforce the link between human rights and the environment.



This Issue Brief explores the role of the human rights and environment linkage in strengthening the Rio+20 process and outcome. It begins with an account of historical context. Then it explores the basic linkages between governance, human rights and the environment. It also offers an initial evaluation of the Zero Draft of the outcome document for Rio+20.

i. Background: Looking Back at Stockholm 1972, Rio 1992, and Johannesburg 2002

A retrospective of the three landmark UN conferences addressing environmental issues is useful to gauge the extent of progress in integrating human rights and environment in the context of sustainable development.

The 1972 Stockholm Declaration on the Human Environment was the first international instrument to establish an explicit link between human rights and environmental protection. Principle 1 of the Stockholm Declaration proclaimed that, “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”

The Stockholm Declaration provided a strong impetus for environmental protection by the international community. Since its adoption, more than one hundred states have made explicit references to environmental rights and responsibilities in their national constitutions. In the international sphere, UN human rights treaty bodies and regional human rights mechanisms have clarified the normative content and state responsibilities concerning environmental degradation and human rights.

In 1992, the Earth Summit broadened its focus from the human environment in order to elaborate on the need for integration between environment and development. The Rio Declaration proclaims in Principle 1 that, “Human beings are at the centre of concerns for sustainable development”, and that, “They are entitled to a healthy and productive life in harmony with nature.” While this principle uses the language of entitlement, it falls short of proclaiming a right to environment. Other principles in the Rio Declaration elaborate on procedural rights central to environmental decision-making, such as: Principle 10 regarding access to information, public participation and access to justice; Principle 11 regarding effective environmental legislation; and Principle 17 regarding environmental impact assessments.

The 2002 World Sustainable Development Summit (WSSD) in Johannesburg examined progress toward sustainable development and set out new commitments in the Johannesburg Declaration and the Johannesburg Plan of Implementation. WSSD called for the full implementation of Agenda 21 on a range of issues that tread closely with human rights and the environment, including: poverty eradication, health, education, and institutional arrangements. Like the Earth Summit in 1992, WSSD also stopped short of an explicit recognition of the right to environment.

Looking back at the three UN landmark conferences, the focus on environmental protection appears to have been diluted over time. This change in focus is not only evidenced by the changes in the names of



the conferences, but also by the issues discussed as well as the content of the outcome documents. Whereas Stockholm brought to light transboundary and global environmental issues, Rio and Johannesburg incorporated a development dimension that required analysis not only of environmental issues but also of economic and social issues.

While integration of these issues is key to effective environment and development outcomes, this change in focus has, to a large extent, over-burdened the agenda resulting from the last two summits, posing significant strains on the ability of international institutions and other governance arrangements to effectively address the broad array of issues involved in the umbrella concept of sustainable development. At the same time, the international agenda that emerged in relation to sustainable development appears to have prioritized the economic aspects over the social and environmental dimensions. In this regard, there is a real risk that Rio+20's green economy theme could eclipse the other dimensions of sustainable development, as well as the need for reforms in institutional governance.

This outcome where green economy subsumes all other issues can be avoided, however, by strengthening Rio+20's recognition of the linkage between human rights and the environment in the context of sustainable development. In this sense, the cross-cutting character of the linkages between human rights and environment can help bridge and integrate the linkages that exist between green economy and institutional framework.

ii. Rio+20: Linking Governance, Human Rights and the Environment

In Resolution 16/11 (2011), the UN Human Rights Council requested the Office of the High Commissioner for Human Rights to conduct a comprehensive study on human rights and environment. The study examined the practice of states and UN organs as well as normative and jurisprudential developments. It concluded that the linkage between human rights and environment was well established and had received significant attention since the 1972 Stockholm Declaration.

While the procedural and substantive dimensions of the human rights and environment linkage are strong and still evolving, the institutional dimensions to carry the linkage forward appear to be lagging behind. The UN Human Rights Council is currently debating ways in which to operationalize the human rights and environmental linkage, such as through the creation of a Special Procedure. At the same time, Rio+20 faces the challenge of recognizing a rights-based approach to sustainable development. In this connection, the linkages between governance, human rights and the environment are particularly relevant to discussions on the institutional framework for sustainable development.

Effective environmental governance systems rest upon core precepts that have been elaborated by the procedural dimension of the human rights and environment linkage. To recall, the linkage's emphasis on the quality of the decision-making process directly ties with environmental democracy, as it empowers civil society to participate in decisions that affect public interests concerning the environment. Central to this procedural approach are issues of access to information, public participation and access to justice. The Aarhus Convention and the case-law of its Compliance

Committee provide a well-known example of how these issues can be implemented in the discharge of public duties. Further, the human rights and environmental linkage emphasizes the need for effective compliance with environmental laws as well as the need for effective mechanisms that hold public authorities accountable for their decisions. The jurisprudence of the regional human rights courts and mechanisms, *e.g.*, *Ogoni* and *Endorois* in Africa; *Awasi Tingni* and *Saramaka* in the Americas; and *Oneryildiz* and *Tatar* in Europe, offer in this regard a robust body of precedents.

The linkages between governance, human rights and the environment are thus well established. The question facing Rio+20 is how to incorporate these linkages into its discussion on the Conference's themes, particularly in relation to the institutional framework for sustainable development. For one, these linkages emphasize the need for transparency and accountability in the institutional designs for sustainable development.

iii. Rio+20's Zero Draft

So far, the Rio+20 process has not adequately taken into account developments in the integration of human rights and environment. For example, the January 2012 Zero Draft of the outcome document entitled "The Future We Want" does not recognize the fundamental right to a healthy environment or adequately operationalize the human rights and environment linkage. The Zero Draft includes scant references to the terms "rights" and "human rights", including with respect to: the right to access information, the right to water and sanitation, and the right to food; the UN Declaration on the Rights of Indigenous Peoples; and principles of democracy and accountability.

These references provide a basis upon which the Zero Draft can be improved to reflect a rights-based approach to sustainable development that is inspired by, and reflects the substantive content of, the human rights and environment linkage.

More specifically, the following elements should be incorporated into the Rio+20 outcome document:

1. *Explicit recognition of the right to a healthy environment:* As environmental awareness grows, owing to increased scientific evidence and ethical thinking, there is increasing recognition that life of dignity on the planet is only possible in a healthy environment. An explicit recognition of the right to a healthy environment is thus central to re-adjusting the frames of analysis and the ethical vision of the international community in respect of sustainable development. Rio+20 should thus explicitly recognize that every person has the right to a healthy and sustaining environment, that is an environment capable of supporting human society and the enjoyment of human rights. Rio+20 should also recognize that every state has a duty to ensure that present and future generations can enjoy the right to a healthy and sustaining environment.

2. *Implementation of the right to a healthy environment should form part of the mandate of the Ombudsman for Future Generations and of a new environmental organization if one is created:* A rights-based institutional approach would provide the necessary guidance and direction for a new and effective environmental organization, if one is created. Further, institutional safeguards and



accountability mechanisms are central to enhancing sustainable development outcomes. Similarly, the work of the Ombudsman for Future Generations would increase in effectiveness and significance if explicitly guided by the right to a healthy environment.

3. A global treaty, or regional conventions, could elaborate specific obligations regarding Principle 10 of the Rio Declaration: Experience and research have demonstrated that freedom of expression, access rights (including access to information, public participation, and access to justice), transparency and civic engagement are fundamental to sustainable development and the achievement of the Rio Principles. The Aarhus Convention provides a starting point for negotiations, being the foremost environmental agreement regarding so called “access rights” with respect to environmental governance. The Convention ensures that each individual has access to information, public participation, and access to justice on all matters that affect their environmental rights.

iv. Conclusion

The human rights and environment linkage is critical to the success of the Rio+20 UN Conference on Sustainable Development. The Zero Draft of the Outcome Document, however, is largely silent on this key dimension of sustainable development. The option of silence equals defeat; either there is progress or there is a lost opportunity. In order for Rio+20 to be successful in its goals, it must explicitly recognize the right to a healthy environment and call for the establishment of effective governance and institutional frameworks to implement it.

**FOR FURTHER DISCUSSION ON THE TOPICS ADDRESSED HEREIN,
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