

# Environmental Concerns and the Interdependence of Human Rights: a Path to Political Responsibility?

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## A. Introduction

Our development practices have led us to a state of global systemic crisis.<sup>1</sup> The pace of economic globalization is only increasing, with far-reaching and sometimes devastating effects upon the environment. The environmental consequences of development must be understood in order to develop new theories and practices that are relevant in this increasingly global context. Environmental issues in turn frequently involve a wide range of human rights issues, from civil and political to economic, social and cultural. Rights do not exist in a vacuum, isolated and independent of one another; rather, all rights are inherently interrelated, each dependent upon the others for its existence and free exercise. Indeed, this principle — the interdependence of rights — was formally recognized by the international community during the 1993 World Conference on Human Rights in Vienna: “All human rights are universal, indivisible and interdependent and interrelated.”<sup>2</sup>

The goal of this paper is to illustrate the significance and scope of the interdependence of rights, by drawing upon the example of the *Ligue des droits et libertés du Québec*'s gradual incorporation of environmental issues into its mandate. This is followed by a reflection upon the strategic advantage that an understanding of the interdependence of environmental issues and human rights can bring to citizen-led political initiatives. The paper concludes with a discussion of the notion of public responsibility that is implicit in Article 28 of the *Universal Declaration of Human Rights*, which states that “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this *Declaration* can be fully realized.”<sup>3</sup>

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<sup>1</sup> The expression “global systemic crisis” is often used to convey the structural dimension of the situation and its systemic and multidimensional nature. See among several others: LEAP [www.leap2020.eu](http://www.leap2020.eu).

<sup>2</sup> World Conference on Human Rights, *Vienna Declaration and Programme of Action*, 1993, UN Doc A/CONF.157/23, 32 ILM 1661 at 24 [World Conference, *Vienna Declaration*].

<sup>3</sup> *Universal Declaration of Human Rights*, GA Res 217 (III), UNGAOR, 3D Sess, Supp No 13, UN Doc A/810, (1948) 71 [*Declaration*].

The current global crisis presents a crucial opportunity to discuss the broad spectrum of interrelated rights issues and how they may be understood and reconciled. If we accomplish this, we will have fulfilled the necessary conditions for all rights to be exercised, and in so doing we will make important strides towards overcoming our sense of powerlessness as citizens.

## **B.Environmental Issues as Human Rights Issues: an Historical Overview**

There is nothing particularly ground-breaking about linking human rights and environmental issues. Indeed, this link was explicitly recognized by the international community in 1972 at the UN Conference on the Human Environment in Stockholm.<sup>4</sup> It was proclaimed that “both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights [and] the right to life itself.”<sup>5</sup> The right to a healthy environment was recognized as the first principle in the *Stockholm Declaration*: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being.”<sup>6</sup> Since 1972, a number of steps have been taken in the international system and in several national legal systems to implement this principle. Retracing those steps shows that the path from general principle to legal formulation and effective implementation has been long and winding indeed.

### **1) Procedural Protections Following the Rio Conference**

Twenty years after Stockholm, at the 1992 UN Conference on Environment and Development in Rio de Janeiro (the Rio Conference),<sup>7</sup> the international community revisited the link between human rights and the right to a healthy environment with a new focus: the participation of all citizens.<sup>8</sup> This was an early step toward establishing a strong procedural dimension of the right to the environment, and it helped clarify the civil and political rights linked to environmental issues:

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<sup>4</sup> *Declaration of the United Nations Conference on the Human Environment*, GA Res 2994 (XXVII), UNGAOR, 1972, UN Doc A/CONF. 48/14/Rev. 1 (1973); 11 ILM 1416 (1972) [*Stockholm Declaration*].

<sup>5</sup> *Ibid*, art 1.

<sup>6</sup> *Ibid*, Principle 1.

<sup>7</sup> *Rio Declaration on Environment and Development*, UNCEDOR, 1992, UN Doc A/CONF. 151/5/Rev.1, (vol I); 31 ILM 874 (1992) [*Rio Declaration*].

<sup>8</sup> In contrast to the *Stockholm Declaration*, humans are now only “entitled to a healthy and productive life in harmony with nature” (Principle 1).

PRINCIPLE 10: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Concrete mechanisms for public participation were gradually introduced in the years following Rio, not only by local governments but also within various national legal systems.<sup>9</sup> Québec introduced the option of legal recourse through the *Environment Quality Act*,<sup>10</sup> and the *Bureau des audiences publiques sur l'environnement* (BAPE)<sup>11</sup> became the primary body for implementing the *Act's* requirements for public participation in, and consultation on, environmental issues.

Following the implementation of a formal procedure for public participation under Québec's *Environmental Quality Act*<sup>12</sup> and similar legislation elsewhere, the number of citizen-led environmental groups multiplied and public expertise on current issues improved, significantly enriching public debate. In response, however, developers attempted to circumvent the consultation process entirely whenever possible and limit the length of any consultations that could not be avoided. They also employed tactics intended to silence dissenting voices, in particular by means of

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<sup>9</sup> An expanded discussion of these mechanisms is beyond the scope of this paper. For further reading on the effectiveness and limitations of some of these instruments (particularly the Espoo and Aarhus Conventions in Europe), we recommend Maguelonne Déjeant-Pons & Marc Pallemarts with the collaboration of Sara Fioravanti, *Human Rights and the Environment* (Strasbourg: Council of Europe Publishing, 2002).

<sup>10</sup> *Environmental Quality Act*, RSQ, c Q-2, Division III.1.

<sup>11</sup> *Ibid*, Division II.1. See Mario Gauthier & Louis Simard, "Le BAPE et l'institutionnalisation du débat public au Québec : mise en œuvre et effets" in Martine Revel et al, eds, *Le débat public : une expérience française de démocratie participative* (Paris: La Découverte, 2007) 78.

<sup>12</sup> RSQ, c Q-2.

SLAPPs (Strategic Lawsuits Against Public Participation).<sup>13</sup> The result was a power struggle between the competing interests surrounding environmental issues, and it quickly became clear that the enormous advantage in resources enjoyed by the proponents of development left the contest woefully unbalanced, despite the mechanisms put in place to ensure equal participation. Several of the rights stipulated in the *International Covenant on Civil and Political Rights (ICCPR)*<sup>14</sup> were arguably violated, in particular freedom of expression and freedom of association, effectively serving as proof and a cautionary tale of the need for robust and effective procedural protections of civil liberties in order to exercise the right to the environment.

## **2) Socio-economic and Cultural Rights Violations: Expanding the Discussion of Interdependence**

Around the world, clear violations of many economic, social and cultural rights were increasingly being exposed in relation to environmental issues. Indeed, the link between protection of the environment and human health had been recognized in 1966. Article 12 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* explicitly included environmental quality as an essential condition for the right to health: “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for [...] (b) The improvement of all aspects of environmental and industrial hygiene.”<sup>15</sup>

Certainly, the right to health is necessarily linked to the condition of the environment. Infamous cases have dramatically illustrated the multidimensional nature of the rights violations caused by environmental abuses. Examples include the 1978 Love Canal disaster,<sup>16</sup> when it was discovered that a neighbourhood had been built on a toxic-waste dumping ground, thereby violating the entire population’s right to housing and education, in addition to their right to health. Other examples include major

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<sup>13</sup> See, for example, Uniform Law Conference on Canada, *Strategic Lawsuits Against Public Participation (SLAPPs) Report 2008*, online: ULCC [www.ulcc.ca](http://www.ulcc.ca); Mayo Moran, Brian MacLeod Rogers, & Peter Downard, *Anti-SLAPP Advisory Panel Report to the Attorney General* (28 October 2010), online: Ontario Ministry of the Attorney General [www.attorneygeneral.jus.gov.on.ca](http://www.attorneygeneral.jus.gov.on.ca).

<sup>14</sup> *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976, accession by Canada 19 May 1976) [*ICCPR*].

<sup>15</sup> *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3, 6 ILM 368, art 12(2) on the right to health (entered into force 3 January 1976, accession by Canada 19 May 1976) [*ICESCR*].

<sup>16</sup> Pierre Rainelli, “Pollution des sols : problèmes économiques” (1996) 3-4 *Études et gestion des sols* 307 at 310.

dam construction projects that led to the forced displacement of millions,<sup>17</sup> violating their cultural rights in many instances as well as their right to choose their place of residence.<sup>18</sup> Finally, headline-grabbing cases have documented instances of pollution and disaster that directly endangered the lives of many, of which Bhopal, Chernobyl and the Exxon Valdez are only the most well-known.

On the topic of socio-economic and cultural rights, the right to equal enjoyment of economic, social and cultural rights as stipulated in Article 2(2) of the *ICESCR* and in *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*<sup>19</sup> has certainly attracted particular attention. Research has shown that disadvantaged groups and communities are at far higher risk of exposure to contamination that adversely affects their health and quality of life: “Disadvantaged or minority groups (racial minorities, individuals of low socio-economic status, Aboriginal peoples, local farmers, etc.) bear a disproportionate share of the risks resulting from pollution.”<sup>20</sup> This environmental inequality can also be observed on a global scale, notably in the practice of shipping mass amounts of waste from developed countries to the developing world for storage, treatment and recycling, usually without safety measures in place to protect local workers.<sup>21</sup>

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<sup>17</sup> See among others University of Oxford, Forced Migration Online, “Types of development projects causing displacement”, online: FMO [www.forcedmigration.org](http://www.forcedmigration.org).

<sup>18</sup> Article 13 (1) of the *Universal Declaration of Human Rights*, GA Res 217(III), UNGAOR, 3d Sess, UN Doc A/810, (1948) 71 [*UDHR*] and article 12(1) of the *ICCPR*, above note 14.

<sup>19</sup> Economic and Social Council, *Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights). General Comment No 20*, UNESCOR, 42d Sess, E/C.12/GC/20 (2009) [*General Comment No 20*].

<sup>20</sup> Jean-Paul Deléage, “Des inégalités écologiques parmi les hommes”, (2008) 35:1 *Écologie & Politique*, 13 [translated from the original French].

<sup>21</sup> “L'équité environnementale : clef du développement durable” (17 April 2009), online: Institut EDS <http://www.ihqeds.ulaval.ca/>. This deplorable practice has led to the adoption of both an international treaty and regional instruments. For the treaty, see *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal*, 22 March 1989, 1673 UNTS 126, 28 ILM 657 (entered into force 5 May 1992). For the regional instruments, see *Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa*, 30 January 1991, Organization of African Unity (entered into force 22 April 1998), online: African Union [www.au.int](http://www.au.int).

### 3) Global Environmental Issues, Depletion of Natural Resources and the Right to Self-determination

Even before the Rio Conference, another step in the growing awareness of the relationship between human rights and environmental issues prompted further refinement of the principle of the interdependence of rights. It had become apparent that the relationship between human rights and environmental issues extends beyond individual impacts to include collective implications and effects. This can be observed in a number of different cases, particularly in the above example of large dams and in pollution resulting from the exploitation of natural resources. Closer to home, it can be seen in development decisions that are either unsustainable or are incompatible with certain populations' cultures and ways of life, or that monopolize basic resources such as land and water.

The collective nature of the relationship between human rights and environmental issues is addressed mainly through Article 1 of the two *Covenants (ICCPR and ICESCR)*: "All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."<sup>22</sup>

Addressing this collective dimension meant acknowledging two important implications. First, because of its strong connection to development choices and political decisions, the collective component of the relationship between human rights and environmental issues called for the scope of the right of peoples to self-determination to be clarified. Second, in terms of future impact, it drew attention to the intergenerational nature of rights.<sup>23</sup> The World Commission on Environment and Development was thinking in similar terms: "every human being — those here and those who are to come — has

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<sup>22</sup> *ICCPR* above note 14; *ICESCR* above note 15, art 1 para 2.

<sup>23</sup> Edith Brown-Weiss, "The Planetary Trust: Conservation and Intergenerational Equity" (1984) 11 *Ecology LQ* 495 (a leading researcher on this subject through her work beginning in the mid-1980s); Edith Brown-Weiss, "Conservation and Equity Between Generations" in Thomas Buergenthal, ed, *Contemporary Issues in International Law* (Kehl: Engel, 1984) 245; Edith Brown-Weiss, "International Law, Common Patrimony and Intergenerational Equity: Research in Progress" in René-Jean Dupuy, ed, *L'Avenir du droit international de l'environnement* (Dordrecht: Martinus Nijhoff Publishers, 1985) 445; Edith Brown-Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo: UN University Press, 1989) at 385 (her subsequent work at the United Nations University); Edith Brown-Weiss, *Environmental Change and International Law: New Challenges and Dimensions* (Tokyo: UN University Press, 1992) at 493 (the author assigns responsibility to future generations on the basis of three principles: conservation of options [diversity], conservation of quality, and conservation of access).

the right to life, and to a decent life.”<sup>24</sup> This prompted deeper consideration of our obligations toward future generations, gradually expanding the field of international human rights law.<sup>25</sup>

Discussion and work around the world focusing on defining the influence of environmental issues on human rights has thus progressed beyond the right to a healthy environment and the procedural dimension, diverging in at least three directions. The first focuses on the present, direct effects of environmental damage on recognized rights, such as the rights to life, health and housing. The second concerns the temporal aspect and our obligations to the future, brilliantly expressed by the United States Supreme Court as our responsibility to consider “answers to questions that we have not yet learned to ask.”<sup>26</sup> The third relates to our duty to make sustainable use of the planet’s limited natural resources in the present and for the future.

### C. Interdependence in Action: The Québec Shale Gas Debate

The entire range of interdependent dimensions — environmental and human rights — can be observed in the Québec shale gas debate. This case includes an attempt to restrict procedural rights and its effects on other recognized rights, in particular the right of peoples to freely determine their development. It also illustrates our responsibilities to future generations with respect to an energy source that we do not actually need in the present and the risk of irreversible depletion of groundwater resources. These rights issues were what drew the attention of the *Ligue des droits et libertés du Québec*.

Since its inception in 1963, the *Ligue* has been involved in many cases concerning rights violations, including cases that could be linked, directly or indirectly, to environmental issues. However, the *Ligue* was not officially involved in environmental issues per se until relatively recently. Instead the *Ligue* focused on Aboriginal rights, the right to adequate housing, freedom of expression, and even the right to water to a certain extent, without placing these issues squarely within any kind of environmental justice framework. It was the *Ligue*’s participation in the fight against SLAPPs that

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<sup>24</sup> *Report of the World Commission on Environment and Development: Our Common Future*, UNGAOR, 42d Sess, Annex, UN Doc A/42/427 (1987) at para 54 [*Report of the World Commission*].

<sup>25</sup> Anthony D’Amato, “Agora: What Obligation Does our Generation Owe to the Next? An Approach to Global Environmental Responsibility” (1990) 84 AJIL 190.

<sup>26</sup> US, House of Representatives, 93d Cong, *Report of the House Committee on Merchant Marine and Fisheries on HR 37* (HR Doc No 93-412) (1973), cited in *TVA v Hill*, 437 US 153 at 177 (1978); Joseph Sax, “Le petit poisson contre le grand barrage devant la Cour suprême des États-Unis” (1978) 4 RJE 369. See also Edith Brown-Weiss, above note 23 (the author assigns responsibility to future generations on the basis of three principles: conservation of options [diversity], conservation of quality, and conservation of access).

forged a link between the two major branches of citizen initiatives: human rights struggles and eco-citizenship.

### **1) The Fight against SLAPPs: Early Procedural Protections in Relation to Environmental Issues**

SLAPPs are lawsuits filed by companies or institutions against individuals or lobby groups in an attempt to neutralize or censor them when they speak out against corporate activities. This is a well-known tactic in Canada that has been the subject of studies.<sup>27</sup> SLAPPs come in a variety of forms and are used in a number of disputes involving larger issues including, but not limited to, environmental issues.<sup>28</sup> In Québec, though, the SLAPP tactic made its first appearance as a result of environmental disputes, and environmental activist groups were the first to react, launching a public awareness campaign in 2006 called *Citoyens, taisez-vous!*<sup>29</sup>

As a result of this campaign, the Québec Ministry of Justice commissioned a report and public hearings were held, in which the *Ligue* participated.<sup>30</sup> The *Ligue*'s strong interest in this process was unsurprising considering the many civil rights issues involved, in particular the rights to participate in public affairs, to freedom of expression, to access to justice, and to a fair and equitable hearing.

The *Ligue* joined forces, in its interventions on the SLAPP issue, with the *Réseau québécois des groupes écologistes (RQGE)*, the *Association québécoise de lutte contre la pollution atmosphérique (AQLPA)*, and *Éditions Écosociété* to push for legislation. A new law, the *Loi modifiant le Code de procédure civile pour prévenir l'utilisation abusive des tribunaux et favoriser le respect de la liberté d'expression et la participation des citoyens aux débats publics (Projet de loi 9)*, was finally enacted in June 2009.<sup>31</sup> Upon the

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<sup>27</sup> Susan Lott, "Corporate Retaliation against Consumers: The Status of Strategic Lawsuits Against Public Participation (SLAPPs) in Canada" (September 2004), online: PIAC [www.piac.ca](http://www.piac.ca).

<sup>28</sup> Comité au ministre de la Justice, "Les poursuites stratégiques contre la mobilisation publique : les poursuites-bâillons (SLAPP), Rapport du comité au ministre de la Justice" (15 March 2007), online: Justice Québec [www.justice.gouv.qc.ca](http://www.justice.gouv.qc.ca).

<sup>29</sup> [Translation: Citizens, Be Quiet!] This campaign was launched by the *AQLPA (Association québécoise de lutte contre la pollution atmosphérique)* and the *Comité de restauration de la rivière Etchemin*.

<sup>30</sup> Ligue des droits et libertés, "Les poursuites stratégiques contre la mobilisation publique – les poursuites – bâillons (SLAPP)" (1 February 2008), online: Ligue des droits <http://liguedesdroits.ca>.

<sup>31</sup> RSQ, 2009, c 12.

adoption of the *Projet de loi 9*, the president of the *AQLPA* stated that “this law is the result of the effective mobilization of united citizens. Together, we can move mountains.”<sup>32</sup> The *Ligue* had thus successfully made its first foray into environmental affairs, and in so doing it had discovered the substantial range of civil rights issues underlying environmental concerns. The *Ligue* quickly recognized the need for alliances with and among groups working in the areas of both human rights and environmental conservation.

## **2) You Can't Make an Omelette without breaking a Few Eggs: Socio-economic Rights at Risk**

Public opposition had already been expressed in response to earlier large-scale development projects, such as Suroît,<sup>33</sup> Mont-Orford Park<sup>34</sup> and the Rabaska initiative.<sup>35</sup> In addition to these cases, the shale gas debate gave the *Ligue* an opportunity to gauge the potential rights violations in many development projects, and especially the rights impact of the prevailing practice of exploiting resources without restraint. Development, it was discovered, often took the form of an attack on communities. The development of the shale gas industry in Québec, which relies on the controversial process of hydraulic fracturing (fracking), met passionate opposition from environmental groups who claimed that it put groundwater and drinking water resources at risk.<sup>36</sup> In previous projects, citizens' strategies had emphasized environmental concerns rather than direct violations of the

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<sup>32</sup> “Adoption du projet de loi 9 : fruit d'une mobilisation citoyenne efficace” (3 June 2009), online: AQLPA [www.aqlpa.com](http://www.aqlpa.com) [translated from the original French].

<sup>33</sup> Opposition movement launched in 2004 against construction of a thermal power station based on climate change concerns. See in particular (in French only): Denis Lessard, “Le Suroît définitivement liquidé avant la commission parlementaire” *La Presse* (17 November 2004), online: Vigile <http://archives.vigile.net>.

<sup>34</sup> Opposition movement launched in 2006 to save a natural park from privatization (in French only): “SOS Parc Orford appelle la population à se mobiliser de nouveau, le 3 juin à Québec” (11 May 2006), online: SOS Parc Orford [www.sosparcorford.org](http://www.sosparcorford.org).

<sup>35</sup> Opposition movement from 2006 to 2008 against construction of a liquefied natural gas terminal on the south shore of the St. Lawrence River (in French only): “L'échec d'une mobilisation” (5 December 2008), online: Radio-Canada [www.radio-canada.ca](http://www.radio-canada.ca).

<sup>36</sup> See among others “Quebec seeks fracking moratorium in shale gas rich area” (15 May 2013), online: Reuters <http://ca.reuters.com>.

rights of affected communities.<sup>37</sup> The shale gas debate, however, was an entirely different story.

Indeed, as soon as shale gas exploration and development began, it became apparent that civil and political rights as well as socio-economic and cultural rights were being directly threatened, if not violated outright, in the process. Bolstered by the two international rights *Covenants* as well as the *Aarhus Convention*<sup>38</sup> — generally considered the leading legal framework reflecting best practices for applying procedural rights to environmental issues — the *Ligue* identified several violations of civil and political rights in relation to the BAPE's mandate, geographical restrictions, duration of the mandate, access to information and inequality of means.<sup>39</sup>

Among other provisions, the *Ligue* relied upon paragraph 51 of the *ICESCR's General Comment No. 14: The Right to the Highest Attainable Standard of Health* on the right to health<sup>40</sup> to challenge the decision to develop the shale gas sector “without first collecting all the information required for ensuring its safety,”<sup>41</sup> which the government is obligated to do as part of its international human rights obligations. General Comment 14, issued by the Committee on Economic, Social and Cultural Rights (the UN body responsible for monitoring the implementation of the *ICESCR*), placed particular emphasis on access to information. By invoking the *ICESCR* and General Comment 14, the *Ligue* clearly underscored the relationship between procedural and substantive rights and the interdependence of all rights.

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<sup>37</sup> This is not to say that violations were not a concern. For example, in the Rabaska case, the *Agence de la santé et des services sociaux de la Capitale-Nationale* and the *Agence de la santé et des services sociaux de Chaudière-Appalaches* spoke out against the project because of concerns for public health: Martin Pelchat, “Rabaska: inquiétudes à la Santé publique” *Le Soleil* (13 April 2008), online: [gouvernement.QC.ca http://forum.gouvernement.qc.ca](http://forum.gouvernement.qc.ca).

<sup>38</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, 28 June 1998, 2161 UNTS 447, 38 ILM 517 (1999) (entered into force 30 October 2001).

<sup>39</sup> *Ligue des droits et libertés, Le droit de dire NON* [translation: The Right to Say NO]. Report presented to the *Bureau des audiences publiques sur l'environnement (BAPE)* as part of a consultation process entitled “Développement durable de l'industrie des gaz de schiste au Québec” [sustainable development of the shale gas industry in Québec] (November 2010) (in French only), online: *Ligue des droits* <http://liguedesdroits.ca> [*Ligue, Le droit de dire NON*].

<sup>40</sup> United Nations Economic and Social Council, *The Right to the Highest Attainable Standard of Health*. General Comment No 14, UNESCOR, 22d Sess E/C.12/2000/4, (2000).

<sup>41</sup> *Ligue, Le droit de dire NON*, above note 39 at 13 [translated from the original French].

Regarding substantive rights, the *Ligue* cited in its report, *Le droit de dire NON*, that “some of the features of shale gas exploration and development methods used in Québec to date pose a threat to [...] the right to peaceful enjoyment of one’s property, particularly in the form of challenges some nearby residents face in insuring their properties and in refusing exploration on their properties, as well as problems relating to the presence of nearby wells and access roads.”<sup>42</sup> The *Ligue* focused on two rights that were especially at risk in this situation — the right to health and the right to water.<sup>43</sup>

The available studies clearly demonstrate that shale gas exploration and development carry risks to public health, especially with respect to the numerous chemicals — some with known carcinogenic effects — used in the so-called fracking process.<sup>44</sup> The greatest risk factor for significant rights violations is potential water contamination, since the processes involved in shale gas exploration and development require large quantities of water. We have therefore chosen to focus on these two rights, which are strongly interdependent.<sup>45</sup>

The *Ligue* broke new ground in its approach to linking environmental issues and human rights by suggesting a complex, interdependent connection between the two. The *Ligue* argued that the Québec government’s own laws required it to protect its water resources and, therefore, to study the impacts of development projects that affect these resources in advance of any decision being made in relation to shale gas development. The *Ligue* also insisted that the government must provide citizens with all essential information pertaining to their health. It argued that environmental impact studies, which are mandatory, must also assess the human rights component of projects and not

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<sup>42</sup> *Ibid* at 15 [translated from the original French].

<sup>43</sup> The right to water, though notably omitted from the *ICESCR*, was considered a right in the ICESCR Committee’s General Comment No. 15 in 2002, by the General Assembly of the United Nations on 28 July 2010, and by the United Nations Human Rights Council on 30 September 2010.

<sup>44</sup> See Environmental Protection Agency, *Hydraulic Fracturing Research Study*, US Environmental Protection Agency, Office of Research and Development, EP- A/600/F-10/002, June 2010, online: EPA [www2.epa.gov](http://www2.epa.gov); Environmental Protection Agency, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs: Executive Summary*, EPA 816-R-04-003, June 2004, online: EPA [www2.epa.gov](http://www2.epa.gov); Environmental Protection Agency, “Natural Gas Extraction - Hydraulic Fracturing” (2014) online: EPA [www2.epa.gov](http://www2.epa.gov).

<sup>45</sup> *Ligue*, *Le droit de dire NON*, above note 39 at 15 [translated from the original French].

limit their focus solely to environmental effects. This led the *Ligue* to make the following specific recommendation:

[...] from now on, respect for human rights should be an integral component of the project evaluation criteria used in all environmental consultations. In addition, regarding the impact of projects on all interdependent rights, the results of these evaluations should be made public. Respect for the rights and liberties of all citizens is a fundamental prerequisite for a project to be considered “socially acceptable.”<sup>46</sup>

This interdependence-based analysis also led the *Ligue* to highlight the need to apply the precautionary principle<sup>47</sup> in any decision relating to shale gas development, even though this principle is not explicitly included in Canadian or Québec legislation.<sup>48</sup> The *Ligue* affirmed in this regard that “given the dangerous nature of the substances involved and the glaring lack of information, the *Ligue* is of the opinion that protecting the Québec population’s right to health and water necessitates a strict application of the precautionary principle in the present case.”<sup>49</sup>

Though traditionally a rights-advocacy organization, the *Ligue* justified its appearance before a consultative body on environmental matters by citing a specific article that the Québec government had included in the Québec *Charter of Human Rights and Freedoms* in 2006. Article 46.1 states that “Every person has a right to live in a healthful environment in which biodiversity is preserved, to the extent and according to the standards provided by law.”<sup>50</sup> The *Ligue* inferred that “the legislator’s clear intent in adding article 46.1 to the *Charter* was to provide enhanced protection of the right to live in a healthy environment.”<sup>51</sup> The *Ligue*’s interdependence-based

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<sup>46</sup> *Ibid* at 20 [translated from the original French].

<sup>47</sup> According to principle 15 of the *Rio Declaration*, above note 6, the precautionary principle states the following: “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

<sup>48</sup> Although this principle is mentioned at several points throughout Canadian environmental law, it is, in practice, a general provision. See *114957 Canada Ltée (Spraytech, Société d’arrosage) v Hudson (Town)*, 2001 SCC 40.

<sup>49</sup> *Ligue, Le droit de dire NON*, above note 39 at 18 [translated from the original French] (emphasis in original).

<sup>50</sup> RSQ, c C-12, 2006, s 46.1.

<sup>51</sup> *Ligue, Le droit de dire NON*, above note 39 at 5 [translated from the original French].

analysis provided a much more precise understanding of the impact that the environmental aspects of development decisions have on rights.

### 3) The Right to Say NO: Report by the *Ligue des droits et libertés du Québec*

When it appeared before the *BAPE*, the *Ligue* outlined its involvement in terms of the rights potentially violated by shale gas development. On a more fundamental level, the *Ligue* also focused on the right of peoples to self-determination, set out in the first article of the two *Covenants*. This explains the title of the *Ligue*'s report: *Le droit de dire NON* [The Right to Say NO]. The *Ligue* chose this particular focus because, throughout the many environmental cases that have sparked controversy in Québec in the past decade, the ability of affected communities to make their own development choices has been the fundamental issue at stake. The result has been “an increasing breakdown in trust between the population and its government in matters of resource exploitation, development projects, and the protection of the environment and of their communities.”<sup>52</sup> The *Ligue* stressed in its report that “the fresh perspective we bring to these proceedings is that of respect for all human rights, be they civil and political rights that call for collective decision-making processes or the economic, social and cultural rights that are affected by the decisions made.”<sup>53</sup>

The *Ligue* also highlighted Québec society's collective responsibilities to future generations:

Recall that rights are inherent, interdependent and universal, as emphasized at the 1993 Vienna Conference.<sup>54</sup> In other words, they apply to all human beings in the present and to those not yet born.

To that effect, Québec society must consider two specific obligations in its decision on shale gas exploration and development.

First, we are obligated to safeguard options for future generations. This means that Québec's genuine energy needs must be taken into account in decisions on whether or not to develop shale gas resources. If we do not have such a need, it is our duty to leave this non-renewable resource for generations to come.

Second, it is our collective duty to protect the basic life-sustaining ecosystem so that future generations can also enjoy

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<sup>52</sup> *Ibid* [translated from the original French].

<sup>53</sup> *Ibid* at 6 [translated from the original French].

<sup>54</sup> World Conference, *Vienna Declaration*, above note 2, art 5: “All human rights are universal, indivisible and interdependent and interrelated.”

conditions conducive to living with dignity. Our first task is to protect potential sources of potable water, and not only those that are known and currently in use. Indeed, we are aware that there are water resources underground, some at great depth, whose characteristics and properties are still unknown. Given our current level of knowledge, the precautionary principle must prevail if we are to protect our resources, especially those that are most vital to life.<sup>55</sup>

Through its involvement in the Québec shale gas debate, the *Ligue* fostered a new way of thinking about development by suggesting that citizens have the right to oppose development projects that are proposed to them. This opened the door to new alliances not only with environmental groups but also with groups focused on economic issues, and provided a fresh perspective that needed to be expanded upon and circulated as widely as possible.

The *Ligue*'s work certainly appears to have staying power. As a result of its participation in the SLAPP issue and then in the shale gas debate, long-lasting partnerships seem to have been forged. The *Ligue*'s joint work with the *RQGE* now extends to procedural protections — with significant investments from both organizations into SLAPP-related awareness campaigns. It also extends to democratic rights more broadly, and includes developing a deeper understanding of environmental issues as human rights issues. In particular, the two organizations held a colloquium on the latter topic in February 2012 to broaden their alliances with other sectors. Indeed, if all rights are interdependent, then this interdependence must also encompass socio-economic and ecological issues, and the strategies needed to address them.

The *Ligue*'s strategy in the shale gas debate was not entirely new: it had already generated and fuelled discussion in Québec on social issues in terms of rights and rights interdependence. Extending this strategy to environmental issues, however, was unprecedented in Québec, and may in future foster new alliances with other sectors by providing a common analytical framework, despite the breadth and diversity of their respective objectives.

#### **D. A Broader Understanding of Rights Interdependence: Future Directions?**

The final brief discussion is intended to suggest avenues that might be worth exploring to deepen our understanding of the interdependence of rights and the implications of that interdependence, and thereby advance political struggles.

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<sup>55</sup> *Ligue, Le droit de dire NON*, above note 39 at 18 [translated from the original French] (emphasis in original).

### **1) Defending Civil and Political Rights Instead of Balancing Competing Interests**

As a general rule, all social issues inherently create power struggles in which the parties involved make use of all the resources available to them. As suggested above, SLAPPs are no exception. Framing such issues within the context of rights and freedoms, however, would allow us to understand and present them not as conflicts between competing interests, but rather as violations of common standards, and therefore as violations of the foundations of our social order. This change in perspective would provide citizens with a legitimate platform that would make it more difficult for the government to ignore them. Opinions may differ as to whether it is acceptable, within a democratic society, for different individuals or groups to have an unequal ability to defend their interests, based on their financial or other means. But one thing is clear: the use of court proceedings to silence dissent and to prevent a right from being exercised is an abuse of justice. When this tactic is assessed in light of its impact on rights and freedoms, rather than as an issue of competing interests, it inevitably loses some of its legal force and legitimacy.

Applying an interdependence analysis to the strategies used by economic interests or other powerful players allows us to identify and illustrate the consequences of neglecting to consider rights as interdependent — the alternative is an inherently restrictive perspective on rights. Viewing rights as interdependent also enables us to bring the focus back to the central and cross-disciplinary nature of the principle of equality. Interdependence concerns not only the fulfillment of rights, but also their violation, and only public participation can offset the inequality of means and restore the conditions needed for all rights to be fulfilled.

### **2) Environmental Issues and the Right of Peoples to Freely Determine Their Own Development**

As with social issues, environmental issues are often understood merely as competing interests and conflicting priorities. Compromises must be made, sides must be chosen, and pros and cons must be weighed. Sometimes the solution presented is a simple cost/benefit analysis. Adopting the perspective of rights interdependence constitutes a departure from utilitarian philosophy. It becomes a question of abiding by societal norms. And so, as in the shale gas case discussed above, integrating a rights-impact component into environmental impact studies could make it possible, in the future, to give more weight and validity to non-economic criteria. It could also help the *BAPC* to escape from the rut in which it has been trapped for several years because of its strict focus on balancing interests, which has gradually led it to

exclude the option of rejecting proposed projects.<sup>56</sup> What is more, this interdependence approach could potentially form the basis for a renewed understanding of the links between rights and democracy.

In light of the foregoing analysis, both the right of peoples to self-determination and the right of peoples to freely determine their own development take on a new dimension that paves the way for developing clear standards for our fundamental social principles. Phrases such as “self-determination” and “freely determine” presuppose the ability to freely exercise all civil and political rights. For that reason, development directions cannot be predetermined and set in stone. Respect for economic, social and cultural rights thus becomes a deciding factor in development choices and provides a common standard for guiding debate on the topic.

Reinterpreting the right of peoples to self-determination would provide an alternative perspective on the infamous “democratic deficit” and would allow us to rethink democratic requirements in ways that are more compatible than traditional approaches with how our society is developing. This, in turn, could bring a new, deeper meaning to “the right to participate in public affairs,” which is an essential component of implementing Article 28 of the *Universal Declaration of Human Rights*.

### **E. In Closing: Rights Interdependence in a Globalized World**

At the beginning of this paper, the term “global systemic crisis” was chosen deliberately, because the label applied to a situation has a significant influence on how it will be addressed. Despite the strategic advantage of a global outlook, it must be noted that the dominant tendency in the past few decades has been for different groups and movements to focus on their own sector-specific issues. The *Ligue*'s approach in the shale gas debate shows the strategic advantage of a more comprehensive perspective, one that takes into account the many layers of complexity present.

The strategy discussed herein will not necessarily generate significant legal change; at the end of the day, however, political choices and decisions, as well as the implementation of public policies, are indeed the forces that enable rights to be exercised effectively. This political dimension will be a key factor in our collective ability to address global environmental issues in order to achieve a greater measure of justice for both environmental and human rights.

Linking social and human rights issues to environmental concerns creates the possibility of moving beyond a restrictive and individualistic interpretation and broadening our understanding of the interdependence of all rights. As previously stated, this link is implicit in Article 28 of the *Universal Declaration of Human Rights*; making it explicit will force those in political

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<sup>56</sup> Nicole Desroches, “Plus insidieux que la corruption et la collusion : la mainmise sur les prises de décisions” (In French only) (7 January 2013), online: GaïaPresse <http://gaiapresse.ca>.

power to take this connection into account if they wish to retain their legitimacy.

Furthermore, establishing this link allows environmentalists to operate from a social choice perspective within a broader political framework, enabling them to reach a much broader audience, significantly raise their credibility, and maximize their impact. Interpreting environmental issues within a rights interdependence framework allows the foundations of environmental responsibility to be reinforced both politically and judicially. This may allow society to transcend the prevalent and narrow views of sustainable development and restore social growth<sup>57</sup> to its rightful place as a priority in our development choices.

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<sup>57</sup> Recall that, originally, sustainable development rested upon three pillars: development, environmental protection, and equality. See *Report of the World Commission*, above note 24, at paras 27-29.