





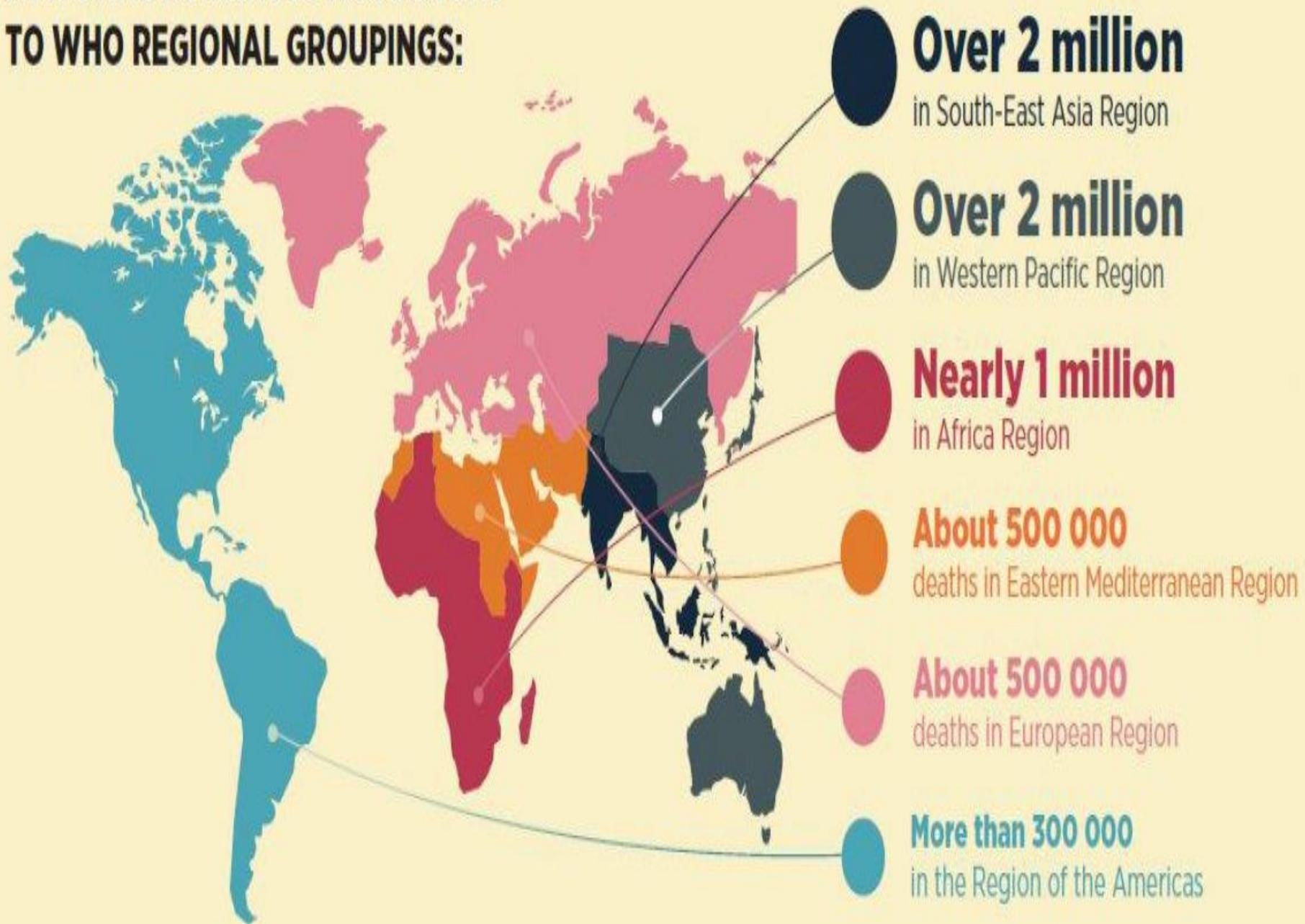








REGIONAL ESTIMATES ACCORDING TO WHO REGIONAL GROUPINGS:









Elizabeth Tower (Big Ben)

Houses of Parliament

London

Princo 24

Oxford Circus
Vauxhall
Clapham Common

London

PLAXTON

FJ02 PZT

St. Martin-in-the-Fields

Stockholm Summit 1972

United Nations Summit on the Human Environment



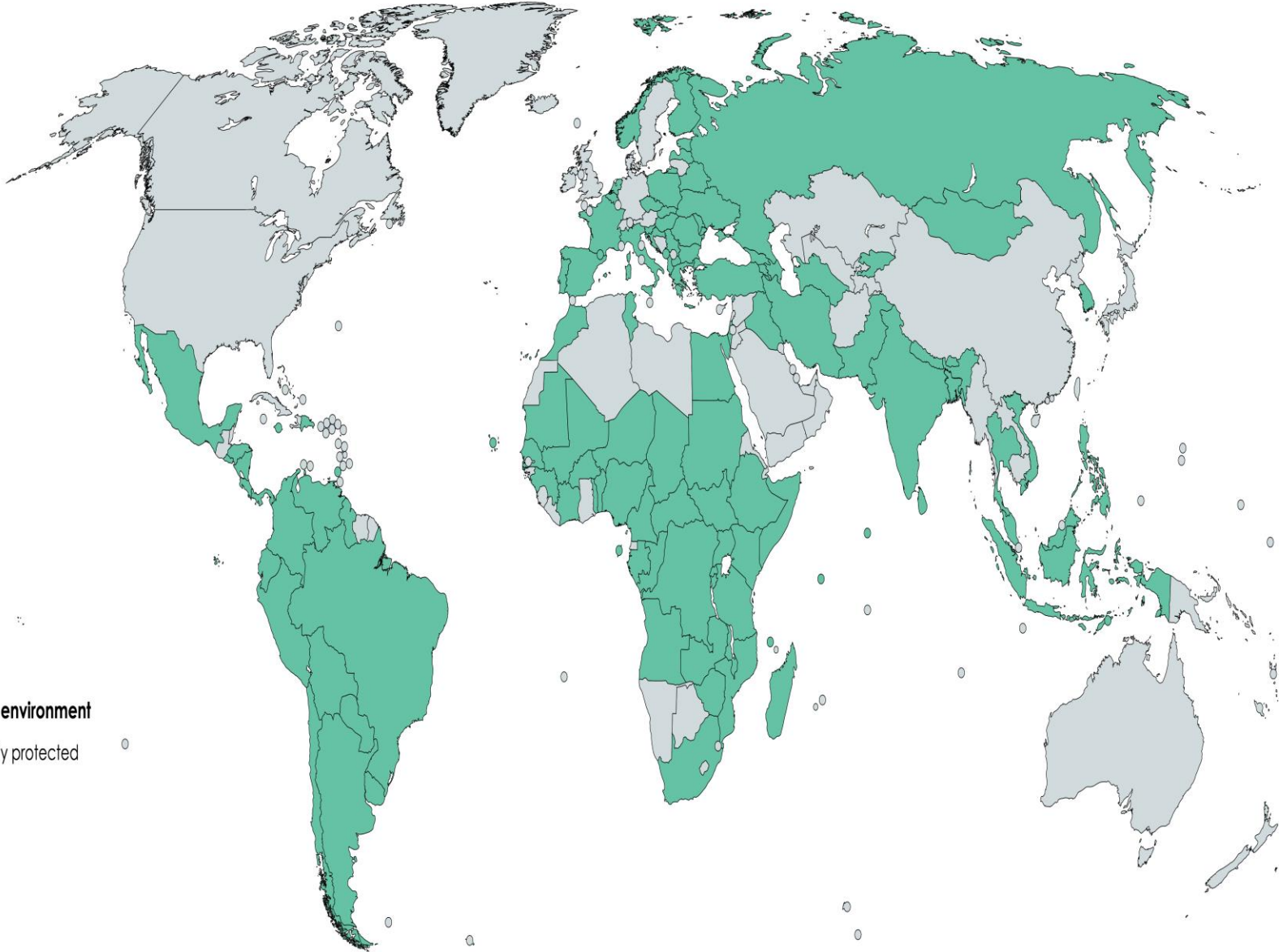
United Nations Environment Programme

Programme des Nations Unies pour l'environnement



Right to healthy environment

■ Constitutionally protected



New Constitutional Provisions I

- Jamaica (2011)
- **3.**The rights and freedoms referred to in subsection (2) are as follows-
- ...
- **I.** the right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage;

New Constitutional Provisions II

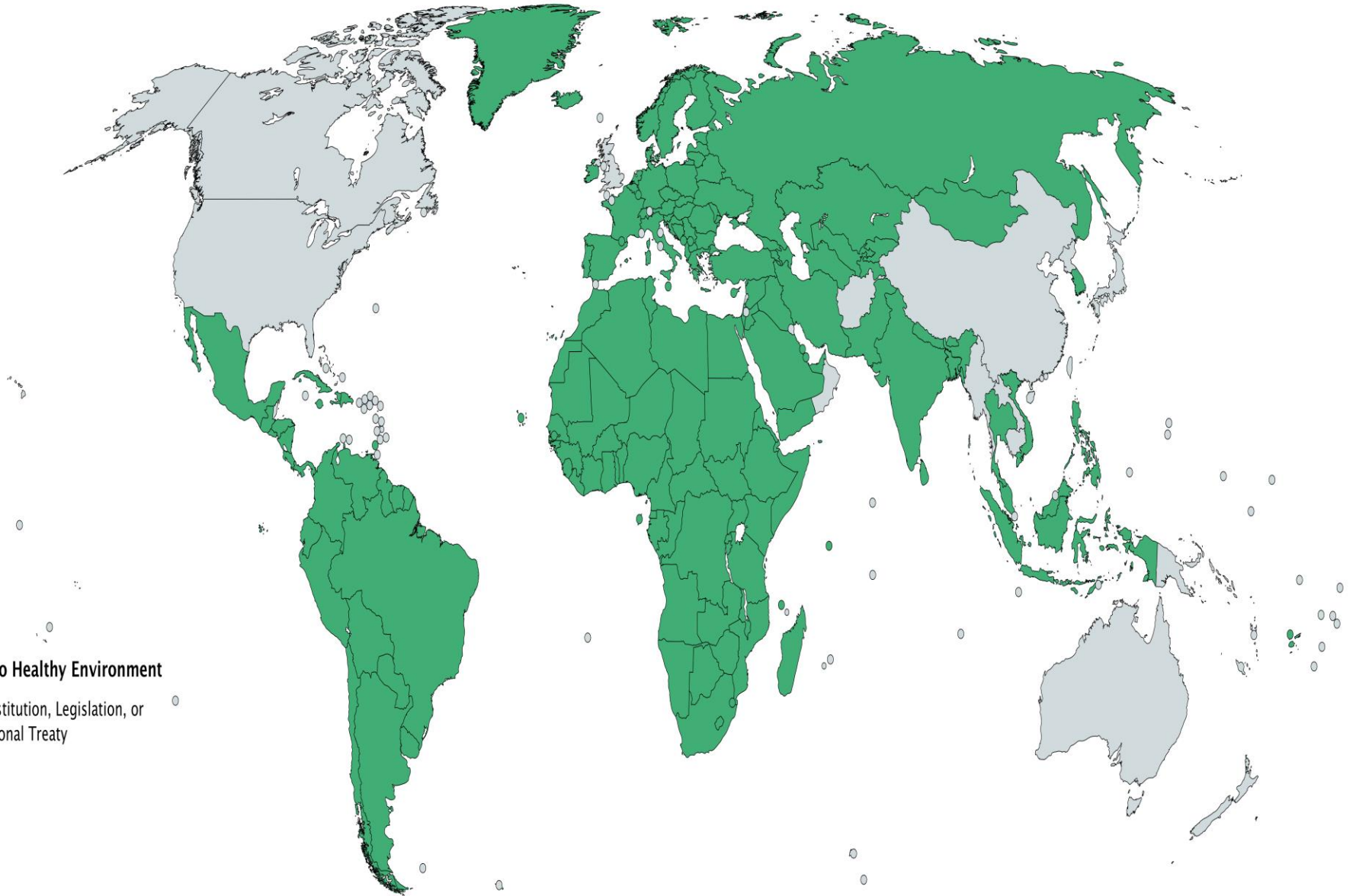
- Dominican Republic (2015)
- **ARTICLE 67. PROTECTION OF THE ENVIRONMENT**
- Preventing contamination, protecting and maintaining the environment for the enjoyment of present and future generations constitute duties of the State. Consequently:
 - **1.** All people have the right, both individually and collectively, to the use and sustainable enjoyment of natural resources, to live in an environment that is healthy, ecologically balanced, and adequate for the development and preservation of the different forms of life, scenery and nature. ...

New Constitutional Provisions III

- Cuba (2019)
- **ARTICLE 75**
- All persons have the right to enjoy a natural environment that is healthy and stable.
- The State protects the environment and the country's natural resources. It recognizes their close linkage with the sustainable development of the economy and society to make human life more rational and to ensure the security of current and future generations.

Right to Healthy Environment

■ Constitution, Legislation, or Regional Treaty



Escazu Agreement

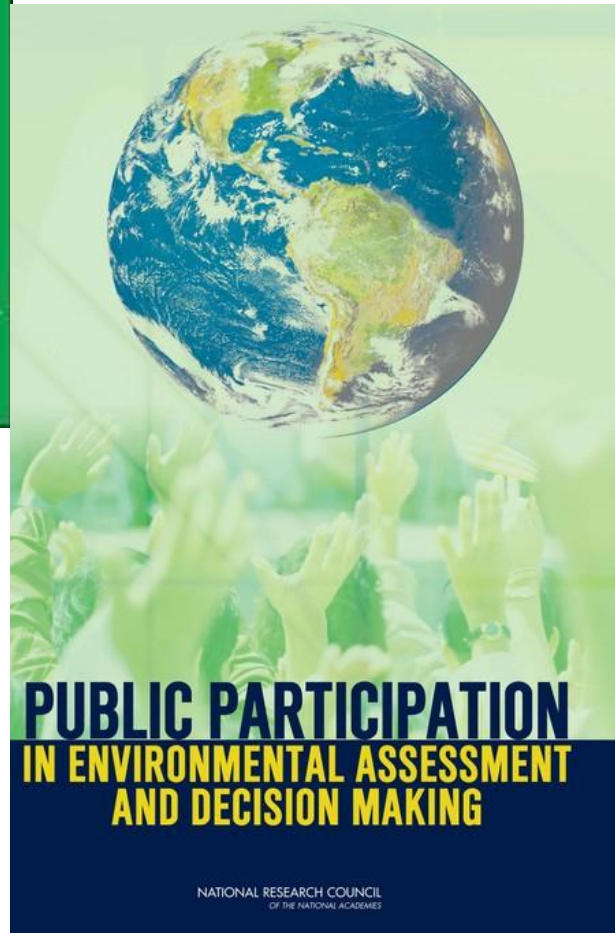
- On Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean
- States guarantee the right to a healthy and sustainable environment (Articles 1 and 4)
- Six ratifications to date, eleven required to come into force
 - Jamaica, St. Kitts and Nevis, St. Vincent and the Grenadines have already ratified



FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

2018

The main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.







Try me!

**100%
ORGANIC**

**FRESH
LOCAL
PRODUCE**

DANGER



**TOXIC
CHEMICALS**

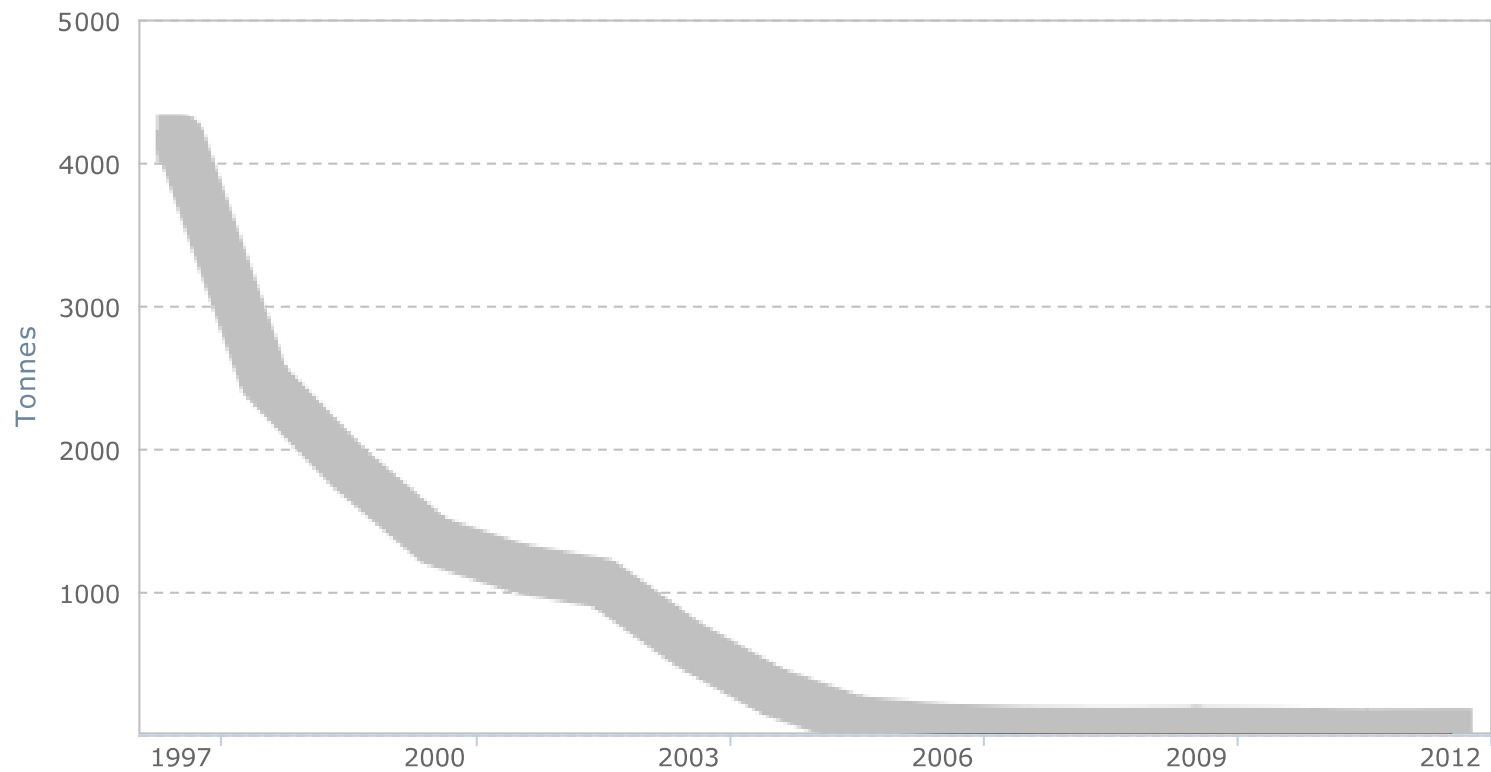


Stronger Environmental Laws





Releases of black and red chemicals from oil and gas activities



Source: Norsk olje og gass og Miljødirektoratet

Licence: NLOD

Better Decision-making



More Effective Enforcement







Judicial Role





Beatriz Mendoza et al v. Argentina







ANTES

DESPUÉS



MARGENES EL PUEBLITO



Entrega de llaves a familias relocalizadas que vivían en Puente Bosch







President Trump & Fossil Fuel Industry

#YouthvGov

See you in court.



THE PEOPLE VS. ARCTIC OIL

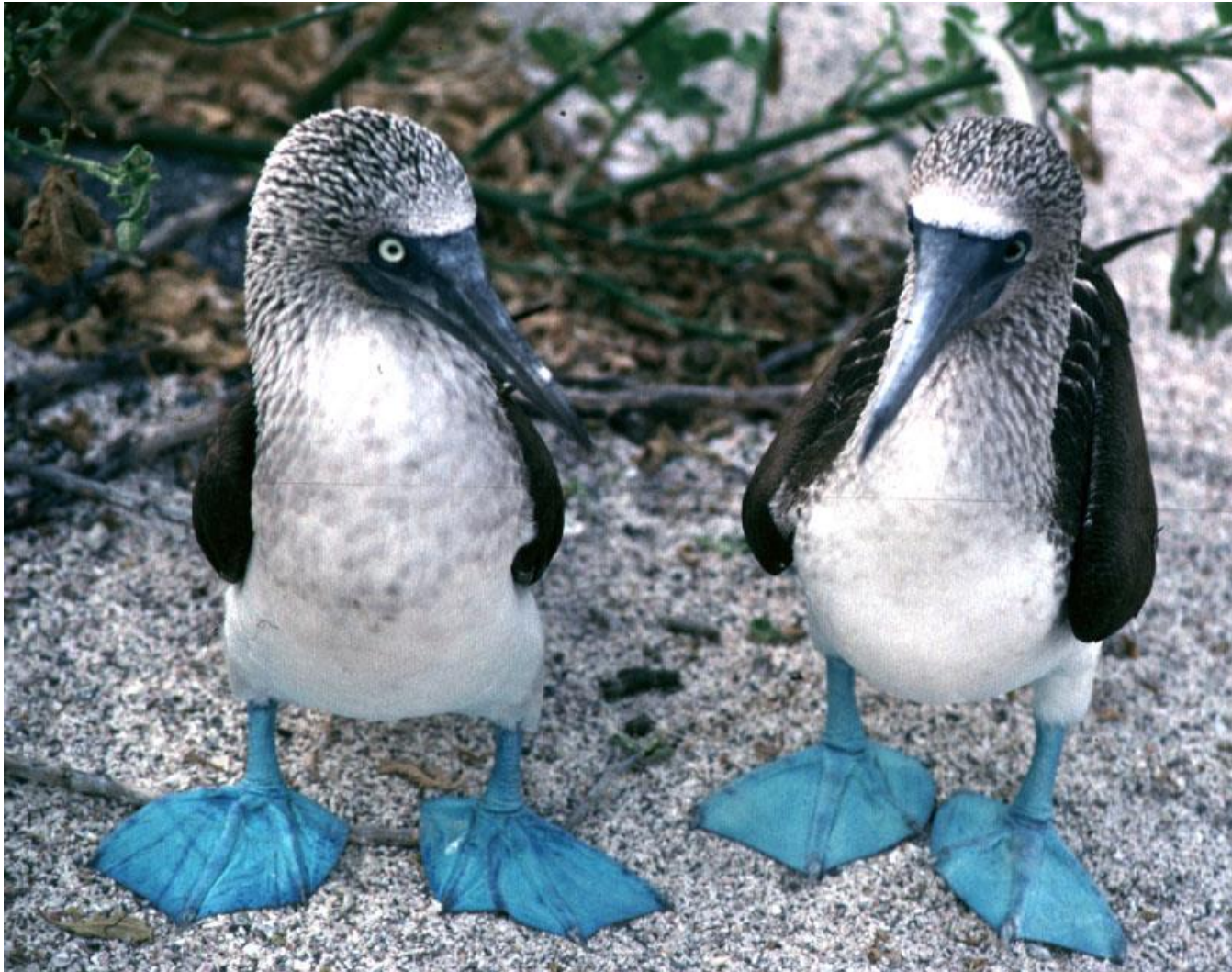
KeepItInTheGround Arctic





You have the right to
breathe clean air

Aid to Statutory Interpretation



Environmental Courts and Tribunals

- Now hundreds globally at national and sub-national level
- Steps to create/strengthen include assessment of the existing judicial system, engaging stakeholders, assessing the need for change, selecting a model and planning the best practices which optimally serve each country's unique judicial, legal, social, economic and political environment.
- Best practice examples include judicial independence, flexibility, use of ADR, comprehensive jurisdiction, open standing, effective remedies and enforcement powers, and unique case management and expert evidence tools.
- Outstanding UN Environment report called "Environmental Courts and Tribunals: A Guide for Policy-makers" (2016)

Additional Resources

- ECOLEX—legislation and cases (jointly managed by FAO, UNEP, and IUCN)
 - www.ecolex.org
- UN Special Rapporteur on Human Rights and the Environment
 - <http://srenvironment.org>
- Columbia University climate change litigation database
 - www.climatecasechart.com

THANK YOU!!





Title of Session: Environmental Pollution and Human Rights: Challenges and Solutions

Session Chairperson:

His Honour Sunil Sookraj

Session Panellists :

Professor David Boyd (joined the team via Skype)

Objectives of Session:

At the end of this session, participants will be able to:

- a. Identify some major impacts to the environment caused by pollution;
- b. Identify some legal challenges faced in effectively responding to these impacts, and
- c. Explain the value of a specialised environmental court to address environmental pollution

Key points from presentations :

His Honour Sunil Rookraj, Trinidad and Tobago

1. Environmental law is an emerging and specialised area which is still under development. Improving the environmental Rule of Law and dispute resolution is essential to the Sustainable Development Goals particularly Sustainable Development Goal 16 which includes building effective, accountable and inclusive environmental processes. Many countries including Trinidad and Tobago have included SDG 16 in their vision 2030.
2. There are several roles of a specialised environmental court:
 - a. *To promote the rule of law (SDG target 16.3)*
 - b. *Develop effective, accountable and transparent institutions at all levels (SDG target 16.6)*
 - c. *Ensure responsive, inclusive, participatory and representative decision-making at all levels (SDG target 16.7)*
 - a. *Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements (SDG target 16.10)*
3. Various countries across the region including Guyana, Jamaica and Trinidad and Tobago have set up bodies to regulate laws and the environment. The Environmental Management Act sets up environmental management authority and management commission of the Rule of Law.
4. As a part of their vision for sustainable development, the Government of Trinidad and Tobago enacted the Environmental Management Act.
5. The Environmental Court is important in the Caribbean to deliver:
 - a. *Swift justice as matters won't be caught up in bureaucracy*
 - b. *Environmental conflicts require quick action and response*
 - c. *Certainty and predictability- dealing with matters on a daily basis and ensures predictability*

- d. *Costs- no filing fees before the Environmental Commission in Trinidad and Tobago. Persons have the right to appear in person if they so choose. The rules and procedures are not as formal as those in the High Courts. Even if you choose to engage an attorney the costs would be much less*
 - e. *A specialised environmental court will be able to build competence over time. This adds lens to the competence of courts. These experts will bring certain special expertise.*
 - f. *The expertise doesn't change so the benefits are numerous.*
 - g. *Specialised courts free regular courts of increased workload*
 - h. *Can achieve consistency that may not be in regular courts*
6. Recommendations for future courts :
- a. *Equal jurisdiction as other Superior Courts. Therefore can deal with all environmental matters. In Trinidad and Tobago the body only currently has jurisdiction over certain restricted matters before it. In the Court of Appeal (COA) there is an appeal on a question of law.*
 - b. *Judges in Environmental Courts should be permanent and longstanding*
 - c. *Expertise by engineers and other experts can be accessed as needed*
 - d. *The region needs standardised rules and regulations that allow it to act speedily. We are too small a region to be acting differently*
 - e. *As a region we need to be working consistently*

Professor David R Boyd

Why Environmental Degradation and Climate Change is a Human Rights issue

1. Professor Boyd's major objectives as UN special rapporteur are :
 - a. *To serve climate change as a human rights issue for the first time; the right to live in a safe, healthy and clean environment*
 - b. *To take this objective from paper into reality*
2. Climate change is affecting human rights across the world and to meet the Paris Agreement levels there needs to be rapid change. Globally, there are 1 million species at risk of extinction because of human activities. Pollution is causing 7 million premature deaths around the world.
3. Over 100 countries across the world have made Constitutional amendments to include the right to a healthy environment. Jamaica's Constitution was amended in 2011, Cuba's in 2015, the Dominican Republic in 2019 all to include the environment. In some cases, this has taken the form of a review of existing environmental laws which leads to new laws or the strengthening of current laws as was the case in France.
 - In 1992, Norway strengthened their environmental laws. Companies used to dump toxic waste into the ocean but the law changed and within a number of years companies began complying with the changes.
4. The Escazu Agreement needs 13 ratifications to come into force and currently has 6. This is an important regional agreement.
5. There has been a surprising amount of jurisprudence from territories where rights have been recognised regionally. It is critically important that the courts relax their standing. Taking legal action to protect the environment itself. In many of these settings, courts have been expansive and moved into public interest considerations.
6. The substantive elements to environmental protection are:
 - clean air
 - access to safe drinking water
 - a non-toxic environment
 - healthy bio-diversity and ecosystems
 - safe climates
7. There is significant case law on the right to a healthy and sustainable environment which are emerging in all regions of the world. However, the current state of the world would indicate that we

still haven't gotten the balance right but there is some progress. The Government of Colombia turned down a multi-million dollar open gold-mining put because of the right to access safe drinking water and constitutional protection of the Human right to a healthy environment.

8. Judges have a vitally important role in determining environmental legislation and interpreting environmental law. The right to a healthy environment can change people's lives.
9. 25 children and teens in Colombia filed a law suit against deforestation. Another example of this is the case in Norway of the oil and gas spill.

Courts can also use constitutional rights as an aid to statutory interpretation and this was illustrated in the case from Seychelles about the poaching of wildlife. The courts used constitutional environmental rights to result in stronger penalties than would otherwise have existed.

10. There are additional resources available such as:
 - ECOLEX
 - Colombia University Climate Change Litigation Database
 - UN Special Rapporteur Website.

Questions and Responses :

Question: Participant from Jamaica- Why is the Court in Trinidad and Tobago called a Commission? In Jamaica, commissions are regarded as the footstools of Ministers. Isn't calling the court a commission a way of demoting the court in the eye of the public?

Response: His Honour Sunil Rookraj, Trinidad and Tobago – The Court is called a Commission but it is not temporary in nature as a Commission would be. The members of the Commission are appointed by the President of Trinidad and Tobago and not the Executive. None of the members of the Commission report to any politician. The Commission is a Superior Court of Record and can rule as they decide. The naming of the body was done in 2000 and perhaps there needs to be an update and reform of this.

Comment: The Honourable Mme Justice Charmaine Pemberton, Court of Appeal, Trinidad and Tobago: One of the reasons that the Commission is effective is its experts and the fact that other disciplines such as engineering are engaged in this work. This goes a long way and is pertinent and meaningful to the Commission's deliberations.

Response: His Honour Sunil Rookraj, Trinidad and Tobago – The limitations of the Commission are because of the legislative and the jurisdictions but they have different skill sets on the bench and make for more wholistic discussion. Hopefully, this is reflected in the decisions of the court.

Question: Participant from Jamaica – Whether it is time for the states which have signed the agreement to push the United Nations for sanctions against the United States and China and what is being done internationally in that regard?

Response: Professor David R Boyd – Under the current regimes the United Nations frameworks and treaties do not include state-state sanctions and penalties for failure to meet their required undertakings. This

is definitely a weakness of the court but there is some growth in states agreeing to and making progress in fulfilling their obligations.

There is a need for more aggressive action to reduce greenhouse gas emissions. The UN Special Rapporteur report still states that wealthy countries have to take the lead and should not be exploring more oil, gas and coal if we already have more reserves of this that we can burn.

In fact, wealthy countries have pledged 100 billion dollars a year to meet climate change concerns in recognition that the countries who do the least damage suffer the most.

The loss and damage principle recognises that no matter what is done there will be damage. In 1992, there was a commitment to address this but after 27 years, no money has gone into this. Recently, the UN was to take up a proposal given by the Maldives 10 years ago to add a levy of between 10-27 dollars on each flight purchased which would go towards addressing loss and damage.

Question: His Honour Sunil Rookraj, Trinidad and Tobago – What about the issue of relaxing locus standi before the courts ?

Response: Hon. Mr. Justice Gregory Smith– I am all for relaxing locus standi before the Commission in Trinidad and Tobago. Since there is no appeal I do not think that it will affect much but it will make allowances for this.

Locus standi has already been reduced and exists. In Jamaica persons can bring a matter if they are or are likely to be affected.