Environmental aspects of economic, social and cultural rights
Chinese and Norwegian perspectives

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1. Introduction

After the Special Rapporteur on human rights and the environment submitted her final report in 1994,¹ the topic received little attention in relevant United Nations human rights institutions.² Human rights and environmental protection has reappeared as an important topic on the agenda of the human rights bodies. On the basis of the UN High Commissioner for Human Rights’ “Analytical study on the relationship between human rights and the environment”,³ the Human Rights Council appointed “an independent expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment” in 2012.⁴ This article examines how the Committee on Economic, Social and Cultural Rights (ESCR Committee) has approached environmental issues, and explores China and Norway as case studies.

Despite the apparent and essential differences between China and Norway, there are some characteristics that may justify a joint treatment of the two countries. With regard to economic, social and cultural rights, both China and Norway are parties to the UN Covenant on Economic, Social and Cultural Rights (CESCR, 1966) and were subject to country reviews in 2005.⁵ Both countries were also scheduled to submit country reports in 2010 – China’s second report and Norway’s fifth report.⁶ One main concern of Norway currently is whether and how the welfare state it has built during the 20th century can be maintained and adapted to current economic, social, cultural and environmental challenges. The Norwegian situation has arguably similarities to China’s effort to achieve a harmonious society in which citizens’ welfare is a key factor.

² See A/HRC/19/34 and A/HRC/19/L.8/Rev.1, and documents referred to in the latter.
³ A/HRC/19/34.
⁴ A/HRC/19/L.8/Rev.1 para. 2.
⁵ See http://www2.ohchr.org/english/bodies/cescr/cescrs34.htm.
⁶ For Norway, see UN doc. E/C.12/NOR/5. The Chinese report is currently not available in English.
Environmental issues are important to both Norway and China. To Norway environmental protection raises significant issues regarding the balance between freedoms of private parties and the need to restrict such freedoms for environmental protection purposes. Moreover, Norway is a main exporter of raw materials, in particular petroleum and fish, and is currently considering measures to develop the mining sector. These sectors are challenging from environmental perspectives. Being a main exporter of products and some raw materials, including minerals, China faces a number of exploitation and production related environmental problems. The Norwegian and Chinese environmental challenges are to a significant extent related to economic, social and cultural rights, e.g. local air and water pollution, access to and use of natural resources, and noise levels.\(^7\)

One main objective of this article is to explore to what extent and how environmental issues have been addressed in the ESCR Committee’s review of Norway and China. The article will focus on the reviews carried out in 2005, since relevant documentation is not yet available regarding the reviews based on the country reports scheduled for 2010. On this basis, the article aims at contributing to debate the role of such country reports from an environmental perspective, and it asks whether the reporting system can be used more effectively to promote environmental policy reforms. The findings of this article may thus be of interest to the ongoing review process.

Initially, the article will relate these issues into the broader discussion of the relationship between human rights and the environment (section 2). Thereafter it distinguishes between two main issues: a rights-based approach to environmental protection (section 3) and synergies between human rights and environmental protection (section 4).

2. Human rights and the environment
We may distinguish between two main approaches, or “tracks”, to deal with the relationship between human rights and environment. The first “track” takes as its starting point environmental protection and explores to what extent and how a rights-based approach to environmental protection can contribute to environmental objectives. The second “track” takes as its starting point existing human rights and explores their relationship to environmental issues. The main focus of this track is to what extent and how human rights can be reformed in order to contribute more positively to environmental protection.

1) The Stockholm Declaration of 1972 formulated a rights-based approach to environmental protection in principle 1.\(^8\) Subsequently, there was significant discussion on how to further pursue the idea of a rights-based approach among diplomats and in the literature. However, little has been achieved in more recent policy documents; neither the World Charter for Nature nor the Rio and Johannesburg

\(^7\) For an environmental assessment of the negotiations of a free trade agreement between China and Norway, see http://fni.no/Norway-China-FTA/index.htm.

\(^8\) Stockholm Declaration of the United Nations Conference on the Human Environment, principle 1: “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, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”
Declarations refer to rights-based approaches to environmental protection. One major achievement was, however, the UN Economic Commission for Europe’s adoption of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998). This Convention, which is open to countries outside the Commission for Europe, focuses on procedural issues. Despite the limited success in establishing consensus regarding a rights-based approach to environmental protection in general global instruments, there are some isolated examples of rights-based approaches under some environmental treaties, ranging from specific treaty provisions to the establishment of formal and informal compliance and implementation procedures that allow for the involvement of private parties and NGOs.

Efforts at promoting inclusion of environmental provisions in human rights treaties at the global level have not been successful. In a regional context, environmental clauses have been included in article 24 of the African Charter on Human and Peoples’ Rights (1981), in article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988), and in article 37 of the Charter of Fundamental Rights of the European Union (2007). These provisions are formulated in general terms and their practical use can be questioned.

At the national level rights-based approaches to environmental protection have been more extensively used by some countries, in particular through adoption of environmental clauses in constitutions. Both Norway and China have adopted environmental provisions in their constitutions. While the Norwegian provision is rights-based, the Chinese provision focuses on the duties of the state. However, as is the

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10 However, article 1 on the Convention’s purpose emphasize the link between procedural and substantive rights in stating that: “In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.” This Convention also provides for a compliance mechanism in which individuals can bring forward complaints to an independent Compliance Committee (see http://www.unece.org/env/pp/cc.html).

11 See, for example, article 10(c) and (d) of the Convention on Biological Diversity (1982) and the discussions of establishment of non-compliance institutions under article 17 of the Stockholm Convention on Persistent Organic Pollutants (2001) and article 17 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998).

12 Article 110b of the Norwegian Constitution states: “Every person has a right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources should be managed on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.
case for many countries having adopted similar provisions, the Norwegian provision has been largely ineffective.\textsuperscript{14}

The relevance of this track to the CESCR is through provisions of the Covenant that explicitly emphasise environmental aspects. The only provisions of the CESCR that contain such references are the provisions on the right to health; article 12(2)(b), and on the right to self-determination; article 1(2).

2) As a starting point for exploring the human rights based track, we may observe that the relationship between human rights and the environment faces a major tension between the inherent anthropocentrism of human rights and calls for protecting the environment on its own merits (by some referred to as an eco-centric approach to environmental protection).\textsuperscript{15} This tension shows that the relationship between human rights and environmental protection is two-sided. On the one hand, human rights and protection of the environment can be mutually supportive. In such situations, the main challenge is to ensure that synergies are maximized. On the other hand, human rights and protection of the environment may conflict, such as where human rights can be invoked to prevent the application of environmental policy measures or to promote activities that will be environmentally harmful. In such situations, the main challenge is to prevent such conflicts and to secure a reasonable balancing of the interests involved. Both these situations may occur under the CESCR. Tensions could occur in relation to the right to work (article 6) and the right to an adequate standard of living (article 11). Synergies, on the other hand, could occur in relation to the right to a standard of living (article 11), the right to health (article 12), and the right to education (article 13).

In the following, we shall first explore how the provisions of the CESCR that explicitly refers to environmental issues have been followed up by the ESCR Committee and in the context of the country reviews of Norway and China. Thereafter, we shall examine how environmental issues have been dealt with under other provisions of the CESCR.

3. Track 1: A rights based approach to environmental protection

> In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.
> The authorities of the State shall issue specific provisions for the implementation of these principles.”

\textsuperscript{13} Article 26 of the Chinese Constitution states: “The State protects and improves the environment in which people live and the ecological environment. It prevents and controls pollution and other public hazards.
> The State organizes and encourages afforestation and the protection of forests.”


The only provision of the CESCR that explicitly links to environmental protection is article 12.2 which states that: “The steps to be taken by the States Parties to the present Covenant to achieve the full realization of [the right of everyone to the enjoyment of the highest attainable standard of physical … health] shall include those necessary for … [t]he improvement of all aspects of environmental … hygiene”. This provision raises several problems of interpretation. In particular, the concept “environmental hygiene” remains unclear.

The ESCR Committee’s General Comment no. 14 clarifies the concept “environmental hygiene” by stating that it: “comprises, inter alia, … the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.” Moreover, this General Comment calls on state parties to formulate national policies with the objective of “reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline”, and it states that:

Violations of the obligation to protect follow from the failure of a State to take all necessary measures to safeguard persons within their jurisdiction from infringements of the right to health by third parties. This category includes such omissions as … the failure to enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.16

Relevant issues are also mentioned in General Comment no. 15 on the right to water:

Environmental hygiene, as an aspect of the right to health under article 12, paragraph 2 (b), of the Covenant, encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions. For example, States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes.17

A main instrument to enhance the effective implementation of of the provisions of the CESCR is the Reporting Guidelines.18 This version of the Reporting Guideline, which will be used in the following, was adopted in 2009 and was not applicable when Norway and China submitted their 2004 reports. The only element of the Reporting Guidelines of relevance here is para. 57 which sets out that states shall “[p]rovide information on the measures taken: … (b) To prevent, treat and control diseases linked to water …”. The reporting guidelines thus focus on a very limited environmental aspect of article 12(2)(b) – water pollution. Air and soil pollution, including noise and radiation, have been left out. This means that currently there is no incentives in the Reporting Guidelines to report aspects of health related environmental threats that are serious in both Norway and China, as well as in most developed countries: air pollution in urban areas.19

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18 UN doc. E/C.12/2008/2.

19 An EU estimate published in 2008 states that “[o]zone exposure is thought to cause the premature deaths of up to 20 000 people within the EU each year. Furthermore, it is responsible for the increased use of medicine for respiratory conditions, corresponding to 30 million additional medication-use days a year.” Published at http://www.eea.europa.eu/maps/ozone/impacts/costs-of-ozone-pollution.
The Norwegian 2004 Report to the CESCR Committee identifies environmental pollution among the most important cancer risk factors. Moreover, the report contains a separate heading on environmental health care which focuses on the responsibilities that have been imposed on municipal authorities. However, the report does not mention the significant challenges Norway faces regarding air pollution. One report published in 2007 by the relevant Norwegian administrative institutions finds that “more than 800 000 people are annoyed on a daily basis due to traffic and air pollution in the cities.” Despite this serious situation and in light of the omission of environmental issues in the revised Reporting Guidelines, it is noteworthy that the Norwegian 2010 Report to the Committee contains no information of interest regarding environment-related health.

China’s 2004 report includes a voluminous account of health-related issues. Despite significant environment-related health problems in China, there are few references to environmental issues in this part of the report. It mentions “environmental hazards” among the “new health problems”, it points to efforts to prevent health hazards from polluted drinking water, and it refers to efforts to monitor air and water quality. As a contrast, there is significant emphasis on occupational health in the report.

The reports indicate that Reporting Guidelines are essential for the implementation efforts of countries under the CESCR. It is therefore of great importance that Reporting Guidelines reflect the content of treaty provisions and subsequent agreement on how they are to be interpreted and implemented, such as through General Comments.

Another provision of the CESCR that explicitly refers to environmental issues is article 1.2. It states that:

> All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligation arising out of international economic co-operation, based upon the principles of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

This provision is common to the CESCR and the Covenant on Civil and Political Rights (CCPR, 1966). China has not ratified the latter, and is therefore only bound by the CESCR. The ESCR Committee has not adopted any General Comment regarding article 1.2. However, the Human Rights Committee has expressed the following regarding article 1.2 in its General Comment no. 12:

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21 Ibid. paras. 313-315.

22 The total population of Norwas was less than 5 million at the time. Folkehelseinstituttet, TØI and SFT, _Helseeffekter av luftforurensning i byer og tettsteder i Norge_, 2007, p. 3.

23 E/C.12/NOR/5.

24 One estimate study estimates that outdoor air pollution caused 470 000 premature deaths in China in 2000, see Junfeng Zhang, Denise L Mauzerall, Tong Zhu, Song Liang, Majid Ezzati, and Justin V Remais, _Environmental health in China: progress towards clean air and safe water_, Lancet 2010; 375, p. 1111.


26 See also CESCR article 11.2(a). The implementation of this provision shall be further explored under section 4.
This right entails corresponding duties for all States and the international community. States should indicate any factors or difficulties which prevent the free disposal of their natural wealth and resources contrary to the provisions of this paragraph and to what extent that affects the enjoyment of other rights set forth in the Covenant.

Despite not being directly related to the CESCR, it can be argued, on the basis of a need for consistency, that this statement should be taken into account when interpreting article 1.2 of the CESCR.

On the one hand, article 1.2 can be interpreted as a right to environmental qualities that ensure long-term availability of “natural wealth and resources”. Such an interpretation of the provision would correspond to the concept “environmental sustainability”. On the other hand, the provision can be interpreted as a freedom to determine how to utilize existing natural wealth and resources regardless of consequences for future generations. Moreover, the term “peoples” remains undefined. Neither General Comment no. 12 of the CCPR nor the Reporting Guidelines resolve these interpretative issues.

Norway and China do not comment upon environmental aspects of article 1.2 in their 2004 reports. In order to follow up a request in the CESCR Committee’s Concluding Observations regarding Norway’s 2004 report, Norway’s 2010 report includes information on how Sami interests have been reflected in recent legislation within a broad variety of fields, as well as numerous references to reports under the CCPR and ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989). However, this report does not emphasize environmental issues beyond a reference to one of the acts, the Finnmark Act, pointing out that its purpose is to “help ensure that the land and natural resources in Finnmark are managed in a balanced and ecologically sustainable manner”. 28

The limited focus on environmental perspectives in the country reports is reflected in the ESCR Committee’s Concluding Observations. The only references of some relevance in relation to Norway were the recommendation in the Concluding Observations to “ensure that the Finnmark Act, which is currently being considered by parliament, gives due regard to the rights of the Sami people to participate in the management and control of natural resources in the county of Finnmark”, and implicitly in the recommendation that Norway “adopt effective measures to address the underlying causes of regional disparities in health indicators.” 29 The reference to environmental issues in the Committee’s Concluding Observations on China were more explicit: “The Committee requests the State party to include, in its next periodic report, detailed information on environmental policies formulated by the State party, in particular, policies to reduce atmospheric pollution, and to evaluate the impact of large infrastructure development projects on the environment.” 30 This request is not explicitly linked to specific provisions of the CESCR. Its appearance among observations regarding health issues indicates that the Committee was primarily concerned with health-related issues. In addition, the Committee commented on access to safe drinking water. 31 The Committee had no environment-related observations regarding Hong Kong and Macau.

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28 E/C.12/NOR/5 p. 17.
29 E/C.12/1/Add.109 paras. 26 and 39.
30 E/C.12/1/Add.107 para. 63.
31 Ibid. paras. 34 and 62.
The ESCR Committee should be commended for explicitly mentioning environmental issues in the Concluding Observations regarding China. However, we may question why the Committee focuses on environmental issues in relation to China while ignoring such issues in relation to Norway. Given that Norway has been ranked highest on the Human Development Index almost every year since 2000,\(^{32}\) we could expect the Committee to be attentive to policy areas where Norway faces significant challenges. Despite arguments, *inter alia* based on the “Environmental Kuznets Curve”, that highly developed countries decouple economic development and environmental degradation,\(^{33}\) the development of environmental indicators in Norway shows that overexploitation of natural resources and deterioration of environmental conditions remain among its main challenges.\(^{34}\)

We can conclude that the ESCR Committee has failed to establish appropriate mechanisms and procedures for dealing with environmental aspects of articles 1.2 and 12.2 of the CESCR. The above findings also indicate that states have failed to integrate environmental interests and environmental NGOs in their processes and efforts to progressively implement the CESCR. This is remarkable given that the relationship between human rights and the environment has been extensively discussed since the early 1970s.\(^{35}\)

4. **Track 2: Increasing synergies between human rights and environmental protection**

The second “track” aims at integrating environmental issues into the human rights system. This includes enhancing positive environmental effects of human rights and mitigating negative environmental effects that might result from the implementation of human rights. On the one hand, it can be argued that it is solely within the jurisdiction and responsibility of states to address the relationship between human rights and the environment. According to this line of argument, the ESCR Committee should focus on implementation of the commitments states have undertaken in the CESCR and not approach associated environmental issues. On the other hand, taking the debate on the fragmentation of international law as a starting point,\(^{36}\) it can be argued that that it is within the mandate of all intergovernmental institutions, including the ESCR Committee, to increase synergies and mitigate conflicts between related areas of international law. Such a mandate would include assisting countries in their efforts to harmonize human rights and environmental policies.

In 1994, the Special Rapporteur on human rights and the environment recommended that:

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\(^{34}\) See [http://www.environment.no/](http://www.environment.no/).


\(^{36}\) See the discussion of “Fragmentation of international law: difficulties arising from the diversification and expansion of international law” within the International Law Commission, accessible at [http://untreaty.un.org/ilc/guide/1_9.htm](http://untreaty.un.org/ilc/guide/1_9.htm).
the various human rights bodies should examine, in the various fields of concern to them, the environmental dimension of the human rights under their responsibility. She suggests in particular that the following themes should be regularly examined by the bodies, committees, working groups and special rapporteurs concerned: ... (d) Committee on Economic, Social and Cultural Rights. The Committee could frame general comments with a view to defining the interaction of the environment with the human rights under its responsibility. It could moreover examine, in the context of ongoing studies, the possibility of including communications on ecological matters in any procedure established by means of a protocol for the treatment of complaints by individuals or States;37

As follows from the discussion in section 3, the ESCR Committee has only to a very limited extent followed up these recommendations in the context of articles 1.2 and 12 of the CESCRR.

Against this background, we shall explore whether and how the CESCRR Committee has dealt with environmental issues in relation to other provisions than those discussed above. The provisions to be examined include article 6 on the right to work, article 7(b) concerning safe and healthy working conditions, article 11 on the right to an adequate standard of living, article 13 on education, and article 15 concerning science and culture.

The relationship between the right to work as recognized in article 6 and environmental protection involves both synergies and potential conflicts. Important issues concern the relationship between employment, pollution and access to natural resources. In both a Norwegian and a Chinese context, challenging issues may occur during modernization of communities that have traditionally depended on sustainable use of natural resources. Such issues have not been addressed in General Comment no. 16 on the right to work.38 On the one hand, it can be argued that such issues are complex and that it is inappropriate for the Committee to address them in general comments. On the other hand, it can be argued that the right to work has essential implications for environmental protection, and that it cannot be implemented without taking into account environmental consequences. A middle ground should be sought, perhaps based on asking countries to consider environmental and natural resource issues in their reports. Neither the Norwegian nor the Chinese reports have commented upon such issues.

A somewhat related issue is the right to safe and healthy working conditions according to article 7(b). It is hard to envisage a situation in which improved working conditions could lead to degraded environmental conditions. While situations of conflict cannot be ruled out, the main issue under article 7(b) is to maximize synergies between improved working conditions and environmental protection. Such issues have not been explored in general comments, the Reporting Guidelines or the reports of Norway and China.

Article 11 contains three main elements that are of relevance to environmental protection: right to adequate housing, freedom from hunger, and right to water. As in the case of the right to work, there is

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38 E/C.12/GC/18.
a complex relationship between these rights and environmental issues. However, contrary to the right to work, the ESCR Committee has on several occasions approached environmental issues under article 11. When considering the right to adequate housing, the Committee stated in General Comment no. 4 that: “housing should not be built on polluted sites nor in immediate proximity to pollution sources that threaten the right to health of the inhabitants”. Both China and Norway comment on environmental aspects of housing in their 2004 reports. China emphasizes important improvements, but recognizes that many challenges remain. Norway, on the other hand, concluded that: “Through an active anti-pollution policy, industrial emissions such as dust, odour, hydrochloric acid and sulphur dioxide have almost been eradicated.” There are few Norwegians living in main cities that would agree with this statement. In addition to the 800,000 who are annoyed on a daily basis due to pollution in Norwegian cities (see above), Norwegian authorities have estimate that between 500 and 2000 die prematurely due to air pollution every year, and that children and the old are the most vulnerable. Norway has reconsidered this issue in the 2010 report where it stated that “5% are subject to noise pollution from industrial activity, and 4% are bothered by air pollution from industrial activity and the like.” Noise and pollution from traffic do not seem to have been part of this assessment.

The relationship between food production and environmental protection is fraught with complexities. However, the emphasis of the ESCR Committee has been on the main synergies between the two, primarily as contained in the “food safety” objective which is closely associated with environmentally responsible food production. General Comment no. 12 on the right to adequate food highlights such synergies. China’s report indicates that it considers “the protection of natural forests, protection of natural ecosystems and the environment” to be a significant element of its policy on the right to food. Moreover, China emphasizes measures taken to avoid negative environmental consequences of food production. The Chinese report did not focus on food safety issues, and thus it did not focus on environmental synergies. The Norwegian 2004 report, on the other hand, has a main focus on food safety issues. It does not identify any challenges of importance regarding food safety or ecologically sustainable farming or fishing. None of the documents mention climate change in the context of the


40 E/1990/5/Add.59 paras. 109, 112 and 121-122.


42 See http://www.environment.no/Topics/Air-pollution/.

43 E/C.12/NOR/5 p. 56. See also pp. 58-59 concerning construction on polluted sites.

44 E/C.12/1999/5 paras. 4, 8 and 10.

45 E/1990/5/Add.59 para. 128.

46 Ibid. paras. 132-133 and 138.

right to food. Environmental issues are not explicitly mentioned in the Reporting Guidelines. The most relevant element is the request that countries provide “information on the measures taken to ensure the availability of affordable food in quantity and quality sufficient to satisfy the dietary needs of everyone, free from adverse substances, and culturally acceptable.”

Finally, the right to water has not been explicitly mentioned in the CESCR, but it has been considered to be an essential element of the right to an adequate standard of living, and it is also an element of the right to health. The Reporting Guidelines suggest that the right to water is mainly to be considered in the context of article 11. While the Reporting Guidelines do not explicitly mention environmental issues, such issues are dealt with extensively in General Comment no. 15 on the right to water. The issues concern prevention of unsafe and toxic water conditions, protection against water contamination and pollution, avoidance of over-exploitation, maintenance of environmental conditions conducive to good water quality, and availability of procedural rights. The Norwegian 2004 report did not consider issues related to water and the environment in the context of article 11. China’s 2004 report take up some issues, in particular related to water conservation and availability. Norway’s 2010 report, which is based on the updated Reporting Guidelines, contains a sub-section on water under article 11, but environmental issues were not mentioned.

The right to education according to article 13.1 of the CESCR does contain some guidance concerning the content education. While environmental issues are not mentioned explicitly, one could argue that education which enables “all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace” would need to cover environmental issues. General Comment no. 13 supports this view in stating that “new elements[, including respect for the environment,] are implicit in, and reflect a contemporary interpretation of article 13 (1).” Reflecting the fact that several environmental treaties emphasize the duty of states to include environmental issues in education, the General Comment states that education “has a vital role in ... protecting the environment”. The Reporting Guidelines request states to: “Indicate to what extent the form and substance of education in the State party are directed towards the aims and objectives identified in

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48 E/C.12/2008/2 para. 44.
49 See E/C.12/2008/2 paras. 48-49.
50 See E/C.12/2002/11 paras. 8, 10, 12(b), 16(c) and (d), 21-23, 28, 44(a) and (b), 48, 55.
51 E/1990/5/Add.59 para. 133. See also paras. 160 and 182 concerning the right to health.
52 E/C.12/1999/10 para. 5.
53 See, inter alia, art. 13 of the Convention on Biological Diversity (1992) and articles 4.1(i) and 6 of the UN Framework Convention on Climate Change (1992).
54 E/C.12/1999/10 para. 1.
article 13, paragraph 1”. The Norwegian and Chinese 2004 reports do not contain any information on whether and how environmental issues have been integrated in their education systems. The same is the case for the Norwegian 2010 report.

Finally, environmental issues are relevant under both aspects of article 15 – science and culture. While the relationship between these rights and environmental protection is complex in the sense that both synergies and conflicts may occur, the most prominent feature of the relationship seems to be synergies. The two General Comments that have so far been issued under article 15 do not focus on those aspects of the provision that are of most interest from an environmental perspective. However, it is of interest that General Comment no. 21 states that culture encompasses “natural and man-made environments”, as well as “methods of production or technology”. Moreover, the Comment emphasizes the availability of “nature’s gifts, such as seas, lakes, rivers, mountains, forests and nature reserves, including the flora and fauna found there, which give nations their character and biodiversity”. It also points out the dependency of indigenous peoples on access to land, resources, nature and genetic resources and maintenance of their associated traditional knowledge. As this General Comment was published in 2009, it is perhaps not surprising that neither China nor Norway paid any attention to environmental issues in those parts of their 2004 reports that considered cultural issues. The same is the case for the Reporting Guidelines, which do not include references to environmental issues in the context of article 15. This situation changed somewhat with the Norwegian 2010 report, as this report mentioned environmental and natural resource issues related to the Sami people. However, as indicated in the report, most of these issues are covered by the CCPR and ILO Convention no. 169 and Norway essentially limited its comments to references to reports submitted under these conventions.

5. Conclusions

55 E/C.12/2008/2 para. 58.

56 The only reference to environmental issues in the context of education relates to increases in the allocations to education in Norwegian development aid budgets, see E/C.12/4/Add.14 para. 434.

57 One area of potential conflict is highlighted in E/C.12/GC/21 para. 50(b).

58 General Comment no. 17 on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (E/C.12/GC/17), and General Comment no. 21 on the right of everyone to take part in cultural life (E/C.12/GC/21).


60 Ibid. paras. 16(a), 36-37, 49(d), 50(c) and 55(e).

61 The only exception being the Norwegian report that contained a paragraph on environmental research, see E/C.12/4/Add.14 para. 485.

62 E/C.12/NOR/5 pp. 7 and 79-80.
The conclusion in section 3 that the ESCR Committee has failed to establish appropriate mechanisms and procedures for dealing with environmental aspects was essentially confirmed when we explored the practice of the Committee under other provisions of the CESCR in section 4. One main exception, however, is article 11 on the right to an adequate standard of living. Here, the Committee has made considerable progress in integrating environmental issues. It is remarkable that the Committee has made more progress on this provision than on articles 1.2 and 12.2 where environmental issues have been explicitly mentioned in the text of the CESCR. But it is even more remarkable that environmental issues have been most extensively integrated in the right to water, a right that has not been explicitly mentioned in the CESCR. Hence, General Comment no. 15 on the right to water may serve as a model for how environmental issues can be integrated in other general comments. But the focus on environmental issues in General Comment no. 15 has not been carried over to the Reporting Guidelines. This is a major weakness that is likely to influence the way in which environmental issues are followed up in practice.

The case studies of China and Norway illustrate the importance of the Reporting Guidelines. If environmental issues are not explicitly mentioned in the Reporting Guidelines, the chances are high that environmental issues will only be mentioned on an ad hoc basis and mainly where countries refer to such issues to demonstrate successful implementation of the CESCR. Countries are unlikely to raise environmental issues when discussing the challenges they face in their implementation of the CESCR. This seems to be the case where environmental issues are mentioned in the General Comments and not in the Reporting Guidelines. In light of how environmental issues were addressed by China and Norway in their reports on articles 11 and 12, we may even ask whether the Reporting Guidelines are more important than the text of the Convention in this sense.

The Concluding Observations of the ESCR Committee did to a very limited extent mention environmental issues. In addition to relying on country reports, the Committee depends on input from third parties, including in particular civil society, when reviewing country reports. While China and Norway may have built on input from environmental authorities when preparing their reports, there are no traces of involvement of environmental NGOs or independent environmental experts in the documents studied for the purpose of this article. Hence, claims regarding the state of the environment and environmental policy have not been subject to any critical scrutiny.

If we compare the Chinese and Norwegian 2004 reports, we can observe that environmental issues were far more extensively integrated in the Chinese than in the Norwegian report. This is remarkable given the achievements of Norway in the field of economic, social and cultural rights, where it is ranked highest on the Human Development Index, compared to the welfare-related environmental challenges Norway currently faces. This demonstrates that there is a need for the Committee to more explicitly recognize environmental issues as part of its mandate and establish mechanisms to enable it to more effectively address environmental issues during its review process.

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63 E/C.12/2008/2 paras. 48-49.
Against this background, we may hope that the Independent Expert on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment (appointed in 2012) and the Special Rapporteur on the human rights obligations related to environmentally sound management and disposal of hazardous substances and waste (appointed in 1995, his mandate extended in 2011) will contribute to clarify the role of environmental and natural resource issues on the agenda of human rights bodies. However, there is a danger that human rights bodies could place environmental and natural resource issues on hold while waiting for the outcome of these processes. In the opinion of this author, much can and should be achieved in terms of integration of environmental and natural resources issues by human rights bodies in general and the ESCR Committee in particular on the basis of existing knowledge and policy decisions.