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SCIENCE AND ENVIRONMENT

**Human rights and the environment as part
of sustainable development**

Report of the Secretary-General*

* This document is submitted late so as to include the most up-to-date information possible.

Summary

In its decision 2004/119, the Commission on Human Rights requested the Secretary-General “to update the report on the consideration being given to the relationship between the environment and human rights as part of sustainable development”.

This report analyses some of the developments that have taken place at the international, regional and national level in recognition of the link between the protection of the natural environment and the enjoyment of human rights.

The report concludes that since the World Summit on Sustainable Development, there has been growing recognition of the connection between environmental protection and human rights. The work carried out by human rights treaty bodies and the special procedures of the Commission on Human Rights, as well as several multilateral environmental agreements adopted in recent years, provide several examples of this connection. At the regional level, the Aarhus Convention and a growing number of decisions by regional courts also provide examples of the growing recognition of the links existing between human rights and the environment. These links are also reinforced by developments that have taken place at the national level in the fields of constitutional law, legislation, administrative practices and decisions, and the case law of municipal courts.

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Introduction

1. The Commission on Human Rights, in its decision 2004/119, requested the Secretary-General "to update the report on the consideration being given to the relationship between the environment and human rights as part of sustainable development". The Secretary-General has already submitted a report on this issue to the sixtieth session of the Commission pursuant to the Commission resolution 2003/71 (E/CN.4/2004/87). The present report is submitted in response to the aforementioned request.
2. A note verbale was sent to all permanent and observer missions to the United Nations Office at Geneva, requesting information on the extent to which the link between the enjoyment of human rights and fundamental freedoms and the protection of natural environment has been addressed at the national level. OHCHR received responses from the following Governments: Azerbaijan, Bahrain, Congo, Costa Rica, Cyprus, the former Yugoslav Republic of Macedonia, Kiribati, Mexico, Morocco, Philippines, Serbia and Montenegro, Switzerland and Syrian Arab Republic.
3. Letters requesting information for the preparation of the report were also addressed to relevant intergovernmental organizations and non-governmental organizations. The following intergovernmental organizations replied: Food and Agriculture Organization of the United Nations (FAO); Secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention); secretariat of the Stockholm Convention on Persistent Organic Pollutants; secretariat of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) of the United Nations Economic Commission for Europe (UNECE); secretariat of the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Watercourses Convention); and World Health Organization (WHO). Information was also received from the following non-governmental organizations: Centre for International Environmental Law (CIEL); Earthjustice; Foundation for International Environmental Law and Development (FIELD); Friends of the Earth International and IUCN - The World Conservation Union.
4. The present report consists of three parts. The first part considers the way in which the link between human rights and the environment has been addressed by human rights treaty bodies, the special procedures of the Commission on Human Rights, and some multilateral environmental agreements (MEAs) that have been adopted in recent years. The second part reviews developments that have taken place at the regional level, with a particular reference to the work of UNECE and the jurisprudence of the European Court of Human Rights. The third part considers the extent to which the interrelations between human rights and environmental protection have been addressed at the national level. Finally, the report contains some concluding remarks.

I. DEVELOPMENTS AT THE INTERNATIONAL LEVEL

5. The joint expert seminar on human rights and the environment organized by the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Environment Programme (UNEP) in January 2002 showed that developments at the international, regional and national levels provided evidence of a growing recognition by the international community of the

links between the protection of the environment and the enjoyment of human rights (E/CN.4/2002/WP.7, annex II, paras. 2-3). In March 2004, the Geneva Environment Network (GEN) organized a Roundtable on Human Rights and the Environment that discussed such issues as the concept of “environmental human rights”, the “proceduralization” of these rights, and the way in which the link between human rights and environmental protection has been addressed by international courts, human rights treaty bodies and special procedures of the Commission on Human Rights.¹

A. Human rights treaty bodies

6. The human rights treaty bodies have on several occasions contributed to clarifying the nature and content of the relationship between some of the substantive rights set out in the treaties and the protection of the environment. Some of the general comments adopted recently by treaty bodies have specifically addressed the link between human rights and the environment.

7. General comment No. 15 (2002) on the right to water (E/C.12/2002/11), adopted by the Committee on Economic, Social and Cultural Rights (CESCR) in November 2002, recognizes water as a pre-condition for the enjoyment of several human rights - including the right to life, the right to food, to adequate housing and to the highest attainable standard of health. The Committee observes that environmental hygiene - as an aspect of the right to health under article 12 (2)(b) of the Covenant - “encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions”. States parties should “ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes” (para. 8). The realization of the right to water should take place in a sustainable manner, thus “ensuring that the right can be realized for present and future generations” (para. 11). During armed conflicts, emergency situations and natural disasters, “the right to water embraces those obligations by which States parties are bound under international humanitarian law”, i.e. protection of objects indispensable for the survival of the civilian population (including drinking water installations and supplies and irrigation works) and protection of the natural environment against widespread, long-term and severe damage (para. 22). The realization of the right to water presupposes the right of individuals and groups to have full and equal access to information concerning water, water services and the environment, whether held by public authorities or third parties, and to participate in the formulation and implementation of national water strategies that may affect their exercise of their right to water (para. 48).

8. General comment No. 1 (2001) (CRC/GC/2001/1) of the Committee on the Rights of the Child (CRC) on the aims of education elaborates on the role that education has to play in fostering respect for the natural environment. The Committee emphasizes that education needs to be designed and provided in such a way as to promote and reinforce the range of specific ethical values enshrined in the Convention, including respect for the natural environment, in an integrated and holistic manner. CRC stresses that the promotion and reinforcement of the values of article 29 (1) must focus on problems within the child’s own community. For example, for the development of respect for the natural environment, “education must link issues of environment and sustainable development with socio-economic, socio-cultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects” (para. 13).

9. There are few references to the issue of human rights and the environment in the concluding observations issued by treaty bodies in the context of reviewing State party reports. Only three treaty bodies have included references to the issue of environmental degradation and its negative effects on the enjoyment of human rights in their concluding observations or comments.

10. In the period 2003-2004, only on two occasions has CESCR included references to the environment in its concluding observations. In its analysis of the second periodic report of Ecuador, the Committee voices concerns “about the negative health and environmental impacts of natural resource extracting companies’ activities” on the exercise of land and culture rights by the affected indigenous communities and the equilibrium of the ecosystem (E/C.12/1/Add.100, para. 12). See also the Committee’s concluding observations on the initial report of Yemen (E/C.12/1/Add.92). The Human Rights Committee seldom addresses environmental concerns in its concluding observations. In its analysis of the human rights situation in Suriname, the Committee notes that mercury that had been released into the environment in the vicinity of indigenous communities “continues to threaten the life, health, and environment of indigenous and tribal peoples” (CCPR/CO/80/SUR, para. 21).² Similarly, CRC does not often refer to environmental matters in its concluding observations. For example, following its examination of the report of Jamaica (CRC/C/15/Add.210), the Committee recommended that Jamaica intensify its efforts to address environmental health concerns, particularly with regard to air pollution and solid waste management, and increase access to safe drinking water and sanitation.³

B. Special procedures of the Commission on Human Rights

11. The special procedures of the Commission on Human Rights have provided a valuable contribution to examining and advancing understanding of the inextricable link between the enjoyment of human rights and the protection of the environment, including references to this issue in their reports.

12. The mandate of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights is the one which is most closely related to environmental issues. In her final report to the Commission (E/CN.4/2004/46), the former Special Rapporteur - Ms. Fatma-Zohra Ouhachi-Vesely - referred to several new trends in the international movements of wastes, and analysed their negative effects on the enjoyment of several human rights, including the rights to life, health, sufficient food, safe and healthy working conditions, housing, information, participation, freedom of association, the right to form and join trade unions, and other rights enshrined in the Universal Declaration of Human Rights and other international instruments.

13. The Special Representative of the Secretary-General on human rights defenders, Ms. Hina Jilani, included environmental activists - and in particular those who protest against multinational enterprises through peaceful demonstration, information campaigns and other activities - in the group of civil society actors that are particularly exposed to violence and other violations of their rights. In her 2003 report to the Commission, the Special Representative restated that the ambit of her mandate was in her view “broad enough to include ... those defending the right to a healthy environment [or] promoting the rights of indigenous peoples” (E/CN.4/2003/104/Add.1, appendix).

14. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Mr. Miloon Kothari, has stressed on several occasions that from a human rights perspective the issue of housing cannot be separated from a range of other issues related to sustainable development, including land, access to potable water and sanitation, a safe and healthy environment, and poverty. In his statement at the World Summit for Social Development (WSSD), the Special Rapporteur affirmed that “the right to adequate housing needs to be recognized as a crucial entitlement on the road to achieving sustainable development ... since the realization of the right to adequate housing loses its meaning unless processes are put into place to ensure that people and communities can live in an environment that is free from pollution of air, water and the food chain”.⁴

15. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression conveyed his appreciation for “projects designed to facilitate monitoring of the implementation of the right to information, ... some [of which] focus ... on ... environmental information/sustainable development fields” (E/CN.4/2004/62, para. 61). In particular, he noted with interest the Access Initiative (in conjunction with the World Resources Institute) - a global coalition of civil society groups working together to promote national-level implementation of commitments to access to information, participation and justice in decisions affecting the environment as set out in principle 10 of the Rio Declaration on Environment and Development.⁵

C. Multilateral environmental agreements

16. Several multilateral environmental agreements (MEAs) adopted in recent years provide evidence of the existing links between the protection of the environment and the enjoyment of human rights. Some of these conventions aim at protecting the environment and human health against risks associated with various forms of pollution. Others endorse individual procedural rights - such as the right to receive information concerning the environment held by public authorities, the right to participate in decision-making process or the right to have access to justice - that may be regarded as human rights (e.g. the right to remedy), or as emerging human rights standards (e.g. the right to have access to information held by public authorities). These MEAs play an important role in fostering connections between human rights and the environment, in particular by enhancing the implementation of principle 10 of the Rio Declaration.

17. The Cartagena Protocol on Biosafety, adopted by the Conference of the Parties to the Convention on Biological Diversity (CBD) in January 2000, entered into force in September 2003.⁶ The Protocol seeks to protect biological diversity and human health from the potential risks posed by living modified organisms (LMOs) resulting from modern biotechnology. It establishes an advance informed-agreement procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. Pursuant to article 23, the parties to this Protocol shall promote and facilitate public awareness, education and access to information on LMOs, consult the public in the decision-making process regarding LMOs and make the

results of such decisions available to the public. In taking a decision on imports under the Protocol, States parties may take into account, inter alia, socio-economic considerations arising from the impact of LMOs on the conservation and sustainable use of biological diversity, “especially with regard to the value of biological diversity to indigenous and local communities” (art. 26).

18. Pesticides and industrial chemicals have poisoned millions of people in recent decades and killed tens of thousands as a result of accidents, misuse and inadequate controls and equipment. Meanwhile, every human being carries in his or her body traces of various hazardous chemicals, many of which have been linked to cancer, birth defects and other health problems. The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Rotterdam Convention) - which entered into force in February 2004 - seeks to limit the risks associated with the international trade of certain hazardous chemicals and pesticides in order to protect human health and the environment from potential harm.⁷ The Convention establishes a Prior Informed Consent (PIC) procedure, which permits developing countries to prevent shipments of certain hazardous chemicals from entering their territory unless they have explicitly agreed to their import. Pursuant to article 15 (2) of the Convention, each party shall ensure, to the extent practicable, that the public has appropriate access to information on chemical handling and accident management and on alternatives that are safer for human health or the environment than the chemicals listed in annex III.

19. The Stockholm Convention on Persistent Organic Pollutants - which entered into force on 17 May 2004 - aims to protect human health and the environment from the harmful impact of persistent organic pollutants (POPs).⁸ POPs are chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of living organisms and are toxic to humans and wildlife. POPs circulate globally and can cause damage wherever they travel. The Convention seeks to eliminate or restrict the production and use of all intentionally produced POPs (i.e. industrial chemicals and pesticides),⁹ as well as to minimize and - where feasible - eliminate the release of unintentionally produced POPs, i.e. those chemicals which are produced unintentionally as by-products (such as dioxins and furans). Under the Stockholm Convention, States parties shall develop and implement educational and awareness programmes on POPs, as well as on their health and environmental effects and on their alternatives (art. 10). States shall also provide the public with all available information on POPs, and promote and facilitate public participation in the implementation of the Convention. For the purposes of the Convention, information on health and safety of humans and the environment cannot be regarded as confidential (art. 9).

20. The aim of the 1989 Basel Convention is to protect human health and the environment against the adverse effects that may result from the generation and management of hazardous wastes and other wastes. For this purpose, it establishes a procedure for the control of the transboundary movement of such wastes, and it requires their environmentally sound management. The Seventh Meeting of the Conference of the Parties (COP-7) was held from 25 to 29 October 2004. In decision VII/38 on international cooperation, COP-7 requests “the Secretariat to continue its cooperation on critical areas for the effective implementation of the Basel Convention, its protocol and amendments with relevant organizations”, including the Office of the United Nations High Commissioner for Human Rights. In three decisions on the dismantling of ships in the absence of appropriate health and safety standards COP-7 notes that

the abandonment of ships on land and in ports can have effects on human health and the environment, and calls upon States parties to promote the environmentally sound management of ship dismantling.

D. Intergovernmental organizations

21. In November 2004, the Food and Agriculture Organization adopted Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security.¹⁰ The Guidelines address a wide range of issues relating to the progressive realization of the right to food. FAO reported that some of them provide evidence of the link between environmental protection and sustainable development and the realization of the right to food. For instance, guideline 1 encourages States to promote democracy, the rule of law, sustainable development and good governance, so as to provide a peaceful, stable and enabling economic, social, political and cultural environment in which individuals can feed themselves and their families in freedom and dignity. Pursuant to guideline 2, States should promote broad-based economic development to realize the right to food and encourage, at the same time, conservation and sustainable management of natural resources. Guideline 8 suggests that States facilitate sustainable, non-discriminatory and secure access and utilization of resources consistent with their national law and with international law, and respect and protect the rights of individuals with respect to resources such as land, water, forests, fisheries, and livestock without any discrimination. Special attention may be given to groups such as pastoralists and indigenous people and their relation to natural resources.

22. At its twenty-second session (3-7 February 2003), the Governing Council of the United Nations Environment Programme (UNEP) adopted decision 22/17 on governance and law, in which, inter alia, the Governing Council requests the Executive Director to intensify efforts in the provision of policy and advisory services in the application of principle 10 of the Rio Declaration (Part II.B).¹¹

23. WHO stated in its submission that at the core of its work is the estimation of the burden of water-related disease, which reflects the inextricable link between the right to water and the right to health, and the need for safe water supply and safe water management practices to affirm these rights. In February 2003, WHO launched issue No. 3 of the health and human rights publication series *The Right to Water*. The objective of this brochure is to raise awareness of the right to water as an important health and human rights concern. The brochure outlines the scope and content of the human right to water and its relationship to other civil, cultural, economic, political, and social rights. In particular, it notes that water is closely linked and associated with the rights to food and nutrition, to work and to a healthy environment.

E. Civil society organizations

24. In 1998, CIEL started a Human Rights and Environment (HRE) Programme, which seeks to promote and utilize human rights law to safeguard crucial environmental rights. In particular, CIEL has provided legal support - including advice and direct representation - in several cases before the Inter-American Commission on Human Rights (IACHR) concerning indigenous and other local communities that depend on their environment for their life, culture, and livelihoods. In the *San Mateo* case (2004), the Commission accepted the request for precautionary measures to protect the life and health of an indigenous community affected by mining toxic waste in Peru.

In the *Ralco* case (2003), IACHR approved a friendly settlement between indigenous communities affected by the construction of the *Ralco* dam in southern Chile and the Government.

25. Earthjustice prepared in 2004 an issue paper on human rights and the environment presented to the Commission on Human Rights at its sixtieth session.¹² This paper highlights recent developments in international, regional and domestic bodies during 2003 in the area of human rights and the environment. The paper shows “repeated and increasing recognition of a human rights-based approach to environmental protection, [which] demonstrates that a right to a clean and healthy environment, whether as a separate, codified right or as a result of repeated application of other human rights to environmental harms, is emerging as an important component of international law”.

26. FIELD provided information on its involvement in activities in the context of human rights and the environment. FIELD is an observer of the Partnership for Principle 10 (PP10), an initiative developed under the auspices of the WSSD to support the implementation of principle 10 at the national level. In March 2004, FIELD participated in the UNEP Roundtable on Human Rights and Environment, and submitted a paper focusing on participatory rights and access to environmental information in South Asia.

27. Friends of the Earth International submitted a publication entitled *Our Environment, Our Rights: Standing up for People and the Planet*.¹³ The report analyses several environmental case studies, and shows the impact of environmental pollution and degradation on the equal effective enjoyment of human rights and fundamental freedoms. The report argues that “the definition of human rights” should be seen “to include environmental rights such as rights for environmental refugees, right to claim ecological debt and the right to environmental justice”, and abuses worldwide.

28. IUCN - The World Conservation Union provided information on the Third World Conservation Congress (Bangkok, 17-25 November 2004), which decided that IUCN should strengthen its work on environmental rights and the links between the realization of human rights and conservation. The Congress encouraged IUCN to make greater use of existing human rights instruments and mechanisms to protect the environment and the rights of those who defend it.

II. DEVELOPMENTS AT THE REGIONAL LEVEL

A. United Nations Economic Commission for Europe

29. The secretariat of the Aarhus Convention provided information on recent developments in the implementation of the Convention. A detailed analysis of the Convention - which is widely accepted as the leading example of the implementation of principle 10 of the Rio Declaration - is contained in last year’s report (E/CN.4/2004/87, paras. 17-20).

30. The Compliance Committee established under the Convention to identify and address problems with respect to treaty compliance at an early stage has dealt since October 2003 with a total of 10 communications from NGOs and individuals and a submission from one Government. At present, the Committee has not reached any conclusions as to whether any State is or is not in compliance.

31. At their extraordinary meeting on 21 May 2003 in Kiev, the parties to the Convention adopted the Protocol to the Convention on Pollutant Release and Transfer Registers (PRTR). The Protocol - signed by 36 States and the European Community - is open for accession by all States (including, as is the case for the Convention itself, non-ECE countries) and regional economic integration organizations. Whereas the Convention primarily establishes obligations on public authorities towards the public, the Protocol introduces a new dimension in that it implies reporting obligations for the private sector and may therefore be seen as a tool promoting corporate accountability in a specific context. PRTR reporting systems invite the public to participate in the regulatory system, both by monitoring the environmental performance of facilities and sectors and by engaging in dialogue with companies and government agencies on ways of improving such performance.

32. In 2004, the Working Group of the Parties established a small ad hoc expert group to consider the scope, format and content of possible guidelines on promoting public participation in international forums. The expert group completed drafting guidelines in November 2004. Once discussed and amended by the Working Group of the Parties, these guidelines will be submitted for possible adoption to the second meeting of the parties to the Convention in May 2005.

33. The secretariat of the Watercourses Convention provided information on the Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters,¹⁴ jointly adopted on 21 May 2003 by the parties to the Watercourses Convention and the parties to the Convention on the Transboundary Effects of Industrial Accidents. As of November 2004, the Protocol had been signed by 24 countries and ratified by 1. The aim of the Protocol is to ensure that any person whose rights are affected by the transboundary impact of industrial accidents on international watercourses (e.g. fishermen or downstream waterworks) have access to an effective remedy and receive adequate and prompt compensation for the damage suffered. Loss of life or personal injury, damage to property and loss of income, as well as environmental damage, are covered by the Protocol (art. 2 (2) (d)). In order to promote the objectives of the Protocol, States parties shall provide for access to information and access to justice (art. 8 (5)).

B. European Court of Human Rights

34. The European Convention on Human Rights (ECHR) - like other human rights treaties adopted in the same period does not contain any provision addressing explicitly the protection of the environment. Nonetheless, the European Court of Human Rights has considered environmental claims under the ECHR through interpretation of existing rights, in particular the right to respect for private and family life (art. 8) and the right to the peaceful enjoyment of one's possessions (Protocol No. 1, art. 1).

35. In the case *Hatton and others v. United Kingdom*, the European Court of Human Rights was asked to decide whether the government policy on night flights at Heathrow airport gave rise to a violation of the applicants' rights under articles 8 and 13 of the Convention. In its judgement of 2 October 2001, a chamber of the Court noted that a fair balance had to be struck between the competing interests of the individual and the community as a whole and that in both contexts, the State enjoyed a "certain" margin of appreciation in determining the steps to be taken to ensure compliance with the Convention. However, the chamber underlined that in

striking the required balance States must have regard to the whole range of material considerations. Further, “in the particularly sensitive field of environmental protection, mere reference to the economic well-being of the country is not sufficient to outweigh the rights of the others” (para. 97). Therefore, the Court found that in the absence of any serious attempt to evaluate the extent or the impact of the interferences with the applicants’ sleep patterns, the United Kingdom had failed to strike such a balance, in violation of article 8.

36. The judgement was appealed to the Grand Chamber of the European Court, where it was overturned by a judgement of 8 July 2003. Reiterating the “fundamentally subsidiary role of the Convention” (para. 97), the Grand Chamber reaffirmed that it is essentially for the State to strike a fair balance between the economic interest of the country and the conflicting interests of the persons affected by noise disturbances. Environmental protection “should be taken into consideration by States in acting within their margin of appreciation and by the Court in its review of that margin, but it would not be appropriate for the Court to adopt a special approach in this respect by reference to a special status of environmental human rights” (para. 122).¹⁵ The Court found that the United Kingdom authorities had not overstepped their “wide” margin of appreciation by failing to strike a fair balance between the right of the affected individuals and the conflicting interests of others and of the community as a whole, and concluded that there had been no violation of article 8 of the Convention.

III. DEVELOPMENTS AT THE NATIONAL LEVEL

37. The joint OHCHR/UNEP expert meeting on human rights and the environment noted that several developments had occurred at the national level - in particular in constitutional law, legislation, administrative practices and decisions, and the case law of municipal courts - in the recognition of a link between the protection of natural environment and the effective enjoyment of human rights (E/CN.4/2003/WP.7, annex II, paras. 5-8). An analysis of the submissions received seems to confirm this trend.

A. Provisions recognizing individuals rights regarding a clean and healthy environment in national constitutions or laws with constitutional status

38. Several national constitutions now formally recognize a right to a healthy and clean environment.¹⁶ For example, article 50 of the Constitution of Costa Rica states that “everyone has the right to a healthy and ecologically balanced environment” (“*toda persona tiene derecho a un ambiente sano y ecológicamente equilibrado*”). Similarly, section 16, article II, of the Constitution of the Philippines enshrines the right “to a balanced and healthy environment in accordance with the rhythm of nature”. In some cases, such constitutional provisions permit individuals or groups to file legal actions to protect the environment or fight against pollution.¹⁷ Article 39 (2) of the Constitution of Azerbaijan states that “every person has the right ... to receive compensation for damage caused to their health and property by ecological violations”. The above-mentioned article 50 of the Constitution of Costa Rica entitles individuals to denounce any act liable to infringe this right, and to demand compensation in case damage has occurred. Some constitutions also state that every person has an obligation to protect and enhance the environment.¹⁸

39. Some countries reported that their constitution does not include any provision recognizing an individual right to a safe and clean environment.¹⁹ In its reply, the Syrian Arab Republic stated that the Syrian Constitution “contains special provisions which implicitly acknowledge the individual’s right to a healthy environment”. Switzerland stated that it does not recognize for the time being an individual right to a healthy environment as a fundamental right, but acknowledges that a healthy and clean environment is a component of several human rights, like the right to health, to food, to water and so on. Other constitutions - without referring to an individual right to a healthy and clean environment - provide that the State has an obligation to adopt measures for the protection of the environment and human health against pollution and other forms of environmental hazards.²⁰

B. Right to information on and public participation in environmental matters

40. Some States provided information relating to the right of individuals to receive information and to participate in the decision-making process regarding the environment.²¹ Serbia and Montenegro reported that the Law on the Basics of Environmental Protection provides that data about the quality of the environment are public information, and that competent bodies have an obligation “to inform the public in a timely and objective manner about the state of the environment and about any form of pollution that may constitute a threat for the life and health of the population and a threat for the environment” (art. 13). The former Yugoslav Republic of Macedonia’s draft Law on Environment specifies that everyone has a right - without having to prove his/her interest - to obtain information and data on the environment held by public authorities (art. 5). Cyprus reported that it has ratified the Aarhus Convention, and has recently adopted Law No. 119 (I) on “Access to information on the environment”. Mexico provided information on the *Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*, adopted in June 2002.

41. With regard to the measures adopted at the national level to facilitate public participation in the decision-making process regarding the environment, Costa Rica reported that the *Ley Orgánica del Ambiente* of 1995 establishes that the State and municipalities shall facilitate the active participation of the citizens in the elaboration and execution of programmes and projects aimed at protecting the environment. Switzerland reported that the procedure of popular initiative allows the general public to participate in the adoption, modification and repeal of acts adopted at the federal or cantonal level, and that this procedure has been used several times in the context of environmental protection. Kiribati provided information on sections 19 and 21 of the Environment Act, which provide for public participation in environmental issues. To facilitate public participation in the development and implementation of public policies in the environmental field, Mexico established *Consejos Consultivos para el Desarrollo Sustentable*.

C. Jurisprudence

42. Some respondent States provided information on decisions adopted by national courts recognizing the connection between human rights and the protection of the environment.²² Mexico reported that a study compiling decisions of federal courts and administrative tribunals on environmental matters is currently being prepared. The Philippines provided information on several cases decided by national courts on environmental matters. In the 1993 case *Oposa v. Factoran*, the Supreme Court ruled that the right to a balanced and healthy environment as provided for in section 16, article II, of the Constitution, and the right to health, as embodied in

section 15, article II, entitle the complainants, a group of Filipino children, to stand in court on behalf of future generations in order to seek the cancellation of all logging permits in the country.

43. In a case concerning alleged physical damage resulting from the installation of a mobile phone antenna in the village of the claimant, the Swiss Federal Tribunal affirmed that article 8 (1) of the European Convention on Human Rights protects the right of individuals to respect for their private and family life, and imposes an obligation on the State to adopt adequate and reasonable measures to protect this right, in particular when polluting or noisy installations diminish the quality of private life in the surrounding area. In Costa Rica, the *Sala Constitucional* of the Supreme Court of Justice stated in 1998 that the right to health and the right to a healthy environment stem from the right to life itself, and constitute fundamental rights of the individual that can be protected judicially. The Court also stated that “it is incumbent on the State to adopt measures as appropriate and necessary to ensure that citizens enjoy a natural environment free from pollution”.

D. References to environment-related issues in States parties’ reports to treaty bodies

44. References to the linkages between a clean and healthy environment and the enjoyment of human rights and fundamental freedoms are sometimes included in States parties’ periodic reports under some of the existing human rights treaties.

45. The revised reporting guidelines issued by CESCR (E/C.12/1991/1) request States parties to provide specific information on measures taken by Governments to improve all aspects of environmental and industrial hygiene and to promote a healthy environment, and it is therefore not surprising that a considerable number of States parties include references to the protection of the environment in their reports, usually in the context of environmental legislation passed to ensure the sustainable use of natural resources, sustainable and environmentally sound production of food, and environmental health-care regulations aimed at promoting public health and protecting the population from environmental factors that may have a negative impact on health etc.²³

46. Some of the reports submitted to the Human Rights Committee in the period 2003-2004 include references to environmental issues. For example, the initial report of Albania (CCPR/C/ALB/2004/1) notes that the Constitution recognizes the right of individuals to be informed on the state of the environment, and commits the State to create a sound and ecologically suitable environment for present and future generations. Moreover, a few reports submitted in recent years expressly acknowledge the existence of a right to a healthy environment.²⁴

47. Some of the reports under the Convention on the Elimination of All Forms of Discrimination against Women contain brief references to environmental issues and their impact on women’s rights. For instance, the fifth periodic report of Bangladesh contains a section on “Women and the Environment”, which recognizes that women “are directly and adversely affected both through man-made and natural calamities” such as floods, cyclones, droughts, arsenic-contaminated water, river erosion, etc. (CEDAW/C/BGD/5, sect. 3.11).²⁵

48. Several reports submitted to the CRC refer to the environment in the context of the right to health. For example, the initial report of Sao Tome and Principe's (CRC/C/8/Add. 49) acknowledges that the poor state of its environment - due to lack of sanitation and local communities' inability to manage and maintain infrastructure - has serious repercussions on public health.²⁶ Other reports include reference to the protection of the environment in the section concerning aims of education.²⁷

IV. CONCLUSIONS

49. **Since the World Summit on Sustainable Development, important developments have taken place at the international and regional levels in recognition of the link between the protection of the natural environment and the enjoyment of human rights.**

50. **The work carried out by human rights treaty bodies and the special procedures of the Commission on Human Rights provides several examples of this connection. Some of the general comments adopted by treaty bodies in recent times, and in particular general comment No. 15 on the right to water adopted by the Committee on Economic, Social and Cultural Rights, have helped to clarify the links between some of the substantive rights set out in the treaties and the protection of the environment. References to the linkages between a clean and healthy environment and the enjoyment of human rights and fundamental freedoms are sometimes included in States parties' periodic reports to treaty bodies, but are only seldom addressed in the concluding observations issued by treaty bodies. The special procedures have also provided a valuable contribution to examining and advancing understanding on the inextricable link between the enjoyment of human rights and the protection of the environment.**

51. **At the regional level, the Aarhus Convention - which addresses the right of access to information, participation and justice with the aim of protecting the right to live in an environment adequate for health and well-being - continues to represent the most advanced example of the link between the environment and human rights. A growing number of decisions by regional courts expressly recognize that a clean and healthy environment represents a necessary precondition for the enjoyment of several human rights - in particular those associated with the protection of private and family life or private property from illegal interference by public authorities or by private companies (where it is the duty of the State authorities to regulate such activities).**

52. **Several multilateral environmental agreements adopted in recent years provide further examples of the growing recognition of the existing links between human rights and the environment. Some of these legal instruments - like the Cartagena Protocol on Biosafety or the Stockholm Convention on Persistent Organic Pollutants - aim at protecting the environment and human health against risks associated with various forms of environmental pollution. Others endorse individual procedural rights - such as the right to receive information concerning the environment held by public authorities, the right to participate in the decision-making process or the right to have access to justice - that may be regarded as human rights (e.g. the right to an effective remedy for the violation of a right), or as emerging human rights standards (e.g. the right to have access to information held by public authorities).**

53. **At the national level, developments in the fields of constitutional law, legislation, administrative practices and decisions, and the case law of domestic courts offer additional examples of the connection between the protection of the natural environment and the effective enjoyment of human rights. Several national constitutions expressly recognize a right to a healthy environment (or a related formulation). The linkage of human rights and environmental concerns is reflected in developments relating to procedural and substantive rights, in particular with regard to legislation concerning the right to have access to environmental information held by public authorities. A significant number of decisions of national courts have identified environmental harm to individuals or communities as violations of the rights to health, to life, to self-determination, to food and water, and to housing.**

Notes

¹ *Human Rights and the Environment: Proceedings of a Geneva Environment Network roundtable* (UNEP/GEN/2004/2).

² See also the concluding observations on the fifth periodic report of the Russian Federation (CCPR/CO/79/RUS), in which the Committee expressed concern about the conviction of environmental activists on treason charges.

³ See also the Committee's observations on the second periodic report of the Czech Republic, in which the Committee urged the State party to undertake comprehensive research on the possible effects of environmental pollution on the health of children (CRC/C/15/Add.201).

⁴ Available at <http://www.unhcr.ch/housing/>.

⁵ Principle 10 reads as follows:

“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.

⁶ Text available at <http://www.biodiv.org/biosafety/protocol.asp>.

⁷ Text available at <http://www.pic.int/en/ViewPage.asp?id=104>.

⁸ Text available at http://www.pops.int/documents/convtext/convtext_en.pdf.

⁹ A health-related exemption has been granted for DDT, which is still needed in many developing countries to control malarial mosquitoes. This will permit Governments to protect their citizens from malaria - a major killer in many tropical regions - until they are able to replace DDT with chemical and non-chemical alternatives that are cost-effective and environmentally friendly.

¹⁰ Text available at <http://www.fao.org/DOCREP/MEETING/007/J0492E.HTM>.

¹¹ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 25, (A/58/25), chap. III, decision 22/17, Part II.B.*

¹² Available at <http://www.earthjustice.org/regional/international/2004UNreport.pdf>.

¹³ Available at <http://www.foei.org/publications/link/rights/index.html>.

¹⁴ Text available at <http://www.unece.org/env/civil-liability/protocol.html>.

¹⁵ It is interesting to note that this is the first time that “environmental human rights” are formally recognized in a judgment by the European Court of Human Rights.

¹⁶ Azerbaijan, Costa Rica, Philippines, Serbia and Montenegro, The former Yugoslav Republic of Macedonia.

¹⁷ Azerbaijan, Costa Rica, Serbia and Montenegro.

¹⁸ Azerbaijan, Serbia and Montenegro, The former Yugoslav Republic of Macedonia.

¹⁹ Cyprus, Kiribati, Switzerland.

²⁰ Bahrain, Switzerland.

²¹ Azerbaijan, Costa Rica, Cyprus, Kiribati, Mexico, Serbia and Montenegro, Switzerland, The former Yugoslav Republic of Macedonia.

²² Mexico, Philippines, Serbia and Montenegro, Switzerland.

²³ See, for example, the fourth periodic report of Norway (E/C.12/4/Add.14), not yet examined; the fourth periodic report of Italy (E/C.12/4/Add.13 examined on 24 May 2003); and the initial reports of Malta (E/1990/5/Add.58 examined on 26 May 2003), Kuwait (E/1990/5/Add.57 examined on 20 November 2003), Lithuania (E/1990/5/Add.55 examined on 9 December 2002) and Brazil (E/1990/5/Add.53 examined on 20 November 2001).

²⁴ See, for example, the initial reports of Thailand (CCPR/C/THA/2004/1) and Serbia and Montenegro (CCPR/C/SEMO/2003/1) and the fifth periodic report of Finland, (CCPR/C/FIN/2003/5).

²⁵ See also the second periodic report of Croatia (CEDAW/C/CRO/2-3); the combined initial through third report of Gambia (CEDAW/C/GMB/1-3)); and the second periodic report of Paraguay (CEDAW/C/PAR/5).

²⁶ See also the initial report of Angola (CRC/C/3/Add.66); the second periodic report of Bangladesh (CRC/C/65/Add.22); the second periodic report of Canada (CRC/C/83/Add.6).

²⁷ See for instance the second periodic report of India (CRC/C/93/Add.5); the second periodic report of Luxembourg (CRC/C/104/Add.5); the initial report of Brazil (CRC/C/3/Add.65); and the second periodic report of Japan (CRC/C/104/Add.2).
