

# A CISDL LEGAL BRIEF



## INTERNATIONAL HUMAN RIGHTS AND INTERNATIONAL SUSTAINABLE DEVELOPMENT LAW

For the World Summit on Sustainable Development 2002  
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**The international human rights regime has important implications for economic and environmental laws. What is the nature of this relationship and how can integration of these various domains contribute to sustainable development?**

There are key synergies between human rights and sustainable development. Human rights related to the right to information and the right to participation are critical in order to ensure accountability for and implementation of laws related to sustainable development. Obligations to respect and fulfil the right to health, for example, correspond to a wide variety of international instruments designed to address environmental issues such as climate change, and may even require further action than is stipulated in such environmental instruments. Many rights, such as the right to life and the right to an adequate standard of living, provide monitoring mechanisms and legal support for many of the goals related to poverty in *Agenda 21*, and set out concrete and immediate obligations for individual states and the international community.

### Introduction and Summary of Recommendations

Human rights are indivisible, and all civil, political, economic, social and cultural rights are critical for the realisation of sustainable development. This brief, however, will focus in particular on the role of economic, social and cultural rights in sustainable development. Such rights, although as important as civil and political rights, have received comparatively lesser attention in debates that link human rights and environmental protection. In addition, the integration of human rights into economic and environmental legal regimes is an extensive process and involves action at the local, national, regional and global levels. This brief will address certain relevant actions that should be included in the programme of action decided upon at the World Summit on Sustainable Development to implement *Agenda 21* and related sustainable development goals.

This brief<sup>1</sup> addresses three general recommended actions:

- **Integrating human rights into decision-making by environmental, economic and sustainable development institutions.** As noted below, international human rights obligations would normally require states to adopt treaties and protocols that provide extensive measures to protect the environment and eradicate poverty, including provision of increased and predictable levels of domestic and

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<sup>1</sup> The Centre for International Sustainable Development Law (CISDL), based in Montreal, Canada, is a new legal institution that examines areas of intersection between environmental, social and economic law. This brief was prepared by CISDL Director Ashfaq Khalfan of Kenya, and CISDL Director Marie-Claire Cordonier Segger of Canada. The CISDL gratefully acknowledges the review and co-authorship on an earlier draft by Caroline Dommen of Switzerland, CISDL Commission member.

international financing for such measures.<sup>2</sup> Human rights obligations may also be considered as tools to generate compliance with certain international environmental and economic agreements, to indicate ‘core’ and other obligations requiring immediate implementation, to provide mechanisms to monitor such commitments, and to fill gaps in such instruments.

There is a need for environmental, economic and sustainable development bodies and procedures to be fully aware of the increasing environmental and economic roles played by human rights bodies and procedures. They should also take further steps to fully integrate human rights law into their activities. In particular, they should ensure that human right obligations are fully considered by states in the development of environmental, economic and sustainable development law, such as at Conferences of Parties of various Multilateral Environmental Agreements, the WTO Doha Ministerial Round and in the preparatory process for the World Summit on Sustainable Development.

• **Developing International Sustainable Development Law by addressing the implications of human rights in the formulation and implementation of international environmental and economic law.** It is recommended that more attention be devoted to the understanding, development and implementation of International Sustainable Development Law (ISDL). ISDL comprises a body of law that exists at the **intersection** of international environmental, social (including human rights) and economic law.<sup>3</sup> This agenda will also require that human rights institutions do their part in integrating environmental and economic considerations into their work. Human rights bodies such as the Committee on Civil and Political Rights and the Committee on Economic, Social and Cultural Rights should prepare General Comments on the application of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* in relation to the environment and economy. The existence of such general comments would facilitate the use of human rights bodies and procedures for sustainable development.

• **Ensuring that human rights obligations to eradicate poverty are fully addressed in environmental and economic law.** Poverty eradication is a key requirement of human right law, which is necessarily linked to sustainable development. Two components of this link should be explicitly recognised and acted upon by states and the international community. Firstly, poverty eradication must be treated as a key objective of sustainable development, particularly in issue areas such as desertification. Secondly, environmental protection programmes by states, IGOs and NGOs should be designed in a manner sensitive to the basic rights and needs of the most vulnerable. The latter point does not imply limits on the overall level of environmental protection, but requires that environmental programmes be appropriately designed and implemented.

### **How does human rights relate to the sustainable development?**

The full potential of human rights has not been realised as yet. Human rights obligations have several critical contributions to make in the context of sustainable development:

- to provide further support for and generate further compliance with certain economic and environmental agreements,
- to fill gaps in these treaties,
- to indicate ‘core’ and other obligations that require immediate implementation
- to provide mechanisms to monitor sustainable development obligations

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<sup>2</sup> For further analysis of this issue, see the CISDL Legal Brief, “International Human Rights Obligations and Levels of Financing for Development” 21 March, 2002, released at the UN International Conference on Financing for Development. Available online at [www.cisd.org](http://www.cisd.org)

<sup>3</sup> For detailed explanation of ISDL, see the CISDL Legal Brief, “International Sustainable Development Law: Principles, Practise and Prospects” 28 January, 2002, released at the Second Preparatory Committee meeting for the World Summit on Sustainable Development. Available online at [www.cisd.org](http://www.cisd.org)

- to spur the development of environmental and economic law and policy.

These goals should be realised through three major strategies:

- greater recourse to the reporting bodies of the human rights treaties, such as the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*<sup>4</sup> and the *International Covenant on Civil and Political Rights (ICCPR)*,<sup>5</sup>
- the promotion of human rights related to sustainable development in the media,<sup>6</sup> and
- formally considering the requirements of international human rights law in the process of economic and environmental treaty formation.

In particular, a number of economic, social and cultural rights are intrinsically related to environmental protection. According to the treaty body supervising implementation of the *ICESCR*, the Committee on Economic, Social and Cultural Rights (CESCR), the notion of sustainability is intrinsically linked to the right to food, implying that food must be accessible for both future and present generations.<sup>7</sup> The right to health is violated by: “the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.”<sup>8</sup> In particular, Article 12.2 (b) of the *ICESCR* which refers to “the improvement of all aspects of environmental and industrial hygiene” is understood by the Committee to require the reduction of all detrimental environmental conditions that directly or indirectly impact upon human health.<sup>9</sup>

The issue of climate change illustrates the necessity that current human rights institutions address environmental issues. Climate change impinges on the *right to food*, as it will lead to a general reduction in crop yields in most tropical and sub-tropical regions.<sup>10</sup> Such a result would undermine the access to food of families that depend on farming, either as source of their food or as a source of core income. Climate change reverses the realisation of the *right to health*, by increasing the number of people exposed to vector borne diseases such as malaria and water-borne diseases, such as cholera.<sup>11</sup> Climate change will impinge on the *right to an adequate standard of living*. Flooding caused by anthropogenic climate change, could displace between 75 million to 200 million people, in most cases destroying their shelter and means of livelihood.<sup>12</sup>

Though the *ICESCR* requires that economic, social and cultural rights be realised progressively,<sup>13</sup> it has certain immediate requirements: that there not be discrimination in implementation of the rights, and

<sup>4</sup> *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, (1976), 993 U.N.T.S. 3. Although there is no process for individual or group complaints, NGOs and IGOs may participate in the reporting sessions of the Committee on Economic, Social and Cultural Rights.

<sup>5</sup> *International Covenant on Civil and Political Rights (ICCPR)*, (1976), 999 U.N.T.S. 171.

<sup>6</sup> For the central role of the media as the primary tool of human rights actors, see, for example, William Korey, “Human Rights NGOs: The Power of Persuasion” (1998) 12 *Ethics and International Affairs*, at 158 ff.

<sup>7</sup> Committee on Economic, Social and Cultural Rights, *General Comment No.12: The Right to Adequate Food*, UN ESCOR, 1999, UN Doc. E/C.12/1999/5, CESCR, para. 7. The General Comments serve as persuasive authority as to the interpretation of the *ICESCR*.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, *General Comment No.14: The Right to the Highest Attainable Standard of Health*, UN ESCOR, 2000, UN Doc. E/C.12/2000/4, para. 51.

<sup>9</sup> *Ibid.*, para. 14.

<sup>10</sup> Intergovernmental Panel on Climate Change (IPCC), Third Assessment Report, Working Group II, *Climate Change 2001: Impacts, Adaptation and Vulnerability*, 13-16 February 2001, <<<http://www.ipcc.ch/>>> at 5.

<sup>11</sup> *Ibid.*, at 5.

<sup>12</sup> *Ibid.*, at 13.

<sup>13</sup> *ICESCR*, Article 2.1. A similar limitation on economic, social and cultural rights, albeit broader, exists in the Universal Declaration on Human Rights, which states in Article 22; “Persons are entitled to realization of their economic and social rights “through national effort and international co-operation and in accordance with the organization and resources of each State.”

that policies be implemented immediately with a view to progressively realise the rights contained in the *ICESCR*. Certain forms of environmental degradation and environmental policies (including those caused by climate change) will be discriminatory in their impacts, and will limit some States' capacity to ensure enjoyment of economic, social and cultural rights (in the case of climate change for instance, small island States will be particularly affected).

Moreover, environmental degradation can result in violation of 'minimum core obligations.' These are defined and their implications elucidated upon by the Committee on Economic, Social and Cultural Rights (CESCR), the United Nations ECOSOC body of independent experts that monitors the Covenant:

"[A] minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary care, of basic shelter and housing or of the most basic forms of education is *prima facie* failing to discharge its obligations under the *ICESCR*... In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations.<sup>14</sup>"

This perspective could assist in spurring the development of new international environmental and economic law.<sup>15</sup> The fulfilment of core obligations probably requires states to accept greenhouse gas emission reductions beyond those indicated in the Kyoto Protocol.<sup>16</sup>

Human rights obligations may also assist in identifying international obligations in relation to environmental protection, poverty eradication and development, complementing the principle of common but differentiated responsibilities. The *ICESCR* and the *Convention on the Rights of the Child* (which all States in the world, except the USA and Somalia, have ratified) specify that States realise the rights that they set out to the maximum of available resources. This requirement refers both to the resources available within a state and those available through international co-operation and assistance.<sup>17</sup> In addition, the *ICESCR* places a general responsibility on developed states to assist developing states in times of emergency,<sup>18</sup> and applies internationally, to render states and private actors responsible for the damage they cause to the rights of persons in other states.<sup>19</sup>

### **What is the role for International Sustainable Development Law in the Areas of Human Rights and the Sustainable Development?**

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<sup>14</sup> Committee on Economic, Social and Cultural Rights, *General Comment No.3*, UN ESCOR, 1990, UN Doc. E /1991/23 at para. 10. See also the list of obligations in *General Comment No. 14*, *supra* note 8 at para. 43-44. In this comment, at para. 47, the CESCR has stated that such core obligations are 'non-derogable' and that a state party cannot, under any circumstances whatsoever, justify its non-compliance with core obligations

<sup>15</sup> It has been argued that human rights law is useful for environmental protection because where a human right is put forward, it connotes a claim to an absolute entitlement that is "theoretically immune to the lobbying and trade-offs which characterize bureaucratic decision-making. Its power lies in its ability to trump individual greed and short-term thinking." Michael Anderson, "Human Rights Approaches to Environmental Protection: An Overview" in Alan Boyle & Michael Anderson, eds. *Human Rights Approaches to Environmental Protection* (Oxford: Clarendon, 1996) at 21.

<sup>16</sup> The Kyoto Protocol listed reductions of about 5% from 1990 levels, amended in 2001 to reductions of about 1%-2%. However, according to the IPCC, stabilization of carbon dioxide levels in the atmosphere would require *a very significant reduction* in world carbon emissions levels from 1990 levels. Intergovernmental Panel on Climate Change, Third Assessment Report, Working Group III, 28 February- 3 March 2001, *Climate Change 2001: Mitigation*, <<<http://www.ipcc.ch/>>>at 5.

<sup>17</sup> CESCR, *General Comment No. 3*, *supra* note 14.

<sup>18</sup> CESCR, *General Comment No. 14*, *supra* note 8 at para. 40.

<sup>19</sup> (i.e. they will have violated their obligation to *protect* the rights of persons in other states from the actions of persons within their jurisdiction). The CESCR states that states must prevent third parties from violating the right to health in other countries, if they are able to influence these third parties by way of legal or political means. *Ibid* at para. 39.

There should be further development of International sustainable development law (ISDL). This is a body of law that exists at the **intersection** of international environmental, social (including human rights) and economic law - a specific, narrow set of instruments and provisions where environmental, social and economic considerations are integrated.<sup>20</sup> This concept is reflected in Chapter 39 of *Agenda 21*, where states commit to objectives such as (a) to focus on the “further development of international law on sustainable development, giving special attention to the delicate balance between environmental and developmental concerns”; and recognises, at (b), the “need to clarify and strengthen the relationship between existing international instruments or agreements in the field of environment and relevant social and economic agreements or instruments, taking into account the special needs of the developing countries.”<sup>21</sup> The integration envisaged by ISDL can draw upon, *inter alia*, the substantive and procedural principles of international law for sustainable development devised by the International Law Association’s Committee on the Legal Aspects of Sustainable Development.<sup>22</sup>

International efforts should focus on capacity building in the integration of international human rights and environmental law. States and intergovernmental institutions, such as the World Bank, the Office of the High Commissioner for Human Rights and the United Nations Environmental Programme should establish research and implementation programmes that examine the contribution of human rights regimes to sustainable development, in cooperation with NGOs.

It is recommended that human rights bodies such as the Committee on Civil and Political Rights and the Committee on Economic, Social and Cultural Rights be invited to prepare General Comments on the application of the ICCPR and ICESCR in relation to the economy and the environment. Such work should be carried out with the technical assistance of UNEP and qualified NGOs. The existence of such general comments would facilitate the use of human rights bodies and procedures for environmental protection. Bodies such as the Committee on Economic, Social and Cultural Rights and the Human Rights Committee have already demonstrated environmental awareness.<sup>23</sup> However, given that these bodies have certain limitations, most significantly that they meet for only a few weeks each year as well as lack of certain technical expertise, it is necessary to grant these bodies the necessary financial and technical resources.

### **What is the role of poverty eradication in the context of human rights and sustainable development?**

A key concept of sustainable development, as defined by the World Commission on Environment and Development in the report, *Our Common Future*, is “[T]he concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given.”<sup>24</sup> The *Rio Declaration on Environment and Development* recognized the indispensable role of poverty alleviation in achieving

<sup>20</sup> ISDL is not intended to be holistic. It would not include elements of environmental, social and economic law that do not explicitly relate to sustainable development; such as animal rights and the conservation of ‘charismatic mega-fauna’ in environmental law or protection against torture and privacy rights in human rights law.

<sup>21</sup> *Agenda 21*, 1992 Report of the UNCED, I (1992) UN Doc. A/CONF.151/26/Rev. 1, (1992) 31 I.L.M. 874, Chapter 39.1 Objectives (a) and (b).

<sup>22</sup> This work is based on previous efforts by the Commission on Sustainable Development and other legal experts. See *Report of the Expert Group on Identification of Principles of International Law for Sustainable Development* (London: ILA, 1995). See also International Law Association (ILA), *Report of the Sixty-Second Conference* (Seoul: ILA, 1987) at 1-11, 409-87.

<sup>23</sup> See above note 7 ff. in relation to the CESC. In monitoring the right to life, the Human Rights Committee has consistently sought information on specific measures in the field of public health, including environmental matters such as the registration and transportation of nuclear waste. However, there remain doubts as to whether such rights are immediate or progressive. Robin Churchill, “Environmental Rights in Existing Human Rights Treaties” in Alan Boyle & Michael Anderson, eds. *Human Rights Approaches to Environmental Protection* (Oxford: Clarendon, 1996) at 90.

<sup>24</sup> World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University, 1987) at 43.

sustainable development.<sup>25</sup> The imperative of the eradication of hunger and poverty was given key importance in *Agenda 21*.<sup>26</sup>

It is important that issues of basic human rights related to poverty<sup>27</sup> are adequately targeted within the framework of sustainable development. The imperative of providing ‘priority to the poor’ has strong legal basis in various human rights treaties such as the *ICESCR*. As noted above, core human rights obligations create national obligations for all States, and international responsibilities for developed States, as well as others that are “in a position to assist.”<sup>28</sup> In addition, when state parties to the *ICESCR* are facing severe resource constraints, all obligations under the Covenant remain valid, in particular for the most vulnerable population groups and individuals.<sup>29</sup> The CESCR’s statement on poverty and the *ICESCR* elaborates on this notion by adding the concept of an ‘international minimum threshold’:

“When grouped together, the core obligations establish an international minimum threshold that all developmental policies should be designed to respect. In accordance with General Comment No. 14, it is particularly incumbent on all those who can assist, to help developing countries respect this international minimum threshold. If a national or international anti-poverty strategy does not reflect this minimum threshold, it is inconsistent with the legally binding obligations of the State party.”<sup>30</sup>

The *ICESCR* does not place any particular obligation on any one country to provide aid to another, nor does it require any particular policy choice. However, it does require that the state parties to the Covenant individually and collectively take necessary actions consistent with the Covenant to ensure, as stated in the *UDHR*, that international co-operation and assistance be directed towards the establishment of a social and international order in which the rights and freedoms set forth in the *ICESCR* can be fully realised.<sup>31</sup>

The eradication of poverty is not limited solely to the realisation of economic, social and cultural rights. As pointed out by the CESCR, the provision of the rights to food, health, and education, for example, requires the fulfilment of civil and political rights (for example the right to free expression), and of the rights to political participation and decision-making, and non-discrimination.

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<sup>25</sup> *Ibid.*, Principle 5.

<sup>26</sup> *Agenda 21*, 1992 Report of the UNCED, I (1992) UN Doc. A/CONF.151/26/Rev. 1, (1992) 31 I.L.M. 874, Chapter 3, especially s. 3.1.

<sup>27</sup> These include the rights in the *ICESCR*, in particular the right to an adequate standard of living, civil and political rights and the right to development, the right to equality and non-discrimination and the right of those affected by a key decision to participate in the relevant decision-making process. Committee on Economic, Social and Cultural Rights, *Poverty and the International Covenant on Economic, Social and Cultural Rights*, UN ESCOR, 2001, UN Doc. E/C.12/2001/10, paras. 10-12.

<sup>28</sup> *Ibid* at para. 20.

<sup>29</sup> CESCR, *General Comment 12: The Right to Food*, *supra* note 7 at para. 28.

<sup>30</sup> *CESCR Poverty Statement*, *supra* note 28 at para. 20. Minimum core obligations in the domestic context were explained as necessary since: “If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*.” (in General Comment No. 3, *supra* note 14 at para. 10). An analogical argument may apply at the international level. Unless international obligations do not exist to compensate for the inability of a domestic party to meet its core obligations, references to international cooperation in the *ICESCR* would be of little relevance in light of the *ICESCR*’s purpose, which is to ensure the realisation of economic, social and cultural rights for all in accordance with the commitments in the *UN Charter* and the *UDHR*. Preambulatory paragraph 3 of the *ICESCR* states, “Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.”

<sup>31</sup> As stated in the Limburg Principles on the Implementation of the Covenant on Economic, Social and Cultural Rights, (1987), U.N. Doc. E/CN.4/1987/17, Annex, (1987) 9 Human Rights Quarterly at para. 30. The *Limburg Principles* were developed by a number of leading experts in the field of international economic, social and cultural rights.

Obligations related to poverty eradication should **not** be understood as implying limitations to the overall scope of environmental protection. The poor are often the communities most vulnerable to pollution and its adverse consequences. Rather, the principle of priority to the poor has two implications, first that poverty eradication be treated as a key objective of environmental protection, and second, that environmental protection measures are designed in a manner sensitive to the needs of the most vulnerable.

The first principle is critical since poverty has been described as a factor that reduces people's capacity to use resources in a sustainable manner,<sup>32</sup> For subsistence reasons, the poor destroy resources that they require over the long-term.<sup>33</sup> A good example of an environmental instrument that addresses poverty is the *Desertification Convention*, which requires states to integrate strategies for poverty eradication into efforts to combat desertification<sup>34</sup> and to improve national economic environments with a view to eradicating poverty and ensuring food security.<sup>35</sup> However, human rights law could complement the *Desertification Convention*, such as by imposing stronger obligations for resource mobilization to address food security.<sup>36</sup>

The second principle is to ensure that environmental measures take account of the basic needs of the poor. The issue of climate change reflects these human rights requirements. Emissions reductions programmes should be structured such that they do not unduly impact upon the standard of living of the poor.<sup>37</sup> Human rights law will require that certain categories of carbon emission sources be treated differently. A potential future example may be the production of methane by animal husbandry and rice cultivation. A related implication of this principle is the obligation of states to address the needs of the poor in adapting to the effects of climate change. This imperative is more important given that the poorer peoples and states are less able to adapt to climate change.<sup>38</sup>

### Key Recommendations

The recommendations in this brief highlight three imperatives in integrating international human rights law into international sustainable development law; first, integrating human rights into decision-making by environmental, economic and sustainable development institutions, second, developing International Sustainable Development Law by addressing the implications of human rights in the formulation and implementation of international environmental and economic law and third, ensuring that human rights obligations to eradicate poverty are fully addressed in environmental and economic law.

The Centre for International Sustainable Development Law (CISDL) is based in the McGill University Faculty of Law (founded in Montreal, Canada, in 1849), works in cooperation with the McGill School of the Environment, the Université de Montreal Faculty of Law, and the Université de Québec à Montreal,

<sup>32</sup> *Our Common Future*, at 49.

<sup>33</sup> Cletus Avoka, "Poverty and the Environment" in Felix Dodds, ed. *Earth Summit 2002: A New Deal* (London: Earthscan, 2000) at 124.

<sup>34</sup> *Convention to Combat Desertification in Those countries Experiencing Serious Drought and/or Desertification, particularly in Africa*, 17 June 1994, 33 I.L.M. 1328, Art. 2 (c).

<sup>35</sup> *Ibid.*, Art. 10.4.

<sup>36</sup> While the *Desertification Convention* requires states to fund these programmes "according to their capabilities," the language in the *ICESCR* is tighter, requiring action from a state "to the maximum of its available resources .... by all appropriate means." *Desertification Convention*, Art. 20.3, *ICESCR*, Art. 2.1.

<sup>37</sup> An example would be to use the proceeds from carbon taxes to compensate negatively affected low-income groups. IPCC, "Mitigation" at 9.

<sup>38</sup> IPCC, "Mitigation" at 6-8. The issue of vulnerable states is reflected in the *Framework Convention on Climate Change* which requires developed countries to assist developing countries that are particularly vulnerable to the adverse effects of climate change to meet the cost of adaptation to these adverse effects. *United Nations Framework Convention on Climate Change*, 9 May 1992, 31 I.L.M. 849, Article 4.4.

with guidance from the three Montreal-based multilateral environmental accords (the NAFTA Commission for Environmental Cooperation, the UNEP Biodiversity Convention, and the Montreal Protocol multilateral fund). Its mission is to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.

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