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**The Human Rights Fundamentals of  
Conservation in the Context of the  
Extraction of Energy Resources**

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Gedruckt auf alterungsbeständigem Papier.

In memoriam  
my grandfather Alonso Moreta Andrade



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# Contents

Foreword . . . . .	11
List of Abbreviations and Acronyms . . . . .	13
List of Figures . . . . .	15
A. Introduction . . . . .	17
B. Legal Foundations of the Link Between Human Rights and Conservation . . . . .	27
I. Human Rights in International Law . . . . .	27
1. Objective . . . . .	27
2. Definition . . . . .	28
3. Characteristics . . . . .	30
4. Classification . . . . .	33
5. Legal Nature of Human Rights Obligations . . . . .	36
a. Obligation to Respect . . . . .	37
b. Obligation to Ensure and Meet Human Rights . . . . .	39
c. Obligation to Protect . . . . .	41
d. Obligation to Respect Human Rights without Discrimination . . . . .	44
6. Legal Framework for Human Rights . . . . .	45
II. Environment and Conservation in International Environmental Law . . . . .	48
1. Environment in International Environmental Law . . . . .	48
2. Cause-and-Effect Relationship Between Human Activities and the Environment . . . . .	51
a. Global Driving Forces Affecting the Consumption of Natural Resources . . . . .	52
b. Pressures on the Environment . . . . .	55

c. States, Impacts and Responses . . . . .	57
3. Conservation and International Environmental Law: a Way to Protect the Environment . . . . .	58
4. Principles and Rules of International Environmental Law . . .	61
5. Environmental Legal Framework . . . . .	65
III. Conclusion . . . . .	66
C. The Extraction of Natural Resources in the Energy Sector . . . . .	69
I. The Extraction of Natural Resources . . . . .	69
1. Natural Resources: Definition and Classification . . . . .	69
2. Life Cycle of Natural Resources Within the Economy . . . . .	72
3. The Extraction of Natural Resources and Its Impact . . . . .	73
4. Natural Resources and Their Exploitation in International Law	75
II. Energy in an International Context . . . . .	79
1. Energy and Development . . . . .	79
2. Extraction of Energy Sources . . . . .	85
a. Non-renewable Energy Resources : Basic Components for the Generation of Fossil Fuels . . . . .	85
b. Renewable Energy Resources: keystones of the Development of Clean Energies . . . . .	91
3. Property and Natural Resources . . . . .	99
a. Property: Definitions and Categories . . . . .	99
b. Permanent Sovereignty over Natural Resources . . . . .	102
c. Ownership of Energy Resources . . . . .	106
4. Energy Generation in International Law . . . . .	112
a. Energy Law in International Law . . . . .	112
b. Regulation of Non-Renewable Energy . . . . .	116
c. Regulation of Renewable Energy . . . . .	118
III. Conclusion . . . . .	120
D. The Link Between Human Rights and the Environment . . . . .	123
I. Substantive Rights . . . . .	123
1. The Right to Life . . . . .	125
a. Legal Foundations . . . . .	125
b. The Prohibition of Arbitrary Deprivation of Human Life in Relation to the Development of Dangerous Activities . . . . .	127
c. The Duty to Protect Life by Law and its Role in the Extraction of Natural Resources . . . . .	131
d. Conclusions . . . . .	135
2. The Human Right to Property . . . . .	136
a. Legal Foundations . . . . .	136



b. Linking the Right to Property and the Environment in the Context of the Extraction of Energy Resources . . . . .	141
c. Indigenous Peoples and the Right to Property . . . . .	143
d. Conclusion . . . . .	152
3. The Right to Respect for Private and Family Life and Home . .	154
a. The Human Right to Respect for Privacy, Family and Home and its Ecological Approach . . . . .	154
b. Limitations of State's Duties . . . . .	160
c. Extraction of Energy Resources in the Light of Article 8 of the European Convention on Human Rights . . . . .	166
d. Conclusion . . . . .	169
4. The Right to Adequate Standards of Living . . . . .	171
a. The Right to Food . . . . .	172
aa. Contents and Importance . . . . .	172
bb. General Legal Obligations . . . . .	174
cc. Specific Legal Obligations . . . . .	177
dd. The Right to Food in the Context of Energy Resource Extraction . . . . .	182
ee. Bionergy: A Challenge for the Realization of the Right to Food . . . . .	185
ff. Conclusion . . . . .	189
b. The Right to Housing . . . . .	191
aa. Scope of Contents . . . . .	191
bb. Obligations . . . . .	195
cc. Forced Evictions and the Extraction of Energy Resources . . . . .	197
dd. Conclusions . . . . .	210
5. The Right to Health . . . . .	212
a. Scope and Content . . . . .	212
b. Obligations . . . . .	215
c. The Role of the Environment in the Realization of the Right to Health . . . . .	223
d. Conclusion . . . . .	233
6. The Right to Water . . . . .	235
a. Water as a Human Right . . . . .	235
b. Legal Foundations . . . . .	236
c. Definition and Normative Content . . . . .	243
d. Obligations . . . . .	250
e. Water and the Extraction of Energy Resources . . . . .	258
f. Conclusion . . . . .	266

II. Procedural Rights . . . . .	269
1. The Right to Participation . . . . .	271
a. The Right to Access to Information . . . . .	273
b. The Right to Participate in Decision-Making Processes . . . . .	278
c. Benefit Sharing . . . . .	287
d. Conclusion . . . . .	290
2. Access to Justice: an Environmental and Human Right . . . . .	292
3. Environmental Impact Assessment (EIA) . . . . .	296
III. Corporate Responsibility and Accountability for Transnational Corporations and Other Business Enterprises: Case of Study Texaco Oil Company and Chevron vs Lago Agrio Plaintiffs . . . . .	304
1. Texaco Oil Company (Texpet) and Chevron vs Lago Agrio Plaintiffs . . . . .	304
2. Responsibility and Accountability for Transnational Corporations and other Business Enterprises in Relation to Human Rights and Environmental Protection . . . . .	338
a. Corporate Responsibility and Accountability for TNCs With Respect to Human Rights . . . . .	342
b. Corporate Responsibility and Accountability for TNCs With Respect to International Environmental Law . . . . .	354
c. Conclusion . . . . .	359
E. Conclusion: The Human Right Dimension of Conservation in the Context of the Extraction of Energy Resources . . . . .	361
References . . . . .	371

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## Foreword

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María Augusta León Moreta

Quito, January 2015



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## List of Abbreviations and Acronyms

ACHPR	African Charter of Human and People's Rights
ACHR	American Convention on Human Rights
ACmHRP	African Commission on Human and Peoples Rights
ATCA	Alien Tort of Claims Act
BITs	Bilateral Investment Treaties
C155 ILO	International Labor Organization Convention No. 155 concerning Occupational Safety and Health and the Working Environment
C161 ILO	International Labor Organization Convention No. 161 concerning Occupational Health Services
C169 ILO	International Labor Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries
CBD	Convention on Biological Diversity
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CSO	Civil Society Organization
DSPIR	Driving forces, Pressures, States, Impacts and Reponses
EBRD	European Bank for Reconstruction and Development
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECmHR	European Commission on Human Rights
ECtHR	European Court on Human Rights
EEA	European Environmental Agency
EIA	Environmental Impact Assessment
EIR	Extractive Industries Review
EITI	Extractive Industries Transparency Initiative
EU	European Union
FAO	Food and Agricultural Organization
GATT	General Agreement on Tariffs and Trade
GHG	Greenhouse gas
HRC	Human Rights Committee
IACmHR	Inter-American Commission of Human Rights

IACtHR	Inter-American Court on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDB	Inter-American Development Bank
IEA	International Energy Agency
IFC	International Finance Corporation
IGOs	Intergovernmental Organizations
ILO	International Labor Organization
IMF	International Monetary Fund
IUCN	International Union for Conservation of Nature
MEAS	Multilateral Environmental Agreements
MEM	Ministry of Energy and Mines of Ecuador
MITs	Multilateral Investment Treaties
NCPs	National Contact Points
NGO	Non-governmental Organization
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of the High Commissioner for Human Rights
OP/BP 4.1	Revised Operational Policy and Bank Procedure on Indigenous Peoples
PCA	Permanent Court of Arbitration
PSC	Production Sharing Contracts
SDNY	United States District Court for the Southern District of New York
TexPet	Texaco Petroleum Company
TNCs	Transnational Corporations
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNDP	United Nations Development Program
UNDRIP	United Nations Declarations on the Rights of Indigenous Peoples
UNECE	United Nations Economic Commission for Europe
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
US	United States of America
WCD	World Commission of Dams
WCED	World Commission on Environment and Development
WHO	World Health Organization
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization
WWC	World Water Council

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## List of Figures

Figure A.1: Dynamic Interrelationship Between Environment and Human Well-Being

Figure A.2: Classification of Ecosystem Services

Figure A.3: Components and Determinants of Human Well-Being

Figure B.1: DSPIR Framework

Figure B.2: Global Driving Forces Influencing the Consumption of Natural Resources

Figure B.3: Pressures on the Environment

Figure B.4: Example of DPSIR Framework for Energy Demand

Figure B.5: Holistic Approach to Conservation

Figure C.1: Classification of Natural Resources

Figure C.2: Lifecycle of Natural Resources within the Economy

Figure C.3: Threats to the Environment Relating the Extraction of Natural Resources

Figure C.4: Extraction of Natural Resources in International Environmental Law

Figure C.5: Energy System and the Impact on the Environment

Figure C.6: Issues Surrounding Energy: Impact and Response

Figure D.1: Competing Interests in Relation to the Right to Property

Figure D.2: Fair Balance

Figure D.3: Components of the Right to Respect for Private and Family Life, Home and Correspondence





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## A. Introduction

Environment, ecosystem services, human well-being and support mechanisms for a functioning environment have a specific function in the chain of dynamic interaction between environment and human beings (Figure 1.1). In fact, if the quality of one component were affected, reduced or eliminated due to natural phenomena or man-made actions or omissions, the remaining components would not be able to perform their functions, thereby affecting interactions within the system. Therefore, it is important to first characterize each of these elements in order to understand their complex relationship and the impact that the exploitation of natural resources may have on these components and their interactions.



Figure A.1: Dynamic Interrelationship Between Environment and Human Well-Being  
Source: Mc Neely and Mainka, *Conservation for a New Era* (2009) 17.

One crucial component of environment is ecosystems. They constitute the dynamic interactions and interrelations between living (biotic) components – microorganism, plants and animals – and non-living (abiotic) components and

their environment.<sup>1</sup> This dynamic complex of living and non-living elements functioning as a unit gives rise to the so-called ecosystems services which are the entirety of conditions and processes that contribute to the regeneration of biodiversity and the generation of goods and services which benefit life and the development of human beings.<sup>2</sup> The Millennium Ecosystem Assessment classifies ecosystem services into four categories: supporting services, provisioning services, regulating services and cultural services (Figure 1.2).

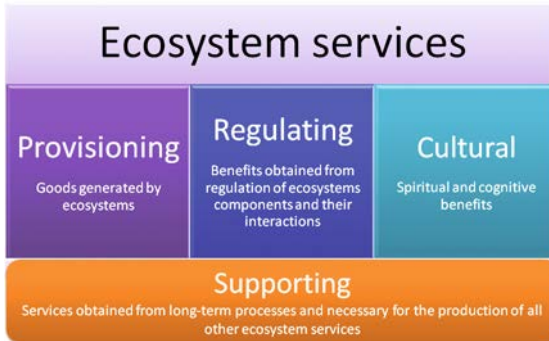


Figure A.2: Classification of Ecosystem Services

Source: Mc Neely and Mainka, *Conservation for a New Era* (2009) 17.

The first group of ecosystem services are supporting services. They are services obtained from long-term processes which permit the generation and regeneration of ecosystems required for the production of all other ecosystem services. Examples of such services are primary production, production of atmospheric oxygen (through photosynthesis), soil formation and retention, nutrient recycling, water recycling and the provisioning of habitats. For instance, the production of food requires soil formation, nutrient and water recycling.<sup>3</sup> The second category encompasses provisioning services which are all goods generated from ecosystems, including: food and fiber; fuel; genetic resources; biochemicals, natural medicines and pharmaceuticals; ornamental

1 IUCN and others, *World Conservation Strategy* (1980) s 1, Par. 7; Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 49; Birnie and others, *International law & Environment* (2009) 58; McNeely and Mainka, *Conservation for a New Era* (2009) 39

2 Daily, 'Introduction: What are ecosystem services?' in Daily (ed), *Nature's Services: Societal Dependence On Natural Ecosystems* (1st edition, Island Press 1997); Robert Constanza and others, 'The value of the world's ecosystem services and natural capital' (1997) vol 387 *Nature* 253 – 260, 253; McNeely and Mainka, *Conservation for a New Era* (2009) 39 – 40

3 Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 59 – 60; McNeely and Mainka, *Conservation for a New Era* (2009) 40

resources; and fresh water.<sup>4</sup> The third group are the regulating services. They are benefits derived from a range of factors and processes within the ecosystems which adjust, control and manage ecosystems components and their interactions. The modification of any factor or process involved in the regulation of the ecosystem has a direct or indirect impact on the state and interaction of other environmental media. For example, water regulation depends on land cover. Indeed, the conversion of wetlands or the replacement of forests by croplands can change the water storage potential of the system. Important regulating services are: air quality maintenance, climate regulation, water regulation, human disease control, erosion control, water purification and waste treatment, biological control, pollination and storm protection.<sup>5</sup> Some services which can be categorized either as supporting or regulating services. Soil retention and formation, e. g. influence on the one side the water quality; on the other side, they also indirectly benefit people through the supply of food.<sup>6</sup> Finally, the fourth category deals with cultural services. These are non-material benefits that people obtain from ecosystem in form of spiritual enrichment, cognitive development, reflection, recreation and aesthetic experiences including: cultural diversity, spiritual and religious values, knowledge systems, educational values, inspiration, aesthetic values, social relations, sense of location, cultural heritage values, recreation and ecotourism.<sup>7</sup>

A third element of the dynamic interrelationship between environment and human beings is human well-being. It is made up of five linked components: basic material needs for a good life including adequate livelihoods enough food and access to goods; health, including having a healthy physical environment; good social relations including social cohesion, respect, social recognition; personal security, including the access to natural and other resources, rule of law, safety of persons and possessions and living in an environment that is safe from natural and man-made disasters; and the availability of freedom of choice.<sup>8</sup> These five dimensions interact in a complementary fashion to provide physical, social, psychological and spiritual fulfilment. A positive or negative change in one of the components often impacts on other components and on human beings. The health component, e. g., is linked to a healthy physical environment;

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4 Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 56 – 57

5 Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 57 – 58; McNeely and Mainka, *Conservation for a New Era* (2009) 41

6 McNeely and Mainka, *Conservation for a New Era* (2009) 41

7 Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 58 – 59

8 Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 74

therefore, a polluted environment considerably reduces the availability and quality of basic materials and as a consequence reduces people's quality of life. Furthermore, the five key components of human well-being are influenced by two additional types of determinants which are expressed either in form of commodity inputs, most of them provided by ecosystem services such as goods and services, or in the form of mechanisms which provide conditions and access to such inputs such as access to resources (Figure 1.3). Under certain circumstances, key components may be both constituents of and means to human well-being. For example, health can be considered as a goal as well as the way to achieve other important components.<sup>9</sup>

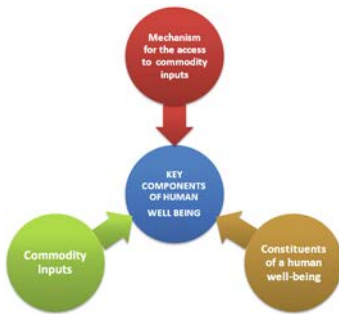


Figure A.3: Components and Determinants of Human Well-Being

Through several mechanisms and decision making-processes, man not only impacts on issues relating to human well-being but also the environment. Socio-economic factors, technological developments, policies, institutions and legal instruments constitute some of the multiple mechanisms that have either a negative or positive impact on the environment and people's lives. Therefore, appropriate instruments, functioning institutions as well as clear and enforceable rules created on the basis of transparency and participation, contribute to the prevention of adverse consequences of environmental harms, to ensuring polluters are held liable for any environmental damage caused and to respecting human rights.<sup>10</sup> In fact, well-defined property rights and transparent institutional structures constitute the basis for a long-term protection of ecosystems and their services, and for the realization of human rights. Furthermore, the access to and the right to use natural resources and services within ecosystems depend on the existence of institutions and on their degree of efficiency. Con-

<sup>9</sup> Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 73 – 74

<sup>10</sup> Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 81

centration of power in a few hands and subsidies undermine the solidity of bodies responsible for the distribution of goods and services.<sup>11</sup> According to the Millennium Ecosystem Assessment, in order to ensure transparent and functioning institutions as well as to enforce rights, the process of creating, revising and modifying institutions and rules, requires the support of six basic elements or 'freedoms', viz. participation, economic facilities, social opportunities, transparency guaranties, ecological security<sup>12</sup> and protective security.<sup>13</sup> These social, political, economical and ecological freedoms provide the structures that allow a sustainable interaction between man and the environment.

Human activities give rise to environmental changes which in turn can have a positive or negative effect on goods and services provided by ecosystems, as well as on the development of human well-being. Ecosystem changes resulting from processes of disruption, overexploitation, pollution and depletion, e.g. have a significant impact on the availability and quality of goods and other services important for human well-being (provisioning functions). Similarly, negative changes in regulating functions on ecosystems such as water purification or the stabilization of local or regional climate, affect substantial components of human well-being and can result in human rights violations.<sup>14</sup> For example, the human right of access to water and the human right to health can be jeopardized by the impact of human actions or non-actions on the quantity and quality of water or the purification cycle of this resource. These examples illustrate the extreme symbiosis and interdependence between the environment and human beings. Human well-being depends on the capacity of ecosystems. However, human beings have at the same time the capacity to change environmental conditions which can have serious repercussions on the environment and regenerating capacity. In this context, the exploitation of natural resources for energy production is one of the many factors with a direct or indirect impact on ecological systems and the performance of human rights.

In a globalized world, energy constitutes an essential element for human development and economic growth. Resources necessary for the generation of

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11 Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 82

12 According to the Millennium Ecosystem Assessment, 'Ecological security' is conceptualized as 'the minimum level of ecological stock, [...] defined by respective communities through an open and participatory process, that is required to provide the supporting services needed to ensure the sustainable flow of provisioning, regulating, and cultural ecosystem services' in Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 83

13 Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 82 – 83

14 Joseph Alcamo and others, *Ecosystem Assessments and Human Well-Being: A Framework for Assessment* (2003) 76 – 77

energy are mainly raw materials, whether renewable or non-renewable, as well as environmental media such as soil or water. To be useful to an economy, these resources follow a conversion cycle. The first stage in this cycle is their extraction. This process of gaining access to and extracting the resources varies according to the type of energy that is to be generated with them. While the generation of hydropower requires, for example, the construction of dams and subsequent flooding of vast tracts of land, the generation of biofuels is based on the cultivation of feedstock which mainly requires environmental media such as water and soil. In the last sixty years, energy demand has constantly increased due to factors such as population growth and economic development. Projections foresee that the consumption of energy is expected to grow by 56 percent between 2010 and 2040.<sup>15</sup> This growing energy demand has exerted significant pressure on natural resource stocks as well as on the quality of the environment, which in turn has had negative effects on the life and access to resources by people living near the extraction areas. In this scenario, the interest, rights and obligations of several stakeholders come into play.

The extraction of energy resources can lead to a conflict of interest between states, transnational corporations, individuals and international organizations. On the one hand, States have the responsibility to strengthen the economic development of their citizens. Accordingly, energy resource-rich countries encourage the extraction of such resources to increase their revenue and cash flow. For this purpose, States create adequate conditions to stimulate investment by private corporations which have the know-how and technology to carry out extraction operations. On the other hand, States have the international obligation to respect, protect and fulfill human rights. For its part, transnational corporations are interested in investing in cost-effective projects with the aim to increase their profits. To ensure their investment, transnational corporations require States to protect their capital and know-how through the adoption of a number of safeguards and mechanisms. International organizations also constitute key stakeholders in extraction projects. In particular, financial international institutions have established in their policies conditions under which a project will be carried out in order to obtain funding. Other stakeholders involved in the extraction of energy resources are individuals and vulnerable groups whose rights can be compromised by extraction projects. People depend on access to natural resources and on a healthy environment to develop their social, political and economic lives. Unfortunately, the exercise of their rights has been compromised by the impact of extraction operations on the environment. In this context, all stakeholders exercise a strong influence on environmental conservation and the realization of human rights.

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15 U.S. Energy Information Administration, *International Energy Outlook 2013* (2013)

Based on these considerations, this study will attempt to answer the question whether there is a causal link between the realization of human rights and conservation of the environment in the context of energy resource extraction. Accordingly, the main objectives of the study are to demonstrate on the one hand that the fulfilment of human rights strongly depends on the quality of the environment and on access to natural resources. On the other hand, it aims to show that negative environmental effects arising from extraction operations jeopardize this delicate relationship. For this purpose, the study will elucidate the interaction between mechanisms developed within the framework of human rights and international environmental law to ensure the protection of the environment and human rights from the negative effects of the extraction of renewable and non-renewable energy resources.

The hypotheses to be proven in this study are:

- 1) The quality of the environment and access to natural resources are a precondition for the realization of human rights.
- 2) Extraction operations have a direct influence on the environment and ecological interrelations. In other words, the extraction of energy resources evidences a direct cause-and-effect relationship between human activities and the environment.
- 3) The environmental impact from extraction operations affect the realization of substantive rights such as the right to property, to respect for private life and family and home, to life, to an adequate standard of living, to health and to water.
- 4) Procedural rights created within the framework of international environmental law constitute mechanisms which ensure that extraction projects in the energy sector are developed in accordance with the rule of law, transparency and a respect for human rights.

The relevance of the findings of the study is to achieve transparency in the cause-effect relationship between environmental impacts arising from extraction operations and the exercise of human rights as well as to make all stakeholders involved in an extraction project aware of the tools and mechanisms to prevent environmental damage and human rights violations in the energy sector.

For the development of this study, scientific legal methods were applied. Tools used for the assessment of legal literature were, among others, methods of applying and interpreting provisions such as analogy and teleological reduction, concretization of legal norms, and comparative methods. With regard to literature, the primary literature used in this study comes from international agreements, covenants and declarations in the area of environmental law and human rights. Important sources of this study were rulings by the Inter-American and European Human Rights Courts and the African Commission on

Human and Peoples Rights. These instances have dealt in several cases with the consequences that the development of industrial and extraction activities has on the effective realization of human rights. Therefore, such rulings were subject to a comparative analysis in order to prove the dependency between the realization of human rights and the environmental quality. In addition, reports of international organizations are incorporated as expert sources. With regard to secondary literature, the study draws on comments, manuals, legal journals, monographs and dissertations.

This study covers three main issues. The first issue deals with the theoretical framework within which the study is developed. Accordingly, Chapter B pays attention to the definition, characteristics and classification of human rights and to the legal nature of human rights obligations. The objectives of this analysis are to draw up a definition of human rights which will guide this study, as well as to demonstrate whether a healthy and clean environment is a precondition for the realization of human rights. In addition, environment and conservation will be the subject of an analysis in Chapter B. Here, it is important to define the term environment and to determine the cause-and-effect relationship between human activities and the environment. Relating to the second issue, the extraction process of renewable and non-renewable energy resources and its impacts on the environment will be elucidated. In Chapter C, special attention is given to the concept of natural resources, the process of the extraction of energy resources, the ownership of such resources and the regulation of energy generation. The aim of this analysis is to establish to what extent environmental impacts arising from extraction operations affect the life and living conditions of individuals and communities. In relation to the third issue, the link between the conservation of the environment and the realization of human rights will be analyzed. In Chapter D, substantive human rights and procedural environmental rights will be explained in the light of the environmental impact caused by the different extraction activities in the energy sector. This Chapter addresses those human rights whose implementation depends on environmental protection such as the right to adequate living standards, the right to health and the right to water. Furthermore, the Chapter will deal with those human rights which have served as a legal foundation for complaints before regional human rights courts when the environmental impact caused by acts or omissions of a state has resulted in human rights violations. This is the case with the right to life, the right to respect private and family life and the right to property. On the other hand, procedural rights – the right to participation, the right of access to justice and the obligation to carry out Environmental Impact Assessments (EIAs) – will be examined. These safeguards, created within international environmental law, will be explained in the light of a human rights context when preventing and avoiding environmental damage. To conclude this Chapter, the legal battle be-



tween Texaco Oil – Chevron and Ecuadorian citizens will be elucidated. The analysis of this case will be the basis for discussing the extent of corporate responsibility and accountability of Transnational Corporations (TNCs) for environmental damage and human right violations. Finally, conclusions and recommendations will be given in Chapter E.



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## **B. Legal Foundations of the Link Between Human Rights and Conservation**

This Chapter aims at determining the legal basis of the link between human rights and the environment. In order to achieve this aim, the area of human rights will be analyzed in the first part of the Section. This requires creating a definition of human rights to guide the development of this investigation. Next, it will be attempted to demonstrate that a healthy and clean environment is a precondition for realizing civil and political rights as well as economic, social and cultural rights. Additionally, the human rights foundations of this investigation will be laid by analyzing the sources of international law. In the second part of the Section, the framework of international environmental law will be addressed. For this purpose, the concept of environment and the elements that create the interrelation between environment and human well-being will be clearly defined after which the cause-and-effect relationship between human activities and the environment will be looked at. This will be helpful in the next stage of the investigation to illustrate how extractive activities affect the environment and realization of human rights. Finally, a set of rules and principles of international environmental law will be laid down.

### **I. Human Rights in International Law**

#### **1. Objective**

In the early stages of the development of a human rights protection system, the international community established, as an essential goal of human rights, the protection of human dignity from violations by state authorities.<sup>16</sup> Afterwards, this perspective which conceptualized human rights as a right to defend against the state's actions evolved into a new concept that goes beyond the exercise of

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<sup>16</sup> Cassese, *International Law* (2005) 397; Steiner, 'International Protection of Human Rights' in Evans (ed), *International Law* (2006) 769

‘pressure against states to stop their violations’ and rather aims at preventing such violations in the first place.<sup>17</sup> So far, the international human rights protection system has counteracted the causes of violations by drawing the attention of the states on the human rights situation through human rights monitoring bodies or by prosecuting such states for breaches of human rights before international tribunals. At the present time, the growing economic and political interdependence of states in the era of globalization and the new threats for the international community – global terrorism, scarcity of resources and an increasing number of natural disasters – pose new challenges to the human rights protection system. As a result, the new objective of human rights is to transform the political, social and economic structures of the states. This can be achieved by strengthening the participation of non-states, by holding them accountable for human rights violations, by promoting interstate cooperation and by assuring compliance with national court rulings relating to human rights issues.<sup>18</sup>

## 2. Definition

In the context of international law, the concept of human rights has so far never been defined. However, several authors have attempted to provide a definition from different perspectives. Kälin and Künzli, e.g., proposed a definition of human rights by delineating six distinctive characteristics of human rights.<sup>19</sup> First, human rights allow right-holders to make claims against states for failing in their duty to promote, protect and perform before international instances. Second, the primary concept of human rights embodies the protection of individuals. Furthermore, during the process of developing human rights, this protection has been extended to other subjects such as legal entities and minorities. Third, human rights are basically invoked against states. States are obliged to respect, protect and meet human rights. Therefore, when states do not meet these obligations, they should be held accountable for their actions or failures to act resulting in the violation of human rights. Fourth, human rights are applicable both in times of peace and war. In case of a national emergency, states may temporarily abrogate specific human rights under certain conditions and circumstances previously defined by law. Fifth, human rights are internationally acknowledged and guaranteed. Regardless of the content or function of human rights, this characteristic draws a distinction between human rights and

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17 Nowak, *Einführung in das internationale Menschenrechtssystem* (2002) 39

18 Steiner, ‘International Protection of Human Rights’ in Evans (ed.), *International Law* (2006) 769

19 Kälin and Künzli, *Universeller Menschenrechtsschutz* (2008) 36–37

constitutional or fundamental rights. Under international law, human rights allow the beneficiary to claim his or her rights not only before a national court but also before supranational bodies. Sixth, the cornerstone of human rights protection is the acknowledgement by the states that human rights are necessary to ensure the dignity and worth inherent in human beings. On the basis of these characteristics, Kälin and Künzli defined human rights as internationally guaranteed provisions which enable individuals to make claims against the state in order to protect fundamental aspects of human beings and a person's dignity during both peace and war.<sup>20</sup>

Human rights can also be conceptualized from a descriptive, philosophical and legal perspective. Novak proposes three definitions of human rights. The first defines human rights as subjective rights that enable individuals to live according to the principles of freedom, equality and human dignity. Another concept stems from the classification of human rights. Accordingly, human rights are the sum of all civil, political, economic, social, cultural and collective rights anchored in international and regional instruments as well as in national constitutions. From a legal and philosophical point of view, human rights constitute a unique value system in international law which is universally recognized and contains elements of liberalism, democracy, equality, 'empowerment', participation, social justice, rule of law and 'good governance'.<sup>21</sup>

Another definition of human rights can be deduced from three pillars on which the international human rights protection system rests. These primary elements are: the recognition of individuals as partial subjects of international law, the limitation of the absolute sovereignty of the state, and the contribution of human rights to strengthening international relations. Following World War II, the international community acknowledged the importance of protecting individuals from the intervention of state authority. As a consequence, individuals acquired the status of partial subjects of international law. This in turn enabled individuals to appeal to international or national instances when their rights were violated by the state. This fundamental idea of human rights also underpins the subsequent development of international relations. A human rights protection system ensures the fundamental interest of the international community by establishing an objective order, the so-called order public. In this context, human rights can be conceptualized as international rules which protect individuals from interference by states authorities with their rights and freedoms within the framework of peaceful and friendly relations between states.<sup>22</sup>

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20 Kälin and Künzli, *Universeller Menschenrechtsschutz* (2008) 37

21 Nowak, *Einführung in das internationale Menschenrechtssystem* (2002) 13 – 14

22 Herdegen, *Völkerrecht* (2009) 369 (1); Kälin and Künzli, *Universeller Menschenrechtsschutz* (2008) 17 – 21

As can be observed, the concept of human rights can be approached from a number of different perspectives. In any event, the concept of human rights employed in the development of this work is that human rights are international rules which protect individuals from interference by the state and third parties and cover fundamental aspects of people's lives such as freedom, equality and dignity.

### 3. Characteristics

Human rights can be characterized by two different approaches. The first categorization of human rights draws on the roots of the 1993 Vienna Declaration and Action Programme. In the preamble of this international instrument, the international community recognized 'that all human rights derive from the dignity and worth inherent in the human person'. On this basis, human rights have been characterized as universal, indivisible and interdependent and interrelated.<sup>23</sup> In fact, the 1945 Charter of the United Nations had previously laid the foundations for the universality of human rights. Article 1 of the Charter states that one of the purposes of the United Nations is to achieve 'international cooperation by promoting and encouraging respect for human rights and fundamental freedoms for all [...]'. However, these attributes, in particular the universality of human rights, have been sharply criticized. The background to such criticism rests on the different approaches and interpretations of the content of the rights. For instance, the meaning and content of certain rights such as the non-discrimination principle, differ from Western to Middle Eastern countries. Another hurdle for the recognition of a universal validity of human rights is in limiting the application of human rights. In democratic states, for example, the freedom of expression represents the cornerstone of the political opinion-making process of the population and strengthens democratic values and the rule of law. By contrast, socialist states limit this right through censure mechanisms or the state's control bodies. Finally, the role played by religious and cultural conceptions of the population cannot be underestimated.<sup>24</sup> Beyond the criticism, international human rights agreements have already identified those universal rights which apply to all persons without time limit and among changing economic, social and political scenarios under the umbrella of a cross-cultural dialogue between societies.<sup>25</sup> These rights are among others the right to

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23 UNGA, The 1993 Declaration and Programme of Action, Par. 5; Kälin and Künzli, *Universeller Menschenrechtsschutz* (2008) 22

24 Kälin and Künzli, *Universeller Menschenrechtsschutz* (2008) 24

25 Weber, *Menschenrechte* (2004) 1