



UiO • Department of Public and International Law
University of Oslo

Human rights and International Environmental Law
JUS 5520

dina.townsend@jus.uio.no



"Yes, the planet got destroyed. But for a beautiful moment in time we created a lot of value for shareholders."



Key human rights texts

- UN Charter 1945 – UN purpose: to promote and encourage respect for human rights and fundamental freedoms without discrimination
- Universal Declaration of Human Rights (UDHR) 1948
- International Covenant on Economic, Social and Cultural Rights 1966
- International Covenant on Civil and Political Rights 1966
- Regional human rights treaties: European Convention (1950), American Convention on Human Rights (1969), African Charter (1981)
- Also a number of sub-regional texts and subject specific human rights texts

What is the nexus between IEL and the protection of human rights?



Stockholm Declaration (1972):

Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.

Principle 1 - 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.

Hague Declaration (1989):

Duty to preserve the ecosystem is tied to 'the right to live in dignity in a viable global environment, and the consequent duty of the community of nations *vis-à-vis* present and future generations to do all that can be done to preserve the quality of the environment'.

Rio Declaration

Principle 1

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

Principle 3

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.



Rio +20 – riddled with rights talk

8. We also reaffirm the importance of freedom, peace and security, **respect for all human rights, including the right to development and the right to an adequate standard of living, including the right to food, the rule of law, gender equality, women's empowerment and the overall commitment to just and democratic societies for development.**

Rio+20 – rights of women, indigenous groups, rights to health, food, sexual and reproductive rights, intellectual property, rights of migrants

What about human rights texts?

- No mention of the environment in UNDHR, the Covenants (ICCPR & ICESCR), ECHR

BUT

African Charter on Human and People's Rights

'all peoples shall have the right to a generally satisfactory environment favourable to their development' - Art 24

San Salvador Protocol to the American Convention on Human Rights

'Everyone shall have the right to live in a healthy environment and to have access to basic public services. The state parties shall promote the protection, preservation and improvement of the environment.' - Art 11 (distinction between right and state obligations)

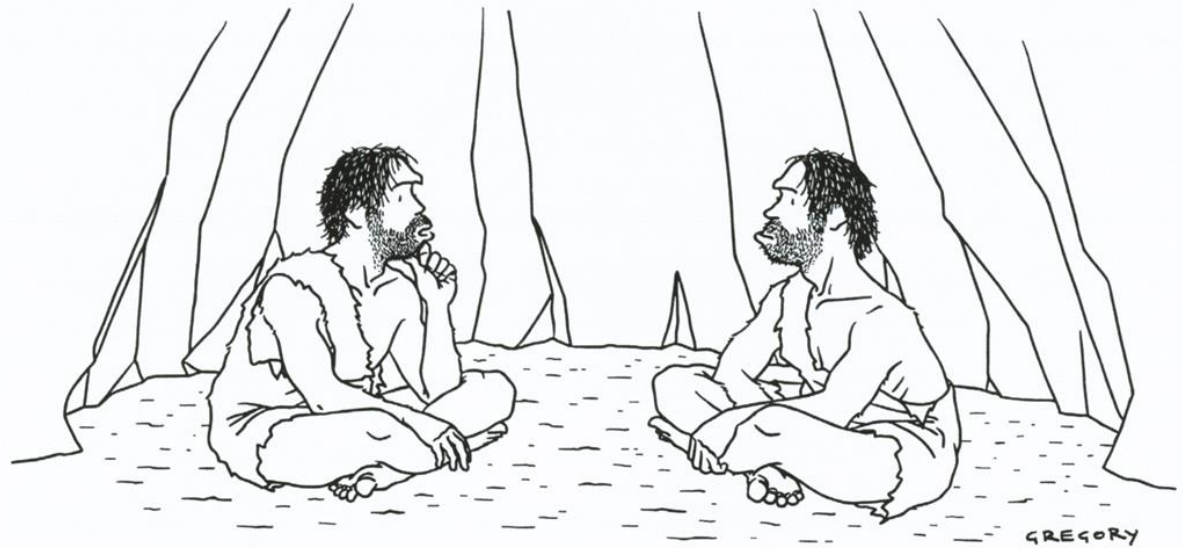
Other treaties? Convention on Indigenous and Tribal Peoples

Afghanistan 2004	Central African Republic 2013	Germany 1949 (rev. 2012)	Lithuania 1992 (rev. 2006)	Paraguay 1992 (rev. 2011)	Sweden 1974 (rev. 2012)
Albania 1998 (rev. 2012)	Chad 1996 (rev. 2005)	Ghana 1992 (rev. 1996)	Luxembourg 1868 (rev. 2009)	Peru 1993 (rev. 2009)	Switzerland 1999 (rev. 2014)
Algeria 2016	Chile 1980 (rev. 2015)	Greece 1975 (rev. 2008)	Macedonia (The former Yugoslav Republic of) 1991 (rev. 2011)	Philippines 1987	Syrian Arab Republic 2012
Andorra 1993	China 1982 (rev. 2004)	Guatemala 1985 (rev. 1993)	Madagascar 2010	Poland 1997 (rev. 2009)	Taiwan 1947 (rev. 2005)
Angola 2010	Colombia 1991 (rev. 2013)	Guinea 2010	Malawi 1994 (rev. 1999)	Portugal 1976 (rev. 2005)	Tajikistan 1994 (rev. 2003)
Antigua and Barbuda 1981	Comoros 2001 (rev. 2009)	Guyana 1980 (rev. 2009)	Maldives 2008	Qatar 2003	Timor-Leste 2002
Argentina 1853 (reinst. 1983, rev. 1994)	Congo (Democratic Republic of the) 2005 (rev. 2011)	Haiti 1987 (rev. 2012)	Mali 1992	Romania 1991 (rev. 2003)	Togo 1992 (rev. 2007)
Armenia 1995 (rev. 2005)	Congo 2001	Honduras 1982 (rev. 2013)	Mauritania 1991 (rev. 2012)	Russian Federation 1993 (rev. 2014)	Tunisia 2014
Austria 1920 (reinst. 1945, rev. 2013)	Costa Rica 1949 (rev. 2011)	Hungary 2011 (rev. 2013)	Mexico 1917 (rev. 2015)	Rwanda 2003 (rev. 2015)	Turkey 1982 (rev. 2011)
Azerbaijan 1995 (rev. 2009)	Côte d'Ivoire 2000	India 1949 (rev. 2015)	Moldova (Republic of) 1994 (rev. 2006)	Saint Lucia 1978	Turkmenistan 2008
Bahrain 2002 (rev. 2012)	Croatia 1991 (rev. 2010)	Indonesia 1945 (reinst. 1959, rev. 2002)	Mongolia 1992 (rev. 2001)	Sao Tome and Principe 1975 (rev. 1990)	Tuvalu 1986
Bangladesh 1972 (reinst. 1986, rev. 2014)	Cuba 1976 (rev. 2002)	Iran (Islamic Republic of) 1979 (rev. 1989)	Montenegro 2007	Saudi Arabia 1992 (rev. 2013)	Uganda 1995 (rev. 2005)
Barbados 1966 (rev. 2007)	Czech Republic 1993 (rev. 2013)	Iraq 2005	Morocco 2011	Senegal 2001 (rev. 2009)	Ukraine 1996 (rev. 2014)
Belarus 1994 (rev. 2004)	Dominican Republic 2015	Italy 1947 (rev. 2012)	Mozambique 2004 (rev. 2007)	Serbia 2006	United Arab Emirates 1971 (rev. 2009)
Belgium 1831 (rev. 2014)	Ecuador 2008 (rev. 2015)	Jamaica 1962 (rev. 2011)	Myanmar 2008	Seychelles 1993 (rev. 2011)	United Kingdom 1215 (rev. 2013)
Belize 1981 (rev. 2011)	Egypt 2014	Kazakhstan 1995 (rev. 2011)	Namibia 1990 (rev. 2010)	Sierra Leone 1991 (reinst. 1996, rev. 2008)	United Republic of Tanzania 1977 (rev. 1995)
Benin 1990	El Salvador 1983 (rev. 2014)	Kenya 2010	Nepal 2015	Slovakia 1992 (rev. 2014)	Uruguay 1966 (reinst. 1985, rev. 2004)
Bhutan 2008	Equatorial Guinea 1991 (rev. 2012)	Kiribati 1979 (rev. 1995)	Netherlands 1815 (rev. 2008)	Slovenia 1991 (rev. 2013)	Uzbekistan 1992 (rev. 2011)
Bolivia (Plurinational State of) 2009	Eritrea 1997	Korea (Democratic People's Republic of) 1972 (rev. 1998)	Nicaragua 1987 (rev. 2014)	Somalia 2012	Vanuatu 1980 (rev. 1983)
Brazil 1988 (rev. 2015)	Estonia 1992 (rev. 2011)	Korea (Republic of) 1948 (rev. 1987)	Niger 2010	South Africa 1996 (rev. 2012)	Venezuela (Bolivarian Republic of) 1999 (rev. 2009)
Bulgaria 1991 (rev. 2007)	Ethiopia 1994	Kosovo 2008	Nigeria 1999	South Sudan 2011 (rev. 2013)	Viet Nam 1992 (rev. 2013)
Burkina Faso 1991 (rev. 2012)	Fiji 2013	Kyrgyzstan 2010	Norway 1814 (rev. 2015)	Spain 1978 (rev. 2011)	Zambia 1991 (rev. 2009)
Burundi 2005	Finland 1999 (rev. 2011)	Lao People's Democratic Republic 1991 (rev. 2003)	Oman 1996 (rev. 2011)	Sri Lanka 1978 (rev. 2015)	Zimbabwe 2013
Cambodia 1993 (rev. 2008)	France 1958 (rev. 2008)	Latvia 1922 (reinst. 1991, rev. 2014)	Palau 1981 (rev. 1992)	Sudan 2005	
Cameroon 1972 (rev. 2008)	Gabon 1991 (rev. 1997)	Lesotho 1993 (rev. 1998)	Panama 1972 (rev. 2004)	Suriname 1987 (rev. 1992)	
	Gambia 1996 (rev. 2004)		Papua New Guinea 1975 (rev. 2014)	Swaziland 2005	

Huge uptake of environmental rights provisions in domestic constitutions

UNEP identifies 3 main dimensions of the interrelationship between human rights and environment:

1. The environment as a pre-requisite for the enjoyment of human rights (human rights obligations of States include the duty to ensure the level of environmental protection necessary to allow the full exercise of protected rights)
2. Certain human rights, especially access to information, participation in decision-making, and access to justice in environmental matters, as essential to good environmental decision-making (human rights must be implemented in order to ensure environmental protection)
3. The right to a safe, healthy and ecologically-balanced environment is a human right in itself.



“Something’s just not right—our air is clean, our water is pure, we all get plenty of exercise, everything we eat is organic and free-range, and yet nobody lives past thirty.”

The environment as a pre-requisite for the enjoyment of human rights

What rights depend on the environment?

- Right to life (eg Art 2 ECHR, *Oneryildiz v Turkey*, *Yakya Axa*)
- Right to food and water
- Right to housing
- Basic public services
- Dignity
- Rights to self-determination (ICCPR/ICESCR 1)
- Right to property (UDHR17)
- Right to work (ICESCR 6-9)
- Right to Development (ACHPR 22)
- Right to a Healthy Environment (ACHPR 24)
- Right to freely dispose of wealth and natural resources (ACHPR 21)

? What about a right to sustainability and inter-generational justice?

? What about political rights?

The importance of the environment for the realisation of human rights

- Human Rights depend on certain environmental conditions

Case study:

**IACHR - REQUEST
FOR AN ADVISORY
OPINION BY COLOMBIA**



Request for an advisory opinion by Colombia (IACHR)

49. Nowadays it is widely recognized that the **quality of the environment in which we human beings live and on which we depend constitutes a condition *sine qua non* for the effective enjoyment of the rights and freedoms recognized by international human rights law.** In addition, there is no doubt as regards the **normative relationship between environmental law and human rights**, considering that **the object and purpose of the former is precisely to protect the natural surroundings in which we human beings live and develop**, both individually and collectively. In this context, the mutual need for both environmental law and human rights law has been recognized in order to ensure their full effectiveness.

50. ... Thus the physical life **and a life with dignity** of the **individual**, as well as his physical, mental and moral integrity depend on the habitat from which he derives his sustenance and in which he carries out his cultural, social and economic activities, and develops his life project.

- Paragraph 69: Colombia argues - Norms of international and domestic environmental law give content to the obligations of State parties under human rights law.

? Is the opposite also true? Does HR law inform what state obligations are in respect of the environment?

P780 Sands et al “economic and social rights ... promise to allow human rights bodies to consider whether substantive environmental standards and conditions are being maintained”

- **SERAC v Nigeria 2001 – African Commission of Human Rights** - governments must not threaten the health and environment of their citizens and must refrain from interfering with the enjoyment of “the best attainable state of physical and mental health.”
- **SERAP v Nigeria 2012 – ECOWAS**: violations of rights to health, adequate standards of living and economic and social development.



Gas flare at Utorogu
Picture credit:
Reuters/George Esiri

Right to private and family life

Powell and Rayner v UK –

Heathrow case - court recognised Article 8 as right to private life and home but said state has margin of appreciation to strike balance between competing individual and community interests

Lopez Ostra v Spain –

Ostra lived opposite a waste plant on state land. Court found a violation of Article 8 and balance between her interests and public interests was not struck. The court found the plant caused serious health problems.



Civil and Political Rights

Procedural rights

- P787 Sands – Civil and political rights are equally capable of creating practical and enforceable obligations in relation to environmental matters

Access to information and the right to participate – procedural rights

Rio Declaration Principle 10:

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

Agenda 21 – access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment

“Availability and access to information allows preventative and mitigation measures to be taken...” PIEL chpt 15 p624

Human rights lens: the importance of access to information and rights to participation for individuals and communities affected (and not just state obligations to other states)

Procedural rights

- [1998 Aarhus Convention](#) – p652 PIEL
 - Creates a Europe-wide regime for 1. environmental information access, 2. public participation and 3. access to justice in environmental matters.
 - Participation and environmental information are broadly defined and restrictions limited
 - Relatively tight time limits for responding to requests
 - Right to participate includes rights to submit comments and obligations on parties to take account of PP outcomes
 - Article 5 – public authorities must possess and update environmental information
 - Article 6 – parties must inform the public early in the decision-making process
 - Article 9 – access to courts both on procedural and substantive issues

Access to information is not unlimited – **Fauchald v Norway**

Procedural rights in the courts

CLAUDE-REYES v CHILE 2006 IACHR – Information on the ‘Río Cónдор forestry Project’ was requested and denied by Chile. Court found “The information should be provided *without the need to prove direct interest or personal involvement* in order to obtain it....The delivery of information to an individual can, in turn, permit it to circulate in society, so that the latter can become acquainted with it, have access to it, and assess it. In this way, the right to freedom of thought and expression includes the protection of the right of access to State-held information”

SARAMAKA v SURINAME 2007 IACHR – the Court required the effective participation of the affected people in line with their customs and traditions regarding any development or investment plan within their territory

TĂTAR v. ROMANIA 2009 ECHR – violation of Art 8: The authorities have to ensure public access to the conclusions of investigations and studies. The State has a duty to guarantee the right of members of the public to participate in the decision-making process concerning environmental issues. Failing to do so makes it impossible for members of the public to challenge the results of an assessment.

ÖNERYILDIZ v TURKEY 2004 ECHR – identifies the right to access to information as an essential component of the right to life (para 90)

Environmental Impact Assessments

Environmental Impact Assessments (EIAs) and Strategic Impact Assessments (SEAs), Gabcikovo case, Pulp Mills Case, Principle 17 of Rio (Chapter 14 Sands)

? What do EIAs have to do with rights?

- Rights to access to information

Essential means for obtaining information about impacts

Tătar v. Romania - ECHR emphasised requirement for an EIA when risky activities are at stake

- Rights to administrative justice

- Rights to participation

? What should the purpose of EIAs be? What are the problems with thinking about EIAs through a rights lens?

EIA procedures have been developed by the World Bank Operational Directive 4.01

Procedural Rights and Rights to free association, right to protest, right to political participation, right to life

Kawas-Fernández v Honduras (2009) IACHR

<https://www.globalwitness.org/en/reports/dangerous-ground/>



Berta Cáceres, murdered in Honduras, for resisting development of dams and logging

<https://www.theguardian.com/environment/series/the-defenders>



Sikhosphi 'Bazooka' Rhadebe was shot eight times at his home in Xolobeni, South Africa

The importance of rights for IEL

- The protection of human rights is often critical to the realisation of environmental goals and outcomes stipulated in IEL
- The denial of people's rights often occurs hand in hand with the degradation of environments
- Rights bring issues of equality and justice into environmental legal questions
- Human rights and climate change
 - Paris Agreement: “Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights”

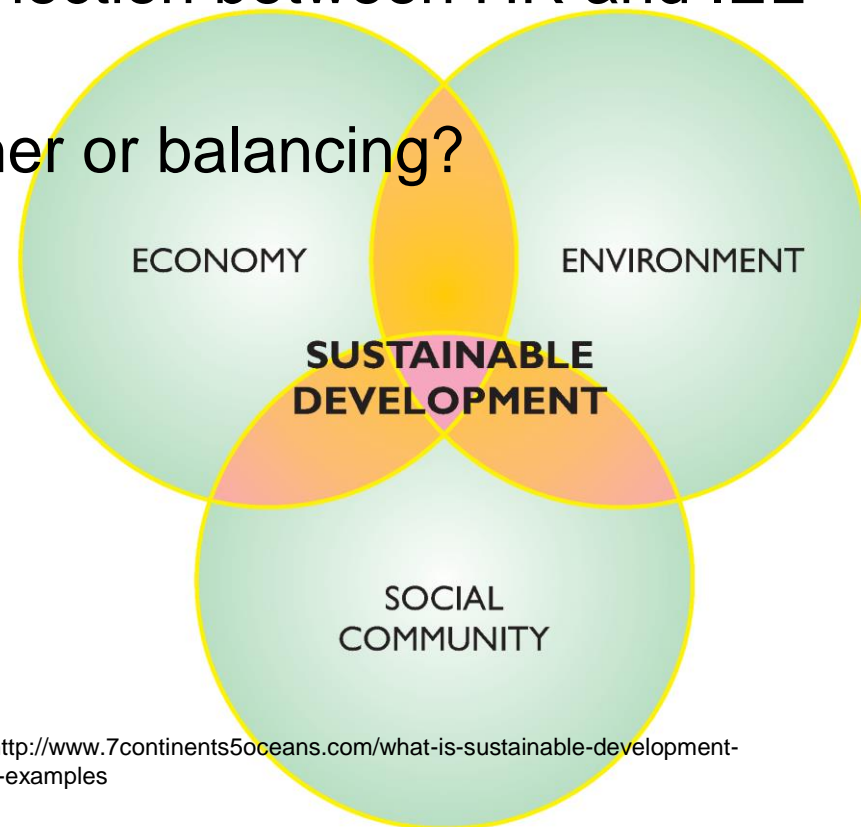
- Human Rights principles

- Justice

- Understanding the ways in which environmental decision-making discriminates against certain groups or classes of people
 - Understanding the effects and broadening our definitions of environmental damage (p706 PIEL)
 - Highlighting the shifts in power and authority in an increasingly global world. States and individuals are increasingly burdened with the environmental costs of multi-national, big business. Can IEL address this? See (SERAP v Federal Republic of Nigeria - ECOWAS Court 2012)

Principles

- Sustainability / Sustainable Development
 - Ideally the connection between HR and IEL principles
 - Bringing together or balancing?





3. The right to a safe, healthy and ecologically-balanced environment is a human right in itself.

Right to environment in courts

- ECHR – *X and Y v Germany* (1976) “no right to nature preservation” and *Kyrtatos v Greece* (2005) “applicants have not shown that damage to the birds and other protected species was of such a nature as to directly affect their own rights”
- IACHR – special relationship of indigenous groups to the environment - *The Mayagna (Sumo) Awas Tingni Community v Nicaragua* – protecting indigenous rights necessitates protecting the environment

Right beyond human rights

? Future generations - Do they have rights? Should they have rights? Do we have rights to their protection?

"Dear future generations. Please accept our apologies. We were rolling drunk on petroleum." Kurt Vonnegut

? Rights for non-human others? Animal rights?

– Christopher Stone "Should trees have standing?"



"I'd like to hear less talk about animal rights and more talk about animal responsibilities."

Tensions in the relationship between HR and IEL

- HARM - Do HRs capture the HARM done to humans when the environment is degraded?
- RESPONSIBILITY OF STATES - Do IEL and HR have common jurisdictions? (Para 81 Colombia's request for advisory opinion and para 71 *Oneryildiz v Turkey*)
- LIABILITY –Are the right parties held liable when we think of IEL in terms of HR interests? Are they held liable in the right ways?
- NON-RIGHTS VIOLATIONS - Can we talk about human+environmental impacts beyond rights discourse? What are the risks and advantages of doing so?
- HR\ENVIRONMENT CONFLICTS - What about circumstances in which rights interests and environmental interests clash? Can unsustainable environmental degradation be necessary for the securing of human rights?



Indigenous groups hosted the alternative Peoples' Summit at Rio - told the UN Rio+20 summit that the green economy is a "crime against humanity" that 'dollarises' Mother Nature and strips communities of their rights.

Tensions continued



- Green Grabbing and the appropriation of nature
 - nature up for sale- the protection of nature to the exclusion of previous users and custodians, for example: Tayrona National Park, Caribbean coast of Colombia, designated for eco-tourism meant the criminalisation, exclusion and forced eviction of community members who have lived and worked in the protected area for decades. Paramilitary groups used violence and repression to “clean up” the park for tourist activities, and privatised parts of the park by leasing them to a local tourism company.
 - See "Green Grabbing: a new appropriation of nature?" Fairhead, Leach and Scoones - Journal of Peasant Studies

Summing up: HR and IEL

- Necessarily interconnected and interdependent fields
- HRs demand the protection of the environment in order for those rights to be realised and protected
- IEL depends on HRs to secure environmental goals and outcomes. In addition, HRs highlight important aspects of IEL including aspects of justice
- But this is not always an easy relationship – anthropocentric human rights sometimes conflict with environmental goals (and also, HR goals)