



# **The Human Right to a Healthy Environment**

INTERNATIONAL ASSOCIATION  
OF DEMOCRATIC LAWYERS

HANOI, JUNE 2009

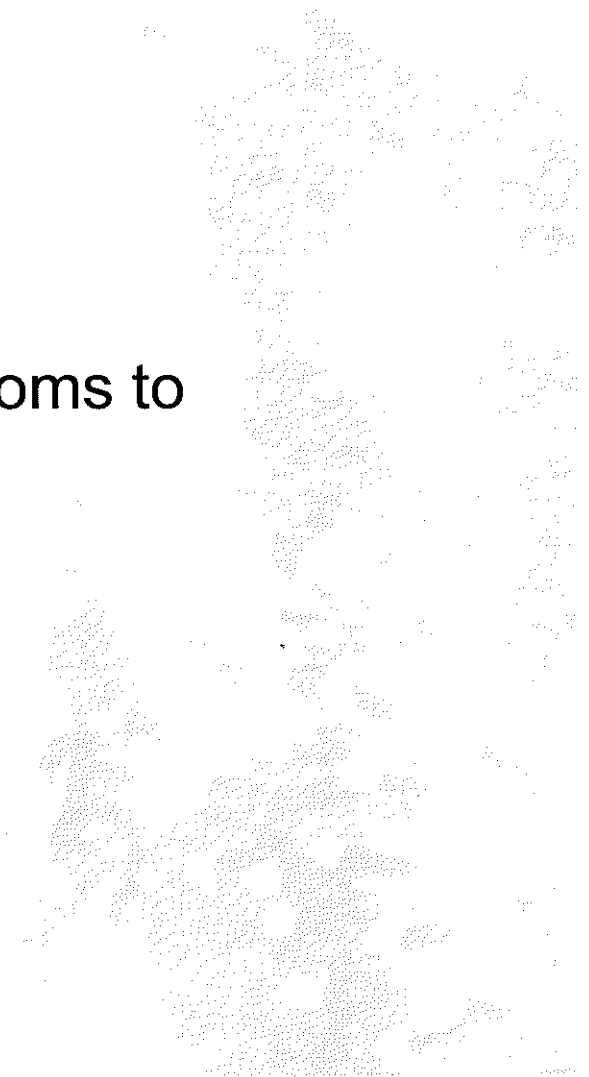
Jan van de Venis, JustLaw

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.

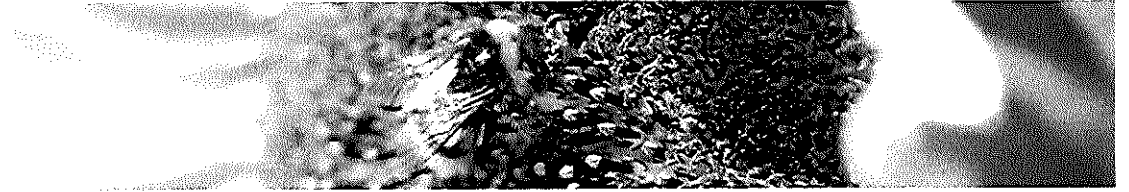




## Questions?

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





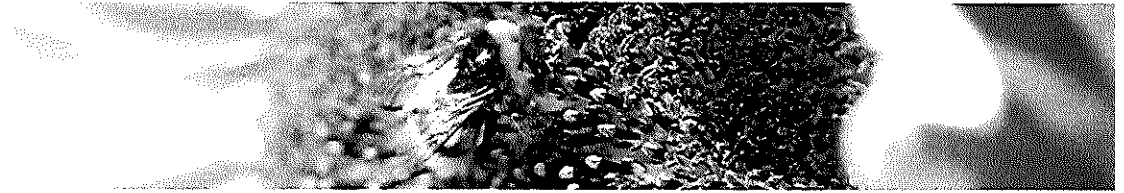
**“Earth provides enough to satisfy every man's need, but not every man's greed.”**

**Mahatma Gandhi**



# **International Binding and Non-Binding**

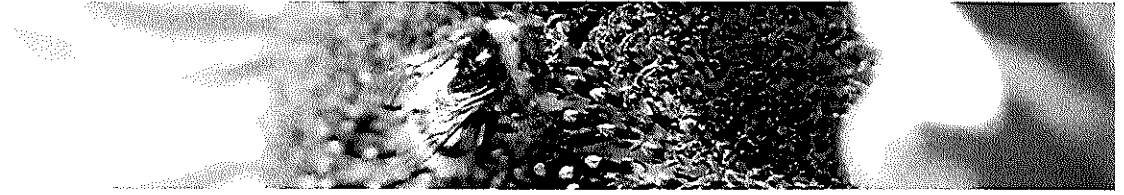
- **1948**      **Universal Declaration on Human Rights**
- **1966**      **ICCPR**
- **1966**      **ICESCR**
- **1972**      **Stockholm Declaration**
- **1979**      **CEDAW**
- **1989**      **CRC**
- **1992**      **Rio Declaration, confirmed in Johannesburg 2002**
- **1998**      **Aarhus Convention**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



## Regional

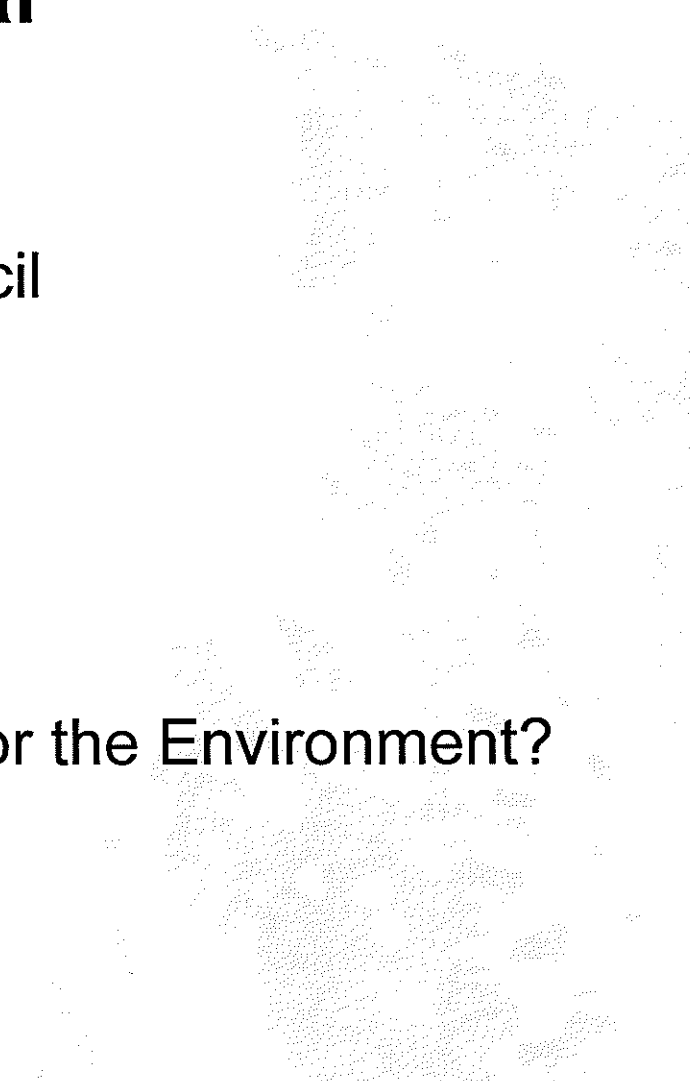
- 1950 ECHR
- 1981 ACHPR
- 1988 ACHRESCR add. Protocol San Salvador

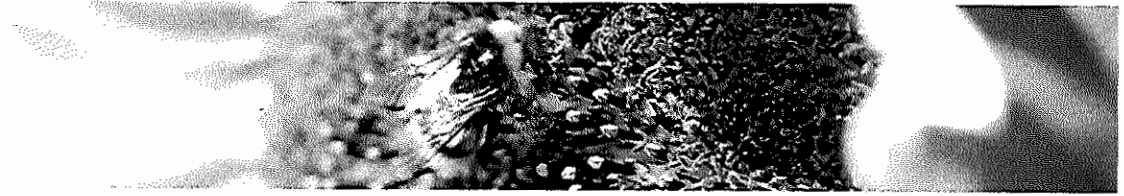




## Jurisprudence - International

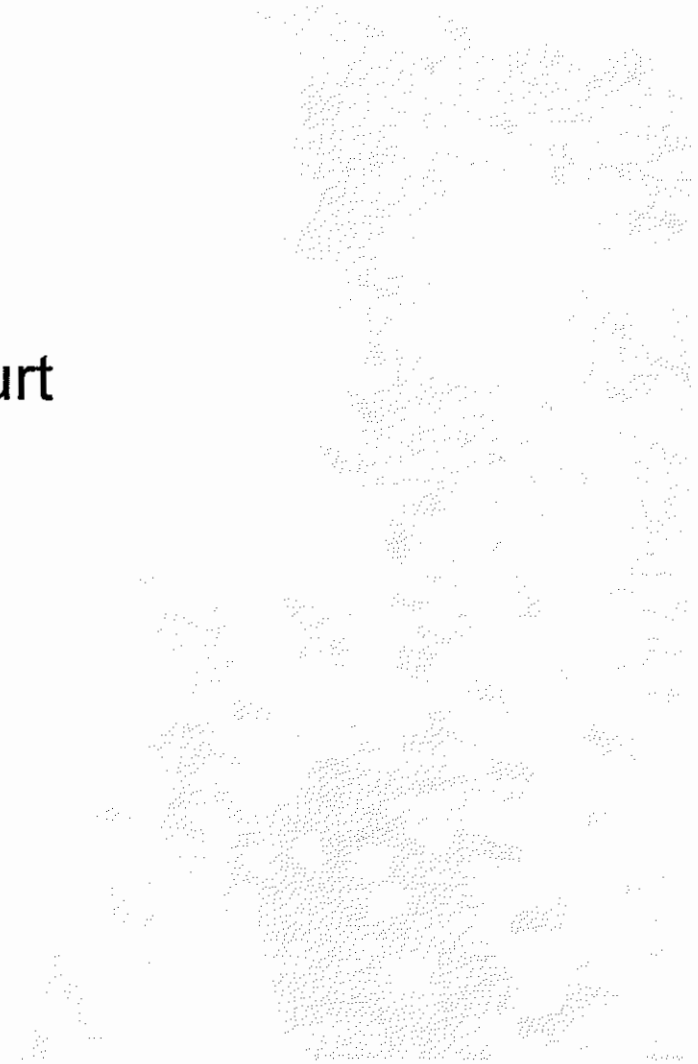
- UN HR Commission – UN HR Council
- UN HR Committee
- UN ESCR Committee
- ICJ
- Do we need an International Court for the Environment?





## 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:

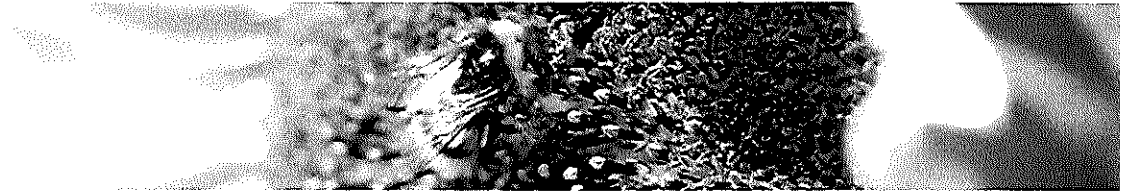
*“Everyone has the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both the Government and the community shall have the duty to defend and preserve it for present and future generations.”*

- 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?

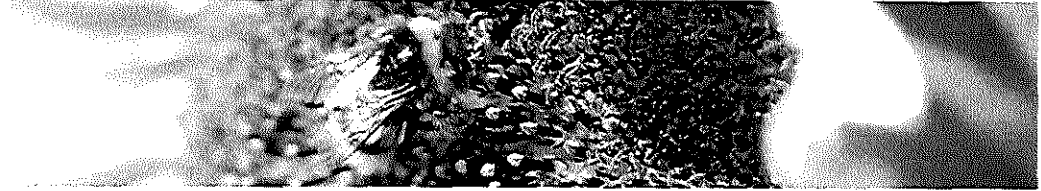
- Focus on individuals, not on States
- (Inter)national access to Court
- Individuals have rights where individuals get hurt by disruption of the environment
- Human rights claims are absolute (no lobby, negotiations or successful pressure)



# 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](http://www.unep.org)**

**[www.ipcc.org](http://www.ipcc.org)**

**[www.climatelaw.org](http://www.climatelaw.org)**

**[www.pewclimate.org](http://www.pewclimate.org)**

**[www.greenpeace.org](http://www.greenpeace.org)**

**[www.standupforyourrights.com](http://www.standupforyourrights.com)**

**[www.foei.org](http://www.foei.org)**

**[www.environmentcourt.org](http://www.environmentcourt.org)**

**FORWARD TO COPENHAGEN!**

