



**Expert Forum on Ecosystem Services and Human Well-being:  
The Role of Law and Governance  
Geneva, 19-20 September 2008**

**Report of the meeting**

1. The United Nations Environment Programme, through its Division of Environmental Law and Conventions, convened an Expert Forum on Ecosystem Services and Human Well-being: The Role of Law and Governance in Geneva, Switzerland on 19 and 20 September 2008.
2. The purpose of the meeting was to explore the role that law and governance could play in helping reverse ecosystem degradation and enhance the contributions of ecosystems to meeting basic human needs and ultimately human well-being, focusing on the concept of “ecosystem”, which provides a useful framework for analyzing and acting on the linkages between people and the environment<sup>1</sup>, including the linkage between environment and poverty.
3. One important legal dimension of the interaction between people and the environment is the issue of human rights. The meeting largely focused on that aspect. Work in this area responds to the need to address interlinkages between the environment and others sectors as well as innovative approaches to environmental law, as envisaged in the third Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme III).
4. One of the areas that UNEP was required to explore was the linkage between human rights and the environment. Recently, the Commission on Human Rights by Resolution 2005/60 requested the High Commissioner for Human Rights and invited UNEP, UNDP and other relevant bodies and organizations, within their respective mandates and approved work programmes and budgets “*to continue to coordinate their efforts in activities relating to human rights and the environment in poverty eradication, post-conflict environmental assessment and rehabilitation, disaster prevention, post-disaster assessment and rehabilitation, to take into consideration in their work relevant findings and recommendations of others and to avoid*

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<sup>1</sup> The following are definitions from the Millennium Ecosystem Assessment, which could be useful to better capture the theme of the meeting.

An ecosystem is “a dynamic complex of plant, animal, and microorganism communities and the nonliving environment interacting as a functional unit. Humans are an integral part of ecosystems. Ecosystems vary enormously in size; a temporary pond in a tree hollow and an ocean basin can both be ecosystems” (MA). Ecosystem services are the “benefits people obtain from ecosystems. These include provisioning services such as food and water, regulating services such as regulation of floods, drought, land degradation, and disease; supporting services such as soil formation and nutrient cycling; and cultural services such as recreational, spiritual, religious and other nonmaterial benefits”.

Well-being is defined as “Human well-being has multiple constituents, including basic material for a good life, freedom and choice, health, good social relations, and security. Well-being is at the opposite end of a continuum from poverty, which has been defined as a “pronounced deprivation in well-being”. The constituents of well-being, as experienced and perceived by people, are situation-dependent, reflecting local geography, culture, and ecological circumstances”.

*duplication*”(paragraph 8). The UN reform process also calls for the integration of human rights, and of a human rights approach, in all of the organization’s work.

5. Prior to the present meeting, UNEP jointly with the Office of the High Commissioner for Human Rights (OHCHR) convened a meeting of experts on human rights and the environment in Geneva in 2002. The meeting recognized the need to reinforce the normative links between human rights and the environment and affirmed that such link is an essential tool in the eradication of poverty and the achievement of sustainable development. It also expressed the need to consider more broadly the catalogue of substantive human rights that can be marshalled to assist in achieving environmental protection, with particular reference inter alia to the rights of indigenous peoples and other vulnerable groups. The present meeting was an occasion to further the work already undertaken in the directions indicated at the 2002 meeting, while taking into account more recent development such as the emergence of an ecosystem approach.

6. A small group of experts in several relevant disciplines attended the meeting. In particular, the experts were to undertake the following at the meeting:

- To explore and increasingly understand the role of law and governance in shaping the interaction between ecosystems, their services and human well being;
- To identify synergetic policy and legal approaches promoting the sustained adequate functioning of ecosystems while contributing to human well-being;
- To identify next steps for UNEP for promoting the above mentioned synergetic policy and legal approaches.

The representative of UNEP facilitated the discussions. The specific topics addressed in the meeting are contained in the agenda of the meeting as attached in Annex I.

7. In addition to the experts, several UNEP and OHCHR staff members attended the meeting as observers. Two UNEP staff members from the Division of Environmental Law and Conventions served as the secretariat for the meeting. The list of participants will be found in Annex IV.

8. The meeting was opened at 9.30 a.m. on 19 September 2008 by the representative of UNEP who welcomed the participants. Following an introduction by the experts of their respective fields of work and interests, the experts gave a brief presentation on critical aspects of the relationship between people and ecosystems and the relevance of the concept of ecosystem services from their respective points of view. This helped set the stage for further discussion and clarify the use of terminology. Discussions continued on the basis of a document that was prepared by the secretariat to provide some orientation for discussions (the document is reproduced in Annex II). Discussions focused around the three major topics in the agenda, namely the role of human rights in promoting the sustainable management of ecosystems and the equitable access to and use of ecosystem services, the role of formal and informal institutions in promoting sustainable management of ecosystems, and equitable access to and use of ecosystem services, which included the issue of tenure. One issue that was addressed throughout the meeting related to appropriate types and level of governance. The human rights element was also very prominent throughout the entire meeting.

9. The main discussion points are reflected in a summary prepared by the secretariat and reviewed by the experts, and in a list of recommendations, including both general recommendations on what could be the appropriate legal and governance approaches/directions to promote promoting the sustained adequate functioning of ecosystems while contributing to

human well-being and specific recommendations on follow-up work to be undertaken by UNEP including in cooperation with other UN bodies (especially in relation to human rights) and other partners such as the academia and other institutions. The summary of considerations and recommendations is contained in Annex III.

10. Following intensive debate on the subject covered by the agenda items, the meeting concluded its work at 5.30 p.m. on 20 September 2008.

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# Annex I

## Agenda

### Day I

#### 9.30 am – 12.30 pm: Morning session

- I. Overview of interactions between people and ecosystems:
  - The anthropological perspective
  - The economic perspective
  - The legal perspective

*12.30 pm – 2.30 pm: Lunch break*

#### 2.30 pm – 5.30 pm: Afternoon session

- II. The role of human rights in promoting the sustainable management of ecosystems and the equitable access to and use of ecosystem services:
  - Substantive human rights
  - Procedural human rights
  - Strengths and limitations of a human rights approach
  - Promoting synergies among human rights and the environment regime

### Day II

#### Morning session: 9.30 am – 12.30 pm

- III. The role of formal and informal institutions in promoting sustainable management of ecosystems and equitable access to and use of ecosystem services
  - The role of tenure systems
  - The contribution of informal/customary legal mechanisms and institutions
  - The relationship between informal/ customary legal mechanisms and institutions and formal institutional and legal frameworks
  - Promoting synergies among informal/customary and formal institutional and legal frameworks

*12.30 pm – 2.30 pm: Lunch break*

#### Afternoon session: 2.30 pm – 5.30 pm

- IV. Report of findings and recommendations for action

## Annex II

### Orientation for discussions

#### I. Interactions Between People and Ecosystems: the Role of Law and Governance

##### Background

1. An ecosystem is a dynamic complex of plant, animal, and microorganism communities and the nonliving environment interacting as a functional unit, of which humans are an integral part. The ecosystem concept provides a valuable framework for analyzing and acting on the linkages between people and the environment<sup>2</sup>. According to the ecosystems approach analysis, ecosystems provide communities with several commodities, or *provisioning services* such as food, water, timber and other commodities that support people's living and generate income, *regulating services* such as flood control or pollination, as well as *cultural services* such as recreation and the aesthetic and spiritual appreciation of nature.
2. In 2005, the Millennium Ecosystem Assessment (MA) reported that approximately 60% of the ecosystem services examined are being degraded or used unsustainably. The MA revealed that the recent economic development and the improvement of human well-being to some extent have been achieved at the costs of the degradation of many ecosystem services as well as the exacerbation of poverty of some groups of people.
3. Due to the high and growing demand for ecosystem services, tradeoffs among services are often necessary. For instance, a decision to increase food by converting a forest to agriculture will imply a decrease in the supply of services such as clean water, timber, and flood regulation. Combined with the growing demand, serious environmental degradation is impairing the capability of ecosystems to provide these services. This is worsened, in many parts of the world, by the loss of the knowledge of the ecosystem dynamics held by local communities.
4. Often the lives of people living in severe poverty directly depend on some of these services (e.g. provisioning services) and attach great importance to other services (e.g. *cultural services*, for instance the spiritual appreciation of nature). At the same time, the poor are affected disproportionately by the harmful impacts of ecosystem degradation that, in many cases, were caused by other, often geographically distant actors. Furthermore, the poor suffer also from various exclusionary practices such as the privatization of what were formerly common pool resources, which often prevents them from having access to various ecosystem services. Also, such practices at times deprive the local communities of their potential role in protecting the ecosystems, including through traditional practices.

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<sup>2</sup> The MA indicates that, "for the purpose of analysis and assessment, a pragmatic view of ecosystem boundaries must be adopted, depending on the questions being asked. A well-defined ecosystem has strong interactions among its components and weak interactions across its boundaries". "At a larger scale, regional and even globally distributed ecosystems can be evaluated based on a commonality of basic structural units. The global assessment being undertaken by the MA reports on marine, coastal, inland water, forest, dryland, island, mountain, polar, cultivated, and urban regions. These regions are not ecosystems themselves, but each contains a number of ecosystems".

5. Changes in ecosystems affect not only humans but also other species and decisions concerning ecosystems are at times also influenced by the recognition by people of the intrinsic value of species and ecosystems. Sound policy and regulatory choices can reverse ecosystem degradation and enhance the contributions of ecosystems to human well-being. In identifying the relevant policy, regulatory and institutional options that can contribute to this, it is important to take into account a number of considerations.

6. The consequences of ecosystem changes may be felt much later in time as compared to the moment when action occurs. Also, certain changes may have short term impact while others can have impacts over years or decades. The spatial scale is also important. While local decision-makers can influence certain choices (e.g. land use, type of fertilizer) they cannot control certain factors such as prices, property rights, climate etc. which are probably controlled at a higher (e.g. national) level. Also, some changes occurring at a local scale may have little impact locally but major impacts at large scales.

7. Interventions need to be context specific in relation to the social target. While for both rich and poor people it is important to ensure long-term supply of ecosystem services, for the poor it is also important to secure more equitable and secure access to ecosystem services.

8. Hence, the importance for decision-making processes to take into account the temporal and the physical scale influenced by decisions, the uncertainty of outcomes (in relation to possible irreversible outcomes), the cultural and social context, and the aspects related to trade-offs and equity.

9. The MA identified the need for effective responses to address a series of barriers related to the management of ecosystems. These barriers include: inappropriate institutional and governance arrangements; market failures and the misalignment of economic incentives; social and behavioral factors; underinvestment in the development and diffusion of technologies; insufficient knowledge (and poor use of existing knowledge) concerning ecosystem services and management, policy, technological, behavioral, and institutional responses that could enhance benefits from these services while conserving resources; and concentration of responses on the short-term benefits from increasing the productivity of provisioning services.

10. The following are general issues for consideration, relevant for identifying the role that legal mechanisms and governance can play to enhance the contribution of ecosystem services to human well being. More specific issues will be addressed in sections II and III.

### **Issues for discussion**

- A. Relevance, for the legal/governance discourse, of the nature of ecosystem service (e.g. provisioning, regulating or cultural), of the nature of the relationship between the people and the ecosystem service (e.g. people who depend directly *vis a vis* people who only depend indirectly on the systems provided by ecosystems), and of the choice of the spatial dimension.
- B. The role of governance structures, as well as legal and policy instruments, in regulating conflicts among different ecosystem services and establishing tradeoffs and ensuring equity, including through negotiation.
- C. Areas for reform of environmental law and institutions through which they could promote access to services and sustainable management of ecosystems.

## **II. The role of human rights in promoting the sustainable management of ecosystems and the equitable access to and use of ecosystem services**

- Substantive human rights
- Procedural human rights
- Strengths and limitations of a human rights approach
- Promoting synergies between human rights and the environment regime

## **Background**

11. As mentioned in section I, the ecosystem concept provides a valuable framework for analyzing and acting on the linkages between people and the environment, as ecosystems provide services to human beings and therefore can contribute to their well-being. Human rights can play an important role in providing individuals access to these services and also in promoting sustainable management of the ecosystems. Traditionally, the link between human rights and the environment can be summarized in two main concepts:

- the exercise of human rights can promote the preservation of ecosystems; and
- the serious degradation of ecosystems can result in the denial of human rights for the people who depend on such ecosystems. In other words, a sound environment is the fundamental prerequisite for the enjoyment of human rights.

12. Many international environmental instruments provide for rights that are instrumental to environmental protection, which find their basis in Principle 10 of the Rio Declaration, according to which "Environmental issues are best handled with the participation of all concerned citizens at the relevant level" (Principle 10) and therefore individuals at national level are accorded "appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes" Principle 10 also affirms that "States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided". Several environmental and human rights instruments support rights of public participation in environmental decision-making and local management of natural resources for local communities and indigenous peoples.

13. Some local communities base their livelihoods on the natural resources (or habitat) where they live, and the disappearance or alteration of the latter can also provoke the disappearance of local communities, and this has environmental and human rights consequences. At the same time, the degradation of ecosystems can also have an impact on the enjoyment of human rights on a larger scale (e.g. impacts on climate and consequent impairment of human rights of people affected). Serious impacts from ecosystem degradation can be suffered from indigenous peoples, the majority of whom live in extremely vulnerable ecosystems, in territories that often host important natural resources and can be particularly affected by environmental harm. Massive deforestation and desertification can force those people to move away from their traditional lands, and end up living in different territories (including refugee camps in extreme cases) and different lifestyles. This has important human rights implications. An important instrument to tackle situations of this sort is the United Nations Declaration on the Rights of Indigenous Peoples, Adopted by General Assembly Resolution 61/295 on 13 September 2007.

14. A human rights approach to environmental management is in line with the idea of going beyond a purely needs centered approach in dealing with sustainable development issues in recognition of the fact that human beings are, in Amartya Sen's words, "agents" rather than merely "patients". A human rights perspective could help us consider public participation not only as a way to ensure sound environmental management, but also a value in itself. In other words, according to this view, the relevance of citizenship and social participation, based on a

human rights approach, is not just instrumental, but integral part of what is worth preserving, if we combine the basic notion of sustainability with a broader view of human beings.

15. A human rights approach to access to ecosystem services also brings in also the discourse of poverty. The poor frequently experience social exclusion, isolation, alienation, discrimination and inequality. Poverty not only arises from a lack of resources – it may also arise from a lack of *access* to resources, information, opportunities, power and mobility. International human rights law has a particular pre-occupation with individuals and groups who are vulnerable, marginal, disadvantaged or socially excluded.

16. Human rights can probably play a very important role in both promoting in both promoting sustainable management of the ecosystems and ensuring equitable access to ecosystem services. A series of issues require consideration.

### **Issues for discussion**

- A. The role of human rights in promoting sustainable management of the ecosystems on the one hand and in ensuring access to ecosystem services on the other hand. Also its role in ensuring equity in such access.
- B. The role of human rights in addressing instances in which global environmental benefits are accompanied by negative impact at the local level (e.g. global green gas emissions reduction through increase production and use of biofuels, with possible consequences on food security)
- C. Issue of possible conflicting rights, for instance between the rights to ensure that a certain regulating service is protected (e.g. flood regulation through planting trees) and the right to access provisioning services (e.g. agricultural land for the production of food). The role of the judge and other dispute settlement mechanisms. The need for capacity building and removing barriers to access to courts and other dispute settlement institutions.
- D. Issue of sustainability: possible negative consequences of a generalized recognition of access rights on availability of the resource (e.g. in the case of right of access to water).
- E. Suggested directions for human rights law, or areas that should be further explored that could bring positive contributions in terms of promoting synergies among human rights and the environmental regime.

### **III. The role of formal and informal institutions in promoting sustainable management of ecosystems and equitable access to and use of ecosystem services**

- The role of tenure systems
- The contribution of informal/customary legal mechanisms and institutions
- The relationship between informal/ customary legal mechanisms and institutions and formal institutional and legal frameworks
- Promoting synergies among informal/customary and formal institutional and legal frameworks

### **Background**

17. As mentioned in section I, the MA has identified a series of barriers related to the management of ecosystems that require effective responses. The first barrier relates to existence of inappropriate institutional and governance arrangements including the presence of corruption and weak systems of regulation and accountability. A number of issues that we are facing today are of recent, emerging concerns and are not reflected in designing today's institutions. Therefore, changes in exiting institutions and the development of new ones may be sometimes necessary,

particularly at the national level, and especially relating to the management of common pool/open access resources. These issues are in turn closely linked to the human rights aspects of access to ecosystem services as highlighted in section II.

18. Ecosystems are extremely complex and in continuous evolution. Often their boundaries go beyond administrative or political boundaries. However, they are often managed by institutions and through policy and legal tools that don't take into account the complexity of the ecosystems. Such institutions are often static and not flexible. This often results in a mismatch between the dynamics of the institutions and that of the ecosystems they manage.

19. Considering the heterogeneous nature of ecosystems, optimal management can happen at different levels. While the management of large and complex ecosystems may require the involvement of actors at different levels, the management of small ecosystems may require the involvement of fewer actors. An additional complication derives from the fact that the consequences of ecosystem changes may be felt much later in time or at a different geographical scale.

20. Environmental problems and natural resources management often requires collaboration between different actors, who have different comparative advantages. For example, local communities that depend on natural resources for livelihoods are usually very knowledgeable about their environment and can organize themselves and be potentially effective resource managers. However they will lack control over external factors (e.g. markets, prices) which other actors would be better able to control (e.g. governments and NGOs). The importance of traditional and local managers in the management of ecosystems is very important as they are those who have to implement government policies at the local level, so their commitment is essential to determine their success. Also, their knowledge can be extremely valuable in public participation processes concerning the local resources and traditional, informal institutions may be more able to adjust to the evolving equilibrium of ecosystems. Section II highlighted the human rights dimension of public participation.

21. Scale and form of institutions are therefore important factors in making decisions regarding management of ecosystems and access to ecosystem services. The principle of subsidiarity, which means "making and implementing decisions at the lowest effective level of government or other organization" can be useful to this end. It implies preference for decentralized decision-making, with enhanced autonomy, cultural diversity, and public participation, besides allowing consideration of local conditions.

22. The role of informal institutions and legal mechanism (e.g. customary law applied by local communities) and their relation with formal ones is also very important. Conflicts among different types of institutions and legal systems as well as the lack of acknowledgement of informal institutions and legal systems by the government or other institution may lead to parallel systems, which can lead to inequitable access.

23. As mentioned above, discussions about institutions are closely linked to the issue of tenure and of access and management of common-pool /open access resources. According to the findings of the Global Environment Outlook<sup>3</sup> there exist many unresolved conflicts over the ownership and management of common property resources (such as water, air, land, forests and oceans). Many of these conflicts have in common the attempt by local communities to defend one or more ecosystems against the destructive claims of non-resident owners to exploit them. These

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<sup>3</sup> GEO-3 and GEO 2006

conflicts often occur at the periphery, far from the centers where opinions are formed, and they have much to do with intragenerational equity, even before intergenerational equity. The issue of intellectual property rights is also relevant in this respect. Some of issues associate with property rights have an important human rights component.

24. Appropriate institutions and clear definition of property rights are also essential to support market based mechanisms, and to ensure that equity in wealth distribution and resource allocation that can derive from such mechanisms.

### **Issues for discussion**

- A. How different tenure systems influence the way ecosystems are managed and ecosystem services are accessed. Problems associated with parallel systems of land adjudication. Intellectual property rights as part of the discourse on property rights. Difference between resource allocation and benefit sharing (e.g. physical water allocation vs sharing of the benefits arising out of water projects/ uses). The human rights dimension of tenure systems.
- B. Identification of the correct level of decision making, i.e. need to devolve (or centralize) decision making to meet management needs while ensuring effective coordination across scales. Addressing the lack of alignment between political/administrative boundaries and units appropriate for the management of ecosystem goods and services. Possible role for the subsidiarity principle.
- C. Addressing the issue of asymmetry in temporal dimensions of ecosystems and decision-making mechanisms.
- D. Contribution of informal institutions and legal systems and their relation with formal ones, including customary dispute settlement mechanisms. Strengths and weaknesses of traditional systems, including possible discrimination against some community members (e.g. women). Importance of the gender factor in management of resources. How can governance and law promote gender sensitive solutions that can in turn enhance the contributions of ecosystems to human well-being? The Human rights dimension of informal institutions and legal systems.
- E. Shifting the focus of institutions from short-term benefits deriving from provisioning services to the benefits deriving from regulating and cultural services and to poverty alleviation and equitable distribution of benefits from ecosystem services.

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## **Annex III**

### **Observations and recommendations**

#### **V. Overview of interactions between people and ecosystems**

##### *Relevant concepts and scope of discussions*

1. Experts considered the interaction between people and ecosystem services from various perspectives, namely the legal, economic and social/ anthropological perspective
2. Several experts highlighted the need to clarify the meaning and scope of certain concepts (e.g. ecosystem services vs environmental services; governance). Although the experts recognized that it was not for the meeting to reach conclusions on definitions of the relevant concepts, they considered it was important to have a common understanding of those concepts for the ensuing discussion.
3. It was noted that governance and law were largely overlapping concepts rather than mutually exclusive ones, with governance including institutions and law, structures and processes and that the group should consider governance at all levels, and include all involved actors and dimensions (e.g. including the economic dimension of decision making processes and the relevant actors). The discussions focused on ecosystems services, i.e. on the benefits provided from nature to people and that this concept should be understood in a broad sense as values of nature that can enhance human well being and not just in a strictly economic/utilitarian way. When talking about the interaction between people and ecosystems it should be clear that there is a continuum between the two and the anthropogenic environment should be included in the discussions. Institutions were understood in a broad sense.

##### *Anthropological, economic and legal aspects of the relationship between people and ecosystems*

4. From an anthropological perspective, it was highlighted that progress was made in the environmental field globally in many areas, and that the developments that had occurred presented new challenges to be faced. Progress was made for examples in the area of nature protection through the establishment of protected areas. However, efforts undertaken globally on the basis of conservation values had at times resulted in the imposition of institutional arrangements, the resettlement of communities and the criminalization of activities that were not previously considered illegal. Also, problems of inequality had not been addresses and ecosystems had not necessarily been protected from more pervasive interventions (such as resources extraction).
5. Progress could also be observed in the area of land tenure reform, usually associated with agrarian reform or consisting in the regularization of existing arrangements. These efforts were usually successful if accompanied by adequate infrastructures and other complementary interventions such as education programmes. Constraints were on the other hand inherent to such reforms as they were unable to deal with external factors such as market forces. Also, the provision of public land to private owners had often resulted in new forms of concentration into few private owners due to market forces. The need to look at land tenure reforms from a broader perspective, taking into account external factors such as market forces, was therefore identified.

6. Another important area of intervention related to the development of programmes and incentives for ecosystem services. Although such programmes could improve access and benefits from the ecosystem services, they did not necessarily guarantee equal access. It was very important for such programmes to carefully identify their target, as they usually resulted in the subsidization of one service to the expense of other services and trade offs needed to be looked at. Also, these programmes needed to be realistic and designed to be effective in the long term.

7. While intellectual property rights could be useful in protecting traditional ecological knowledge, it was also pointed out that they could be problematic due to the complexity of the patterns of distribution of knowledge and also because in some cases the application of intellectual property rights could result in overregulation with the effect of “criminalizing” research.

8. It was also highlighted that although progress was made in many countries in protecting local rights and strengthening cultural identities, cultural markers were often misused or overused, to the point that an excessive focus on the concept of tradition could lead to exclusion of those who were not considered to fall under the definition of traditional, and the freezing of those falling under such definition in their role. In some cases this implied the “essentialization” of poverty, i.e. the need maintain certain markers of tradition (e.g. low level of consumption, low intensity of technology) often coinciding with poverty. It was pointed out that this could have very important human rights implications.

9. Although access to markets for local resources/products had probably improved for many communities around the world, and even if resources were produced in an increasingly sustainable way, the issue of where value aggregation occurred needed further attention. It was in fact pointed out that there often lacked appropriate structures at the local level to assign the right value to resources (e.g. coffee tends to provide little value to local farmers while it is a highly valued commodity at the consumers’ end, due partly to its symbolic value).

10. From an economic perspective the issue of invisibility of certain issues behind markets was pointed out. The need to look at a theory of plural value was also identified as well as the need for existing world views to be taken on board when mainstreaming ecosystem services.

11. From the legal perspective, it was highlighted that using an ecosystem approach could provide value added to legal thinking in the area of environment for the following reasons:

- a) it helps to look at how people depend on ecosystems;
- b) It highlights the complexity of the environment;
- c) It helps to overcome the divide between environment, culture, well being etc.;
- d) It makes issues that are outside the realm of environmental law important too (e.g. food security, social security, education etc.);
- e) Specifically, human rights law can benefit from an ecosystem approach for the following reasons:
  - A. being the concept of ecosystem services very anthropocentric, it can be useful for claiming rights and therefore to the human rights agenda;
  - B. it also brings questions related to responsibilities, duties, rights, obligations as well as questions on how to deal with uncertainties and the distribution of benefits among different actors involved.
- f) It highlights the need for legal tools to decide in case of a conflict among competing interests. It was indicated that tools already existed, such as the precautionary principle, the EIA, etc.

- g) An ecosystem approach allows going beyond a pure conservation species centred approach to the environment.
- h) It allows going beyond the inter-governmental level and look at, for instance, inter-local interaction, multilevel governance and links between the different scales, administrative vs political borders etc. Examples in this direction come from the EU legislation for example the water basin approach. It also allows moving away from a state-centred legal thinking.
- i) It also allows looking at the concept of responsibility/liability, for instance of transnational corporations, across state borders. Can these be made responsible if not according to national law, according to standards at a different level? Can they be asked elsewhere to compensate for harm or restore the harmed environment?
- j) It allows looking at the difference in the time factor relevant to ecosystems' functioning and that relevant to legal thinking; for instance at the issue that in most legal systems damage can only be claimed in a short laps of time. Overcoming this disparity requires creative legal thinking. Environmental law to some extent already copes with the issue of the continuously changing environment through for example open ended norms.
- k) the ecosystem approach implies that law needs to be flexible, while at the same time creating predictability.
- l) An ecosystem approach can hep in solving conflicts among uses from a broad perspective by including more aspects and considering the ecosystem's complexity.

12. The importance of understanding the complexity of governance systems, which have to deal with different problems, at different scales, with multiple users and pressures from outside was highlighted. Also, the high interconnectedness between different ecosystems and different types of resources needed attention. The issue of the appropriate level of governance was further discussed under section III.

### ***General considerations on using the ecosystem services approach***

13. It was highlighted how the concept of ecosystem services could be useful in understanding the link between nature and human well being, in terms of what these services could bring for poverty reduction, human health, water etc.

14. The Experts also highlighted, however, that ecosystem services were not the only response to human well being problems and they pointed out the importance of other factors in determining well-being. Issues of distribution and fairness largely depended on the overall social and economic structure; many poverty problems derive from historical structures. Other factors such as infrastructure and education were also fundamental.

15. The issue of environmental justice was approached. The experts recognized that the ecosystem services approach was useful in highlighting the distributive/justice dimension. While the discourse of justice usually looked at the national level (based on Rawls' theory) some authors (e.g. Thomas Pogge) were now trying to globalize the discourse. Participatory aspects were indicated as important for Justice. There was a need to look at the transnational dimension of environmental justice, for instance at the issue of access to courts in another country. It was stressed how important it was to treat equally (in terms of providing equal opportunities of expression/ participation) conflicting interests, to ensure fair decision-making. The "water towers" located in Kenya were provided as an example of ecosystem services of importance to the entire East African region. Policy/regulatory/institutional options to address these types of situations were needed.

16. In order to address issues of justice across borders, often artificially cutting across ecosystems, creative legal/institutional solutions could be used, such as transboundary bodies overlooking the issuance of permits as in the case of the Tornea river basin shared between Finland and Sweden. It was also highlighted that decision-making in this case was very complex and that the only general rule was not to not exclude anyone with an interest at stake in decision-making processes. The concept of ecosystem services could be helpful in defining the problem and identifying the interested parties (e.g. those relying on the services of the transboundary ecosystem). Although inclusion was important, in the end there was a need for prioritizing values, leading to exclusion eventually and this was the role of legislation. The role of the civil society in issues of cross-boundary nature was also mentioned as important

17. It was indicated that often people had a generic idea of justice, without knowing exactly what this entailed. This resulted in the impossibility of realizing such idea of justice. It was therefore important for people to have a vision of what were their underlying principles (e.g. based on democracy, a rights based approach, etc.). Also, it was important to look at what made legal norms legitimate. Environmental legislation taken in a legitimate way was more likely to be effective.

18. The importance to identify indicators that certain conditions (e.g. access to ecosystem services) resulted in human well-being was highlighted. The example was brought of the coast of Kenya where notwithstanding the presence of fish, people experienced malnutrition. Also, there was a need for a more disaggregated level of analysis when looking at well being.

18. It was highlighted that equity is a tri-dimensional concept, comprising: how people accessed resources; how they could change the procedural rules of the markets; and how the outcomes of the markets (monetary and non-monetary markets) were distributed among the community.

### ***Recommendations***

- A. Promote the use of an ecosystem approach in legal thinking which can in turn help identify efficient and effective solutions than can be effectively used - in addition to already existing tools used in environmental law - to cater for the time factor, scale factor, the high interconnectedness of ecosystems, etc.
- B. Promote further understanding of the way that law and governance can promote the contribution of ecosystem services to human well being at all levels, including by addressing problematic issues of the relationships between people and ecosystems that were highlighted by the experts (including for instance issues related to the overuse of cultural markers, with consequences of exclusion and decentralization of poverty; level of value aggregation; role of market forces; etc.)
- C. Identify and narrow governance and accountability gaps, including identifying weaknesses of rights and entitlements systems, and specifically identify where such systems do not work and why;
- D. Focus on concrete steps rather than on a transcendental concept of environmental justice.
- E. Based on work at the national level, further develop disaggregated data and indicators on the relationship between ecosystems and well being, including based on the interdependence between well being and life supporting systems and how they work over time.
- F. The following issues required further consideration:

- procedural rights, including participation at the project, policy making and rule making level and access to justice intended as a broader concept than access to courts;
- the linkages between the institutional and the ecological scales;
- intellectual property rights and traditional knowledge;
- the impact of external forces such as markets, overall social structures, infrastructures, education etc. on the ability of ecosystem services to contribute to human well being;
- The role of life supporting ecosystem services

## **VI. The role of human rights in promoting the sustainable management of ecosystems and the equitable access to and use of ecosystem services**

### *Human rights aspects of the relationship between people and ecosystems*

1. Specifically in respect of the human rights dimension of the relationship between people and ecosystems, the following strengths were identified:
  - a) A human rights approach gives a human face to the problems and lends urgency to violations. It therefore leads to policy priority;
  - b) Value could be found in including the impact on human rights in existing impact assessment methodologies;
  - c) A human rights approach allows to establish minimums, i.e. a baseline for policies;
  - d) It provides a framework to identify rights/entitlements vs. responsibilities/obligations (rights based approach);
  - e) It brings in new advocacy actors;
  - f) It provides a useful procedural framework for action;
  - g) It allows justice issues (and social justice dynamics) to be involved in executive policy.
2. Possible weaknesses related to cases where human rights accountability is weak which could have the effect of lowering the environmental value of a certain course of action.
3. It was indicated that the way a human right was defined could have important consequences on the environment. For instance, the definition of the right to water as a pure “tap” right could have negative impact on the ecosystem supporting the provision of water. The concept of ecosystem was very useful in providing the link between the commodity and the underlying functions that needed to be protected. It was indicated that this could have direct implications, for instance, in the discussions in the context of the London Protocol on Water and Health to the 1992 Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes.
4. It was pointed out that human rights were inherently at the state level: there was a global set of norms but the responsibility to fulfil them remained at the national level. There were no/insufficient means to address extra-territorial responsibilities and this was an area requiring more work. In respect of the concept of rights of future generations, it was suggested that this could be more easily understood/incorporated in the human rights context if a time frame was included.
5. The experts discussed about the possible practical steps that could be taken to promote synergies between the environment and human rights regime. An overview of the history of consideration of the environment in the human rights context was provided, including developments that are taking place at the moment such as the renegotiation of the mandate of the

special rapporteur on toxic waste and the report on climate change and human rights that is being prepared by the OHCHR.

6. The experts recognized that the human rights dimension it was inherent to discussion of all aspects of the interplay between Ecosystem Services and Human Well-being as discussed in sections I and III.

***Recommendations***

- A. Create tools that appropriately conceptualize and communicate concepts related to the contribution of ecosystem services to the fulfilment of human rights, targeting stakeholders at different governance levels.
- B. Involve relevant stakeholders, including human rights organizations working at the national level, for instance through facilitating exchanges and creating networks of national human rights commissions and involving them in discussions about the linkages between human rights and the environment.
- C. Promote an enabling environment at all levels to make the environment and human rights link work (e.g. capacity building of judges and their assistants, prosecutors, public servants – in relation to their obligations and the general public in relation to their rights and obligations; promotion of public interest litigation groups, etc.)
- D. Promote a dialogue between the environment and human rights milieus.
- E. Prepare a joint UNEP and OHCHR scoping study looking at opportunities of intersections between human rights and the environment, including on the basis of specific examples. The study should take on board work already done, including all documents produced at the 2002 OHCHR-UNEP Joint seminar on human rights and the environment and could identify areas and modalities for future cooperation between the Human Rights and the Environment regimes within the UN system. Work in this area should build on past cooperation and existing mandates that has only partially been taken forward.
- F. Cooperate with the OHCHR already in the close future in view of the 60th anniversary of the Universal Declaration on Human Rights to raise the profile of the interaction between human rights and the environment.
- G. The following issues required further consideration:
  - a) The transnational aspect of human rights
  - b) The accountability aspect of rights.
  - c) Rights of future generations in human rights law context.
  - d) Human rights aspects of traditional governance systems (including possible violation of human rights, e.g. of women, marginalised groups etc.)

### **III. The role of formal and informal institutions in promoting sustainable management of ecosystems and equitable access to and use of ecosystem services**

#### *Issues related to property rights*

1. The concept of common pool resources was introduced. Characteristic of these goods were that an individual's withdrawal of common pool resource goods subtracted from another's benefit from it, yet excluding or limiting potential beneficiaries can be challenging either because of the sheer size of the common pool resource which can make fencing costly or traditional norms of equity and customs which may make exclusion undesirable. It was also explained that difficulty in excluding leads to common pool resource being used by multiple individuals, including unauthorized users, with implications for sustainable use. Overharvesting and degradation is however not inevitable. Where resource users coordinated their strategies and agree to limit the timing, location, quantity and technologies of resource withdrawal and or developed rules for monitoring and sanctioning one another, resources could be used sustainably. Thus systems of rights and the identities of users can be manipulated to manage the exclusion and subtractability problems of common pool goods.
2. While property rights to common pool resources can vary between private, public (where government officials are managers) and collective rights, the latter were thought to hold distinct advantages in situations where productivity was marginal and variable and the costs of privatization high. These advantages included minimizing risk, promoting equitable access and minimizing production and transactions costs where scale economies could be achieved. Indeed, if a well-defined community of users existed, the costs of maintaining and protecting collective rights could be lower than those of establishing rights for a large number of individually owned parcels where each individual would have to find and transact with other individuals for every issue that arose.
3. It was also highlighted that rights to land and other resources were increasingly perceived as a bundle of rights as opposed to just simply private, state, or common property. These bundles comprised: access, withdrawal; management; exclusion and alienation. Even without complete ownership (i.e. the right to alienate), individuals and groups may still have access to resources that make significant contributions to their livelihoods, as when pastoralists graze livestock on fallow land that may belong to individual farmers. On the other hand, groups may collectively own resources, with shared access restricted among recognized members.
4. The unbundling of rights reveals the multidimensionality of rights and allows for the possibility that resources can provide different benefits to different user groups simultaneously. It also separates the question of whether a particular right is 'well-defined' from the question of the effects of having a particular set of rights. Only referring to the categories of state, private, communal rights was an oversimplification of reality.
5. A key concern with property rights was whether those rights and claims were secure and had the potential of sustaining current consumption or increasing consumption over the long term. In many parts of the developing world common pool resources such as forests, fisheries, and rangelands, which may all be held under different property arrangements such as state, common property, or private, contributed significantly to rural livelihoods. Many studies show that access and withdrawal rights to the commons often have a positive impact on the livelihoods of the poorer and marginalized members of communities through meeting regular subsistence needs,

providing some cash income, or even serving as safety nets during lean times. Tenure security had to do with whether these rights faced any threats in the short and long term.

6. It was also pointed out, however, that although security in this sphere was very important, there was also a need to ensure some kind of flexibility. For instance, permit systems should be flexible enough to allow the withdrawal of permits when the activity initially permitted resulted more dangerous to the environment than expected.

7. It was stressed that the metaphor of bundle of rights was very useful. This implied certain restrictions and also came with some responsibilities. The example of Sweden was brought, where everyone's right to access nature was recognized. This was a well established concept, although it sometimes led to conflicts. It essentially meant that people had a right to access land owned by someone else.

8. The limitations of property rights systems in addressing problems of access to and management of ecosystems were also discussed. Examples were brought of highly protected areas, with clearly defined borders and property rights, which were more degraded within the borders than outside. In such cases it was not so much the property rights system that mattered but the monitoring (or lack of it) of the use of resources (by whom and when) and application of sanctions to those breaking the rules. Examples were also brought of areas of private forest in Uganda that were more degraded than public ones and instances in which forests were managed sustainably thanks to pigmies groups living next to the forest and helping monitoring it. Important phenomena in the area of property rights included privatization and nationalisation. Problems associated with them were the possible exclusion brought by privatization and the coercion often associated with the nationalization of resources.

#### *Appropriate level of governance*

9. It was highlighted that appropriate governance systems needed to reflect the complexity of ecosystems and their interconnectedness. It was highlighted that it was not possible to identify a best unit as such where management/governance of resources should take place. While a certain governance setup could be successful in a delimited context, it could be undermined by events occurring outside of that context (e.g. pollution of a certain reserve due to activities taking place outside the area). There was therefore a need for interaction across units.

10. Recently, a lot of attention was devoted in national contexts to decentralization. It was stressed how important it was to identify the appropriate level of decentralization in specific contexts. Research was being conducted on this on the ground. The importance of the link between the institutional level and the ecological scale was stressed. This was for instance relevant to the issue of privatization of rangeland resources, with the associated problems of degradation of resources and exclusion. The role of different actors, the issue of their legitimacy at the different levels and the idea of subsidiarity needed to be explored. Also the question of resilience (defined differently by different disciplines) needed attention.

11. The experts discussed whether decentralization could work for all resources/ecosystem services or not and the experts observed that while certain decentralization schemes could be successful in relation to certain ecosystem services (e.g. water), they may not be equally successful in relation to other ecosystem services such as carbon sequestration, biodiversity etc.

12. It was stressed that, while it was important to focus on the local level where governance systems could define the intensity of use of resources, decisions made at the macro scale were

also fundamental as they could have an impact for decades as well as on the ability of certain groups to actually benefit from the local resources. A specific example was provided where local municipalities, although highly involved in managing local resources, were unable to harness the benefits of such management, which mostly advantaged large local land owners, the corporations exploiting the resources and the central level government through taxes. The issue of the level of accountability associated with the different levels of governance was also highlighted (with accountability in most cases higher at the local scale).

13. The importance of flexibility in institutional and legal arrangements was also pointed out. In most cases land was managed through a combination of collective and private land (e.g. Swiss mountains) due to difference in topography and that sometimes common lands allowed, internally, some level of privatization. While legal mechanisms usually relied on one unique framework, there was a need to design different systems according to the nature of the resources (for instance space bounded resources, such as forests, vs mobile resources such as fisheries). Markets were indicated as playing an important role in determining how resources were regulated. Also informal organizations could manage resources effectively and often included sanctions (e.g. fishermen's associations establishing rules on the minimum size of lobsters than can be fished and penalizing those not complying with that principle).

14. Some limitations of decentralization were identified and it was considered that this cannot therefore be the answer in all cases. For instance, local enforcement agencies may not be neutral and strong enough due to their close relation with the local communities.

15. From a legal/institutional perspective, the need was recognized to reconcile the idea of decentralization with land planning, management and restoration of ecosystems at landscape level (which can go even beyond the boundaries of a specific country). For instance, in establishing protected areas, including marine protected areas, it would be important to strengthen their management to improve the delivery of ecosystems goods and services provided by those protected areas or provide environmental flows as part of their basin planning with a view of ensuring sustainable livelihoods downstream.

16. During the discussions it was pointed out that conceptual clarity was needed also in relation to the term "decentralization" as this could be understood in different ways. Also, when referring to the role of local communities, it was important to specifically identify the communities involved, as certain local communities could be more privileged than others in ecosystem services and decisions taken at the local level may not necessarily be considered as legitimate by the people affected. Problematic points that were identified in this respect included:

- a) Whether ecosystem management was integrated in national planning;
- b) The identity of the user groups (with some groups being excluded from the system);
- c) The Identity of the land owners/lease holders and the clear definition of the rights of access, use, and selling of the ecosystem services;
- d) Actors that needed to be consulted and phases when consultation needed to happen; and
- e) Actors in charge of monitoring.

Also, it was important to note that, although quasi legal/customary mediation systems could be effective in some contexts, this may not be true in other contexts such as in countries where people can easily access the formal court system. It was also important to consider that certain changes in ecosystem use could cause migratory movements (e.g. more qualified communities could migrate from elsewhere to take advantage of new economic opportunities following the establishment of a pulp mill) and could also bring some advantages to some groups of people in the form, for instance, of improved environmental services (e.g. sewage systems) at the expenses of the maintenance of the natural environment.

17. The issue of participation in systems for payment for ecosystem services (PES) in contexts characterized by common property regimes was brought to the attention of the group. It was pointed out that PES needed simple rules, including social participation, effective communication, and understanding of the local culture. Also the way the income from PES was employed was important as this could have repercussion on social structures.

18. Some specific measures to improve governance for delivering ecosystem goods and services were identified by one of the experts, together with some possible action:

- f) Mainstream biodiversity concerns into business planning and operations. Some possible actions:
  - i) Develop, promote and implement standards for corporate social responsibility and accountability;
  - ii) Strengthen markets for ecosystem services and identify new ones in which companies can invest for increasing value for their stakeholders while contributing to poverty reduction and ecosystems goods and services conservation;
  - iii) Promote incorporation in the insurance industry of environmental concerns in risk assessment and liability for environmental damage in relevant policies;
- g) Integrate ecosystems management for human well being into development planning and implementation. Some possible actions:
  - i) Promote integrated national development strategies;
  - ii) Raise awareness within administrations with respect to the role of ecosystems and services in delivering development objectives;
- h) Decentralise natural resources management and decision-making. Some possible actions:
  - i) Promote the active engagement of all stakeholders in natural resource management to ensure that local communities know what their rights and entitlements are and how to enforce them
  - ii) Decentralise to local communities the access and management of natural resources, if appropriate
- i) Mainstream Multilateral Environmental Agreements (MEAs) in development planning and implementation. Some possible actions:
  - i) Promote the harmonisation among MEAs
  - ii) Promote the participation of MEAs in relevant international trade discussions
- j) Promote equity, particularly gender equity in natural resources management. Some possible actions:
  - i) Recognise the role of indigenous peoples and local communities in managing natural resources
  - ii) Secure property to women and equitable access to natural resources
- k) Support the establishment of Payment for Ecosystem Services (PES) schemes. Some possible actions:
  - i) Provide a strong science base to document the volume, value and costs of providing ecosystem services
  - ii) Promote political will and institutional commitment to establish PES schemes, either on a voluntary basis or as part of international agreements
- l) Manage ecosystems at the landscape level. Some possible actions:
  - i) Acknowledge the transboundary character of many ecosystems and make adequate provisions at the national policy, legal and institutional levels (this applies to other measures such as establishment of PES, ecosystems restoration, and decentralisation of natural resources management)

- ii) Include representative protected areas into the landscape management, including the link of protected areas with the broader land-use planning, and ensure that the design of protected areas better protect ecosystem services
- iii) Apply environmental flows as part of river basin planning to ensure sustainable livelihoods downstream
- m) Restore landscapes for the benefit of people and nature. Some possible actions:
  - i) Establish programmes to control and / or eradicate Invasive Alien Species (IAS) that threaten ecosystems functioning and livelihoods
  - ii) Identify main drivers of ecosystems degradation and the economic interests behind them
  - iii) Adopt measures aiming at restoring ecosystems and vulnerable sites to conserve biodiversity from projected impacts of climate changes and secure livelihoods
- n) Adapt to deal with expected impacts of climate change. Some possible actions:
  - i) Share information between governments, NGOs, research institutions, and communities on potential climate changes impacts and extreme weather events, and develop disaster preparedness, early warning, and response measures
  - ii) Consider the potential impact on ecosystems goods and services deriving from “environmental refugees”

### ***Recommendations***

- A. Promote governance systems that reflect the complexity of ecosystems and their interconnectedness;
- B. Promote flexible and diversified institutional/legal frameworks to address different types of resources;
- C. Promote property rights regimes that combine predictability and security with flexibility;
- D. The following issues require further consideration:
  - Ecosystems and ownership;
  - The concept of “subtractability” of resources;
  - The concept of subsidiarity;
  - The link between the institutional and the ecological scales;
  - Different levels of accountability at different scales of governance;
  - Problematic aspects of decentralization;
  - Concept of environmental flows;
  - Role of quasi legal/customary mediations mechanism;
  - Access to justice *vis a vis* access to courts.

### ***Recommendations for further action***

- E. UNEP is well placed to link knowledge with action and bridge the gap between the research community and the policy arena. It could therefore:
  - a) Engage the academic community and people engaged in practice in further debate, for instance through an electronic forum or other mechanisms, including to identify knowledge gaps that need to be filled;
  - b) Prepare a synthesis of the work done by researchers and compile a set of cases and examples of what the problems are, and of creative, pragmatic solutions that were effective;

- F. Propose, on that basis, policy alternatives, options, pragmatic solutions in the form of a tool box, ready to be used by policy makers and if necessary provide assistance to specific countries on such policy options.

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## Annex IV

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