



The Human Right to a Healthy Environment

INTERNATIONAL ASSOCIATION
OF DEMOCRATIC LAWYERS

HANOI, JUNE 2009

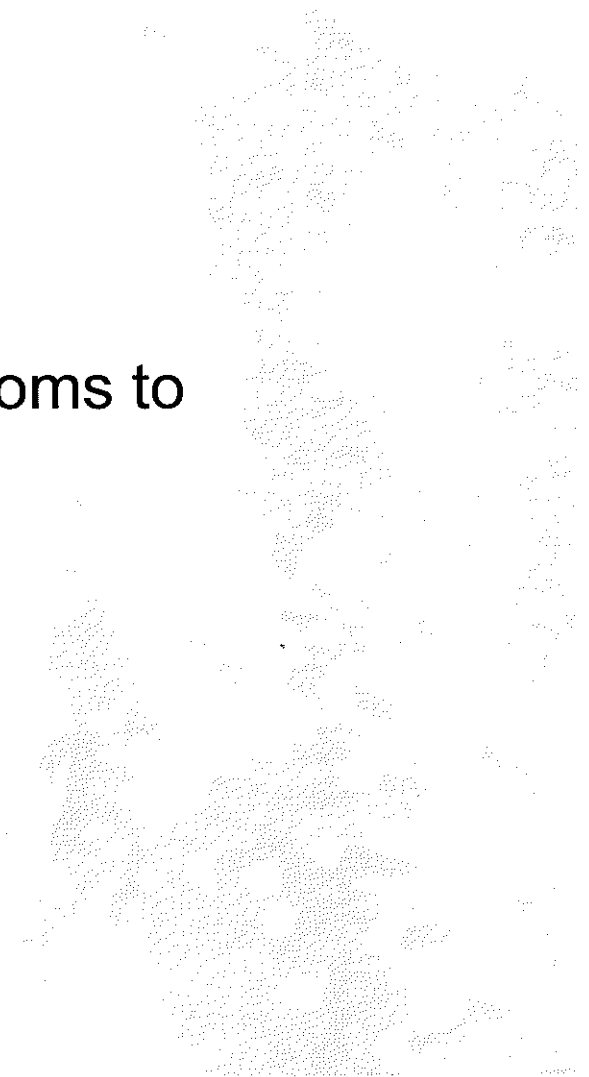
Jan van de Venis, JustLaw

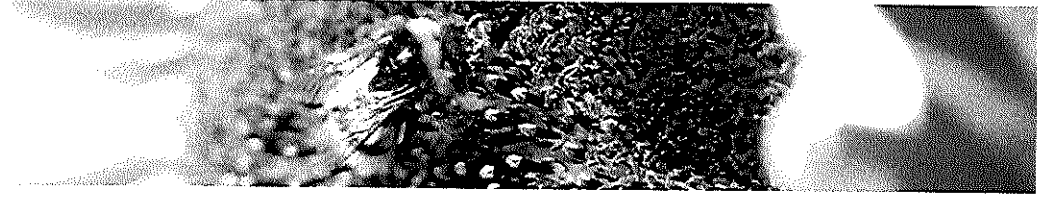
Richard Harvey, Haldane Society of Socialist Lawyers



What are Human Rights?

Human rights are the basic rights and freedoms to which all humans are entitled.

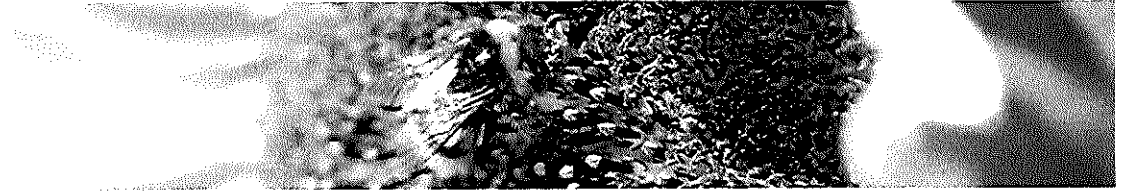




Questions?

- Should we speak of “Human Rights **and** the Environment”?
- “Human Rights **in** the Environment”?
- or “Human Rights **to** the Environment”?





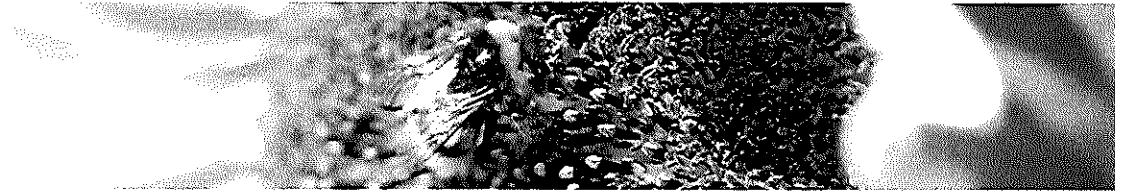
“Earth provides enough to satisfy every man's need, but not every man's greed.”

Mahatma Gandhi



International Binding and Non-Binding

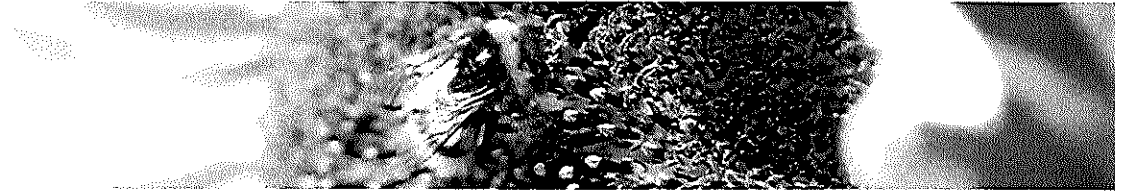
- **1948** **Universal Declaration on Human Rights**
- **1966** **ICCPR**
- **1966** **ICESCR**
- **1972** **Stockholm Declaration**
- **1979** **CEDAW**
- **1989** **CRC**
- **1992** **Rio Declaration, confirmed in Johannesburg 2002**
- **1998** **Aarhus Convention**
- **2005** **UN Secretary General Report on relationship between
Human Rights and the Environment**
- **2007** **UN GA Declaration on the Rights of Indigenous People**



Regional

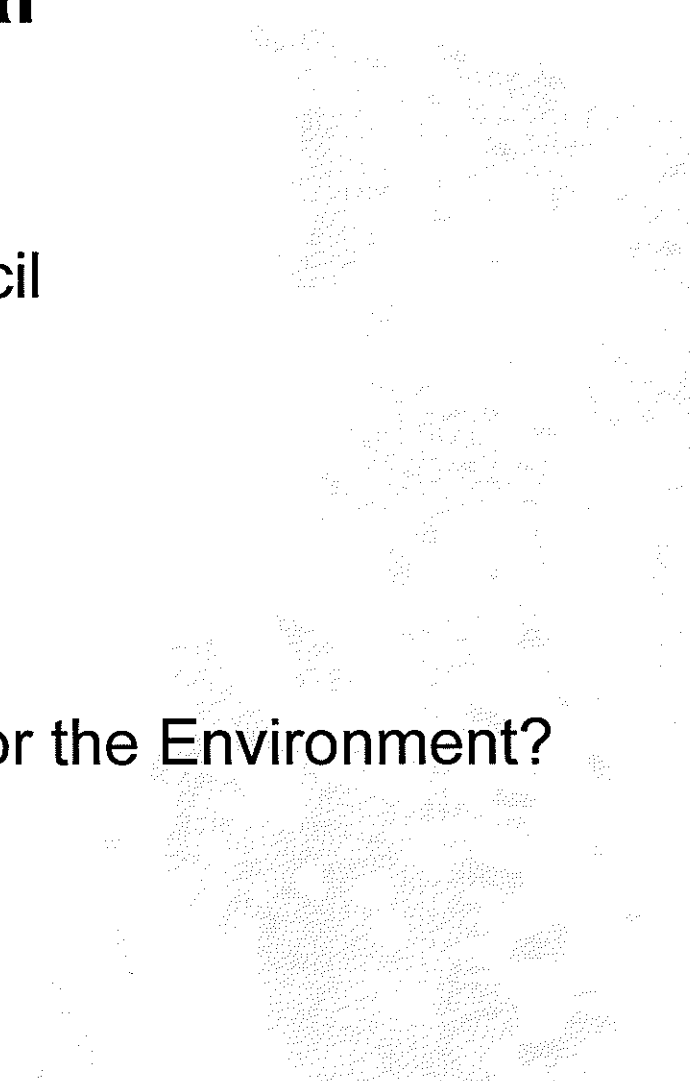
- 1950 ECHR
- 1981 ACHPR
- 1988 ACHRESCR add. Protocol San Salvador

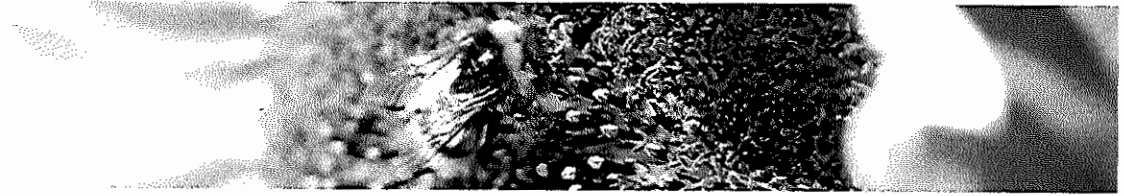




Jurisprudence - International

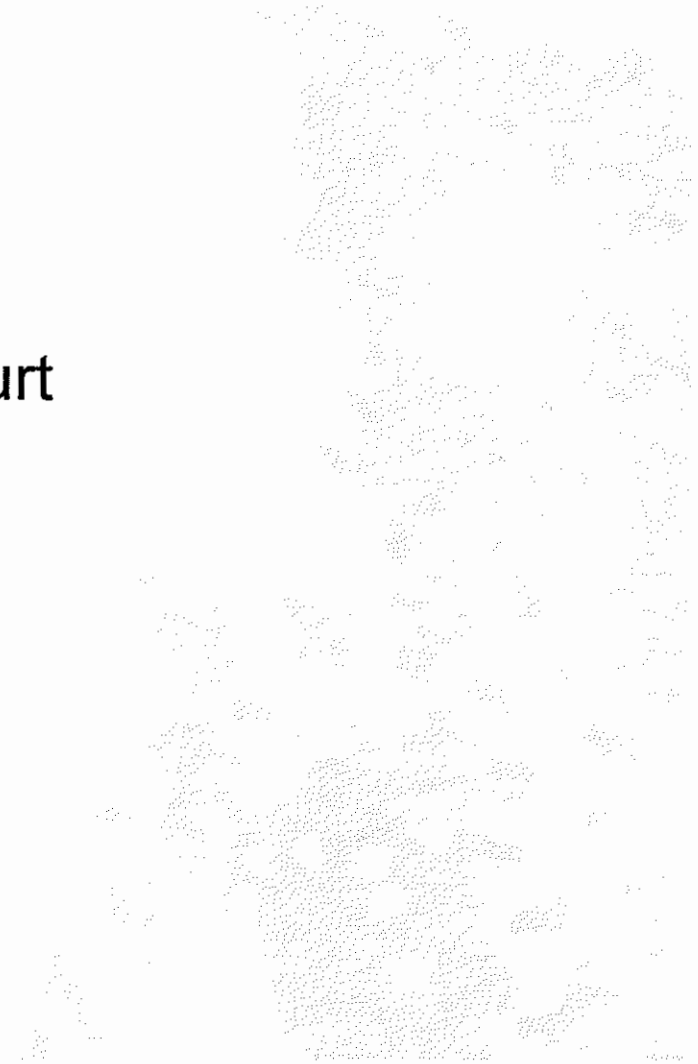
- UN HR Commission – UN HR Council
- UN HR Committee
- UN ESCR Committee
- ICJ
- Do we need an International Court for the Environment?





Jurisprudence - Regional

- African Commission
- Inter-American Commission and Court
- ECHR





National Law and Jurisprudence

- More than 100 constitutions
Some proclaim a duty of care for the government, some create an individual right

Like Brazil, article 225 FC:

“Everyone has the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.”

- Much local case law



Three Approaches

1. Environmental protection is a pre-condition to the enjoyment of internationally guaranteed human rights, especially the rights to life and health
2. Certain human rights are essential elements to achieving environmental protection, which has as a principal aim the protection of human health
3. Links between human rights and the environment are indivisible and inseparable. This posits the right to a safe and healthy environment as an independent substantive human right



Why a Rights-Based Approach?

- Focus on individuals, not on States
- (Inter)national access to Court
- Individuals have rights where individuals get hurt by disruption of the environment
- Human rights claims are absolute (no lobby, negotiations or successful pressure)



Creativity in the Courtroom

We must find new tactics, e.g.

- The “Greenpeace Defence” to challenge government policies and corporate greed or corruption.
 - Genetically modified crops
 - Coal-fired power stations
 - The “Tokyo Two”
- Multi-Pronged Approaches – challenging the polluter where it hurts his pocket, e.g. Trafigura & Côte d’Ivoire



Beyond the Courtroom

We must help NGOs and civil society groups to explore additional remedies, e.g.:

- WTO - Dispute Settlement Body and Appellate Body
- Kyoto Compliance Committee
- Regional Trade Agreements (NAFTA example)
- World Bank – ICSID – Public Protest
- UNESCO – World Heritage Council
- Regional Human Rights Bodies



Environmental Tools

www.unep.org

www.ipcc.org

www.climatelaw.org

www.pewclimate.org

www.greenpeace.org

www.standupforyourrights.com

www.foei.org

www.environmentcourt.org

FORWARD TO COPENHAGEN!

