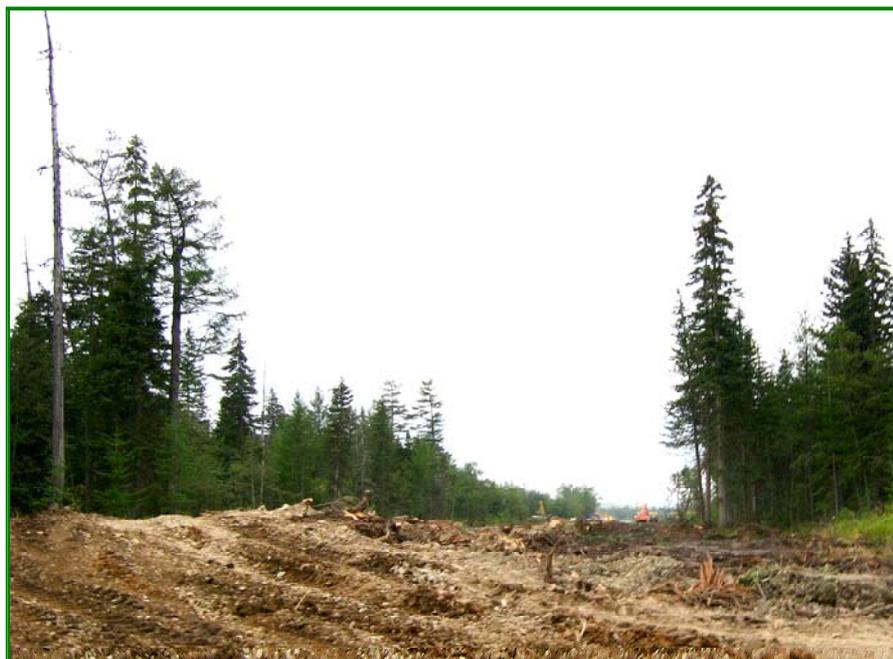

Discussion paper

Laws for forests

An introductory guide to international forest and forest related legal materials that shape forest ethics and practice



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Executive summary

This guide is written for marginalised managers of forest resources (for example the forest dependent poor and their allies). Previous studies have assessed forest law from the perspective of sustainable forest management. By way of contrast, our entry point is a set of broadly recognised ethical principals, drawn from the Earth Charter (2000), whose contravention often hurts the poor. The guide culminates in tables that show the legal backing for each of these ethical principles.

The guide's aim is to arm the reader with a basic understanding of key international legal instruments that relate to forests. It introduces the reader to the main purpose of each instrument. Tables within the annexes then show to which specific sections of legislation an appeal might be made if any one of these broad ethical principles is contravened. The guide therefore serves to identify how marginalised people might appeal to the agreed texts of international law in their fight for social and environmental justice.

Coverage within this guide is deliberately broad – it deals with hard and soft law currently available in the three fields of environmental, human rights and economic law. It makes no attempt to be exhaustive, but rather highlights the most important and broadly adopted legal instruments.

For each legal instrument this guide provides helpful links to additional material on the internet which can be used to add depth to any campaign. Practical use of such legal instruments would require in depth analysis of the text, the national signatories to it and any 'reservations' or opt out clauses inserted in particular national contexts. It would also inevitably need some form of partnership with persons with legal expertise.

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Acronyms and Abbreviations

Aarhus	Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters
Bonn	Convention on the Conservation of Migratory Species of Wild Animals
CBD	Convention on Biological Diversity
CPF	Collaborative Partnership on Forests
CITES	Convention on the International trade of Wild Fauna and Flora
CWH	Convention for the Protection of the World Cultural and Natural Heritage
EITI	Extractive Industry Transparency Initiative
FAO	Food and Agricultural Organisation
GEF	Global Environment Facility
GATT	General Agreement on Tariffs and Trade
GM	Genetically Modified
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICSID	International Centre for Settlement of Investment Disputes
IFC	International Finance Corporation
IFF	Intergovernmental Forum on Forests
ILO	International Labour Organisation
IPF	Inter-governmental Panel on Forests
ITTA	International Tropical Timber Agreement
LMO	Living Modified Organisms
MDG	Millennium Development Goals
NFP	National Forest Programme
NLBI	non-legally binding instrument
OECD	Organisation for Economic Cooperation and Development
PPAH	Pollution Prevention and Abatement Handbook
Ramsar	Convention on wetlands of International Importance Especially as Waterfowl Habitat
Rio Forest Principles	Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests
SPS	Agreement on Sanitary and Phytosanitary Measures
TBT	Agreement on Technical Barriers to Trade
UNCCD	United Nations Convention to Combat Desertification
UDHR	Universal Declaration of Human Rights
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNFF	United Nations Forum on Forests
WBG	World Bank Group
WTO	World Trade Organisation

Laws for Forests: An introductory guide to key international forest and forest related legal materials that shape forest ethics and practice

1. Introduction

'The international arrangements for forests should be dynamic and adapt to evolving conditions.'² Given that there is currently no international framework convention for forests, the international arrangements available certainly have a dynamic, unpredictable relationship. For example, there are numerous ongoing disputes arising from different interpretations or outright contradictions between different international agreements.

The international arrangements that affect forests have been evolving rapidly. There have been several previous syntheses of the legal instruments that affect forests – often called the 'International Forest Regime'³. The aim of these has generally been to see how the needs of sustainable forest management are being addressed and what gaps might need to be filled.

This guide takes a slightly different approach. Its focus is forest dependent peoples who are marginalised from natural resource management by an ongoing failure to uphold broadly agreed ethical principles (drawn in this case from the Earth Charter). It attempts to examine existing laws (and related agreements) for forests that could be used to defend these ethical, and frequently legal, principles. The main intention is to support the case for greater social and environmental justice for marginalised peoples. More broadly, this guide describes what legal frameworks are in place that contribute, or could contribute to the dynamic relationships that affect forest issues.

1.1 Aim of Guide

A starting observation on social and environmental justice is this - those with access to legal knowledge too often do not have the will to act - while those with the will to act often lack access to the knowledge that might help their cause. This guide aims to provide a user-friendly summary of key international legal instruments (treaty, convention, framework convention, protocol, agreement). It covers hard and soft legal instruments currently available in the three fields of environmental, human rights and economic law. It is intended for use by advocates for justice in forest and forest related issues.

The guide is in no way exhaustive and has no pretensions to being definitive. It does not provide details of important regional or national legal instruments. It is beyond the ambit of such an introductory guide to provide a comprehensive survey of all legal instruments to be used in all potential scenarios that people may face. Neither is it intended to provide a comprehensive critical survey of each legal instrument as to its effectiveness in achieving its objectives. There is certainly much scope for doing so in future publications but it is beyond the remit of this particular guide.

² The Economic and Social Council of the United Nations (ECOSOC) in paragraph 3(i) of Resolution 2000/25 cited in UNFF Recent Developments in Existing Forest-Related Instruments, Agreements and Processes Background Document (Working Draft) (September 2004) p4

³ See Tarasofsky, (1995; 1999;) Gluck et al. (1997); Bass and Thomson, (1997); Bass, (1998; 2000); Wisdom, (2001); International Forestry Group, (2003), Pultzl et al (2005)

The guide culminates in tables within two annexes that show to which specific articles of legislation an appeal might be made if any broad ethical principle were to be contravened. The guide therefore serves to identify how marginalised people might appeal to the agreed texts of international law in their fight for social and environmental justice.

1.2 Use of Guide

This guide should not be substituted for referencing the legal instruments themselves. It is only meant to be a starting point in identifying the potential for legal action. International laws are part of a web of law that includes regional and national instruments and institutions for implementation. This guide provides the international component of that web and should be used in conjunction with relevant regional and national laws. For example, such a brief guide could not attempt to exhaustively cover the many national laws that affect forests in multiple different countries in say Africa – although such attempts have been made elsewhere (Kohler, 2001). Bearing in mind these caveats the guide has been drafted to assist civil society groups of, or working with forest dependent peoples, lawyers and academics in their work. Although the guide does provide a foundation of both established legal instruments, and insight into emerging soft laws, the field of international law is extremely dynamic and is a rapidly evolving legal and political environment. It is important for users of this guide to therefore always refer to the most up to date information available regarding any instrument.

1.3 Guide Format

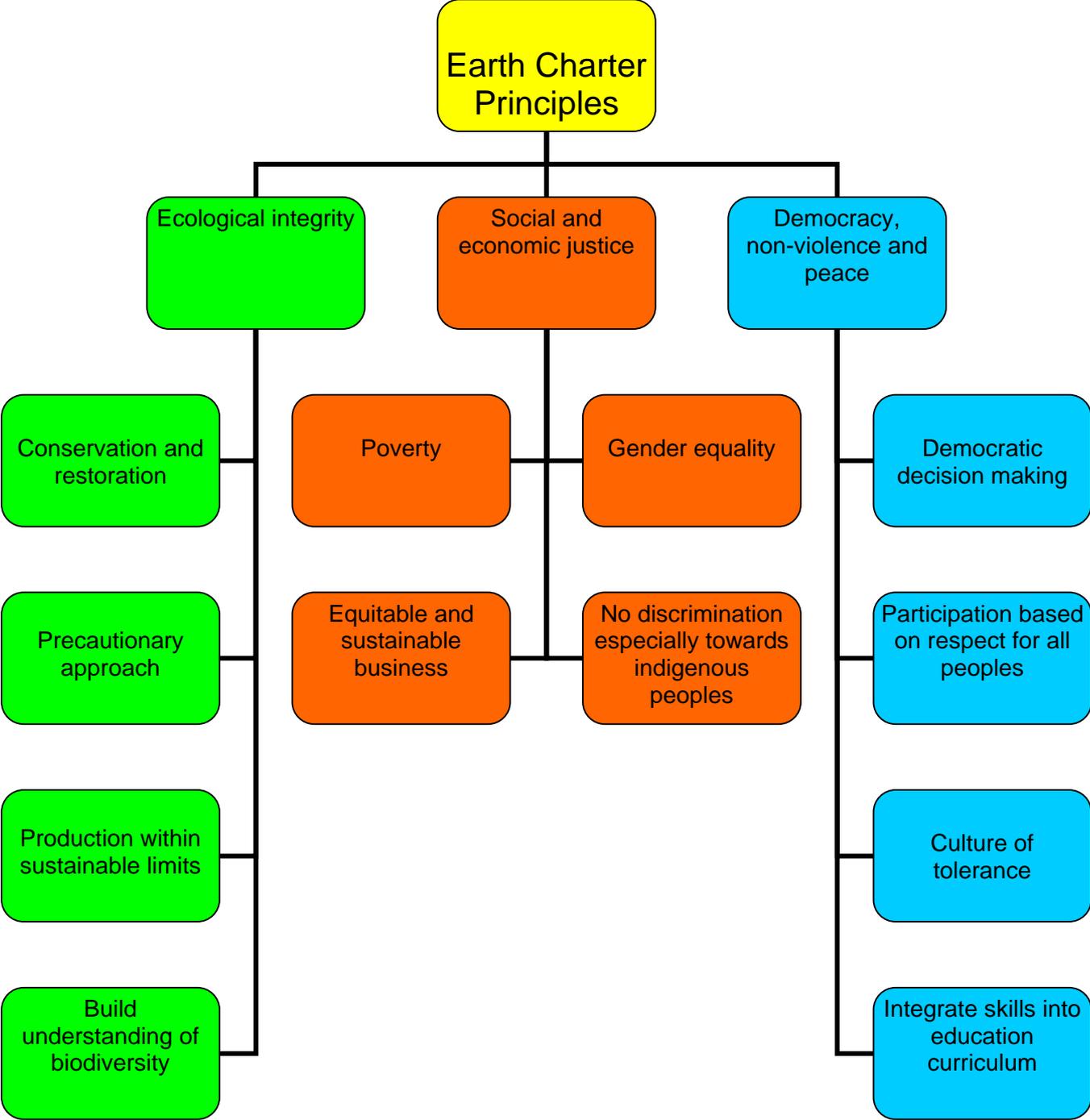
In this guide the legal instruments are categorised around three key principles taken from the Earth Charter – principles that deal with the environment (ecological integrity), human rights (democracy, non-violence and peace) and economics (economic and social justice). Each principle has a number of sub-categories (see fig 1 for details). The Earth Charter principles provide the most widely agreed ethical framework for assessing the overall nature of international legal instruments and their contribution to realising sustainable development objectives.

The Earth Charter is a declaration of fundamental principles for building a just, sustainable, and peaceful global society in the 21st century. The document's inclusive ethical vision recognises that environmental protection, human rights, equitable human development, and peace are interdependent and indivisible. Beyond its huge groundswell of support from civil society organisations, UNESCO has adopted a resolution recognising the Earth Charter as an important ethical framework and the IUCN has recently endorsed the Earth Charter as an ethical guide for its policies⁴.

The guide is divided into three sections: environmental law, human rights law and economic law. Each section examines key legal instruments that could relate to forest and forest dependent peoples' issues. Where possible, environmental and human rights laws have been categorised systematically into tables (see Appendices) that can be used for quick referencing of which laws are strongest in which categories in relation to the Earth Charter principles. Due to the format that many of the international economic legal instruments take it was more difficult to tabulate them into the Earth Charter categories within the time available to produce this guide. Consequently the section on international economic laws is more detailed in its analysis than the environmental and human rights sections.

⁴ Earth Charter 2000 - further information: <http://www.earthcharter.org/>

Fig. 1 The Earth Charter Principles



2 An Introduction to International Law

2.1 Introduction

International law is in a time of great change. The challenge of sustainable development and the management of natural resources are having a significant influence on the direction that international law is developing in. Principle 27 of the 1992 Rio Declaration asserts:

*'States and people shall cooperate in good faith and in a spirit of partnership... in the further development of international law in the field of sustainable development.'*⁵

Many judges from the international community met at the World Summit on Sustainable Development in 2002. They further committed, through the Johannesburg Principles on the Role of Law and Sustainable Development, to sustainable development as a guiding principle around which to interpret laws and develop new legal instruments⁶. As this guide demonstrates, increasingly legal instruments in environmental, economic and human rights, adopt hybrid legal forms. Such hybrid forms require the judicial authorities to act on their commitments at Rio and Johannesburg to establish clear precedents for what constitutes sustainable development laws.

The following section outlines what constitutes the sources of international law today, and how these can be interpreted.

2.2 Sources of International Law⁷

Article 38 of the International Court of Justice outlines the four sources of international law:

1. International conventions whether general or particular, establishing rules expressly recognised by contesting States;
2. International custom, as evidence of a general practice accepted as law;
3. The general principles of law recognised by civilised nations;
4. Judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

A selected number of sources are outlined in more detail below:

2.2.1 Treaties

Treaties between States which are in written form are governed by the Vienna Convention on the Law of the Treaties. This includes provision on treaty interpretation, conflicts of treaties, reservations etc. The Vienna Convention defines a 'treaty' as a means of international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related

⁵ Principle 27 Rio Declaration, United Nations Conference on Environment and Development (1992)

⁶ 'We recognise that the rapid evolution of multilateral environmental agreements, national constitutions and statutes concerning the protection of the environment increasingly requires the courts to interpret and apply new legal instruments in keeping with the principles of sustainable development.' Johannesburg Principles on the Role of Law and Sustainable Development – Journal of Environmental Law (2003) p107

⁷ UNFF Background Document No. 3 – An Overview of International Law. Working Draft (2004) available <http://www.unff.org>

instruments and whatever its particular designation. The term 'treaty' encompasses, among others, the terms convention, agreement, pact, protocol, charter, statute, covenant, engagement, accord, exchange of notes, modus vivendi and memorandum of understanding. Legal instruments which are categorised as one of the above are binding under international law⁸. The terms 'treaty', 'convention', and 'agreement' can generally be considered as legally synonymous. The actual title of the instrument does not determine its legal effect. Once a treaty is signed, customary law, as well as the 1969 Vienna Convention, requires that a State must not act contrary to the object and purpose of the treaty, even if it has not yet entered into force.

Section 3 (Article 31) of the Vienna Convention outlines the general rule of Interpretation of Treaties and states:

1. A Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation a treaty shall comprise, in addition to the text, including its preamble and annexes.

Article 32 explains the supplementary means of interpretation, where preparatory work of the treaty and the circumstances of its conclusion, will be considered to confirm the meaning resulting from the application of Article 31, or to determine the meaning of article 31. This occurs where meanings may be ambiguous or obscure.

2.2.2 Protocol

- a) A Protocol of Signature is an instrument subsidiary to a treaty, which is drawn up by the same parties. Such a protocol deals with additional matters, for example, the interpretation of particular clauses of the treaty. Ratification of the treaty will normally also involve ratification of the protocol.
- b) An Optional Protocol to a treaty is an instrument that establishes additional rights and obligations with regard to a treaty. It is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a two-tier system.
- c) A Protocol can be based on and further elaborate a framework convention. Known as the 'framework-protocol approach', for example the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

Protocols have the same legal force as treaties, but may be linked substantively or procedurally to a mother treaty. By contrast, 'conventions' are normally open for participation by the international community as a whole, or by a large number of States.

2.2.3 Declaration

Some instruments entitled 'declarations' were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained

⁸ Article 2.1(a) Vienna Convention on the Law of Treaties, concluded in 1969, and entered into force in 1980.

binding character as customary law at a later stage, as is the case with the 1948 Universal Declaration of Human Rights.

2.2.4 Reservations

A reservation is effectively a 'get out clause' that modifies or excludes the application of a treaty provision. A reservation must be lodged at the time when an agreement is signed or ratified. The 1969 Vienna Convention includes a section (Articles 19-23) on reservations. In general, reservations are permissible except when (a) they are prohibited by the treaty, (b) they are not included in time among expressly authorised reservations, (c) they are otherwise incompatible with the object and purpose of the treaty. Recently it has become more common for treaties, including most recent environmental treaties, to include a provision that prohibits reservation to the treaty. Examples are Article 18 of the Vienna Convention for the Protection of the Ozone Layer (1985), Article 18 of the Montreal Protocol (1987), Article 37 of the Convention on Biological Diversity (1992) and Article 38 of the Cartagena Protocol (2000). If reservations are permissible, as is the case with most human rights treaties, it is important to see what reservations a State may have made. These reservations can have important implications for any legal action you might take.

2.2.5 Customary International Law

There are two criteria for determining if a rule of international customary law exists:

- 1) State practice is consistent with the rule of 'constant and uniform usage'
- 2) State practice exists because of the belief that such practice is required by law (*opinion juris*)

Both criteria must be met for the creation of customary international law. Since customary law requires this rather heavy burden of proof, and its existence is often surrounded by uncertainties, treaties have become increasingly important. Yet customary international law remains as legally binding as treaty law. There are on-going debates for instance about whether the precautionary principle now constitutes customary international law. The jury, so to speak, remains divided on this particular question.

2.2.6 Soft Law

The term 'soft law' does not have a fixed legal meaning, but it usually refers to any international instrument other than a treaty containing principles, norms, standards or other statements of expected behaviour, such as the IPF/IFF Proposals for Action (see 3.3.4 below). The term soft law is often misperceived as having the same meaning as a non-legally binding instrument (NLBI), but this is not correct. NLBIs may contain political or moral obligations but do not necessarily constitute soft law. The implications of such NLBI are not clear. Many of the legal mechanisms relating to sustainable development are considered to be soft law. What constitutes soft law is an unresolved, contentious issue but despite this it can still provide potential leverage when constructing a case.

2.2.7 Jus Cogens

'*Jus cogens*' or 'peremptory norm' – refer to norms in international law that cannot be overruled: they are of the highest order. Jus cogens even has precedence over and above treaty law. Exactly which norms can be categorised as jus cogens is still subject to some controversy. Examples are the ban on slavery, the prohibition of genocide or torture and the prohibition on the use of force.

2.2.8 General principles

There is no agreed selection of principles that can be considered as universally agreed upon. They usually include principles of the international legal system as well as those common to the major national legal systems of the world. Some treaties reflect, codify or create general principles of law. Decisions of the Conference of Parties to a Multilateral Environment Agreement and conference declarations or statements, may also contribute to the development of international law. For example the precautionary and polluter pays principles in the Rio Declaration (1992).

2.3 Implementation

States should subsequently pass national laws and regulations to enable implementation of international agreements. This is particularly true where such measures are necessary for compliance with the international agreement. Laws and regulations should be regularly reviewed in the context of the relevant international obligations and the national situations. In many cases international treaty obligations can be transferred directly into national law, e.g. the Convention on the International Trade of Wild Fauna and Flora, which embodies specific obligations such as bans or quotas on particular flora and fauna species. In other cases, parties are provided discretion to adopt whatever measures they choose to meet the end results provided for in the treaty (for example, the Convention on Biological Diversity) according to their respective national legal frameworks.

The implementation of international legal instruments is dependent upon not only financial capacity and political will, but also, arguably the capacity of the relevant institutions to undertake the task required of them. With the changing demands of sustainable development law, many legal and policy institutions are stretched by their duty to realise nationally effective systems that can implement and enforce increasingly innovative mechanisms.

2.4 Summary

This brief introduction is intended to provide the reader with a provisional understanding of the key terms and concepts referred to throughout this guide. This can only provide the reader with the simplest of understanding to what is a very complex and dynamic area of law. Many issues like what actually constitutes international law are continually contested; however this is what makes it worthwhile being involved in trying to establish the ideas and principles by which forests are to be managed.

3 International Environmental Laws and Forests

3.1 Introduction

There are a considerable number of legal instruments which directly and indirectly relate to the forests of any one country. For example, Wisdom (2001) cites 144 international agreements relating to natural resources of which the USA is a signatory. International forest organisations such as the Food and Agriculture Organisation (FAO) and Collaborative Partnership on Forests recognise the need for closer collaboration between key international conventions related to forests, such as the UN Framework Convention on Climate Change, the Convention on Biological Diversity, and the UN Convention to Combat Desertification. This makes it all the more important for those involved with forest related issues and the law to have a comprehensive understanding of which articles of each convention relate to forests.

Chapter 3 provides a summary of legally binding and non-binding international environmental laws that relate to forests and forest dependent people. Most of the instruments have been tabulated according to the Earth Charter principles (see Appendix I). Despite their importance regional legal instruments are not included in this section – simply for the sake of brevity.

3.2 Legally Binding Agreements

3.2.1 *International Tropical Timber Agreement (ITTA)*

Adopted: 1 January 1994, Geneva
Entry into force: 1 January 1997
Number of parties: 60
Reservations: Not permitted
Further information: <http://www.itto.or.jp>

The International Tropical Timber Agreement (ITTA) is a global commodity agreement with an environmental aspect which applies to timber from tropical forests only. The ITTA is a time bound agreement. The Agreement promotes international trade in tropical timber and the sustainable management of tropical forest industries through international consultation cooperation, policy work and project activities. The ITTA's objective is to manage tropical forests in a way that will 'contribute to the process of sustainable development' by using market trading mechanisms⁹. Conservation and restoration are important components of the ITTA. Article 21 establishes the Bali Partnership Fund primarily to finance 'sustainable management of tropical timber producing.' Conservation and restoration is covered further in Articles 26.1(b) and 27.2. As a trade agreement the ITTA has no direct articles relating to social and economic justice, democracy, non-violence and peace. Arguably however, all trading agreements should have these as their underlying principles and objectives. At the time of writing a successor agreement to the ITTA is being negotiated. The next agreement may contain the first legally binding definition of sustainable forest management.

3.2.2 *Convention on Biological Diversity (CBD)*

Adopted: 5 June 1992, Rio de Janeiro
Entry into force: 29 December 1993
Number of parties: 188

⁹ Article 1.(c) International Tropical Timber Trade Agreement (1994)

Reservations: Not permitted
Further information: <http://www.biodiv.org>

The Convention on Biological Diversity (CBD) does not directly address forests. However, its objective is defined as 'the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources' (Article 1), which is obviously relevant to forests. The CBD uses a complex mixture of mechanisms adopting a precautionary approach (Article 8.g) to meet its objective. The CBD's strength lies in the manner in which it balances ecological integrity, social and economic justice and democracy, non-violence and peace (see Appendix I).

The CBD has further committed to specific forest and forest related programmes and guidelines. These include the voluntary Expanded Work Programme on Forests¹⁰. The CBD Conference of the Parties VII 2004 adopted the Akwe Kon Voluntary Guidelines for indigenous and local communities¹¹. This complements the CBD's Articles 8(j) and 10(c) relating to indigenous peoples. The Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity 2004 were also adopted¹². These consist of fourteen interdependent practical principles, operational guidelines and a few instruments for their implementation that govern the uses of components of biodiversity to ensure the sustainability of such uses. The principles provide a framework for advising governments, resource managers, indigenous and local communities, the private sector and other stakeholders about how they can ensure that their use of the components of biodiversity will not lead to the long-term decline of biological diversity¹³. Together these three guidelines and programmes provide a substantial soft law basis upon which to build legal initiatives.

3.2.3 Cartagena Protocol on Biosafety to the Convention on Biological Diversity

Adopted: 20 January 2000, Montreal
Entry into force: 11 September 2003
Number of parties: 94
Reservations: Not permitted
Further information: <http://www.biodiv.org>

The Cartagena Protocol's aim is in accordance with the precautionary approach contained in Principle 15 of the Rio Declaration ... 'to ensure an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health...' (Article 1). In Article 2.3 the Protocol ensures that it will not affect a sovereign State's right over its jurisdiction. The impact of LMOs on ecosystems and biodiversity are of great concern, and certainly include forests. With the current increase in interest in using genetically modified (GM) trees the Cartagena Protocol may be of more direct application to forest issues. Issues include crosspollination with non-GM trees and its effect on biodiversity. With the 2003 UNFCCC decision to allow GM trees to be used for carbon sinks there is a great deal of potential for the Protocol to be applied to future disputes regarding their legality (see

¹⁰ Expanded Work Programme on Forests agreed at the 6th CBD Conference of the Parties (2002) at The Hague, Netherlands. This revised the 1998 Work Programme for Forest Biological Diversity

¹¹ Akwe: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or which are likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities. Further information: www.biodiv.org/doc/publications/akwe-brochure-en.pdf

¹² The Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity 2004. Further information <http://www.biodiv.org/programmes/socio-eco/use/addis.asp>

¹³ The CBD Forest Portal <https://www.biodiv.org/programmes/areas/forest/portal/topic2/Addis.shtml>

UNFCCC below). It is a procedural protocol and therefore does not include articles relating to social and economic justice, and democracy per se. It should however be seen as a complement to the CBD in achieving its objectives.

3.2.4 United Nations Framework Convention on Climate Change (UNFCCC)

Adopted: 9 May 1992
Entry into force: 21 March 1994 (annexes adopted in 1997 and 2001)
Number of parties: 188
Reservations: Not permitted
Further information: <http://www.unfccc.org>

The UNFCCC's objective is to achieve 'stabilisation of greenhouse gas concentrations in the atmosphere...within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, [and] to ensure that food production is not threatened'(Article 2). Hence, this Convention can be directly related to the role of forests. The aim therefore is to mitigate contributions to climate change and ensure that measures are in place to deal with its effects. The Marrakech Accord (signed at Conference of the Parties 7 in November 2001) acknowledged four major roles of forests in climate change:

- 1) As a source of carbon dioxide when destroyed or degraded;
- 2) As a sensitive indicator of a changing climate;
- 3) As a source of biofuels to replace fossil fuels;
- 4) As a carbon sink, when managed sustainably.

This Convention is underpinned by the precautionary principle (Article 3.3). As a framework convention it can be criticised for its weak obligations and mechanisms for implementation. At Conference of the Parties 8 (2002) and 9 (2003) parties reached an agreement on the inclusion of afforestation and reforestation in the Clean Development Mechanism, as well as a common reporting format for land use, land use change and forestry.

3.2.5 Kyoto Protocol to the United Nations Framework Convention on Climate Change

Adopted: 11 December 1997
Entry into force: 16 February 2005
Number of parties: 145
Reservations: Not permitted
Further information: <http://www.unfccc.org>

The Kyoto Protocol commitment period runs until 2012, with renegotiations starting in 2005. The Protocol outlines a number of financial incentives for afforestation and reforestation projects to address climate change. These include the Joint Implementation and the Clean Development mechanisms. There are some risks that forests are viewed simply as carbon sinks which could result in a limited perspective on the value of forests, counter to the aims of the CBD Forest Programme. At the 2003 Conference of Parties it was decided to allow GM trees to be used in carbon sinks plantations. Such a decision seems in contradiction to the precautionary approach in the UNFCCC, and could be challenged using other international environmental laws, e.g. CBD, the Cartagena Protocol, Ramsar and Bonn.

3.2.6 United Nations Convention to Combat Desertification (UNCCD)

Adopted: 17 June 1994, Paris
Entry into force: 26 December 1996
Number of parties: 191
Reservations: Not permitted
Further information: <http://www.unccd.int>

The UNCCD recognises the important role that other conventions will play in realising the objective of combating desertification and mitigating the effects of drought. Forestry management has an important place in achieving this. The Convention clearly links desertification with poverty. The UNCCD's solution to desertification is an integrated approach, using participation based on respect for all peoples and no discrimination, restoration and conservation including forestry, and equitable, sustainable business initiatives.

3.2.7 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Adopted: 3 March 1973, Washington, DC
Entry into force: 1 July 1975
Number of parties: 164
Reservations: Permitted
Further information: <http://www.cites.org>

CITES is a treaty aimed at providing various degrees of protection to endangered forest species which are subject to international trade. However, the Treaty does not yet cover many commercially valuable tree species. Indeed controversy arose when a commercial tree species big leaf mahogany (*Swietenia macrophylla*) was listed in Appendix III by Costa Rica (1995) Bolivia, and Brazil (1998). The prime aim of the Convention is conservation.

3.2.8 Convention for the Protection of the World Cultural and Natural Heritage (CWH)

Adopted: 23 November 1972, Paris
Entry into force: 17 December 1975
Number of parties: 177
Reservations: Permitted
Further information: <http://whc.unesco.org>

The objective of this Convention is to protect and preserve cultural and natural heritage around the world considered to be of outstanding value to humanity. Natural heritage refers to outstanding physical, biological and geological formations, habitats of threatened animal and plant species and areas with scientific, conservation or aesthetic value, several of which include forests. Like CITES it is a conservation treaty and makes no mention of issues relating to social, economic or political matters.

3.2.9 Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar)

Adopted: 2 February 1971, Ramsar
Entry into force: 21 December 1975 (amendments adopted in the Protocol of December 1982 and on 28 May 1987)
Number of parties: 138
Reservations: Permitted
Further information: <http://www.ramsar.org>

Ramsar's objective is to secure the protection of wetlands of international importance especially as waterfowl habitat. A range of forested wetlands including mangrove forests are included in its mandate. This Convention includes provision for river basin management taking the role of forests and peat lands into account. Specific sites are protected across borders.

3.2.10 Convention on the Conservation of Migratory Species of Wild Animals (Bonn)

Adopted: 23 June, Bonn
Entry into force: 1 November 1983
Number of parties: 85
Reservations: Permitted
Further information: <http://www.wcmc.org.uk>

The specific focus of the Bonn Convention on the conservation of migratory species of wild animals is relevant to large numbers of species which depend on forest habitats at one point or another during the year. The Bonn Convention has led to the establishment of protected forest habitats. A list of registered sites can be found at the website above.

3.2.11 International Treaty on Plant Genetic Resources for Food and Agriculture.

Adopted: 3 November 2001, Rome
Entry into force: 29 June 2004
Number of parties: 48
Reservations: Permitted
Further information: <http://www.fao.org/aq/cgrfa/>

The objectives of this Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits derived from their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security. This Treaty is increasingly important with the growth of biotechnology in science and forestry.

3.2.12 Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus)

Adopted: 25 June 1998, Aarhus
Entry into force: 30 October 2001
Number of parties: 27
Reservations: Permitted
Further information: <http://www.unece.org/env/pp>

The Aarhus Convention enshrines the three pillars of access to environmental information, participation and the right to environmental justice. Parties are legally committed to ensure that these duties are realised to ensure participatory democracy and justice in environmental matters. This has direct relevance to development questions and forest management.

3.2.13 Convention on Environmental Impact Assessment in a Transboundary Context

Addition to the unamended Convention 40
Further information: <http://www.unece.org/env/eia>

Both this Convention and its subsequent protocol provide the basis for developing national environmental impact assessment guidelines¹⁴. The importance of recognising transboundary environmental effects is a further milestone. As many forests are transboundary this is an important convention. It will potentially be of importance in any dispute relating to GM trees and cross-pollination beyond a State's jurisdiction.

¹⁴ Protocol on Strategic Environment Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context. Adopted on 21 May 2003 at Kiev. Not in force (no ratifications) Further information: <http://www.unece.org/env/eia>

Table 1. Secretariats responsible for implementation of legally binding international environmental laws

Instrument	Adopted	Secretariat
ITTA	1994	ITTO
CBD	1992	UNEP
Cartagena Protocol	2001	UNEP
UNFCCC	1992	UN
Kyoto Protocol	1997	UN
UNCCD	1992	UN
CITES	1973	UNEP
CWH	1972	UNESCO
Ramsar	1971	IUCN
Bonn	1979	UNEP
Treaty on Plant Genetics	2001	FAO
Aarhus	1998	UNECE
EIA	1987	UNEP

3.3 Non-Legally Binding Agreements

3.3.1 Declaration of the United Nations Conference on Environment and Development (Rio Declaration)

Adopted: 14 June 1992, Rio de Janeiro
 Further information: <http://www.un.org/esa/sustdev/csd/csd.htm>

This Declaration provides a comprehensive set of principles for sustainable development. Until now it has not come to be accepted as customary international law in the same way as the Universal Declaration of Human Rights.

3.3.2 Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests

Adopted: 14 June 1992, Rio de Janeiro
 Further information: <http://www.un.org/esa/sustdev/csd/csd.htm>

These Principles provided the foundation of the future IFF/IPF Proposals for Action (see 3.3.4). The Principles seek to combine the objectives of sustainable forest management and conservation. This challenging combination continues to be on the agenda at most international forest related fora.

3.3.3 Agenda 21.

Adopted: 13 June 1992, Rio de Janeiro
 Further information: <http://www.un.org/esa/sustdev/csd/csd.htm>.

Agenda 21 was reaffirmed at the World Summit on Sustainable Development (2002). Chapter 11 provides a focus on forests, including conservation and restoration, minority rights and production within sustainable limits. Other chapters complement and add to these objectives.

3.3.4 Intergovernmental Panel on Forests/ Intergovernmental Forum on Forests Proposals for Action.

Post Rio saw the development of the Intergovernmental Panel on Forests and the Intergovernmental Forum on Forests (IPF/IFF) Proposals for Action in 1995, which included more than 270 proposals. In September 2004, the UN Forum on Forests commented:

'While recognised as an important body of policy guidance at the international level, laying out a basic common understanding of forest issues and ways to address them in a holistic and comprehensive manner, [the IPF/IFF Proposals for Action] are also open to criticism for being insufficiently focused, too numerous and with too much internal duplication.'¹⁵

Indeed, the proposals do read like a wish list for all stakeholders in forest related issues. The Proposals' possible legal value as soft law lies in their statement of intent. The Proposals for Action did form the foundation for the UNFF Multi-Year Programme of Work and Plan of Action.

3.3.5 United Nation Forum on Forests and the Collaborative Partnership on Forests

The UN Forum on Forests (UNFF) was established as a UN subsidiary body in October 2000 when the United Nations Economic and Social Council adopted resolution E/2000/35. As an intergovernmental policy forum, the UNFF comprises all UN member States and specialised agencies, meeting at annual sessions. The UNFF's objective is to implement the Proposals for Action by the Intergovernmental Panel on Forests/Intergovernmental Forum on Forests. The UNFF5 session held in New York, 16-28 May 2005 was the final session scheduled in the timetabled Multi-Year Programme of Work. Discussions focused on the question of an international legally binding forest convention or alternatively a forest code. Due to a lack of agreement on how to proceed a further session was scheduled for February 2006. It is important for any organisation involved in forest issues to remain up to date on UNFF events.

The Collaborative Partnership on Forests (CPF) was established in April 2001¹⁶. It was modelled on the informal, high level Interagency Task Force on Forests that was set up in 1995 to support the IPF/IFF. The CPF's key objective is to support the UNFF to implement the IPF/IFF Proposals for Action. Currently 14 international organisations, institutions and secretariats of treaties that have substantial programmes on forest related issues (including CBD, UNFCCC, UNCCD) form the CPF. THE CPF is a facilitation mechanism that aims to 'enhance cooperation and coordination on forests by carrying out joint initiatives collaborating in many activities and sharing information in order to capitalise on synergies and avoid duplication of effort.'¹⁷

To this end a CPF Network was also established in 2002 to 'help facilitate interaction with a wide range of other interested parties involved in forests, including NGOs, private sector entities and other major groups.'¹⁸

¹⁵ UNFF – Recent Developments in Existing Forest-Related Instruments, Agreements and Processes. Working Draft. (September 2004) available at

<http://www.un.org/esa/forests/pdf/aheg/param/background-2.pdf>

¹⁶ CPF Network Concept Paper (September 2002) UNFF/CPF 8 2002/23 available at

http://www.un.org/esa/forests/pdf/cpf_network_concept_sep_02_e.pdf

¹⁷ Collaborative Partnership on Forests Policy Document – (June 2003), New York available at

http://www.un.org/esa/forests/pdf/cpf_policy_doc.pdf

¹⁸ Ibid.

For campaigners the CPF website provides a valuable, but not definitive, source of materials regarding initiatives undertaken by a large number of forest related organisations, institutions and secretariats of some of the legally binding forest related treaties.

Further information: www.fao.org/forestry/site/2082/en

3.3.6 Food and Agricultural Organisation of the United Nations National Forest Programme

The National Forest Programme (NFP) is hosted by the FAO, and supported by all CPF members in a general sense through their assistance to in-country forest policy development. NFP serve as national level implementation tool for the IPF/IFF processes. Although there is no legal obligation to implement a NFP, in 2004 138 countries were in the planning or implementation phase¹⁹. Given the objective of realising UNFF/CPF aims, NFPs are an important source for civil society organisations to observe whether legal obligations of forest related treaties are being incorporated into national forestry policy developments.

3.3.7 Johannesburg Declaration on Sustainable Development

Adopted: 4 September 2002, Johannesburg
Further information: <http://www.un.org/esa/sustdev/csd/csd.htm>

Although the Johannesburg Declaration affirms Agenda 21 and the Rio Principles it does not actually include the precautionary principle, production within sustainable limits or any direct reference to conservation. The Declaration places a greater emphasis on equitable and sustainable business to end poverty. It represents the further international linking of the right to development with environmentalism and sustainability.

3.3.8 Johannesburg Plan of Implementation of the World Summit on Sustainable Development

Adopted: 4 September 2002, Johannesburg
Further information: <http://www.un.org/esa/sustdev/csd/csd.htm>

The Johannesburg Plan of Implementation, similar to the Johannesburg Declaration, emphasises the important linkages between poverty eradication, the protection of the environment and the sustainable use of natural resources. Paragraph 45 focuses exclusively on forests and sustainable forest management. It emphasises the key role that the institutions and processes of the UNFF and CPF must play in facilitating sustainable forest management nationally, regionally and globally. Sustainable forest management is also linked to the eradication of poverty, achieving sustainable development, preventing biodiversity loss and land degradation, increase food security and provision of affordable energy. Such a list clearly identifies the value of sustainable forest management to the world in a way that is compatible with the Earth Charter principles.

3.3.9 United Nations Millennium Declaration

Adopted: 18 September 2000, New York
Further information: <http://www.undp.org/>

The UN Millennium Declaration consists of eight Millennium Development Goals (MDGs) including 18 targets and over 40 indicators. Forests are closely linked to many of the MDGs.

¹⁹ Overview of CPF Member' Work on Implementation of IPF/IFF Proposals for Action. Working Draft (October 2004) available a http://www.un.org/esa/forests/pdf/national_reports/unff5/cpf.pdf

The primary theme throughout all the MDGs is poverty alleviation through development. The MDGs aim to 'ensure environmental sustainability' (MDG7) and 'integrate the principles of sustainable development into county policies and programmes to reverse the losses of environmental resources' (MDG9). The MDGs encapsulate the key aspects of international agreements in the previous decade, during which development was prioritised within a sustainable framework. The MDGs therefore provide another internationally agreed non-legally binding platform from which to advocate for sustainable forest management in practice.

3.4 Summary

Given the lack of a comprehensive international convention on forests there is a surprisingly large amount of environmental law available to draw upon. One of the difficulties of the fragmented nature of all the environmental laws is that it is difficult to gain a comprehensive sense of the laws and how they work together. Indeed, some of the objectives appear to contradict one other. Yet the environmental legislation adopted since the early 1990s constitutes a body of laws that take a much more holistic approach to the complex issues they are tackling. Most of the environmental laws include key human rights such as gender equality, non-discrimination against minorities, and democratic participatory decision-making. However the weakness of many of these legal instruments appears to be their complexity, and arguably vagueness, undermining their capacity to be implemented and enforced. These are challenges that those creating the next generation of forest related laws face at a time when the interconnections between the three fields of environmental law, human rights law and economic laws are being increasingly recognised.

4 International Human Rights Laws and Forests

4.1 Introduction

Human rights law emerged out of the combined experiences of World Wars I and II. As such, the central legal instruments of human rights law are concerned with ensuring all people have a right to enjoy life free from discrimination, intimidation and harassment. Although the rights of minority groups are found in most of these documents, the majority of instruments and procedures specifically devoted to these groups were developed during the past decade.

Human rights are legally protected under international human rights law, which obliges States to guarantee rights under treaties that they have accepted or under the norms of customary law that apply to all States. A variety of mechanisms and procedures have been developed to assist the implementation of human rights norms.

During the initial development of the human rights regime, the term 'sustainable development' was neither in use nor referred to in any of the early human rights documents. Recent human rights legislation has failed to incorporate this terminology also. Appendix II of this guide depicts this fact clearly. However, increasingly the obvious synergies that exist in realising the objectives of human rights and environmental laws are being understood, even to the point where the question of whether there is a legal obligation to formulate 'environmental rights'²⁰. Such an understanding should influence the approach by national governments to realising human rights laws through policy and legislation.

The importance of including human rights law in this guide is without question. Many indigenous and forest dependent peoples experience political, cultural and social discrimination, intimidation and harassment. There is a vast body of human rights law available - for the purposes of this guide only a number of key materials are covered. No reference is made to important regional human rights laws and agreements. It is recommended that users research appropriate regional agreements for themselves where relevant. Most human rights laws permit reservations, it is imperative that the existing reservations are checked before attempting to apply any human rights legislation. Countries often make reservations that undermine key features of the treaty. It is vital that those working on forest issues are aware of the key human rights materials laid out in this guide.

4.2 Human Rights Laws

4.2.1 *Universal Declaration of Human Rights*

Adopted: December 10 1948, Paris
Further information: <http://www.unhchr.ch/udhr/index.htm>

The Universal Declaration of Human Rights (UDHR) has become a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards. The UDHR affirms 'a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.'

²⁰ 'Environmental Rights' *Human Rights Dialogue* Spring 2004 Series 2 #11

The Declaration consists of 30 articles setting forth the civil and political, and economic, social and cultural rights to which all persons are entitled, without discrimination. Article 3 states:

'Everyone has the right to life, liberty and security of person' could form the foundation for a 'right to a healthy environment'.

Article 22 indicates that the rights are to be realised 'through national effort and international cooperation.' At the same time, it points out the limitations of realisation, the extent of which depends on the resources of each State. Despite its status as a Declaration the UDHR has become accepted universally as part of the body of customary international law and is thus legally binding on all States.

4.2.2 International Covenant on Civil and Political Rights

Adopted: 16 December 1966, New York
Entry into force: 23 March 1976
Number of parties: 154
Reservations: Permitted
Further information: <http://www.ohchr.org/english/law/ccpr.htm>

The International Covenant on Civil and Political Rights (ICCPR) promotes non-discrimination in matters pertaining to civil and political rights. It enshrines the participation of all peoples and a culture of tolerance. Article 6.1 states that:

'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

Some commentators advocate that this statement can be interpreted broadly to include the means to realise the right to life, including through the safeguarding of a healthy environment. The legal success of such interpretations has been limited.

4.2.3 International Covenant on Economic, Social and Cultural Rights

Adopted: 16 December 1966, New York
Entry into force: 3 January 1976
Number of parties: 151
Reservations: Permitted
Further information: <http://www.ohchr.org/english/law/cescr.htm>

The International Covenant on Economic, Social and Cultural Rights (ICESCR) complements the ICCPR. It focuses primarily on equitable economic opportunities, gender equality, non-discrimination and education. However, there are no references to sustainable development and if this covenant is to be viewed through the lens of our 21st century priorities it should also be incorporated as a primary objective.

4.2.4 Indigenous and Tribal Peoples Convention

Adopted: 27 June 1989, Geneva
Entry into force: 5 September 1991
Number of parties: 14
Reservations: Permitted
Further information: <http://www.ilo.org>

It is estimated that approximately 1 billion people are dependent directly on forests for their daily subsistence, a large proportion of whom are indigenous and tribal peoples. The Indigenous and Tribal Peoples Convention (Convention No. 169 of the International Labour Organization) promotes respect for the cultures and institutions of indigenous and tribal peoples, and presumes their right to continued existence within their national societies, to establish their own institutions and to determine the path of their own development. Article 8 requires States to take indigenous and tribal custom and customary law into account when applying national laws and regulations to the people concerned. This convention replaces the Indigenous and Tribal Populations Convention, 1957 (ILO No. 107) which used patronising language, referring to these populations in Article 1(1)(a) as 'less advanced' and promoting an assimilationist approach.

The standards contained in the Indigenous and Tribal Populations Convention establish a basic framework for the protection of those concerned under international law. Many international organisations, such as the United Nations Development Programme and the World Bank, refer to this convention when developing their policies or programmes affecting indigenous peoples. Many of the provisions in the convention are qualified by terms such as 'as appropriate', 'as necessary', 'wherever practicable' or 'to the extent possible'. This is a common approach taken in human rights treaties, which provides a certain degree of flexibility - although some critics say that it may also have the effect of limiting or making vague the obligations of member States.

A number of other ILO instruments are also relevant to the situation of indigenous forest and tribal peoples, including:²¹

- The Forced Labour Convention, 1930 (No. 29) prohibits the use of forced and compulsory labour
- The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) establishes the principle of equal opportunity and treatment in employment and occupation and prohibits discrimination on a number of grounds, including race, colour, sex, religion, political opinion, national extraction and social origin
- The Rural Workers' Organizations Convention, 1975 (No. 141) affirms the right of rural workers to establish and join organisations of their own choosing
- The Human Resources Development Convention, 1975 (No. 142) promotes vocational guidance and training
- The Plantations Convention, 1958 (No. 110) regulates the employment of plantation workers and covers issues such as wages, medical care, housing and maternity protection
- The Minimum Age Convention, 1973 (No. 138) establishes a minimum age for entry into the work force
- The Worst Forms of Child Labour Convention, 1999 (No. 182) prohibits abusive forms of child labour

Under Article 22 of the ILO Constitution, each member State must provide periodic reports to the International Labour Organization on ratified conventions, describing the measures taken to implement the provisions of those conventions. Individuals or civil society

²¹ ILO – The ILO and Indigenous and Tribal Peoples Leaflet #8. Available <http://www.ilo.org>

organisations may not make direct approaches to the ILO, only governments have the legal mandate to do so. Currently only 14 States are party to this Convention.

4.3 Summary

Human rights laws provide a basis upon which to challenge discrimination to individuals or specific groups. There has been a significant increase in legal instruments recognising the rights of specific groups such as the Convention on the Elimination of All Forms of Discrimination Against Women²², and the Convention on the Rights of the Child²³. It is important to be aware of human rights law in relation to forest issues. Large numbers of people are directly affected by any changes in the treatment of forests and this often leads to an infringement of human rights are the violation of international legal standards. Many agencies, both UN and independent, monitor the implementation of human rights laws and document any infringements taking place. Some commentators may criticise human rights law for its aspirational, vague and limited nature, which to some extent can be attributed to its outdated use of language. However, it can also be argued that the development of human rights law is an organic process and that future judicial interpretations will reflect an increasing awareness of the interconnections between rights whilst recognising the concept of sustainable development. This is equally applicable to judicial interpretation of forest related laws.

²² Convention on the Elimination of All Forms of Discrimination Against Women. Adopted 18 December 1979, New York. Entry into force: 3 September 1981. Number of parties: 179. Reservations permitted. Further information: <http://www.ohchr.org/english/law/cedaw.htm>

²³ Convention on the Rights of the Child. Adopted: 20 November 1989, New York. Entry into force: 2 September 1990. Number of parties: 92. Reservations permitted. Further information: <http://www.ohchr.org/english/law/crc.htm>

5 International Economic Agreements and Forests

5.1 Introduction

Agenda 21, adopted in Rio de Janeiro by the United Nations Conference on Environment and Development in June 1992, emphasises the contribution of trade to the acceleration of sustainable development, especially in developing countries. The Johannesburg Plan of Implementation (2002) recognises the role of the private sector as one of three pillars (along with civil society and government) to realise sustainable development. As this chapter will demonstrate, the environmental and social policies of the World Bank Group (especially its private sector lending arm - the International Finance Corporation) are increasingly becoming the de facto standards for much of the global private sector project finance market. However, the vast majority of these policies remain voluntary and increasingly are being questioned by observers regarding their effectiveness in realising the objective of sustainable development. But these standards do constitute a form of international law, whether legally binding or not, which can be used to hold those investors who have signed up to account. This chapter outlines several key international financial and economic guidelines and legally binding agreements. Despite their importance no references are made to regional agreements in this section. (There is no economic law section in the Appendices as the guidelines' format made them unsuitable for tabulation in the same way as environmental and human rights legal instruments.)

5.2 World Trade Organisation

5.2.1 General Agreement on Tariffs and Trade 1947 (revised 1994)

Adopted: 17 April 1994, Marrakech
Further information: http://www.wto.org/english/docs_e/legal_e/final_e.htm

Currently the World Trade Organisation (WTO) has 148 Members.

The key principles in the GATT text are:

Article 1: General most-favoured-nation treatment

Article 3: National treatment

Article 20(b): General exceptions, provides a measure of members independence where it is 'necessary to protect human, animal or plant life or health' to act contrary to WTO regulations. This article has been used as a defence in a number of cases brought before the WTO Dispute Settlement Panel, but has largely failed to be upheld.

The first paragraph of the Preamble to the Marrakech Agreements establishing the World Trade Organisation states that the organisation is founded on principles 'allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.' Given the number of WTO members it is essential that these agreements promote sustainable development and trade. To this end the WTO established the Committee for Trade and Environment on 14 April 1994²⁴. Under the Doha Declaration (adopted 14 November 2001), the WTO reaffirmed their commitment to the objective of sustainable development, as stated in the Preamble to the Marrakech Agreement²⁵ stating:

²⁴ Further information: http://www.wto.org/english/tratop_e/envir_e/envir_e.htm

²⁵ Doha Ministerial Declaration Further information: http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm

'We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive. We take note of the efforts by Members to conduct national environmental assessments of trade policies on a voluntary basis. We recognize that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements.'

Paragraphs 31 and 32, which cover trade and environment outline the work programme which includes negotiations on (i) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements and (iii) labelling requirements for environmental purposes. It is stated that both 'the Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.'

The WTO agreements are instruments to regulate international trade and make no direct reference to forests. However, the Doha Declaration outlines sustainable development as one of its principles. The WTO is publicly seeking to ensure sustainable development is a principle of its mandate, and this applies to forests. Several agreements have direct applicability to forest related issues. For example:

a) GATT Article IX – Marks of Origin. This Article states that the mark of origin will be that of the last place where a product was processed. Currently this is of concern to those advocating comprehensive labelling systems to tackle illegal logging and the related trade in products produced from the timber. For instance if timber is illegally felled in Indonesia and then processed in China, under Article IX it will have China as its Mark of Origin.

b) Agreement on Technical Barriers to Trade (TBT) - Article 2.2. 'Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective...Such legitimate objectives are *inter alia*: national security requirements; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information related processing technology or intended end uses of products.' Articles 5 and 6 of this Agreement are clearly applicable to the certification of forest products.

c) Agreement on Sanitary and Phytosanitary Measures (SPS) - Article 2. Members shall ensure that any SPS measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence except as provided in Paragraph 7 of Article 5. Again this Agreement is significant to the issues surrounding forest certification, for example GM trees. Articles 4, 5.1 and 5.7 have further relevance. Annex A 3(c) states that 'for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with regional organisations operating within the framework of the International Plant Protection Convention' will be followed.

The WTO agreements are extremely important to the development of regulatory mechanisms to realise the sustainable management and trade of natural resources. Members seeking to act in a unilateral manner must ensure that they do not contravene the basic principles of the GATT unnecessarily. At times, what constitutes 'unnecessarily' is a matter of much debate. The current WTO Appellate Body case between the European Union and Argentina, Canada and the United States over the banning of GM crops is a case in point. The outcome of this case, due June 2005, will have ramifications for many issues including GM trees.

5.3 The World Bank Group

The World Bank Group (WBG) includes the International Bank of Reconstruction and Development, the International Finance Corporation, the International Centre for the Settlement of Investment Disputes and the Multilateral Investment Guarantee Agency. The environmental and social policies of the WBG are increasingly becoming the de facto standards for other private guideline initiatives internationally. The environmental standards most commonly referred to are those found in the World Bank Pollution Prevention and Abatement Handbook²⁶. This handbook went into official use on 1 July 1998. The handbook includes general environmental guidelines, as well as specific guidelines on areas such as pulp and paper mills.

5.3.1 WBG guidelines

The Pollution Prevention and Abatement Handbook is by no means the only set of guidelines used by the World Bank Group. As of 4 June 2003, the International Finance Corporation had its own list of safeguard policies that included: Environmental Assessment; OP4.01 (October 1998), Natural Habitats; OP4.04 (November 1998) Pest Management; OP4.09 (November 1998), Forestry; OP4.36 (November 1998), Safety of Dams; OP4.37 (September 1996), Indigenous Peoples; OD4.20 (September 1991), Involuntary Resettlement; OP4.30 (June 1990), Cultural Property Policy Statement (March 1998), International Waterways; OP 7.50 (November 1998)²⁷. As well as these, the International Finance Corporation has its own environmental guidelines for specific industries not covered in the Pollution Prevention and Abatement Handbook. These include: Forestry Operations No. 7, Logging No. 18, Plantations No. 24, Wildland Management No. 26 and Wood Products Industries No. 27.²⁸ This series of guidelines is set to be replaced by new guidelines, incorporating the concepts of cleaner production and environmental management systems. When completed (during 2005) these new guidelines will also be included in the Pollution Prevention and Abatement Handbook. None of these guidelines are legally binding.

5.3.2 Forest Strategy

In 2002, the World Bank's Forest Strategy was introduced. The strategy is based on three interdependent components: harnessing the potential of forests to reduce poverty; integrating forests into sustainable economic development; and protecting vital local and global forest services and values. The World Bank has also established a Forest Governance Program focusing on forest investment and governance. On December 9 2003

²⁶ World Bank Group's Pollution Prevention Abatement Handbook (PPAH) Adopted on July 1998 Further information:

<http://lnweb18.worldbank.org/ESSD/envext.nsf/51ByDocName/PollutionPreventionandAbatementHandbook>

²⁷ IFC Safeguard Policies: Further information: <http://ifcln1.ifc.org/ifcext/enviro.nsf/Content/Safeguardpolicies>

²⁸ International Finance Corporation's Environmental Guidelines Further information: <http://ifcln1.ifc.org/ifcext/enviro.nsf/Content/EnvironmentalGuidelines>

the World Bank endorsed the Extractive Industry Transparency Initiative (EITI)²⁹. At the World Summit for Sustainable Development in 2002, the UK Prime Minister Tony Blair announced the EITI. As yet the EITI does not directly refer to forests but it can be considered relevant to forests, and will need incorporating into any environmental assessment of extractive industry projects that affect forests.

5.3.3 Convention on the Settlement of Investment Disputes between States and Nationals of Other States

Entry into force: October 14 1966, Washington
Number of parties: 142
Further information: <http://www.worldbank.org/icsid/about/about.htm>

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States established the International Centre for Settlement of Investment Disputes (ICSID) as an arbitration organisation to administer the treaty. Now, the arbitral agreement is increasingly contained in modern bilateral, or multilateral investment treaties (Energy Charter Treaty, with over 50 members; NAFTA Chapter XI, with the US, Mexico and Canada as members). ICSID's role as arbitrators, which was largely dormant for the first 30 years, has now taken off with now a total of over 75 registered cases³⁰. ICSID has arbitrated many cases involving investments in natural resources. It is therefore a significant body within the international legal system.

5.4 Equator Principles

Known as the 'Equator Principles' these represent an initiative by the private finance sector to establish their own guidelines for project finance. The Equator Principles were adopted on 4 June 2003, after being drafted by the International Finance Corporation with a number of banks in London, October 2002 29 financial institutions are now signatories to the Equator Principles, which categorise 'the risk of a project in accordance with internal guidelines based upon the environmental and social screening criteria of the IFC'³¹. For those projects which pose a risk to the environment an environmental assessment must be undertaken.

The assessment should address a number of areas including:

- a) assessment of the baseline environmental and social conditions
- b) requirements under host country laws, regulations, and applicable international treaties and agreements
- c) sustainable development and use of renewable natural resources
- d) protection of human health, cultural properties, and biodiversity, including endangered species and sensitive ecosystems
- i) socioeconomic impacts
- j) land acquisition and land use
- k) involuntary resettlement
- l) impacts on indigenous peoples and communities
- m) cumulative impacts of existing projects, the proposed project, and anticipated future projects
- n) participation of affected parties in the design, review and implementation of the project
- o) consideration of feasible environmentally and socially preferable alternatives.

²⁹ EITI Further Information: <http://www2.dfid.gov.uk/news/files/extractiveindustries.asp>

³⁰ Bilateral Investment Treatises – approx 900 exist. Over 800 concluded since 1987. Further information: <http://www.worldbank.org/icsid/treaties/treaties.htm>

³¹ Equator Principles Further information: <http://www.equator-principles.com/>

The Equator Principles are non-legally binding and voluntary. There is no Equator Principles organisation³².

5.5 The Organisation for Economic Co-operation and Development

The Organisation for Economic Co-operation and Development (OECD) was formed in Paris on 14 December 1960. Currently the OECD has 30 member countries, and active relationships with 70 other countries. It has produced several initiatives relating to international financial investment.

5.5.1 OECD Guidelines for Multinational Enterprises: Declaration on International Investment and Multinational Enterprises (Revised) 27 June 2000 at Paris³³

The stated objective of the OECD Guidelines for Multinational Enterprises is to ‘promote policies designed to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy.’

The OECD suggests in the preamble that given the global influence of multinational enterprises:

‘Governments adhering to the *Guidelines* encourage the enterprises operating on their territories to observe the *Guidelines* wherever they operate.’

Chapter 2 states that the objectives of multinational enterprises should be to:

1. Contribute to economic, social and environmental progress with a view to achieving sustainable development...
2. Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.

Chapter 5 on environment outlines rules for undertaking projects which impact on the environment. Reference is made to the World Bank Group standards (see above) as a guideline.

5.5.2 OECD Principles of Corporate Governance 2004

In common with the Guidelines for Multinational Enterprises, the Principles of Corporate Governance are non-legally binding and mirror the increasing tendency towards the global take-up of corporate social responsibility strategies. These principles are largely directed at the responsibilities of shareholders and board members to ensure that other OECD guidelines are adhered to.

5.5.3 OECD Recommendation on Common Approaches on Environment and Officially Supported Export Credits (Revised)

Adopted: December 2003, Paris³⁴
Further information: www.oecd.org/dataoecd/26/33/21684464.pdf

³² The Secretariat for Equator Principles information is: secretariat@equator-principles.com

³³ OECD Guidelines for Multinational Enterprises: Declaration on International Investment and Multinational Enterprises (Revised) 27 June 2000 Further information: www.oecd.org/dataoecd/32/18/31557724.pdf

³⁴ Update 28 February 2005 available: http://www.oecd.org/findDocument/0,2350,en_2649_201185_1_119820_1_1_1,00.html

These recommendations aim to establish environmental guidelines for international finance operations conducted through export credit agencies. The recommendations are non-legally binding. The categorisation of projects is similar to that found in the World Bank Group's Pollution Prevention and Abatement Handbook and the International Finance Corporation Guidelines, as well as the Equator Principles. Examples included in the 'Illustrative List of Sensitive Sectors and Areas' that have a direct relevance to forests and forest dependent peoples are:

13. Industrial plants for the (a) production of pulp from timber or similar fibrous materials; (b) production of paper and board with a production capacity exceeding 200 air-dried metric tonnes per day.
14. Peat extraction, quarries and open-cast mining, and processing of metal ores or coal.
17. Large-scale logging.
20. Large-scale tourism and retail development.
21. Construction of overhead electrical power lines.
22. Large-scale land reclamation.
23. Large-scale primary agriculture/silviculture involving intensification or conversion of natural habitats.

As with all OECD Guidelines activities are expected to be 'consistent with the host government's international obligations and commitments', including both human rights and environmental standards.

5.5.4 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

Adopted: 21 November 1997, Paris

Further Information:

http://www.oecd.org/document/21/0,2340,en_2649_34859_2017813_1_1_1_1,00.html

The legally binding Convention on Combating Bribery of Foreign Public Officials in International Business Transactions targets corruption by public officials. Signatory states are legally committed in Article 1 to:

'...take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.'

Corruption is increasingly being equated with the undermining of efforts to realise the objective of sustainable development. The United Nations Convention against Corruption (2003), which has yet to come into force, includes (in the preamble) two references to sustainable development³⁵. The World Bank's Forest Governance Program targets corruption as one of the key factors contributing to illegal forest activities and associated trade in its processes for Forest Law Enforcement and Governance.

5.6 United Nations Environment Programme

5.6.1 The Global Environment Facility (GEF)

³⁵ The United Nations Convention against Corruption (2003) Further information: http://www.unodc.org/unodc/en/crime_convention_corruption.html

Adopted: 16 March 1994, Geneva
Entry into force: 7 July 1994 (amendments 2002)
Number of parties: 176
Further information: <http://www.gefweb.org>

The Global Environmental Facility (GEF) was formally established by the Instrument for the Establishment of the Restructured Global Environment Facility. GEF projects are implemented by the UN Development Programme, the UN Environment Programme and the World Bank. GEF provides funding for incremental costs of measures to achieve global environmental benefits in four focal areas: climate change, biological diversity, international waters, and ozone layer depletion. Perhaps the most significant recent development in the area of forests is the new mechanism under GEF's function for the implementation of sustainable forest management, as part of the sustainable land management focal area. The Second GEF Assembly in Beijing, October 2002, designated land degradation (primarily desertification and deforestation) as a focal area of the GEF. The programme aims to promote synergies among the priorities on sustainable land management of the UN Convention to Combat Desertification, the Convention on Biological Diversity, the UN Framework Convention on Climate Change and other relevant conventions³⁶.

5.6.2 - UNEP Financial Initiative (UNEP FI)

Adopted: May 1997, New York
Further information: <http://www.unepfi.org/signatories/statements/fi/index.html>

In May 1992, in the run-up to the World Summit in Rio de Janeiro, an initially rather small group of banks committed themselves to assuming environmental responsibility in the financial sector under the UNEP Financial Initiative. The objective of this initiative is

'to identify, promote, and realise the adoption of best environmental and sustainability practice at all levels of financial institution operations.'

The Initiative's commitment to sustainable development as a fundamental aspect of sound business management is founded upon a 'precautionary approach to environmental management, which strives to anticipate and prevent potential environmental degradation'.³⁷

From this initial group, which included representatives from the insurance sector, the Financial Initiative has evolved into a commercial standard for environmentally involved financial institutions, which at one point had over 300 signatories. The Financial Initiative is a non-legally binding instrument.

5.7 Summary

Nearly all of the initiatives relating to the international economic and financial sector are non-legally binding. The many guidelines and recommendations demonstrate a commitment to sustainable development that is founded upon internationally legally binding human rights and environmental laws. The initiatives undertaken so far by leading public and private international finance institutions are encouraging and if implemented sincerely will be a valuable addition to realising the objectives of human rights and environmental legislation. Increasingly these standards will gain a legal identity by which signatories can be held accountable.

³⁶ UNFF – Recent Developments in Existing Forest-Related Instruments, Agreements, and Processes. Working Draft. Background Document No.2 September 2004

³⁷ UNEP FI Section 1 Sustainable Development.

6 Conclusion

By adopting the Earth Charter as a yardstick to assess the existing legal mechanisms, this guide demonstrates that the majority of mechanisms are constructed in a manner that fails to incorporate an ethical and holistic approach in meeting their objectives. In the case of the earliest human rights legislation and environmental laws, such as Ramsar, the agenda of the time was very different to today. Given the complexity of the issues it is important that future legal instruments are constructed using a consistent ethical framework that ensures compatibility between all areas of the law. This is particularly important with economic laws and agreements where acknowledgement of the interconnections between laws appears superficial and has yet to be clearly worked into the texts.

This guide is intended to provide a brief introduction to key legal materials of direct and indirect relevance to forest issues. Due to the enormity of this subject a guide of this size can only provide a brief insight into the scale and complexity of the emerging issues. It is clear that the international legal world is in a dynamic period of rapid change. It is hoped that this guide serves to highlight and elucidate some of the complexities interconnecting forests and international law and can be used as a starting point for anyone wishing to look further.

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Appendix I Environmental Instruments

Table 1. Ecological integrity: Environmental legally binding instruments

Instrument	Date	Reservations Permitted Y/N	Conservation and Restoration	Precautionary Approach	Production within Sustainable Limits	Build Understanding of Biodiversity
International Tropical Timber Agreement	1994	N	Article 21.4(b) Article 26.1(b) Article 27.2		Article 1.(b),(f) Article 21.1 Article 21.4 (a)	
Convention on Biological Diversity	1992	N	Article 1. Article 7. Article 8. Article 10 (d)	Article 8.(g)	Article 6.(b) Article.11	Article 12. Article 17. Article 18.
Cartagena Protocol	2000		Article 2.4 Article 4.	Article 1. Article 2.5		
UNFCCC	1992	N	Article 2	Article 3.3		Article 8.
Kyoto Protocol	1997	N	Article 2.1(ii) Article 3.3, 3.4		Article 10.(c)	
UNCCD	1994	N	Article 2.2 Article 4.2(d) Article 10.2(c)			
CITES	1973	Y	Article II Article III.2(a),3(a) Article IV 2(a), 3, 6(a)			
Convention on World Heritage	1972	Y	Articles 2 - 7			
Ramsar	1971	Y	Article 4, 5			
Convention on Migratory Species	1979	Y	Article 1.4 Article II.1 Article III 4(a),(c) Article IV.1 Article V.5 (e-m)			Article V.5(n)
Aarhus Convention	1998	Y				

Table 2. Social and economic justice: Environmental legally binding instruments

Instrument	Date	Reservations Allowed Y/N	Poverty	Equitable and sustainable business	Gender Equality	No discrimination, especially to minority and indigenous peoples
CBD	1992	N	Article 20.4	Article 10 (a),(e)		Article 8(j) Article 10(c)
UNFCCC	1992	N	Article 4.7	Article 3.4 Article 3.5 Article 4.(d)		
Kyoto Protocol		N	Article 11			
UNCCD	1992	N	Article 3(d) Article 4.2(c) Article 4.3 Articles 5-7 Article 10.4 Article 20.1(d)	Article 4.2(b)	Article 5(d)	Article 10.2 Article 17.1(c) Article 18.1(b)
Convention on Migratory Species	1979	Y				Article III.5(c)
Aarhus Convention	1998	Y				Articles 6-8

Table 3. Democracy, non-violence and peace: Environmental legally binding instruments

Instrument	Date	Reservations Allowed: Y/N	Democratic decision making	Participation based on respect for all peoples	Culture of tolerance	Integrate skills into education curriculum
CBD	1992	N	Article 14.1(a),(c) Article 23.3	Article 4(b) Article 14(e) Article 23.5	Article 3	Article 11
UNFCCC	1992	N		Article 3.1 and 3.2		Article 6
Kyoto Protocol	1997	N				Article 10(e)
UNCCD	1994	N	Article 10.2(f)	Article 3(a),(c) Article 10.2 Article 17.1(f)		Article 5(d) Article 19.1.3(e)
CITES	1973	Y	Article 7			
Convention on World Heritage	1972	Y				Article 27
Aarhus Convention	1998	Y	Article 3.1 Article 4.1 Article 5. Article 9.	Article 1. Article 3.8, 3.9 Articles 6 - 8		Article 3.3

Table 4. Ecological integrity: Environmental non-legally binding instruments

Instrument	Date	Conservation and Restoration	Precautionary Approach	Production within Sustainable Limits	Build Understanding of Biodiversity
Rio Declaration	1992	Principle 4 Principle 7	Principle 15	Principle 3 Principle 8 Principle 12	
Rio Forest Principles	1992	Principle 3.(a) Principle 8.(a), (b) Principle 15		Principle 2(a) Principle 6(c-e) Principle 7(a) Principles 8(d-f)	Principle 4.
Agenda 21	1992	Section II, particularly C11		C2.9, 2.20 C4 C 8.5(d) C10.3 C11	
Johannesburg Declaration	2002				
Johannesburg Plan of Implementation	2002	Sec IV 44 Sec IV 44		Sec III, IV, V	
Millennium Declaration	2000	Sec IV para. 23			

Table 5. Social and economic justice: Environmental non-legally binding instruments

Instrument	Date	Poverty	Equitable and sustainable business	Gender Equality	No discrimination, especially to minority and indigenous peoples
Rio Declaration	1992	Principle 5 Principle 6 Principle 11	Principle 16	Principle 20	Principle 14 Principle 22 Principle 23
Rio Forest Principles	1992	Principles 7(a),(b) Principle 9(b) Principle 10 Principle 11	Principle 1(b) Principle 5(a) Principle 9(a),(c) Principle 12(d) Principle 13(b-d)	Principle 5.(b)	Principle 5(a) Principle 8(f) Principle 12(d)
Agenda 21	1992	C3 C4.3 C5	C2	C24	C11(i) C26
Johannesburg Declaration	2002	Para. 21 - 24	Para. 27 -29	Para. 20	Para. 25
Johannesburg Plan of Implementation	2002	Sec II Sec VIII para. 45(e)	Sec II para. 18	Sec I para. 3 Sec II para. 7(d)	Sec II para. 7 (e) Sec IV para. 45(h)
Millennium Declaration	2000	Para 19		C20 C25	C6

Table 6. Democracy, non-violence and peace – Environmental Non-Legally Binding Instrument

Instrument	Date	Democratic decision making	Participation based on respect for all peoples	Culture of tolerance	Integrate skills into education curriculum
Rio Declaration	1992	Principle 26	Principle 10		
Rio Forest Principles	1992		Principle 2(b),(d)		
Agenda 21	1992	Section III			
Johannesburg Declaration	2002	Para. 31-32	Para. 17 Para. 26		
Johannesburg Plan of Implementation	2002		Sec I para. 5		Sec II para. 7(g) Sec II para. 8(d)
Millennium Declaration	2000	C25	C6		C6

Appendix II – Human Rights Laws

Table 1 Social and economic justice: Human rights legally binding instruments

Instrument	Date	Reservations Allowed Y/N	Poverty	Equitable and sustainable business	Gender Equality	No discrimination, especially to minority and indigenous peoples
UDHR	1948	Y			Article 2 Article 16 Article 25.2	Articles 1-10 Article 22
ICCPR	1966	Y			Article 3	Article 1 Article 10 Article 12.1 Article 16 Article 27
ICESCR	1966	Y	Article 11	Article 6.(1) Articles 7-9 Article 10(2)	Article 3 Article 10(2)	Article 1(1),(2)
ILO 169	1989	Y	Article 4.1 Article 7.1 Article 11 Article 15.2 Article 19 Article 23			Article 2.2(c) Article 3 Article 4.3 Article 5 Article 13-14 Article 15.1 Article 20 Article 31

Table 3. Democracy, non-violence and peace: Human rights legally binding instruments

Instrument	Date	Reservations Allowed: Y/N	Democratic decision making	Participation based on respect for all peoples	Culture of tolerance	Integrate skills into education curriculum
UDHR	1948	Y	Article 20 Article 21	Article 2 Article 21 Article 27	Article 29.2	Article 26
ICCPR	1966	Y		Article 19 Article 21 Article 22 Article 25	Article 2(1) Article 6-9 Article 14 Article 17 Article 18	
ICESCR	1966	Y			Article 1(1)	Article 6.2 Article 13 Article 14
ILO 169	1989	Y	Article 2.2(a) Article 6.1(a) Article 7.3 Article 17 Article 30 Article 32	Article 2.2(b) Article 6.1(b) Article 15.2 Article 16	Article 1 Article 4.2 Article 8 Article 9	