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## HUMAN RIGHTS, ENVIRONMENTAL PROTECTION, AND THE SUSTAINABLE DEVELOPMENT GOALS

John H. Knox<sup>†</sup>

*Abstract:* In recent years, international human rights tribunals and other bodies have identified ways that environmental harm can interfere with the enjoyment of human rights, and have clarified that States have obligations to protect human rights against such interference. For example, States have duties to provide access to environmental information, to protect rights of free expression and association in relation to environmental issues, and to provide for participation in environmental decision-making. This article examines how well the draft Sustainable Development Goals (“SDGs”) proposed by the United Nations Open Working Group reflect the human rights obligations relating to environmental protection. It concludes that the proposed SDGs include goals that would promote those obligations, but that the specific targets are often written in language that is neither concrete nor closely linked to existing human rights obligations.

### I. INTRODUCTION

The 2012 United Nations Conference on Sustainable Development emphasized that every state has the responsibility “to respect, protect and promote human rights,” and that “democracy, good governance and the rule of law . . . are essential for sustainable development” in each of its three dimensions: economic growth, social development, and environmental protection.<sup>1</sup> The following year, UN Secretary-General Ban Ki-Moon reiterated that an essential building block for a sustainable development agenda is “a far-reaching vision of the future firmly anchored in human rights and universally accepted values and principles.”<sup>2</sup>

The importance of human rights for economic and social development has long been recognized in principle, if not always in practice.<sup>3</sup> However, the relevance of human rights for environmental protection, the third pillar

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<sup>1</sup> United Nations Conference on Sustainable Development, Rio de Janeiro, Braz., June 20-22, 2012, *The Future We Want*, ¶¶ 9, 10, U.N. Doc. A/CONF.216/L.1 (June 19, 2012).

<sup>2</sup> See U.N. Secretary-General, *A Life of Dignity For All: Accelerating Progress Towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015: Report of the Secretary-General*, ¶¶ 74-75, U.N. Doc. A/68/202 (July 26, 2013).

<sup>3</sup> The Universal Declaration of Human Rights itself includes economic and social rights, which are codified in the International Covenant on Economic, Social and Cultural Rights. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 12, 1948); International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

of sustainable development, has only recently begun to receive increased attention at the United Nations. In March 2012, shortly before the Conference on Sustainable Development, the United Nations Human Rights Council decided to appoint an independent expert with a three-year mandate to clarify the human rights obligations relating to environmental protection and to identify good practices in their use.<sup>4</sup> In addition, the independent expert was requested to “[t]ake into account the results of the 2012 United Nations Conference on Sustainable Development and contribute a human rights perspective to follow-up processes.”<sup>5</sup>

Perhaps the chief follow-up process was the development of Sustainable Development Goals (“SDGs”) to guide progress toward sustainable development after 2015, the date set as a target by the Millennium Development Goals.<sup>6</sup> At the 2012 conference, governments decided to establish the Open Working Group to develop the SDGs, and in August 2014, the group submitted its report to the UN General Assembly.<sup>7</sup> The report proposed seventeen new SDGs and 169 targets for realization of specific aspects of the goals. The General Assembly decided that the proposal “shall be the main basis for integrating sustainable development goals into the post-2015 development agenda, while recognizing that other inputs may also be considered in the intergovernmental negotiation process.”<sup>8</sup> This continuing negotiation is expected to result in a document adopted by the General Assembly by the end of 2015.

This article explains how the Human Rights Council mandate on human rights and the environment relates to the development of the SDGs. Part I describes the mandate’s principal findings on the relationship between human rights obligations and environmental protection. Part II evaluates the goals and targets proposed by the Open Working Group in light of those findings. The article concludes that while the draft SDGs set out many worthwhile goals, the targets often do not contain language that is concrete and focused enough to effectively promote human rights or environmental protection.

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<sup>4</sup> Human Rights Council Res. 19/10, ¶ 2, U.N. Doc. A/HRC/RES/19/10 (Mar. 22, 2012). In July 2012, the Council appointed the present author to serve as the independent expert. In March 2015, the Council renewed the mandate for another three years and changed the title to “special rapporteur.” Human Rights Council Res. 28/11, U.N. Doc. A/HRC/RES/28/11 (Mar. 26, 2015).

<sup>5</sup> Human Rights Council Res. 19/10, *supra* note 4, at ¶ 2(d).

<sup>6</sup> G.A. Res. 66/288, annex, ¶ 248, U.N. Doc. A/RES/66/288 (July 27, 2012).

<sup>7</sup> Rep. of the Open Working Group of the General Assembly on Sustainable Development Goals, 68<sup>th</sup> Sess., UN Doc. A/68/970 (Aug. 12, 2014) [hereinafter Open Working Group Report].

<sup>8</sup> G.A. Res. 68/309, ¶ 2, U.N. Doc. A/RES/68/309 (Sept. 10, 2014).

## II. THE RELATIONSHIP BETWEEN HUMAN RIGHTS LAW AND ENVIRONMENTAL PROTECTION

The modern environmental movement, which began in the late 1960s, realized from its early days that human rights and environmental protection are closely linked. For example, the 1972 Stockholm Conference on the Human Environment, the first United Nations environmental conference, proclaimed that “[b]oth 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—even the right to life itself.”<sup>9</sup> A few years later, countries began to add a right to a healthy environment to their national constitutions.<sup>10</sup> However, this recognition came too late to be codified in the major international human rights agreements. The General Assembly had already adopted the Universal Declaration of Human Rights in 1948, and the two International Covenants on human rights in 1966.<sup>11</sup> Later efforts to introduce a right to a healthy environment in a new global human rights instrument were unsuccessful. In particular, the main UN human rights body, the Human Rights Commission (which was replaced by the Human Rights Council in 2006) refused to adopt a proposed declaration on human rights and the environment.<sup>12</sup>

Nevertheless, the relationship between human rights and the environment has continued to develop. More than ninety countries have adopted a constitutional right to a healthy environment.<sup>13</sup> The right has also been included in regional human rights instruments in Africa, the Americas, and elsewhere.<sup>14</sup> Moreover, regional human rights tribunals have applied

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<sup>9</sup> U.N. Conference on the Human Environment, Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF G.48/14/rev.1 (June 16, 1972), 11 I.L.M. 1416.

<sup>10</sup> The first countries to adopt the right were Portugal, in 1976, and Spain, in 1978. David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* 62 (2012).

<sup>11</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>12</sup> In 1994, Fatma Zohra Ksentini, a special rapporteur on human rights and the environment appointed by the Human Rights Commission’s Sub-Commission on the Prevention of Discrimination and Protection of Minorities, proposed draft principles on human rights and the environment that had been developed by a group of experts. Draft Report of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities on its 46<sup>th</sup> session, annex I, U.N. Doc. E/CN.4/Sub.2/1994/9 (Aug. 25, 1994). The draft included “the right to a secure, healthy and ecologically sound environment” and listed a number of related rights, including rights to freedom from pollution and to protection and preservation of the air, soil, water, sea-ice, flora and fauna. *Id.* at ¶ 6, 10.

<sup>13</sup> U.N. Independent Expert, *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox: *Preliminary Report*, U.N. Doc. A/HRC/22/43, ¶ 12 (Dec. 24, 2012).

<sup>14</sup> See, e.g., African Charter on Human and Peoples’ Rights, art. 24, June 27, 1981, 1520 U.N.T.S. 217 (“All peoples shall have the right to a general satisfactory environment favorable to their

generally acknowledged human rights, including rights to life, health, and property, to environmental issues.<sup>15</sup> As a result, an extensive body of environmental human rights jurisprudence has evolved even in the absence of a universally recognized human right to a healthy environment.<sup>16</sup>

The mandate created by the Human Rights Council in 2012 requested the new independent expert to study “the human rights obligations, including non-discrimination obligations, relating to the enjoyment of a safe, clean, healthy and sustainable environment.”<sup>17</sup> To map these obligations, the independent expert reviewed a very wide range of sources, including: human rights agreements, declarations, and resolutions; statements by the General Assembly and the Human Rights Council; statements by states in reviewing their own and others’ human rights records as part of the Universal Periodic Review conducted by the Human Rights Council; interpretations by “treaty bodies” (i.e., bodies of experts appointed to oversee compliance with human rights treaties); decisions by regional human rights tribunals; and reports by UN special rapporteurs.<sup>18</sup> The relevant statements are described in fourteen reports, each devoted to a particular source or set of sources.<sup>19</sup> The conclusions of this mapping project are contained in a report presented to the Human Rights Council at its March 2014 session.<sup>20</sup>

Despite the diversity of the sources reviewed, they reached remarkably similar conclusions. The sources agreed that environmental harm can and does interfere with the full enjoyment of many human rights, including: the right to life; the right to the enjoyment of the highest

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development.”); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights: Protocol of San Salvador, art. 11, Nov. 17, 1988, O.A.S.T.S. No. 69 (“Everyone shall have the right to live in a healthy environment.”); Arab Charter on Human Rights, art. 38, May 22, 2004, 12 Int’l Hum. Rts. Rep. 893 (2005) (“Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including . . . the right to a healthy environment.”); ASEAN Human Rights Declaration, art. 28, Nov. 18, 2012, ASEAN Statements and Communiqués (“Every person has the right to an adequate standard of living for himself or herself and his or her family including . . . [t]he right to a safe, clean and sustainable environment.”).

<sup>15</sup> See, e.g., Öneriyildiz v. Turkey, Eur. Ct. H.R., No. 48939/99 (Nov. 30, 2004) (right to life); Marangopoulos Foundation for Human Rights v. Greece, Eur. Comm. Soc. Rts., No. 30/2005 (right to health); Saramaka People v. Suriname, Int-Am. Ct. H.R. (ser. C), No. 172 (Nov. 28, 2007) (right to property).

<sup>16</sup> See generally U.N. Independent Expert, *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, John H. Knox: *Mapping Report*, U.N. Doc. A/HRC/25/53 (Dec. 30, 2013) [hereinafter *Mapping Report*].

<sup>17</sup> Human Rights Council Res. 19/10, *supra* note 4, ¶ 2(a).

<sup>18</sup> The project received invaluable assistance from attorneys and academics on a pro bono basis.

<sup>19</sup> United Nations Mandate on Human Rights and the Environment: John H. Knox, Independent Expert, *Mapping Report* (2014), <http://ieenvironment.org/mapping-report-2014-2/>; Office of the High Commissioner for Human Rights, *Mapping Report*, <http://www.ohchr.org/EN/Issues/Environment/IEEnvironment/Pages/MappingReport.aspx>.

<sup>20</sup> *Mapping Report*, *supra* note 16.

attainable standard of physical and mental health; the right to an adequate standard of living and its components, including the rights to food, water, and housing; the right to property; and the right to respect for private and family life.<sup>21</sup> Human rights bodies have also identified obligations of States to protect against environmentally related interference with the enjoyment of human rights. These obligations fall into three categories: procedural duties, substantive duties, and duties relating to the protection of those particularly vulnerable to environmental harm.

First, the sources agree that human rights law imposes procedural obligations on states, including duties to assess environmental impacts on human rights and to make environmental information public, to facilitate public participation in environmental decision-making, and to provide access to effective legal remedies for environmental harm to the enjoyment of human rights.<sup>22</sup> Closely related to the right to participate in environmental decision-making are the rights of freedom of expression and of association. These rights are of particular importance to the protection of environmental advocates, who are often at great risk of harassment and even death.<sup>23</sup>

States must not only refrain from violating the rights of free expression and association directly; they must also take steps to protect the life, liberty, and security of individuals exercising those rights.<sup>24</sup> These obligations apply to environmental defenders just as strongly as they apply to other human rights defenders. Special rapporteurs have emphasized these

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<sup>21</sup> *Id.* at ¶¶ 17-22.

<sup>22</sup> *See id.* at ¶¶ 29-43. These “access rights” are also reflected in many international environmental instruments. *See, e.g.*, U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, principle 10, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration*]; Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 450.

<sup>23</sup> In 2007, a UN special representative of the Secretary-General on human rights defenders concluded, on the basis of the number of allegations of human rights violations she had received, that those working on land rights and natural resources were the second-largest group of human rights defenders at risk of being killed. Special Representative of the Secretary-General on Human Rights Defenders, *Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled “Human Rights Council”*, ¶ 45, UN Doc. A/HRC/4/37 (Jan. 24, 2007) (by Hina Jilani). In 2013, her successor as the UN special rapporteur on the situation of human rights defenders again reviewed the situation of environmental and land defenders, and concluded that their situation appeared to have worsened over the preceding six years. Special Rapporteur on the Situation of Human Rights Defenders, *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, ¶ 18, U.N. Doc. A/68/262, (Aug. 5, 2013) (by Margaret Sekaggya). More recently, in April 2014, a non-profit group called Global Witness conducted a comprehensive review of all of the reported cases of killings of environmental and land advocates between the beginning of 2002 and the end of 2013. Counting only the cases where there was a clear connection between the death and the person’s advocacy, Global Witness found that 908 people in 35 countries were killed because of their work defending environmental and land rights. GLOBAL WITNESS, *DEADLY ENVIRONMENT: THE DRAMATIC RISE IN KILLINGS OF ENVIRONMENTAL AND LAND DEFENDERS 1* (2014), available at <http://www.globalwitness.org/deadlyenvironment/>.

<sup>24</sup> *Mapping Report*, *supra* note 16, at ¶¶ 39-40.

obligations,<sup>25</sup> as has the UN Human Rights Commission, which called upon states as far back as 2003 “to take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development.”<sup>26</sup> More recently, the Inter-American Court of Human Rights held that a state violated an environmental defender’s right to freedom of association by failing to adopt the necessary measures to protect her from harassment and, ultimately, murder, in response to her efforts to fight illegal logging in a national park.<sup>27</sup>

Second, the emerging environmental human rights jurisprudence indicates that states have substantive obligations to protect against environmental harm that interferes with the enjoyment of human rights. The contours of the obligations vary depending on the right threatened, but human rights bodies generally agree on the major points: human rights law does not require states to prohibit all activities that cause environmental harm; states have discretion to strike a balance between environmental protection and other issues of societal importance, such as economic development; the balance cannot result in unreasonable infringements of human rights; and states’ obligations extend to the protection of human rights against environmental abuses caused by private actors, including corporations. In determining whether the balance struck by a state is reasonable, human rights bodies have looked at factors such as whether the state’s actions comply with international health and environmental standards, whether the actions are non-retrogressive, and whether, once the state has struck a balance in its own law, it actually implements the balance in practice.<sup>28</sup>

Third, human rights bodies have identified obligations of states with respect to people who are especially vulnerable to environmental harm. In addition to a general requirement that states not discriminate in the application of their environmental laws and policies, the sources have

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<sup>25</sup> E.g., *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, *supra* note 23, at ¶¶ 16, 30; Special Rapporteur on rights of indigenous peoples, *Extractive industries and indigenous peoples: Report of the Special Rapporteur on the rights of indigenous peoples*, ¶ 21, U.N. Doc. A/HRC/24/41 (July 1, 2013) (by James Anaya).

<sup>26</sup> U.N. Commission on Human Rights, Res. 2003/71, 62<sup>nd</sup> Meeting, U.N. Doc E/CN.4/2003/L.11, ¶ 4 (Apr. 25, 2003).

<sup>27</sup> *See Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 196 (Apr. 3, 2009). The Inter-American Court required the State to compensate relatives of the human rights defender for pecuniary and non-pecuniary damage, and also required the State to: (i) publish excerpts from its judgment in newspapers of major national circulation; (ii) make a public acknowledgment of international responsibility for the human rights violations; (iii) construct a monument in memoriam of the human rights defender; and (iv) carry out a national awareness campaign regarding the importance of the work of environmentalists in the State. *Id.* at ¶¶ 256-65.

<sup>28</sup> *See Mapping Report*, *supra* note 16, at ¶¶ 44-61.

specified additional duties to certain types of vulnerable groups and communities, including in particular indigenous peoples, whose close relationship with the environment means that their rights are particularly susceptible to infringement as a result of environmental degradation.<sup>29</sup>

The mapping project also identified areas where the human rights obligations relating to environmental harm are less developed. Perhaps the most important of these areas is the interference with the enjoyment of human rights caused by transboundary environmental harm. While some human rights instruments, including the Universal Declaration of Human Rights, contain no explicit jurisdictional limitations, and others, such as the International Covenant on Economic, Social and Cultural Rights, may even provide an explicit basis for extraterritorial obligations,<sup>30</sup> some treaties, including the International Covenant on Civil and Political Rights, limit their protections to individuals subject to the jurisdiction of the State party to the treaty.<sup>31</sup> Because of this diversity of language, and because many human rights bodies have not addressed the issue, it is difficult to reach clear conclusions as to the application of human rights obligations to transboundary harm. However, it does seem clear that, at a minimum, states are obliged to cooperate with one another to address international human rights challenges such as climate change.<sup>32</sup>

In sum, human rights principles establish procedural obligations whose implementation makes environmental decision-making more transparent, better informed, more responsive to the public, and, as a result, more effective. Human rights bodies have identified factors to be taken into account as states decide how to balance substantive environmental protections against other societal interests. Additionally, human rights law

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<sup>29</sup> See, e.g., *Saramaka People v. Suriname*, Int-Am. Ct. H.R. (ser. C) No. 172, ¶ 134 (Nov. 28, 2007) (with respect to large-scale development projects that would have a major impact within the territory of a tribal people, the government must obtain “their free, prior, and informed consent, according to their customs and traditions”).

<sup>30</sup> See International Covenant on Economic, Social and Cultural Rights, art. 2(1), Dec. 16, 1966, 993 U.N.T.S. 3. The Committee on Economic, Social and Cultural Rights, the body of independent experts charged with overseeing implementation of the Covenant, has interpreted it as requiring each of its parties to take steps to protect against harm to the rights to health and water, for example, from actions within its territory that interfere with the enjoyment of the rights in other countries. Committee on Economic, Social and Cultural Rights, *General Comment No. 14: The Right to the Highest Attainable Standard of Health*, ¶ 39, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000); Committee on Economic Social and Cultural Rights, *General Comment No. 15: The Right to Water*, ¶¶ 31, 33, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003).

<sup>31</sup> International Covenant on Civil and Political Rights, art. 2(1), Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>32</sup> See *Mapping Report*, *supra* note 16, at ¶¶ 62-68. For a more detailed analysis of the application of human rights law to climate change, see John H. Knox, *Human Rights Principles and Climate Change*, in OXFORD HANDBOOK OF INTERNATIONAL CLIMATE CHANGE LAW (Cinnamon Carlarne, Kevin R. Gray, & Richard Tarasofsky eds., 2015).



sets out heightened obligations for States to protect those who are particularly vulnerable to environmental harm.

### III. THE SDGs IN LIGHT OF ENVIRONMENTAL HUMAN RIGHTS LAW

How well do the SDGs proposed by the Open Working Group reflect human rights obligations relating to environmental protection? The answer, perhaps not surprisingly, is mixed. The proposed SDGs include goals and targets that would promote those obligations, but the targets are often written in language that is neither concrete nor closely linked to existing human rights obligations.

Many advocates for post-2015 development goals have underscored that they should be based on human rights.<sup>33</sup> The starting point for the development of the SDGs, the 2012 UN conference on sustainable development, repeatedly emphasized the importance of human rights in its outcome document, *The Future We Want*.<sup>34</sup> In July 2013, Secretary-General Ban Ki-moon set out four building blocks for a sustainable development agenda, the first of which is “a far-reaching vision of the future firmly anchored in human rights and universally accepted values and principles, including those encapsulated in the Charter, the Universal Declaration of Human Rights, and the Millennium Declaration.”<sup>35</sup>

The proposal of the Open Working Group cites the references to human rights in *The Future We Want*,<sup>36</sup> but it almost never uses the term in its proposed SDGs and targets. This does not mean that the SDGs ignore,

<sup>33</sup> In part, this reflects a widespread belief that the MDGs do not sufficiently take into account human rights norms. While the MDGs are obviously relevant to, and in many cases congruent with, human rights, their “references to human rights are relatively fleeting, rarely rely on any precise formulations, and generally content themselves with an occasional reference to the Universal Declaration of Human Rights or the Declaration on the Right to Development.” Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755, 760 (2005).

<sup>34</sup> See, e.g., United Nations Conference on Sustainable Development, Rio de Janeiro, Braz., June 20-22, 2012, *The Future We Want*, ¶¶ 8-9, U.N. Doc. A/CONF.216/L.1 (June 19, 2012) (“We also reaffirm . . . respect for all human rights, including the right to development and the right to an adequate standard of living, including the right to food. . . . We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.”).

<sup>35</sup> U.N. Secretary-General, *A Life of Dignity For All: Accelerating Progress Towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015: Report of the Secretary-General*, ¶ 75, U.N. Doc. A/68/202 (July 26, 2013). The other building blocks he identified are: “(b) a set of concise goals and targets aimed at realizing the priorities of the agenda; (c) a global partnership for development to mobilize means of implementation; and (d) a participatory monitoring framework for tracking progress and mutual accountability mechanisms for all stakeholders.” *Id.*

<sup>36</sup> Open Working Group Report, *supra* note 7, at ¶ 7.

much less contravene, human rights norms. On the contrary, as a coalition of civil society organizations stated, the “goals and targets are consistent with existing human rights standards in some quite significant ways.”<sup>37</sup> Nevertheless, human rights advocates have criticized the proposed SDGs for not incorporating human rights norms more explicitly. The coalition of organizations urged the negotiators to align all of the goals and targets with relevant human rights standards, and to include more explicit targets on civil and political rights.<sup>38</sup> The chairpersons of the ten UN human rights treaty bodies issued a joint statement that “strongly urge[d] Member States to maintain—and, indeed, strengthen—consistent alignment with, and references to, human rights,” including by incorporating explicit references to freedoms of expression, association, and peaceful assembly.<sup>39</sup>

Since the Open Working Group submitted its report in August 2014, the Secretary-General has continued to emphasize the importance of a human rights foundation for the SDGs. In his December 2014 “synthesis report” on the post-2015 sustainable development agenda, he again stressed that “all have called for a transformational and universal post-2015 sustainable development agenda, buttressed by science and evidence and built on the principles of human rights and the rule of law, equality and sustainability.”<sup>40</sup> He stated that one of the things that we must do as we implement the new agenda is to “[e]nsure that all actions respect and advance human rights, in full coherence with international standards.”<sup>41</sup> He suggested rearranging the seventeen proposed SDGs in a more focused and concise manner, according to six “essential elements”: dignity, people (ensuring their healthy lives and the inclusion of women and children), prosperity, protection of ecosystems, justice, and partnership for development.<sup>42</sup> In his description of these elements, he often referred to human rights,<sup>43</sup> and he proposed “a technical review to ensure that each goal

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<sup>37</sup> The Post-2015 Human Rights Caucus, Open Letter, *The Post-2015 Agenda Won't Deliver Without Human Rights at the Core*, CENTER FOR ECONOMIC AND SOCIAL RIGHTS, Sept. 29, 2014, <http://cesr.org/article.php?id=1648> (open letter from Amnesty International, the Association for Women's Rights in Development, the Center for Economic and Social Rights, and 21 other organizations, to Ban Ki-Moon and the President of the UN General Assembly).

<sup>38</sup> Post-2015 Human Rights Caucus, *supra* note 37.

<sup>39</sup> Joint Statement of the Chairpersons of the United Nations Human Rights Treaty Bodies on the Post-2015 Development Agenda (Jan. 18, 2015), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15505&>. [hereinafter Joint Statement].

<sup>40</sup> U.N. Secretary-General, *The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet: Synthesis Report of the Secretary-General on the Post-2015 Sustainable Development Agenda*, ¶ 65, U.N. Doc. A/69/700 (Dec. 4, 2014) [hereinafter *The Road to Dignity by 2030*].

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at ¶¶ 66–86.

<sup>43</sup> *Id.* at ¶¶ 68, 69, 77.

is framed in language that is specific, measurable, achievable and consistent with existing United Nations standards and agreements.”<sup>44</sup>

Although this could be taken as a suggestion that the SDGs should include more specific human rights-based indicators, the Secretary-General’s response has been criticized for “miss[ing] an opportunity to illustrate how these previously agreed and well-defined HR obligations carry over into development in practice.”<sup>45</sup> It remains to be seen whether the final version of the SDGs will address human rights more explicitly, or whether it will continue down the path first taken by the MDGs of trying to further some human rights goals without explicitly referring to them.

This article does not try to address the entire spectrum of issues concerning the relationship of the draft SDGs with human rights. Instead, it asks a narrower set of questions: Do the proposed SDGs incorporate those human rights norms that are particularly relevant to environmental protection? When such norms are included, does the proposal set out concrete targets and clear timetables?

The following sections focus on some of the goals and targets most relevant to the nexus between human rights and environmental protection. They are organized below into the three categories of human rights obligations described in Part I: (a) procedural obligations; (b) substantive obligations; and (c) obligations relating to those particularly vulnerable to environmental harm.

#### A. *Procedural Obligations*

The obligations to provide access to environmental information, to facilitate public participation in environmental decision-making, and to provide access to effective remedies for environmental harm are all reflected to some degree in the proposed SDGs, but the references are often not concrete.

##### 1. *Obligation to Provide Access to Environmental Information*

Two targets are particularly relevant to this obligation. The first is under Goal 12, which is to “[e]nsure sustainable consumption and

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<sup>44</sup> *Id.* at ¶ 137. He further suggests that the UN system could prepare a draft set of indicators. *Id.* at ¶ 139.

<sup>45</sup> Subhas Gujadhur, *Ban’s attempt to place human rights as a pillar in the Post-2015 Development Agenda*, URG INSIGHTS (Dec. 31, 2014), <http://www.universal-rights.org/blogs/116-ban-s-attempt-to-place-human-rights-as-a-pillar-in-the-post-2015-development-agenda> (last visited May 16, 2015).

production patterns.”<sup>46</sup> Target 12.8 states: “By 2030, ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature.”<sup>47</sup> While it is difficult to argue with the desirability of this target, the specific reference to 2030 should not obscure the vagueness of its terms. Contrast Target 12.8 with Principle 10 of the 1992 Rio Declaration, which states: “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 . . . . States shall facilitate and encourage public awareness and participation by making information widely available.”<sup>48</sup> Although Principle 10 also uses general terms, it includes much more concrete language as well, including references to “information concerning the environment that is held by public authorities,” and “information on hazardous materials and activities in their communities.”<sup>49</sup>

The second relevant target is under Goal 16, which is to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.”<sup>50</sup> Goal 16 responded to the suggestions of many states, including in particular developed countries, for goals and targets on good governance. Target 16.10 states: “Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.”<sup>51</sup> This language is perhaps more specific than Target 12.8, but it still does not refer clearly to information held by the government, as Principle 10 does. Worse, the phrase “in accordance with national legislation” could be read as limiting the scope of Target 12.8 to a commitment to provide information only to the extent that national laws already require, which would make it almost a nullity.<sup>52</sup>

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<sup>46</sup> Open Working Group Report, *supra* note 7, at 18.

<sup>47</sup> Open Working Group Report, *supra* note 7, at 19.

<sup>48</sup> *Rio Declaration*, *supra* note 22.

<sup>49</sup> *Id.*

<sup>50</sup> Open Working Group Report, *supra* note 7, at 22.

<sup>51</sup> Open Working Group Report, *supra* note 7, at 22.

<sup>52</sup> See Joint Statement, *supra* note 39, at 1 (“While the inclusion of the protection of fundamental rights and freedoms and promotion of gender equality in the goals and targets is crucial, this must reflect international human rights standards and not be limited by national laws (goals 5 and 16).”) (emphasis added).

## 2. *Obligation to Facilitate Public Participation in Environmental Decision-Making*

The most relevant target for this obligation is also under Goal 16. Target 16.7 states: “Ensure responsive, inclusive, participatory and representative decision-making at all levels.”<sup>53</sup> While the sentiment is again praiseworthy, the language could be much clearer. The treaty body chairs suggest that the target should be understood as “including women, children, minorities, indigenous peoples, migrants, older persons, persons with disabilities and the poor.”<sup>54</sup> To that end, it would be useful to list those groups explicitly. It is also important to spell out that each person has the right to participate in such decision-making, rather than leaving the level of participation more abstract, as it is now. Doing so would bring the target more in line with existing obligations under human rights law to respect the right of every person to take part in the government of their country and in the conduct of public affairs.<sup>55</sup> It would also track more closely Principle 10, which states: “Each individual shall have . . . the opportunity to participate in decision-making processes.”<sup>56</sup>

As Part I of this article explains, States have obligations not only to refrain from violating the rights of free expression and association directly, but also to protect the life, liberty, and security of individuals exercising those rights. Although the targets under Goal 16 include some language relevant to those obligations, it is too general to be of much practical use. For example, Target 16.1 states: “Significantly reduce all forms of violence and related death rates everywhere.”<sup>57</sup> While this is again a worthy goal, it would be more useful if tied to specific time frames, targets, and indicators. Even so, it would not address the particular problems faced by environmental advocates and other human rights defenders.

The human rights treaty body chairs have urged that Target 16.10, which states “protect fundamental freedoms” as well as “[e]nsure public access to information,” should be “strengthened by explicitly referring to freedoms of expression, association and peaceful assembly.”<sup>58</sup> This is an excellent suggestion, as long as the reference also includes a specific target

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<sup>53</sup> Open Working Group Report, *supra* note 7, at 22.

<sup>54</sup> Joint Statement, *supra* note 39, at 1.

<sup>55</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 21 (Dec. 10, 1948); International Covenant on Civil and Political Rights, *supra* note 7, at art. 25.

<sup>56</sup> *Rio Declaration*, *supra* note 22.

<sup>57</sup> Open Working Group Report, *supra* note 7, at 22.

<sup>58</sup> Joint Statement, *supra* note 39, at 1.

and timetable. It would be even better if the SDGs included a target relating to the protection of human rights defenders.

### 3. *Obligation to Provide Access to Effective Remedies*

Here, too, the most relevant target is under Goal 16. Target 16.3 states: “Promote the rule of law at the national and international levels and ensure equal access to justice for all.”<sup>59</sup> Again, the assessment is largely the same as those of the other targets: the goal is worthwhile, but the language is too vague to be of much use.

The need for more concrete targets on access to justice is related to the call from many sources, including the Secretary-General, for effective accountability mechanisms for the SDGs themselves. In his December 2014 synthesis report, the Secretary-General described a possible “voluntary, State-led, participatory, evidence-based and multitiered process to monitor progress” towards the SDGs.<sup>60</sup> He suggested that the most significant component of this process would be at the national level. Building on existing national mechanisms, it would “establish benchmarks, review the national policy framework, chart progress, learn lessons, consider solutions, [and] follow up and report thereon” through government reports and as well as national stakeholder and UN reports.<sup>61</sup> Regional and global mechanisms would assist in providing peer review and information.

### B. *Substantive Obligations*

The substantive standards that human rights law sets for environmental protection are usually couched in more general, less concrete language than the procedural requirements. Instead of setting specific limits on acceptable levels of pollution, human rights bodies suggest factors that should be taken into account in deciding whether a particular environmental standard strikes an acceptable balance between environmental protection and other societal interests, such as economic development.

The proposed SDGs and their associated targets could help to provide substance to these standards by providing more guidance as to what States can and should reasonably do to meet their obligations. Many of the goals and targets are relevant in this respect. The following examines targets

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<sup>59</sup> Open Working Group Report, *supra* note 7, at 22.

<sup>60</sup> *The Road to Dignity by 2030*, *supra* note 40, at ¶ 148.

<sup>61</sup> *Id.* at ¶ 149(a). See also Joint Statement, *supra* note 39, at 2 (strongly agreeing with the Secretary-General on this point, and suggesting that States also build on the principles and methods of the treaty bodies themselves, as well as the Universal Periodic Review process of the Human Rights Council).

falling under eight goals, concerning: 1) health; 2) water; 3) economic growth; 4) human settlements; 5) sustainability; 6) climate change; 7) marine resources; and 8) terrestrial ecosystems.

### 1. *Health*

Goal 3 is to “[e]nsure healthy lives and promote well-being for all at all ages.”<sup>62</sup> Target 3.9 is most closely related to environmental protection. It states: “By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination.”<sup>63</sup> The problem of premature deaths as a result of pollution certainly demands urgent attention. In 2014, the World Health Organization reported that in 2012 one in every eight deaths around the world—about seven million people in all—was due to exposure to air pollution.<sup>64</sup> The problem with this target is that the term “substantially” is too vague. Hard targets for percentage reductions in deaths from air pollution, water pollution, and other environmental contaminants would be far more preferable.

### 2. *Water*

Goal 6 is to “[e]nsure availability and sustainable management of water and sanitation for all.”<sup>65</sup> Virtually all of the targets under this goal are relevant to environmentally related human rights. For example, Target 6.3 states: “By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and increasing recycling and safe reuse by [x] per cent globally.”<sup>66</sup> Target 6.6 states: “By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes.”<sup>67</sup> These are worthwhile targets, but again they would be more useful if they were strengthened by the inclusion of more specific indicators.

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<sup>62</sup> Open Working Group Report, *supra* note 7, at 12.

<sup>63</sup> *Id.*

<sup>64</sup> The World Health Organization, *7 million premature deaths annually linked to air pollution*, WHO.INT (Mar. 25, 2014), <http://www.who.int/mediacentre/news/releases/2014/air-pollution/en/> (last visited May 16, 2015).

<sup>65</sup> Open Working Group Report, *supra* note 7, at 14.

<sup>66</sup> *Id.* at 14-15.

<sup>67</sup> *Id.* at 15.

### 3. *Economic Growth*

Goal 8 is to “[p]romote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”<sup>68</sup> Target 8.4 includes a commitment to “endeavor to decouple economic growth from environmental degradation, in accordance with the 10-year framework of programmes on sustainable consumption and production, with developed countries taking the lead.”<sup>69</sup> Decoupling economic growth from environmental degradation is a central aspect of sustainable development, but this target leaves unclear how this decoupling would take place. Given the nature of the commitment, it may not be possible to provide much more specificity.

### 4. *Human Settlements*

Goal 11 is to “[m]ake cities and human settlements inclusive, safe, resilient and sustainable.”<sup>70</sup> The importance of environmental protection to making human settlements safe and sustainable is obvious, and several of the targets are related to the environment. For example, Target 11.4 states: “Strengthen efforts to protect and safeguard the world’s cultural and natural heritage.”<sup>71</sup> Target 11.5 states: “By 2030, significantly reduce the number of deaths and the number of people affected and decrease by [x] percent the economic losses relative to gross domestic product caused by disasters, including water-related disasters.”<sup>72</sup> Target 11.6 is: “By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management.”<sup>73</sup>

The problems here, again, are that much of this language is very vague. In concrete terms, what would it mean to “[s]trengthen efforts to protect and safeguard the world’s cultural and natural heritage”? How would one know whether the target is being met? There are many international environmental and conservation agreements that would be relevant to this target, but the target mentions none of their specific provisions. Similarly, in Target 11.6, how is the “per capita environmental impact of cities” to be measured? What would qualify as “special

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 16.

<sup>70</sup> *Id.* at 18.

<sup>71</sup> Open Working Group Report, *supra* note 7, at 18.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*



attention”? In contrast, Target 11.5 does have a placeholder for a percentage reduction of economic losses, but it does not have a similar indicator for deaths, which is surely the more important measurement.

### 5. *Sustainability*

Goal 12 is to “[e]nsure sustainable consumption and production patterns.”<sup>74</sup> Virtually all of these targets are directly relevant to environmental protection. Again, some are so vague as to be of little use. For example, Target 12.2 states: “By 2030, achieve the sustainable management and efficient use of natural resources.”<sup>75</sup> Without more, this language is close to being completely meaningless.

Target 12.4 states: “By 2020, achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, in accordance with agreed international frameworks, and significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment.”<sup>76</sup> Although this is still not as clear as it might be, the reference to “agreed international frameworks” ties the target to already existing international standards. It could be improved by the inclusion of explicit references to the major environmental agreements that regulate chemicals and wastes, including the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the 2001 Stockholm Convention on Persistent Organic Pollutants, and the 2013 Minamata Convention on Mercury.

### 6. *Climate Change*

Goal 13 is to “[t]ake urgent action to combat climate change and its impacts.”<sup>77</sup> Climate change is obviously an immense threat to the enjoyment of a vast range of human rights, as has been clear at least since 2009, when the UN Office of the High Commissioner for Human Rights issued a report describing the effects of climate change on the rights to life, health, food, water, and many others.<sup>78</sup> The targets relating to this goal are

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<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 19.

<sup>76</sup> *Id.*

<sup>77</sup> Open Working Group Report, *supra* note 7, at 19.

<sup>78</sup> U.N. Office of the High Commissioner for Human Rights, *Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship Between Climate Change and Human*

all quite vague, probably reflecting the statement by the drafters that the UN Framework Convention on Climate Change “is the primary international, intergovernmental forum for negotiating the global response to climate change.”<sup>79</sup> This deference may make sense, but if the SDGs address climate change at all, it would still appear to be desirable to include more specific targets for the desired outcomes.

### 7. *Marine Resources*

Goal 14 is to “[c]onserve and sustainably use the oceans, seas and marine resources for sustainable development.”<sup>80</sup> Again, many of the targets use very general language, but there are some partial exceptions. Target 14.5, for example, states: “By 2020, conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on the best available scientific information.”<sup>81</sup> Target 14.6 is directed at the prohibition of certain forms of fisheries subsidies. Target 14.c is to “[e]nsure the full implementation of international law,” and refers to the UN Convention on the Law of the Sea and “existing regional and international regimes for the conservation and sustainable use of oceans.”<sup>82</sup> The references to international law are welcome, but more work could be done to tie the targets to specific requirements of the international agreements.

### 8. *Terrestrial Ecosystems*

Goal 15 is to “[p]rotect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.”<sup>83</sup> In what by now is a familiar refrain, many of the targets include inarguably worthwhile goals, but they fail to include indicators that are specific enough to make the goals concrete and memorable.

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*Rights*, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009). See also John H. Knox, *Linking Human Rights and Climate Change at the United Nations*, 33 HARV. ENVTL. L. REV. 477 (2009).

<sup>79</sup> Open Working Group Report, *supra* note 7, at 19.

<sup>80</sup> *Id.* at 20.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 21.

<sup>83</sup> *Id.*

### C. *Vulnerable Groups and Non-Discrimination*

The proposed SDGs have been praised for their emphasis on equality and non-discrimination.<sup>84</sup> The treaty chairpersons, for example, have stated that in contrast to “[p]revious development efforts,” which “failed to produce sufficient improvements in the plight of the marginalized, disempowered and excluded, including women, children, indigenous peoples, migrants, older persons, persons with disabilities and the poor,” the inclusion of non-discrimination targets is “an important step towards a development agenda that leaves no-one behind.”<sup>85</sup>

However, many of the references to non-discrimination employ very general language. For example, Goal 10 is to “[r]educe inequality within and among countries.”<sup>86</sup> While it would be useful to refer explicitly to specific types of inequalities, including environmental inequalities, the larger problem continues to be that many of the targets are not concrete enough. For example, Target 16.b is to “[p]romote and enforce non-discriminatory laws and policies for sustainable development.”<sup>87</sup> Again, it would be more useful if this language explicitly referenced some of the groups that are most vulnerable to such discrimination, and included ways that the promotion and enforcement of non-discriminatory laws and policies could be measured.

The proposed goals and targets do highlight the importance of improving the situation of some specific groups. Although they do not include many references to environmental threats in particular, the language is often broad enough to include such threats. For example, the SDGs pay particular attention to gender equality. Goal 5 is to “[a]chieve gender equality and empower all women and girls,” and the first target under that goal is to “[e]nd all forms of discrimination against all women and girls everywhere.”<sup>88</sup> Although this reference, like others in the SDGs, does not specifically refer to non-discrimination in the context of environmental protection, it is so general that it would include discrimination of all sorts. More specifically, Target 5.a states: “Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property . . . in accordance with national laws.”<sup>89</sup> This target addresses an important issue with consequences

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<sup>84</sup> Joint Statement, *supra* note 39, at 1.

<sup>85</sup> *Id.*

<sup>86</sup> Open Working Group Report, *supra* note 7, at 17.

<sup>87</sup> *Id.* at 22.

<sup>88</sup> *Id.* at 14.

<sup>89</sup> *Id.*

for environmental protection. If women are able to own their own land and other property, including natural resources, then they may have greater power to defend themselves from some forms of environmental degradation. But the target again includes the “in accordance with national laws” language, which could be read as subordinating the goal to national legislation.

The SDGs also emphasize the overriding importance of eradicating poverty. The very first goal, Goal 1, is to “[e]nd poverty in all its forms everywhere.”<sup>90</sup> Target 1.5 states: “By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters.”<sup>91</sup> This language is particularly welcome in light of the vulnerability of the poor to disastrous weather events. And, again, it would be even more welcome if the language included more concrete indicators.

One particularly glaring omission is the lack of attention to indigenous peoples, perhaps the group most vulnerable to environmental harms. The proposed goals and targets include only two passing references. Target 2.3 includes indigenous peoples in a long list of groups whose “agricultural productivity and incomes” are to be doubled by 2030, and Target 4.5 includes them in the list of groups for whom equal access to education should be provided by 2030.<sup>92</sup> The treaty body chairs have proposed that the SDGs should include “the right to free, prior and informed consent of indigenous peoples in relation to decisions that affect them as a key means of ensuring respect for all rights and freedoms of indigenous peoples.”<sup>93</sup> In addition, the SDGs should include other targets for realization of the human rights of indigenous peoples, including with respect to the obligation of states to: recognize the rights of indigenous peoples in the territory that they have traditionally occupied, including the natural resources on which they rely; provide them a reasonable benefit from any development in their traditionally occupied territories; and provide them access to legal remedies for harm caused by the development activities.<sup>94</sup>

#### IV. CONCLUSION

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<sup>90</sup> *Id.* at 11.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 11, 13.

<sup>93</sup> Joint Statement, *supra* note 39, at 1.

<sup>94</sup> See U.N. Special Rapporteur on the rights of indigenous peoples, *Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya: Extractive Industries and Indigenous Peoples*, U.N. Doc. A/HRC/24/41 (July 1, 2013).

The SDGs could be of immense importance to sustainable development in general, and in particular to the ongoing development of the relationship between human rights and the environment. Many of the goals are praiseworthy. But most of the goals and, even more, the targets, remain too general and vague to provide much practical guidance to those working to promote human rights and environmental protection. To become more than hortatory gestures, they must be made more concrete.