

UNDERSTANDING HUMAN RIGHTS RELATED TO THE ENVIRONMENT:

EXPLORING THEIR SCOPE AND IMPLICATIONS



UNIVERSAL RIGHTS GROUP



**UNDERSTANDING HUMAN RIGHTS
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EXPLORING THEIR SCOPE AND IMPLICATIONS**

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ABOUT THIS DOCUMENT

The objective of this document is to provide information about the status and scope of human rights related to the environment to States, United Nations entities, other intergovernmental organizations, civil society, and the private sector. It aims to support their efforts in achieving the effective implementation of human rights, particularly where their enjoyment depends upon the environment.

This document seeks to contribute to the expansion of knowledge and enhance clarity regarding the interrelationship between human rights and the environment. It acknowledges the potential of human rights law in facilitating redress for environmental harm caused by both State and non-State actors and in catalyzing environmental protection.

1. INTRODUCTION – THE INTERNATIONAL RECOGNITION OF HUMAN RIGHTS RELATED TO THE ENVIRONMENT

Human rights are inalienable and inherent to all human beings, regardless of origin, nationality, gender, ethnicity, language, religion, or any other status. These rights refer to freedoms, entitlements and prerogatives that are inherent to all individuals in recognition of their dignity as humans.

*International human rights law lays down the obligations of States to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.*¹

The foundations of international human rights law are the [Charter of the United Nations](#), as adopted by the General Assembly in 1945, and the [Universal Declaration of Human Rights](#) (UDHR), adopted in 1948 under the auspices of the United Nations and recognized today as the international standard on protection of human rights. The UDHR is, notwithstanding, not legally binding.

Following the adoption of the UDHR in 1948, and building upon the standard it set out, there are now nine core human rights international treaties, which are legally binding and have the objectives of setting rules to ensure the fulfillment of the human rights and fundamental freedoms embodied and enshrined in the UDHR (See Table 1).

Table 1. Core International Human Rights Treaties and other Instruments²

| | | |
|---|------------------------|-------------|
| International Convention on the Elimination of All Forms of Racial Discrimination | ICERD | 21 Dec 1965 |
| International Covenant on Civil and Political Rights | ICCPR | 16 Dec 1966 |
| International Covenant on Economic, Social and Cultural Rights | ICESCR | 16 Dec 1966 |
| Convention on the Elimination of All Forms of Discrimination against Women | CEDAW | 18 Dec 1979 |
| Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | CAT | 10 Dec 1984 |
| Convention on the Rights of the Child | CRC | 20 Nov 1989 |
| International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families | ICMW | 18 Dec 1990 |
| International Convention for the Protection of All Persons from Enforced Disappearance | ICED | 20 Dec 2006 |
| Convention on the Rights of Persons with Disabilities | CRPD | 13 Dec 2006 |

Source: OHCHR. The Core International Human Rights Instruments and their monitoring bodies. <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies>

¹ United Nations. (n.d.). *Human rights*. <https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more>

² For a complete list of Multilateral Treaties deposited with the UN Secretary General, see, e.g., The United Nations Treaty Collection (n.d.). *Chapter IV: Human Rights*. <https://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>

Human rights related to the environment

The enjoyment of multiple human rights enshrined in the core human rights treaties relates to or depends upon the environment.

Human rights relate to the environment either because their full enjoyment requires certain environmental conditions to be met, as is the case, for example, with the rights to life, health, or food (**substantive rights**), or because their enjoyment is essential to the protection of the environment, environmental rule of law,³ or other human rights (**procedural rights**).

The enjoyment of **substantive rights** is directly affected by – or dependent upon – certain environmental conditions.⁴ Substantive rights impose duties on States to secure specific outcomes, *inter alia*, in terms of the cleanness, healthiness, or sustainability of the environment. They include civil, political, economic, social, cultural, or collective human rights recognized in international instruments (e.g., conventions and declarations).

Procedural rights regard the formal steps to be taken to enforce substantive rights.⁵ As such, **procedural rights** refer to the processes that result or may result in environmental or human rights impact,⁶ and which observance is essential to “ensure that the interests of individuals or groups, in particular of those likely

to be affected, are taken into account in national or international procedures of environmental decision-making.”⁷

Of particular importance for human rights and the environment are access⁸ and participatory rights⁹ which include the right to access to information, the right to public participation, and the right to justice.¹⁰ The Rio Declaration, the Aarhus Convention, and the Escazú Agreement, for instance, recognize these three rights as key pillars of environmental governance.

Both substantive and procedural rights are universal, indivisible, inalienable, interdependent, interrelated, and mutually reinforcing. They are all equally important in upholding human dignity without distinctions and form a crucial part of the right to a healthy environment, as they embody its substantive and procedural dimensions.¹¹

There currently is no single international instrument that compiles and codifies all human rights that relate to the environment. However, a complex body of hard¹² and soft¹³ international law instruments, combined with regional and national norms and standards,¹⁴ regulates and clarifies the scope and content of States’ human rights obligations related to the environment.

3 United Nations Environment Programme (2019). *Environmental Rule of Law: First Global Report*. https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report?_ga=2.207408787.1848091871.1650467795-1588647127.1648519795

4 Daly, E. (2012). *Constitutional Protection for Environmental Rights: The Benefits of Environmental Process*. *International Journal of Peace Studies*. https://www3.gmu.edu/programs/icar/ijps/Vol17_2/DalyConstitutionalProtection.pdf

5 United Nations Environment Programme (n.d.). *What are environmental rights?* <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what>

6 United Nations Environment Programme (2019). *Environmental Rule of Law: First Global Report*. p. 4.

7 Peters, B. (2018). *Unpacking the Diversity of Procedural Environmental Rights: The European Convention on Human Rights and the Aarhus Convention*. *Journal of Environmental Law*, 30(1), p. 1-27. <https://academic.oup.com/jel/article/30/1/1/4430982>

8 United Nations Environment Programme (n.d.). *What are environmental rights?*

9 Norwegian National Human Rights Institution (n.d.). *Climate and Human Rights*. *Procedural Rights*. <https://www.nhri.no/en/report/climate-and-human-rights/7-procedural-rights/>

10 United Nations Economic Commission for Europe (1998). *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. p. 3. <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

11 Center for International and Environmental Law (n.d.). *Environmental Democracy & Access Rights*. <https://www.ciel.org/issue/environmental-democracy-access-rights/>

12 Namely, international conventions that contain binding and enforceable rules for their State parties.

13 General principles instruments. Soft law instruments are not legally binding and enforceable, but these contribute to clarifying the scope and content of hard law norms and filling voids in legal frameworks. Moreover, ‘it appears that soft law has the potential to evolve into or influence the creation of, more formal and binding international law norms, both treaties and international custom. This, as is explained below, is particularly evident in the evolution of environmental rights. Boyd, D. R. (2010). *The environmental rights revolution: constitutions, human rights, and the environment (T)*. University of British Columbia. <https://open.library.ubc.ca/collections/ubctheses/24/items/1.0058239>

14 Ibid.

While the environmental dimension of human rights and the links between human rights and the environment were not expressly included in the International Bill of Rights,¹⁵ most certainly due to the fact that environmental concerns were not squarely on the international agenda at the time these instruments were adopted,¹⁶ there were implicit early insights into the relationship between human rights and the environment. For example, as early as 1966, the ICESCR indirectly recognized the instrumental nature of environmental conditions for the enjoyment of human rights when it established States' obligation to improve environmental hygiene as a necessary step to secure the full enjoyment of the right to health (Article 12).¹⁷

Over the past decades since the 1972 **Stockholm Declaration**¹⁸, international environmental law has been developed in a very *ad hoc* and fragmented way to tackle very specific issues, without having an integrated nor a holistic approach to human rights related to the environment.

At the international level, the Stockholm Declaration of 1972 is considered the first building block of environmental law¹⁹ because, notwithstanding its non-binding nature, it contributed to place environmental protection and environmental concerns squarely on the multilateral agenda²⁰ in an integrated manner

and some of its principles 'have evolved into binding rules of customary international law.'²¹ The Stockholm Declaration has further inspired several enforceable multilateral agreements and continues to this day inspiring further action.

The Stockholm Declaration is made up of 26 principles, an Action Plan, and multiple resolutions that guide States in their efforts to address environmental concerns, while placing environmental considerations front and center of development. Notably, it can be argued to contain the first international recognition that the realization of many human rights depends upon the environment, and as such, entails corresponding obligations for all persons (not only States) to protect and improve the 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.

This makes it the first indirect recognition of the existence of substantive elements to the right to a healthy environment.

15 The International Bill of Rights refers to the rights contained in the UDHR, and the subsequent instruments that codified these, such as the ICCPR and the ICESCR.

16 Knox, J. (2016). *The United Nations Mandate on Human Rights and the Environment*. https://www.ohchr.org/Documents/Issues/Environment/CRC_DGD_Sept2016.docx

17 United Nations General Assembly (1966). *International Covenant on Economic, Social and Cultural Rights*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

18 United Nations Conference on the Human Environment (1972). *Stockholm Declaration*. <https://www.stockholmdclaration.org/about/>

19 See, e.g., Chasek (2020). *Stockholm and the Birth of Environmental Diplomacy*. International Institute for Sustainable Development. <https://www.iisd.org/articles/deep-dive/stockholm-and-birth-environmental-diplomacy>

20 The first instrument to mention environmental concerns was the 1946 International Whaling Convention, which recognizing inter alia 'the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks', seeks to 'ensure proper and effective conservation and development of whale stocks.' The United Nations Treaty Series (1946). 1946 International Convention for the Regulation of Whaling. p. 72, 62. Stat. 1716.

21 Boyd, D. (2010). *The Environmental Rights Revolution: Constitutions, Human Rights, and the Environment* (T). p. 80.

The Declaration was also the first to acknowledge (albeit implicitly) that the enjoyment of some procedural rights depends upon the environment, through its recognition of the need to cooperate in the development of laws regarding liability and compensation for victims of environmental harm.

Principle 22. States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

The Declaration was also ground-breaking in its emphasis on the interdependence between development and the sustainable and responsible use of natural resources.²² In its recognition that economic development must not come at the expense of environmental matters and should instead be pursued in a manner that protects and improves the environment for **the benefit of local populations, the Declaration demonstrates its implicit concern for the fact that the realization of human rights may depend upon the environment.**

Principle 12. Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may emanate from their incorporating environmental safeguards into their development planning and the need for making available to them, upon their request, additional international technical and financial, assistance for this purpose.

Principle 13. In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is

compatible with the need to protect and improve environment for the benefit of their population.

Principle 14. Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.

Moreover, the Stockholm Declaration makes clear that environmental concerns (like human rights concerns) are global, rather than geographically limited, in scope. As such, to effectively address them, both national-level efforts and coordinated international action and cooperation amongst States is required.

In the aftermath of the Stockholm Conference, States began to adopt a series of multilateral environmental agreements (MEAs)²³ to implement the principles and recommendations contained in the Declaration. While almost none of these instruments mention human rights explicitly, many of them indirectly acknowledge the links between human rights and the environment (See Table 3).

Indeed, since Stockholm, there has been considerable progress in recognizing the interrelation between human rights issues and environmental matters. States have continued to update, develop, and implement international human rights related to the environment, increasingly clarifying the relationship.

For example, in 1989, the UN adopted the Convention on the Rights of the Child (CRC), which acknowledges the link between the rights of children, including their health and education, and the environment (See Section 3 below for further information on the human rights related to the environment of children). Article 24 of the CRC establishes States' obligations 'to combat disease and malnutrition, including within the framework of primary health care, though, *inter alia*, the provision

²² United Nations (2022). *Delivering on the vision of the 1972 Stockholm Declaration and achieving the 2030 Agenda for Sustainable Development*. https://unemg.org/wp-content/uploads/2022/06/UNEP_EMG_Delivering-on-the-vision-of-the-1972-Stockholm-Declaration-Rev3.pdf

²³ For a complete list of Multilateral Treaties related to the environment as deposited with the United Nations Secretary General, see, e.g., The United Nations Treaty Collection (n.d.). *Chapter XXVII: Environment*. https://treaties.un.org/pages/Treaties.aspx?id=27&subid=A&clang=_en

of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution,' and 'to ensure that all segments of society, in particular parents and children, are informed, [of]... the advantages of... environmental sanitation.' The CRC also includes in Article 29 the obligation of all States to incorporate 'respect for the natural environment' as an integral part of children's right to education.

In 1992, United Nations Member States gathered in Rio de Janeiro, Brazil, to reaffirm the Stockholm Declaration and refocus international attention on environmental protection in the context of the socio-economic impacts of development. Ultimately, the Conference on Environment and Development, as the meeting was called, went far beyond mere reaffirmation. State participants agreed on a detailed sustainable development agenda called Agenda 21, a Statement of principles for the Sustainable Management of Forests, and the Rio Declaration, which enumerates a series of concrete principles to guide efforts to achieve sustainable development (explicitly using this term), reaffirming that the right to development, like all human rights, is inherently dependent upon effective environmental protection.

During the Rio Conference, States further adopted three key MEAs, amongst other important milestones,²⁴ for the development of a framework on human rights and the environment, that indirectly acknowledge their interrelationship (See Table 3 for further information):

1. United Nations Framework Convention on Climate Change (UNFCCC),
2. United Nations Convention to Combat Desertification (UNCCD), and
3. United Nations Convention on Biological Diversity (CBD).

²⁴ Other relevant developments that followed the Rio Conference include organizing the Global Conference on Sustainable Development of Small Islands Developing States (Barbados Conference) 'to help small island states find solutions to the environmental and development challenges they were facing'. The Conference was the first global conference on sustainable development and the implementation of Agenda 21. See, e.g., United Nations (1994). *Global Conference on the Sustainable Development of Small Island Developing States: Bridgetown, Barbados*. <https://www.un.org/en/conferences/small-islands/bridgetown1994>

Notwithstanding the importance of all Rio Principles, the Rio Declaration is perhaps best known for being the first environmental instrument to internationally recognize three fundamental procedural rights in environmental matters, namely the rights to public participation, access to information, and access to justice. Although these three procedural rights were already part of international human rights law, under the UDHR and the ICCPR, with the Rio Declaration a specific interrelation with environmental concerns was recognized.

Principle 10 of the Rio Declaration establishes that:

*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.*

“ **Principle 14. Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.** ”

Principle 10 formed the basis of the **Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)** under the United Nations Economic Commission for Europe (UNECE), which establishes legally binding obligations for States with respect to procedural rights in environmental matters.²⁵ Its Protocol on Pollutant Release and Transfer Registers²⁶ also establishes obligations for State parties regarding effective implementation of the procedural rights to access to information, access to participation and access to justice in environmental matters.²⁷

The Aarhus Convention *'instructs Parties on how to take steps to guarantee the basic right of present and future generations to live in an environment adequate to health and wellbeing.'*²⁸

Even though the Aarhus Convention was originally negotiated as a regional agreement in 1998, in 2011 the Parties allowed for accession to the Convention by States from outside the UNECE region.²⁹ Notwithstanding the possibility of having a global scope, the Aarhus Convention has only been ratified by 47 countries, although this includes non-UNECE **countries such as Guinea-Bissau**.³⁰ This situation prompts the United Nations, notably through the work of UNEP, and State Parties to undertake efforts to increase ratifications and accessions to the convention. The aim is to achieve the universal implementation of norms regulating environmental procedural rights.

The Aarhus Convention influenced the content of other MEAs. One of these, is the Espoo Convention and Protocol on Strategic Environmental Assessment,³¹ which recognizes the 'importance of providing for public participation in strategic environmental assessment' and establishes obligations for States to fulfill these procedural rights. Similarly, the UNECE Protocol on Water and Health regulates, *inter alia*, the rights to access to information and public participation in the context of water management and the protection of water ecosystems.³²

In September 2000, UNEP Infoterra³³ representatives gathered in Dublin to, *inter alia*, agree on concrete steps to further implement Principle 10 of the Rio Declaration. The Dublin Declaration, which resulted from this meeting, creates a consortium, with the participation of non-governmental organizations, that leverages internet technologies to increase access to environmental information.

The declaration also states that:

'States which are not signatories to the Aarhus Convention should be encouraged to consider the option of acceding to the Convention where this fits their particular circumstances and to explore the possibility of undertaking similar initiatives in their own region or subregion, taking note of the Convention and other relevant instruments such as the Inter-American Strategy for the Promotion of Public Participation in Decision-making for Sustainable Development, as potentially useful reference documents in this context.'

25 United Nations Economic Commission for Europe (1998). *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

26 United Nations Economic Commission for Europe (2009). *Protocol on Pollutant Release and Transfer Registers*. <https://unece.org/env/pp/protocol-on-prtrs-introduction>

27 Ibid.

28 Ibid. p. 42.

29 United Nations Economic Commission for Europe (2011). *Meetings of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Decision V/8-I/8, Accession by Member States of the United Nations not members of UNECE*. <https://unece.org/DAM/env/documents/2011/eia/decision.V.8-I.8.e.pdf>

30 United Nations Economic Commission for Europe (1998). *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Status of ratifications*. https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27&clang=_en

31 United Nations Economic Commission for Europe (1991). *Convention on Environmental Impact Assessment in a Transboundary Context: Protocol on Strategic Environmental Assessment*. https://unece.org/fileadmin/DAM/env/eia/documents/legaltexts/Espoo_Convention_authentic_ENG.pdf

32 United Nations Economic Commission for Europe (2021). *The Protocol on Water and Health: Driving action on water, sanitation, hygiene and health*. <https://unece.org/environment-policy/water/protocol-on-water-and-health/about-the-protocol/introduction>

33 UNEP Infoterra is the International Referral System for Sources of Environmental Information, a component of EARTHWATCH, UNEP's programme for the critical assessment of the global environment. See, e.g., United Nations Environment Programme (2001). *Dublin Declaration on Access to Environmental Information: Note / by the Executive Director*. <https://digitallibrary.un.org/record/514794?ln=es>



The special session of the United Nations General Assembly marking the tenth anniversary of the Earth Summit should give consideration to the possibility of developing a global instrument promoting the application of principle 10 of the Rio Declaration, with broad involvement of non-governmental organizations and taking account of the Aarhus Convention and other regional initiatives.'

In 2012, as States gathered to commemorate the 20 years of the Rio Declaration, States from the Latin American region agreed on a declaration committing to the regional implementation of Principle 10 of the Rio Declaration.³⁴ This was the starting point for a treaty negotiation process that culminated in 2018 with the adoption of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement).³⁵

The **Escazú Agreement** provides a binding framework for Latin America and Caribbean State Parties (see Table 3 for further information). It is the first environmental treaty of the region to establish precise State obligations to secure the realization of the rights to public participation, access to information and justice in environmental matters, and the first in the world to establish obligations to ensure the protection of all individuals and organizations working to protect the environment.

However, with a few exceptions, many of the early efforts at developing an international framework on the protection of the environment did not specifically take into consideration the human rights impacts of climate change.

One such exception is the 1989 Hague Declaration,³⁶ in the aftermath of a conference of States in the Hague convened by the Dutch, French, and Norwegian governments, which linked threats to the atmosphere with threats to the human right to life and called for a framework convention on climate change: *'the right to live is the right from which all other human rights stem... Today, the very conditions of life in our planet are threatened by the severe attacks to which the earth atmosphere is subjected.'*

That same year, the United Nations General Assembly included on its agenda the item 'Protection of global climate for present and future generations of mankind,' marking the first move toward a consensus-building process around the need for new approaches and institutions to address climate changes and atmospheric threats, in relation to human rights and the needs of developing and coastal nations.

Subsequent efforts to secure the universal recognition of the human rights impacts of climate change came from affected communities and States.

In 2005, the Inuit filed a petition³⁷ before the Interamerican Commission on Human Rights (IACHR) requesting assistance to 'obtaining relief from human rights violations resulting from the impacts of global warming and climate change caused by acts and omissions of the United States.'³⁸ The petition illustrated the links between 'their rights to the benefits of culture, to property, to the preservation of health, life, physical integrity, security, and a means of subsistence, and to residence, movement, and inviolability of the home,³⁹ and climate change, particularly the effects of global warming on the Arctic.

34 United Nations Conference on Environment and Development (1992). *Rio Declaration on Environment and Development*. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

35 Economic Commission for Latin America and the Caribbean (2018). *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*. <https://hdl.handle.net/11362/43583>

36 United Nations Framework Convention on Climate Change (1993). *The Hague Declaration on the Atmosphere*. <https://unfccc.int/resource/ccsites/senegal/fact/fs217.htm>

37 Watt-Cloutier, S., & Inuit Circumpolar Conference (2005). *Petition to the Inter American Commission on Human Rights seeking relief from violations resulting from global warming caused by acts and omissions of the United States*. <https://hh30e7.p3cdn1.secureserver.net/wp-content/uploads/finalpetitionicc.pdf>

38 Ibid. p. 9.

39 Ibid. p. 5.

Although the petition was denied by the IACHR on the grounds that it was unable to determine a breach of the rights protected by the American Declaration,⁴⁰ the IACHR granted the Inuit a hearing on this matter in 2006.⁴¹ The testimonies presented during the hearing⁴² demonstrated the deep implications of climate change and its effects for the enjoyment of human rights.⁴³

Later, in 2007, representatives of Small Islands Developing States met in Malé, Maldives, to devise concrete multilateral pathways to link climate change and human rights, and to address the human rights impacts of climate change. The resulting document, the **Malé Declaration** on the Human Dimension of Global Climate Change, notes that

the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights is recognized, in varying formulations, in the constitutions of over one hundred states and directly or indirectly in several international instruments, and expresses concern

that climate change has clear and immediate implications for the full enjoyment of human rights including inter alia the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health.

It also requested the Conference of the Parties of the UNFCCC 'to seek the cooperation of the Office of the United Nations High Commissioner for Human Rights and the United Nations Human Rights Council in assessing the human rights implications of climate change,' while calling on the 'United Nations Human Rights Council to convene, in March 2009, a debate on human rights and climate change,' and requesting the United Nations High Commissioner on Human Rights to undertake a 'detailed study into the effects of climate change on the full enjoyment of human rights.'

Notably, the Malé Declaration signatories also began a process to embed environmental concerns within the human rights work of the United Nations, with climate change as one of their flagship issues. In March 2008, a group of States⁴⁴ that had come together to achieve this end, secured the adoption by consensus of Human Rights Council resolution 7/23 on 'Human rights and climate change.'⁴⁵ This was the first of many resolutions⁴⁶ to state explicitly that climate change poses 'an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.'⁴⁷

Resolution 7/23 also operationalized the Malé Declaration requests for a study of the human rights implications of climate change by the High Commissioner and the organization of a Panel Debate by the Council. The High Commissioner's report was presented to the Council the following year and concluded, among other things, that:

40 Inter-American Commission on Human Rights (2006). *Petition of Sheila Watt-Cloutier et al.* Petition No. P-1413-05. https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2006/20061116_na_decision.pdf

41 Ibid.

42 Gordon, J. (2007). *Inter-American Commission on Human Rights to Hold hearing after Rejecting Inuit Climate Change Petition.* *Sustainable Development Law & Policy, Winter*. p. 55. <https://www.ciel.org/news/global-warming-and-human-rights-gets-hearing-on-the-world-stage-2/>

43 Ibid.

44 Bangladesh, Germany, Ghana, Maldives, Philippines, Switzerland, UK, Uruguay, and Zambia.

45 United Nations General Assembly (2008). *Human rights and climate change.* Resolution A/HRC/RES/7/23. https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_23.pdf

46 See, e.g., United Nations General Assembly (2009). *Resolution 10/4: Human rights and climate change.* Document No. A/HRC/RES/10/4. https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf

47 United Nations General Assembly (2008). *Human rights and climate change.* Resolution A/HRC/RES/7/23. op. cit.

The human rights framework complements the Convention [United Nations Framework Convention on Climate Change] by underlining that “the human person is the central subject of development”, and that international cooperation is not merely a matter of the obligations of a State towards other States, but also of the obligations towards individuals.

Human rights standards and principles, underpinned by universally recognized moral values, can usefully inform debates on equity and fair distribution of mitigation and adaptation burdens. Above all, human rights principles and standards focus attention on how a given distribution of burden affects the enjoyment of human rights.⁴⁸

Eventually, these developments led the UNFCCC Conference of Parties to include in the non-binding **Cancun Agreements**, resulting from its COP 16, the recognition that States ‘Parties should, in all climate change-related actions, fully respect human rights.’ These Agreements then informed the drafting of the (binding) **Paris Agreement**, which acknowledges that:

‘Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.’

Following this achievement and driven by the aim ‘to move beyond general debates between States on the presence and nature of the relationship between human rights and the environment, to a more practical exercise premised on setting out the norms and, ultimately, working with all relevant stakeholders to apply those norms internationally and domestically... the Maldives, Costa Rica and Switzerland, together with a wider core group that included Morocco, New

Zealand, Slovenia and Uruguay, began consultations on a new draft resolution of the Human Rights Council on human rights and the environment.⁴⁹

Following many years of work by States, dozens of civil society organizations, and thorough reports with precise recommendations presented by the United Nations Special Rapporteurs on Human Rights and the Environment (developing in parallel with processes on climate change action), the **Human Rights Council** eventually adopted **resolution 48/13**, which recognizes ‘that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and in environmental decision-making and to an effective remedy, is vital to the protection of a clean, healthy and sustainable environment’ and most notably, recognized ‘the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights’, marking the first global recognition of the right.

“ **Human rights standards and principles, underpinned by universally recognized moral values, can usefully inform debates on equity and fair distribution of mitigation and adaptation burdens.** ”

⁴⁸ United Nations General Assembly (2009). *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*. Report No. A/HRC/10/61. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/103/47/pdf/G0910347.pdf?OpenElement>

⁴⁹ Boyd, D., Knox, J., & Limon, M. (2021). *The case for universal recognition of the right to a safe, clean, healthy and sustainable environment*. <https://www.universal-rights.org/urg-policy-reports/the-time-is-now-the-case-for-universal-recognition-of-the-right-to-a-safe-clean-healthy-and-sustainable-environment-2/>

The Council invited the General Assembly to also consider the matter of the human right to a clean, healthy, and sustainable environment.

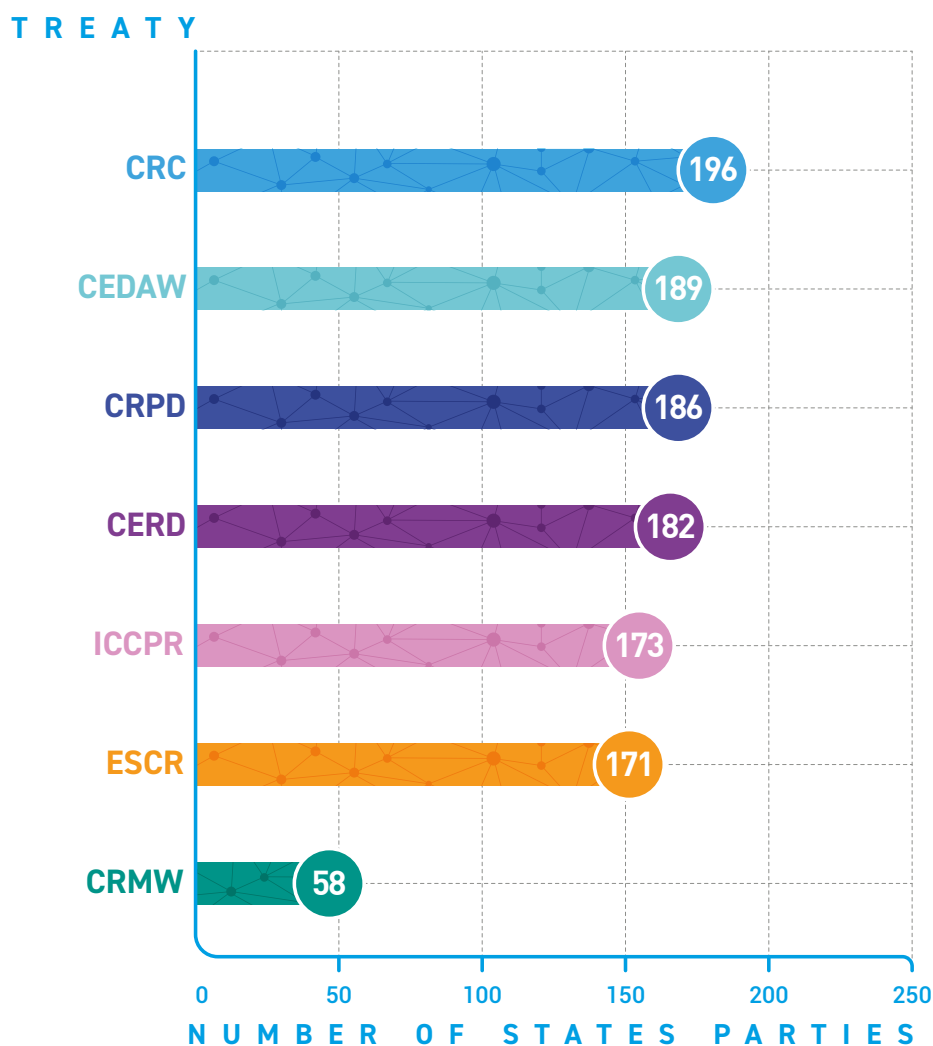
On 28 July 2022, the General Assembly adopted the landmark resolution A/76/300, with unparalleled support – 161 votes in favor, no votes against and 8 votes abstaining. Although resolutions from the General Assembly have no legally binding nature, it is still the main policy-making body of the UN and the adoption of this unprecedented resolution has infinite political meaning. It states:

1. 'Recognizes the right to a clean, healthy, and sustainable environment as a human right;
2. Notes that the right to a clean, healthy, and sustainable environment is related to other rights and existing international law;
3. Affirms that the promotion of the human right to a clean, healthy, and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;
4. Calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy, and sustainable environment for all.'



Figure 1**Human rights related to the environment are relevant to all States**

As Figure 1 illustrates, all States have ratified at least one international treaty that directly recognizes the human rights that depend upon a healthy environment, as well as rights that are indispensable to secure environmental protection (See sections 2.2.1 and 2.2.2 below). Moreover, all States have acknowledged both substantive and procedural rights through their endorsement of numerous soft-law instruments.



States have further ratified various Multilateral Environmental Agreements (MEAs) that touch upon a multitude of environmental themes. Most MEAs remain silent on human rights although certain indirect references to procedural and substantive human rights related to the environment can be found in some of these agreements (see Table 3).

Notwithstanding, the rights and obligations enshrined in international human rights and environmental law instruments form a body of international law that

clarifies the scope of States' obligations *vis-à-vis* human rights related to the environment and guide States' action in fulfilling their international commitments in this regard.

Against this backdrop, the following section illustrates, in a non-exhaustive way, the content and implications for States of the human rights related to the environment.

BOX 1. THE RIGHT TO A HEALTHY ENVIRONMENT UNDER REGIONAL HUMAN RIGHTS INSTRUMENTS

At regional level, the right to a healthy environment has evolved through a mix of soft law and binding human rights treaties that have complemented national-level developments to make environmental substantive and procedural rights fully enforceable.

In 1981, the African Charter on Human and Peoples' Rights (African Charter) established in Article 24 the rights of all peoples to 'a general satisfactory environment favorable to their development.' The African Commission (See Section 5.3) has explained that this right involves both positive (i.e., duty to protect) and negative (i.e., duty to not interfere or cause harm) obligations for States,⁵⁰ and specified that individuals, communities, and the public at large are beneficiaries of this right.⁵¹

The Inter-American System was the second to establish binding human rights obligations related to the environment for States. The 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador') established in Article 11 everyone's (individual) 'right to live in a healthy environment and to have access to basic public services.' This norm establishes the obligation of States to 'promote the protection, preservation, and improvement of the environment.'

In 2004, the League of Arab States recognized in Article 38 of the Arab Charter of Human Rights (Arab Charter) the rights of every person to an adequate standard of living and to a healthy environment, affirming that 'States parties shall take the necessary measures commensurate with their resources to guarantee these rights.' The Arab Charter further recognizes that the right to health is dependent on a healthy environment by stating that 'Combating environmental pollution and providing proper sanitation systems' are part of the measures that State parties shall take to realize the right to health.

Another relevant regional development, albeit not binding like the previous, is the Human Rights Declaration adopted by The Association of Southeast Asian Nations (ASEAN) in 2012. This soft-law instrument, which provides a framework for the implementation of human rights by ASEAN States, recognizes the 'right to a safe, clean and sustainable environment' as an integral part of the right to an adequate standard of living and affirms that the right to development 'should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations,' while stressing that the 'protection and sustainability of the environment' must be an integral part of development plans.

⁵⁰ Van der Linde, M., & Louw, L. (2003). *Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC Communication*. African Human Rights Law Journal. <https://www.corteidh.or.cr/tablas/R21586.pdf>

⁵¹ Ibid.

BOX 2. WHAT DOES THE TERM ENVIRONMENT MEAN?

The term environment usually refers to its various constitutive **elements**:

- Air, climate, and the atmosphere, including ambient air in indoor spaces.
- Fresh and marine water, soil, and land.
- Landscape, and natural sites and ecosystems, including wetlands, coastal and marine areas, whether designated as protected areas or not.
- Biological diversity and its components, including flora, fauna, genetically modified organisms, ecosystems, species, genetic components, and genetic diversity.
- The interaction among these elements.

The environment can be affected by a multitude of **factors**, such as substances, energy, noise, radiation, waste (including radioactive waste), emissions, discharges, or any other releases into the environment, and whose interactions with it may lead to environmental **challenges**, such as ecosystem change, climate change, pollution, environmental degradation, among others.

Source: Aarhus implementation guide.





Photo - Freepik.



2. A NON-EXHAUSTIVE OVERVIEW OF HUMAN RIGHTS RELATED TO THE ENVIRONMENT: SCOPE AND CHARACTERISTICS

States have the duty to respect, protect, and fulfill the human rights of present and future generations.⁵² Regarding human rights related to the environment, the Framework Principles on Human Rights and the Environment (See Box 18 - the Framework Principles) explain that:

'States should ensure a safe, clean, healthy, and sustainable environment to respect, protect and fulfill human rights, and States should respect, protect, and fulfill human rights to ensure a clean, healthy, and sustainable environment.'

In environmental matters, each of these three obligations entails specific duties of conduct.

⁵² United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. Resolution A/HRC/25/53.* <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>



| The obligation to respect | The obligation to protect | The duty to fulfill |
|--|--|---|
| <p>The obligation to respect requires States to refrain from interfering, directly or indirectly, with the enjoyment of human rights. The State must refrain from violating human rights related to the environment through its acts or omissions.</p> <p>This duty requires States to observe international human rights standards on human rights related to the environment. For instance, in the case of <i>Claude-Reyes et al. v. Chile</i>,⁵³ the Inter-American Court of Human Rights (IACtHR) explained that the State's duty to respect the right to access to information entails ensuring that legislation and rules governing limitations on the public's access to government-held information adhere to the parameters set forth in the relevant human rights instruments.</p> <p>Common obligations under international human rights and environmental agreements include:</p> | <p>The obligation to protect requires States to take steps to prevent third parties from interfering with the enjoyment of human rights.</p> <p>The State must take measures to protect individuals from violations of their human rights related to the environment by, <i>inter alia</i>, acts or omissions of non-State entities and human or non-human factors that result in environmental degradation or harm (see Box 2), such as pollution, exploitation of natural resources, climate change and natural disasters.⁵⁴</p> <p>However, as the IACtHR has explained,</p> <p>'a State cannot be held responsible for every human rights violation committed by individuals within its jurisdiction. The erga omnes nature of the treaty-based obligation for States to ensure rights does not entail unlimited State responsibility in the case of every act or deed of a private individual because, even though an act, omission or deed of a private individual has the legal consequence of violating certain human rights of another private individual, this cannot automatically be attributed to the State; rather, the particular circumstances of the case must be examined and whether the obligation to ensure those rights has been met.'⁵⁵</p> | <p>The State must fulfill the rights that are dependent upon the environment, including by promoting environmental protection, and implementing consistent strategies.</p> <p>This duty requires States to take positive actions. For instance, in the case of the Centre for Minority Rights Development and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, the ACHPR⁵⁶ explained that States may need to take special protection measures to secure that indigenous and tribal communities are able to enjoy their human rights. These measures may include positive discrimination or affirmative action measures through consultations, official recognition of their property or land rights and mechanisms to enforce such rights.</p> <p>Common obligations under international human rights and environmental agreements include:</p> |

53 Inter-American Court of Human Rights (2006). *Case of Claude-Reyes et al. v. Chile. (Merits, Reparations and Costs)*. https://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf

54 Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17: The Environment and Human Rights*. https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf

55 *Ibid.* p. 119.

56 African Commission on Human and Peoples' Rights (2003). *Case of the Centre for Minority Rights Development ("CEMIRIDE") (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*. https://www.escri-net.org/sites/default/files/Endorois_Decision.pdf

| | | |
|---|--|--|
| <p>◀</p> <ul style="list-style-type: none"> ○ Guaranteeing appropriate management, including transport, of toxic and hazardous substances and waste and avoiding inappropriate dumping. ○ Observing the prior consent principle. ○ Monitoring, regulating, managing, and controlling environmental risks. ○ Allowing citizens to access environmental information. <p>Concrete measures include avoiding the irregular disposal of hazardous wastes; conducting inclusive and participatory environmental assessments; observing the free, prior, and informed consent principle before making decisions that may interfere with Indigenous Peoples' rights over their territories and natural resources; responding to information requests or allowing peaceful demonstrations against government activities that may result in environmental harm.</p> | <p>In environmental matters, State responsibility for violations caused by third parties may arise when the State fails to regulate, supervise, or monitor the activities that caused environmental damage⁵⁷ or fails to comply with relevant statutory measures designed to prevent the environmental degradation.⁵⁸</p> <p>For example, in <i>Tătar v. Romania</i> (See Case 1) and <i>Fadeyeva v. Russia</i> (See Case 17) the clarified that environmental-related human rights violations can be directly caused by the State or can arise when the State fails to regulate the private sector adequately. This duty encompasses enforcing a legislative and administrative framework to effectively prevent harm to the environment and human health and, regarding hazardous activities, tailored measures to address risks.</p> <p>Common obligations under international human rights and environmental agreements include:</p> <ul style="list-style-type: none"> ○ Adopting and enforcing laws and regulations. ○ Implementing international cooperation and assistance strategies to strengthen other States' capacities. <p>Examples of concrete measures include mainstreaming environmental protection in economic and social policies;⁵⁹ implementing environmental early-warning systems with adequate prevention and mitigation measures; and preventing reprisals against environmental human rights defenders.⁶⁰</p> | <ul style="list-style-type: none"> ○ Promoting and implementing strategies and programs to identify and protect populations in situations of vulnerability. ○ Establishing and providing adequate resources to health care systems for prevention, diagnosis, treatment, monitoring and care. ○ Establishing and strengthening health, water, food, and housing capacities. ○ Monitoring, addressing, reducing, preventing, and controlling negative effects on the environment including pollution and transboundary harm. ○ Raising public awareness, knowledge, and engagement. <p>Other of concrete measures include implementing effective strategies to secure the conservation of natural ecosystems; actively monitoring environmental and other processes to avert environmental harm; generating environmental information and using it to inform public health policies; providing environmental and environmental hygiene education; giving water and food to victims of natural disasters.</p> |
|---|--|--|

57 Ibid. p. 119

58 Buys, E., & Lewis, B. (2021). *Environmental protection through European and African human rights frameworks*. <https://doi.org/10.1080/13642987.2021.1986011>

59 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*. Report No. A/HRC/25/53. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>

60 Ibid.

CASE 1. PAVLOV AND OTHERS V. RUSSIA

Twenty-two applicants residing in Lipetsk, an industrial city in Russia, lodged a case before the ECtHR. The applicants had unsuccessfully sought legal action against federal and regional agencies for the failure to protect their right to private life under Article 8 of the European Convention on Human Rights. They argued that industrial pollution from nearby industrial undertakings had consistently exceeded permitted levels, adversely affecting their health and living conditions.

The Court considered the applicants' complaint regarding the State's failure to regulate industrial undertakings adequately and establish sanitary protection zones around the plants and factories contributing to pollution in Lipetsk. The creation of such zones, mandated by Russian law, aimed to separate residential areas from sources of pollution. The Court acknowledged the complex, resource-intensive nature of establishing these zones but noted the authorities' lenience and delays in enforcing regulations.

The Court recognized the importance of uninterrupted industrial operations for the regional and national economy, acknowledging the need for a fair balance between the interests of the applicants and the community. However, it found that the authorities did not sufficiently consider the applicants' interest in a safe environment or adequately balance it against economic concerns, especially during a severe economic crisis.

While the Court acknowledged the District Court's limited assessment of measures taken by authorities, it held that these measures, implemented between 5 May 1998 and the end of 2013, were ineffective in reducing industrial emissions or improving air quality in Lipetsk. The State failed to diligently address the unfavorable environmental situation, violating its positive obligation to protect the applicants' right to respect for private life during that period.

Although acknowledging progress in measures implemented after 2013, the Court concluded that environmental pollution still required attention, indicating a failure to strike a fair balance in fulfilling the State's positive obligations. As a result, the Court found a violation of Article 8, with six votes in favor and one against.

While recognizing the authorities' awareness, it concluded that the State failed to take effective measures to address the adverse environmental conditions in Lipetsk between 5 May 1998 and the end of 2013, violating the applicants' right to respect for private life under Article 8. However, measures implemented after 2013 showed progress, yet the pollution still required attention, indicating a failure to strike a fair balance in fulfilling the State's positive obligations.



Photo EPA-EFE

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2.1 Procedural rights

Three fundamental procedural rights related to the environment have been recognized in international and regional instruments,⁶¹ as well as in national laws, namely: the right to access environmental information, the right to public participation in environmental decision-making processes, and the right to access justice in environmental matters.

The current and former Special Rapporteurs on human rights and the environment have *'highlighted the virtuous circle between human rights, the environment, and access rights, and... noted that the full exercise of procedural rights of access to information, participation in decision-making, and effective redress produces more transparent and better-informed environmental policies, contributing to a healthier environment that in turn enables people to enjoy substantive human rights such as the right to life, food, and health.'*⁶²

The following subsections provide an overview of the content and meaning of these three fundamental procedural rights relevant to the environment and illustrates some of the State obligations these rights entail.

A. Right to access information in environmental matters

The right to access environmental information is the right of all individuals and organizations (organizations are provided with the same right as individuals under some systems, for example the Aarhus Convention or Escazú Agreement) to seek, receive, and impart information at the disposal of public authorities.

This includes the right of the media to access information on public affairs.⁶³

This right derives from the human right to freedom of expression, which entitles all individuals to seek, receive, and impart information and ideas of all kinds, regardless of frontiers. The rights to freedom of expression (See section 2.2.1 below) and access to information were first recognized, at the international level, by the UDHR (Article 19) and the ICCPR (Article 19).

In environmental matters, the right to access environmental information enables the public to 'understand what is happening in the environment around them'⁶⁴ and facilitates people's understanding of the ways in which the environment and environmental harm impact their human rights.⁶⁵

61 Economic Commission for Latin America and the Caribbean (2018). *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*. https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf

Under this provision, 'access rights' means the right of access to environmental information, the right of public participation in the environmental decision-making process, and the right of access to justice in environmental matters.

62 Economic Commission for Latin America and the Caribbean (2018). *Access to information, participation and justice in environmental matters in Latin America and the Caribbean: towards achievement of the 2030 Agenda for Sustainable Development*. https://repositorio.cepal.org/bitstream/handle/11362/43302/1/S1701020_en.pdf

63 United Nations General Assembly (2011). *International Covenant on Civil and Political Rights. Freedoms of opinion and expression*. Article 19. General comment No. 34. Document No. CCPR/C/GC/34. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

64 United Nations Economic Commission for Europe (2014). *The Aarhus Convention: An Implementation Guide (Second edition)*. <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

65 United Nations General Assembly (2021). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana*. Report No. A/76/207. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/201/78/PDF/N2120178.pdf>

For instance, providing information on the effects of pollution, toxic materials, and plastics on human health, such as their ability to induce conditions like cancer, cardiovascular diseases, diabetes, obesity, asthma, reproductive problems, and more, can assist people in choosing to reside or visit locations, purchase products, and access goods that do not endanger their physical well-being. This way, they can avoid contact with hazardous substances that could potentially harm their health.

The right to access information entitles everyone (i.e., individuals and organizations)⁶⁶ to receive information (including environmental information) from competent authorities, upon request or by State initiative, without justification or explanation.

The information received must be thorough, easily comprehensible, accessible (i.e., bearing in mind the specific needs of the petitioners), complete (i.e., it should be presumed that all State-held information is public, subject to limited exceptions)⁶⁷ and provided through affordable, effective, and timely procedures (i.e., the Aarhus Convention establishes the maximum term of one month and the Escazú Agreement a maximum term of 30 business days).

Wirestock - Freepik. Nuclear-plants



⁶⁶ European Parliament and Council of the European Union (2003). *Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive*. Document No. 90/313/EEC. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003L0004&from=EN#page=3>

United Nations Environment Programme (2015). *Putting Rio Principle 10 Into Action: An Implementation Guide*. <https://wedocs.unep.org/bitstream/handle/20.500.11822/11201/UNEP%20MGSB-SGBS%20BALI%20GUIDELINES-Interactive.pdf?sequence=1BisAllowed=y>

Inter-American Court of Human Rights (2006). *Case of Claude-Reyes et al. v. Chile. (Merits, Reparations and Costs)*. https://corteidh.or.cr/docs/casos/articulos/se-riec_151_ing.pdf

See, e.g., United Nations Economic Commission for Europe (1998). *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*. <https://unece.org/DAM/env/pp/documents/cep43e.pdf>

⁶⁷ Inter-American Court of Human Rights (2006). *Case of Claude-Reyes et al. v. Chile. (Merits, Reparations and Costs)*. https://corteidh.or.cr/docs/casos/articulos/se-riec_151_ing.pdf

What is environmental information?

Environmental information refers to any information, regardless of its date of origin, held by a public body and pertaining to, *inter alia*:⁶⁸

- The state and quality⁶⁹ of the environment, its constitutive elements, impacting factors (see Box 2 above), and any human or non-human activities, norms, policies, or measures that are likely to affect them. Examples include information pertaining to the environmental impact of development projects or extractive activities, administrative measures or agreements likely to affect the environment, including with multilateral organizations and private entities, among others.
- Environmental impacts on human rights, particularly human health, or safety, in contexts where they are affected by the environment, its components, or impacting factors. Examples include information on the impact of chemicals, toxic and pollutant materials on human health.
- Analyses and assumptions underpinning environmental decisions, including cost-benefit and other economic analyses and assumptions.
- Decision-making processes that may affect the environment, its components or impacting factors, and any opportunities to participate in them.
- Relevant legislation and policy.

Environmental information may:

- Be contained in any written, visual, oral, electronic, or any other form, including material forms not yet developed.⁷⁰
- Include information not explicitly labelled as 'environmental' information.
- Be raw, unprocessed, or unfinished.
- Originate from local, national, regional, or international sources.

⁶⁸ United Nations General Assembly (2011). *International Covenant on Civil and Political Rights. Freedoms of opinion and expression*. Article 19. General comment No. 34. Document No. CCPR/C/GC/34. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁶⁹ United Nations Environment Programme (2015). *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*. <https://wedocs.unep.org/20.500.11822/11201>

⁷⁰ United Nations Economic Commission for Europe (2014). *The Aarhus Convention: An Implementation Guide (Second edition)*. <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

BOX 3. RIGHT TO INFORMATION ON HAZARDOUS SUBSTANCES AND WASTES

Based on international human rights and chemical standards, the Special Rapporteur on Toxic Waste has clarified the normative content of the right to information on hazardous substances and wastes:⁷¹

Availability: Reliable environmental information should be 'generated and collected in a manner adequate to assess the magnitude of potential adverse impacts on the rights of people from hazardous substances and wastes.'⁷²

Accessibility: Everyone can seek, obtain, receive, and hold available information unless there is an overriding legitimate public-interest justification for non-disclosure.

Functionality: It should be fit for its intended purpose, namely, 'to prevent harm, to enable democratic decision-making, and to ensure accountability, access to justice and an effective remedy.'

Non-discrimination and equality: It should be disaggregated and specialized to understand and prevent the disproportionate implications and impacts of hazardous substances and wastes on individuals and population groups in situations of vulnerability.



Photo Energy Industry Review - Mining Industry in Romania



Photo Noah Chemicals - Sodium Cyanide

71 United Nations (2015). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, Başkut Tunçak. Report No. A/HRC/30/40. <https://digitallibrary.un.org/record/800897?ln=en>

72 Ibid. p. 33.

CASE 2. TĂȚAR V. ROMANIA

In the case of *Tătar v. Romania*⁷³, two individuals who resided in Baia Mare, filed a complaint against the State of Romania seeking redress because the use of sodium cyanide for gold and silver extraction by a nearby company posed a risk to their lives. The applicants also complained about the authorities' inaction to prevent harm, particularly, an environmental accident which caused a significant amount of sodium cyanide-polluted water to contaminate various rivers and cross multiple borders.

The government opposed to the complaint arguing that the applicants had not done enough to obtain environmental information and challenge the decisions adopted at national level, including the environmental compliance certificate that authorized operations. It further explained that the used technology could only be harmful if applicable regulations were not complied.

Regarding procedural rights, the ECtHR explained that environmental decision-making should be based on thorough surveys and studies, conducted with the participation of affected individuals. This allows for the prevention and assessment of potential harm to the environment and individuals' rights. The prior assessment enables a fair balance to be struck between competing interests. The ECtHR emphasized the importance of public access to these studies and other pertinent environmental information to enable individuals to evaluate the risks they are exposed to.

In this case, the public was not provided with the conclusions of the preliminary study that authorized the operation of the company, the environmental impact report, or information about the activity's hazards. Due to the lack of access to environmental information, the affected individuals were unable to participate in the decision-making process or challenge the resulting licenses.

Even after the accident, the population of Baia Mare, including the applicants, lacked sufficient environmental information to claim their rights and make informed decisions. They 'lived in a state of anxiety and uncertainty exacerbated by the inaction of national authorities. These authorities had a duty to provide sufficient and detailed information regarding the past, present, and future consequences of the ecological accident on health and the environment. They also should have offered preventive measures and recommendations for managing populations facing similar events in the future. The fear of ongoing activity and the potential recurrence of the same accident further contributed to the distress experienced.'⁷⁴

The ECtHR concluded that without access to environmental information, it was impossible to ascertain preventive measures for a similar accident or the actions to take in the event of its recurrence. The State should have granted information to the public before granting a permit, and after the accident, to identify the most appropriate forms of addressing this situation.

As a result, the ECtHR found that the respondent State failed in its obligation to adequately address the risks associated with the company's activities and to implement appropriate measures to protect the affected individuals' rights to privacy, their homes, and their right to a healthy and protected environment.

⁷³ European Court of Human Rights (2007). *Case of Vasile Gheorghe Tătar and Paul Tătar v. Romania*. Application No. 67021/01. <https://hudoc.echr.coe.int/eng?i=001-83052>

⁷⁴ Ibid.

In order to achieve the realization of the right to access information in environmental matters, States should:

→ **Maintain, assess, and keep up-to-date environmental information**, including information on environmental compliance. This is especially important with regards to information about the environment, its components or impacting factors that would not otherwise be accessible to, or known by, the public and might therefore be relevant for the protection of individuals' and groups' (i.e., communities, organizations) rights.

For example, States and businesses must ensure access to information throughout the plastics cycle, including on the hazards that toxic chemicals in plastics pose to the environment and health.

→ **Develop appropriate procedures** and respond to relevant requests, within the framework of national legislation.⁷⁵ Regarding requests for information, States must:

- **Define in the law the procedures** through which the public may request information, including the maximum times in which information should be provided and the specific circumstances under which access to information can be denied or restricted. These procedures must not be cumbersome, nor should they impose requirements that may create obstacles to effective and prompt access to information.
- **Adopt mechanisms and systems to help the public accurately formulate information requests** and provide special assistance to groups or individuals in situations of vulnerability.
- **Inform the public** about which authority holds which type of information.
- **Respond promptly to all requests for information**, including by providing explanations in case of refusal that clearly indicate reasons for denial, and, when appropriate, an indication of whether or not the relevant authorities are in possession of the requested information.

⁷⁵ See, e.g., *Ibid.* 62.

- **Inform the petitioners of the right to challenge and appeal decisions** to deny information, as well as the requirements and procedures for exercising this right.⁷⁶

→ **Effectively put information of public interest in the public domain**,⁷⁷ as well as information on the status of the environment.⁷⁸ Strategies to comply with this obligation include establishing easily accessible systems to share environmental information.

→ **Undertake all necessary efforts to generate environmental information**, to disaggregate it, 'particularly with respect to the dangers confronting those who are most at risk of harm from hazardous substances and wastes',⁷⁹ and to strive to fill relevant information gaps (e.g., on the quality of the environment or its links with human health), where appropriate.

→ **Provide capacity-building** to public authorities and the wider public to facilitate access to information.⁸⁰

→ **Assist and offer guidance** to all individuals and organizations seeking access to information.

→ **Promote** and, where possible, encourage **and facilitate access to environmental information** held by private entities.⁸¹

⁷⁶ See, e.g., Economic Commission for Latin America and the Caribbean (2018). *Access to information, participation, and justice in environmental matters in Latin America and the Caribbean: towards achievement of the 2030 Agenda for Sustainable Development*. <https://repositorio.cepal.org/items/e9add1b2-f631-4bf4-869f-22b24dc19949>

⁷⁷ United Nations General Assembly (2011). *International Covenant on Civil and Political Rights. General comment No. 34: Freedoms of opinion and expression*. Document No. CCPR/C/GC/34. Article 19. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

⁷⁸ United Nations Environment Programme (2015). *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*. <https://wedocs.unep.org/handle/20.500.11822/11201>

⁷⁹ United Nations General Assembly (2015). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tunçak*. Report No. A/HRC/30/40. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/152/14/PDF/G1515214.pdf>

⁸⁰ United Nations Environment Programme (2015). *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*. <https://wedocs.unep.org/handle/20.500.11822/11201>

⁸¹ Court of Justice of the European Union (2010). *Case of Stichting Natuur en Milieu et al. v. College voor de toelating van gewasbeschermingsmiddelen en biociden*. Case No. C-266/09. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0266>

CASE 3. GUERRA AND OTHERS V. ITALY⁸²

Two approaches to States' duty to share environmental information

In *Guerra and others v. Italy*, residents of the town of Manfredonia challenged the State of Italy for not taking appropriate action to reduce the risk of pollution by the Enichem agricoltura chemical factory ("the factory") and prevent accidents. The complainants also argued that the State had failed to provide information about the risks and how to proceed in the event of a major accident. The applicants claimed a violation to *inter alia*, their right to freedom of information.

The factory, which produced fertilizers and other chemicals, was classified as "high-risk" of accident to the environment and the well-being of the local population, according to the criteria set out by local authorities.

The case was filed before the European Commission of Human Rights, and then transferred to the ECtHR.

When hearing the case, the European Commission of Human Rights explained that 'the provision of information to the public was now one of the essential means of protecting the well-being and health of the local population in situations in which the environment was at risk.' Therefore, for the Commission, the right to freedom to receive information confers to individual 'an actual right to receive information, in particular from the relevant authorities, on members of local populations who had been or might be affected by an industrial or other activity representing a threat to the environment.'

For the Commission, this implied a States' duty to make environmental information available to the public and a positive obligation for States to collect, process and disseminate such information, which by its nature could not otherwise come to the knowledge of the public. This right has, therefore, a preventive function with respect to potential violations to other rights, in the event of serious damage to the environment.

The ECtHR, however, did not subscribe to that interpretation. For the Court, the right to access information allows individuals to receive information, impart information and ideas on matters of public interest, and prohibits States from restricting access to information but it does not mean that States have the duty to collect and disseminate information. Therefore, the Court argued that the right to freedom of information was not applicable in this case.

Photo Green European Journal - Manfredonia, Italy



⁸² European Court of Human Rights (1998). *Case of Guerra et al. v. Italy*. Application No. 14967/89. [https://hudoc.echr.coe.int/fre#\(languageisocode%22ENG%22\)%22a-pno%2214967/89%22documentcollectionid%22GRANDCHAMBER%22itemid%222001-58135%22](https://hudoc.echr.coe.int/fre#(languageisocode%22ENG%22)%22a-pno%2214967/89%22documentcollectionid%22GRANDCHAMBER%22itemid%222001-58135%22)

BOX 4. REALIZATION OF THE RIGHT TO ACCESS INFORMATION AND THE ENVIRONMENT

The realization of the right to access environmental information increases individuals' and organizations' (State and non-State) awareness of environmental matters. The United Nations' human rights bodies have repeatedly underlined that access to information is directly related to the protection of human rights from infringement resulting from environmental harm.⁸³

Access to information is a prerequisite for the enjoyment of substantive human rights that depend on the environment such as health, food, safe drinking water and sanitation, and the right to a clean, healthy, and sustainable environment.⁸⁴ Insufficient, inadequate, or absent information prevents individuals from making informed decisions and hinders the capacity of individuals and organizations to identify and act upon risks and harms to their human rights.

Furthermore, access to environmental information can help prevent or mitigate negative impacts, identify safer alternatives, and strengthen decisions and activities through participation.⁸⁵ Indeed, this right facilitates the effective exercise of the rights to, *inter alia*, effective remedy,⁸⁶ expression and participation in environmental decision-making, eventually leading to stronger environmental policies and activities.⁸⁷

For example, in the cases of *Tătar vs. Romania* (see Case 2) and *Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd.* (see Case 5), the courts explained that insufficient information had prevented affected people from adequately participating in and challenging the relevant environmental assessment processes and decisions.

'In the context of hazardous substances and wastes, information gaps create a fundamental impediment to realizing the right to free, active, and meaningful public participation by individuals and communities to decide what risks they are willing to accept.'⁸⁸

The right to access information also enables public oversight and accountability,⁸⁹ hence strengthening democratic institutions.



83 United Nations General Assembly (2013). Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. Report No. A/HRC/25/53. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>

84 United Nations General Assembly (2015). Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak. Report No. A/HRC/30/40. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/152/14/PDF/G1515214.pdf>

85 Ibid.

86 United Nations General Assembly (2021). Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana. Report No. A/76/207.

87 European Parliament (2003). Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive. Document No. 90/313/EEC. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003L0004&rid=9>

88 United Nations General Assembly (2015). Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tuncak. Report No. A/HRC/30/40. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/152/14/PDF/G1515214.pdf>

89 Inter-American Court of Human Rights (2006). Case of *Claude-Reyes et al. v. Chile*. (Merits, Reparations and Costs). para 87. https://corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf

For example, in the case of *Mendoza Beatriz Silva et al v. State of Argentina et al*,⁹⁰ the Supreme Court of Justice of Argentina ordered the State to implement a program for the cleanup of the basin of the Matanza/Riachuelo, which had been severely affected by pollution. Acknowledging that one of the deficiencies of the restoration plans thus far adopted by national authorities was the lack of concrete and updated information and the dispersal of information sources, the Argentinian Court ordered the State to organize a clear, concentrated, accessible, and up-to-date system of public information that would enable oversight over the situation. Alongside measures to address environmental damage, the Court assured the importance of strengthening citizen participation in monitoring the completion of such a program. It recognized that such an activity also depends on the reception of information and the formulation of plans based on it.

“ Human rights standards and principles, underpinned by universally recognized moral values, can usefully inform debates on equity and fair distribution of mitigation and adaptation burdens. ”

⁹⁰ Argentina, Supreme Court of Justice (2008). Case of Mendoza Beatriz Silva et al. v. Argentina et al. Damages resulting from environmental pollution of Matanza/Riachuelo River. https://www.escri-net.org/sites/default/files/Sentencia_CSJN_2008_english.pdf

Restrictions to the right to access information in environmental matters

Requests to access information may only be denied when the request falls within the legal exceptions or restrictions established by law – which should be interpreted narrowly.

The Inter-American Court of Human Rights (IACtHR) has emphasized that restrictions must not be provided by 'any legal norm, since that would be tantamount to admitting that fundamental rights can be restricted at the sole discretion of governmental authorities with no other formal limitation than that such restrictions be set out in provisions of a general nature. [...] The requirement that the laws be enacted for reasons of general interest means they must have been adopted for the "general welfare" (Article 32(2)), a concept that must be interpreted as an integral element of public order (ordre public) in democratic States [...].'⁹¹

Restrictions should therefore be limited in scope and must serve the public interest. National laws must ensure that restrictions are clear and concise enough to prevent leaving these entirely to the discretion of public authorities. 'The restriction must be proportionate to the interest that justifies it and must be appropriate for accomplishing this legitimate purpose, interfering as little as possible with the effective exercise of the right.'⁹²

Photo Koko Film - Seal hunting in Norway



⁹¹ Inter-American Court of Human Rights (1986). *The world 'laws' in Article 30 of the American Convention on Human Rights. Requested by the Government of Uruguay*. Advisory Opinion No. OC-6/86. https://www.corteidh.or.cr/docs/opiniones/seriea_06_ing.pdf

⁹² Inter-American Court of Human Rights (2006). *Case of Claude-Reyes et al. v. Chile. (Merits, Reparations and Costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.pdf

CASE 4. BLADET TROMSØ AND STENSAAS V. NORWAY

Defamation laws must not be extended to unduly restrict the right to access information

The Bladet Tromsø, a Norwegian daily newspaper, published excerpts from a seal hunting inspector's report, alleging violations of hunting regulations on the vessel called Harmoni. Interviews with the Harmoni's skipper, who denied the allegations and questioned the report's validity, were also published. A Commission of Inquiry investigated the report, finding some breaches of hunting regulations but unable to prove most of the allegations. As a result, the crew members of the Harmoni successfully pursued defamation claims against the applicants, leading to fines.

The applicants stated that their articles aimed to spark a discussion about the seal hunting industry, not harm the crew members' reputations. They argued that they couldn't be expected to verify statements from a ministry-appointed official. In contrast, Norway contended that Bladet Tromsø severely damaged the seal hunters' reputation by sensationalizing the report and making serious accusations. Norway suggested that the newspaper could have fostered a public debate without resorting to personal attacks.

The ECtHR determined that the articles contributed to an ongoing public debate, rather than primarily accusing individuals of animal cruelty. The newspaper acted in good faith, relying on the official report without independent verification. The ECtHR found that the public interest in informed discussion outweighed the crew members' reputation concerns. Despite relevant reasons presented by the State, they were insufficient to justify the interference, resulting in a majority ruling of a violation of the freedom of expression (Article 10 of the ECHR).

However, there were two dissenting opinions. One argued that reputation protection wasn't adequately considered, setting a low threshold for protection in cases involving public interest and non-public figures. The other dissenting opinion suggested that the newspaper could have protected the seal hunters' reputation by excluding references to the Harmoni.

Photo - World Animal News



In case of a restriction or confidentiality claim, authorities must conduct a tailored analysis to weigh the public interests served by the refusal, against those served by disclosure. Examples of situations in which access to information may be restricted or denied include:

- o Cases where disclosure poses a risk to the rights of other individuals or groups, including their rights to integrity, life, and health, as well as to the environment or its elements.
- o Internal communications of public authorities or confidential information, protected by national laws, with due regard to the public interest.

*'Confidentiality claims must be legitimate in accordance with international human rights standards. Under the principle of maximum disclosure, there is a presumption that all information held by public bodies should be subject to disclosure, subject to a narrow set of public-interest limitations...'*⁹³

Information regarding public health and safety, human rights violations, and information that would prevent accountability, meaningful public participation, or access to justice, as well as information related to the potential for the mismanagement of hazardous substances and wastes must not be considered confidential.⁹⁴

- o Sensitive information whose disclosure could affect national defense, national security, public safety, Indigenous and other sacred sites, species at risk of extinction, or international relations.
- o If disclosure would interfere with due process or criminal proceedings, including enforcement, prevention, investigation, or prosecution of a crime.
- o Cases in which the request for information is manifestly unreasonable or too general.

Image AP Photo - Khalil Senosi



⁹³ United Nations General Assembly (2015). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baqut Tunçak*. Resolution A/HRC/30/40, para 48. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/152/14/PDF/G1515214.pdf>

⁹⁴ Ibid.

BOX 5. ENVIRONMENTAL ASSESSMENTS (EAS)⁹⁵

States' decisions or activities that are likely to impact the environment must be based on adequate EAs in order to prevent environmental and social harm.⁹⁶ EAs are planning and management tools that allow decision-makers to generate, access, and disseminate information on the impacts that their decisions or activities may have on the environment and affected communities, before adopting, approving, or implementing them.

EAs can either be Strategic Environmental Assessments (SEAs) or Environmental Impact Assessments (EIAs). The former analyzes the effects of policies, norms, plans and programs, while the later assess the impacts of specific projects, including infrastructure, development, extractive and industrial projects. SEAs must be undertaken prior to the adoption or enactment of relevant policies or decisions, while EIAs must be conducted prior to the granting of licenses or the approval of projects.

EAs must be subject to independent review and should be comprehensive enough to identify not only environmental but also social and health impacts.⁹⁷ Increasingly, States are incorporating human rights impact assessments as part of environmental assessment processes.

EAs are an integral part of States' obligations to generate, collate and, where appropriate, disseminate environmental **information** and to secure the public's meaningful **participation**. As such, these assessments can be regarded as tools to secure the implementation of, among others, these two procedural rights.

What do EAs mean for human rights related to the environment?

EAs are tools for the protection of the environment. As such, they should contribute to the realization of the procedural and substantive rights that depend on it, including the right to a clean, healthy, and sustainable environment.

EAs allow individuals and communities, according to the relevant applicable laws, to participate in environmental decision-making processes (see *Save Lamu et al v. National Environmental Management Authority and Ami Power Co, Case 5*). Where their right to participation and other (substantive or procedural) human rights are breached, individuals or communities (depending on the applicable laws) may challenge the resulting decisions.

⁹⁵ United Nations Environment Programme (2018). *Assessing Environmental Impacts: A Global Review of Legislation*. <https://www.unep.org/resources/assessment/assessing-environmental-impacts-global-review-legislation>

⁹⁶ United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment. Individual Report on the International Covenant on Economic, Social and Cultural Rights*. para. 30. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>

⁹⁷ Ibid.

CASE 5. SAVE LAMU ET AL. V. NATIONAL ENVIRONMENTAL MANAGEMENT AUTHORITY AND AMU POWER CO. LTD.⁹⁸

In Kenya, the National Environment Tribunal (NET) revoked a license to set up a Coal Power Plant in the Lamu County because the corresponding EIA was conducted without proper and effective public participation.

Members of the local communities in the Lamu County filed an appeal before the NET requesting it to revoke a Coal Power Plant license and a new EIA. The Appellants explained that the license was granted without their due participation in the EIA process. This omission did not allow the company in charge of developing the plant to adequately identify all environmental and social risks related to this activity, nor the most adequate mitigation measures, including those related to climate change.

Citing, *inter alia*, Principle 10 of the Rio Declaration and national laws on EAs and the rights to access to information and public participation, the NET affirmed that 'the people most affected by a project must... have a say on each and every aspect of the project and its impact. In carrying out a consultative process, it is not a must that every person must support the project, nor can a proponent address every unreasonable demand and suggestion, but it is vital that even the most feeble of voices be heard and views considered.'⁹⁹

The Tribunal added that 'a vital condition of public participation is access to information... The seriousness of access to information cannot be overstated'¹⁰⁰ as it enables affected people to understand the real effects that a project will have on the environment and their rights.

In this case, the NET ruled that despite the fact that the EIA endeavored 'to capture as much of the reasonably foreseeable anticipated impacts of the proposed project and attempted to address the mitigation measures to be put in place to mitigate the various matters identified as Environmental and Social impacts,' it had to be repeated because Amu Power Co. (APC) did not share all the relevant information with the most affected people and did not open sufficient participatory spaces. Had the proponents observed public participation, they would have proposed more adequate mitigation measures, including those related with climate change, which were not included in the original EIA.

The NET added that a SEA should have preceded the authorization of this project, as it was the most appropriate tool to identify the most suitable location for a coal plant project.

The NET, thus, ordered to revoke the license and conduct a new EIA.

⁹⁸ Kenya, National Environmental Tribunal (2016). *Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd.* Tribunal Appeal No. NET 196 of 2016. <http://kenyalaw.org/caselaw/cases/view/176697/>

⁹⁹ Ibid. para 50.

¹⁰⁰ Ibid. para 69.

B. Right to public participation in environmental affairs

The right to public participation in environmental affairs is the right that all citizens have to take part in the environmental decisions that may affect them. 'In its ideal form, public participation involves the activity of members of the public in partnership with public authorities to reach an optimal result in decision-making and policymaking.'¹⁰¹

The spirit of public participation is a collaboration between the public and authorities, to reach informed and accurate decisions. The right to participation is based in the understanding that the public is an important source of information for authorities and for the adequate conduct of public affairs.

As explained by the Supreme Court of Ecuador in the Bosque Protector Los Cedros case (see Case 21), public participation can contribute to stronger environmental decisions. In certain cases, it can even shed light on the most appropriate way to apply the precautionary principle. For instance, by informing which are the most effective protective measures that can be adopted or by aiding in the identification of all relevant social and environmental risks.

The right to participation contributes to better informing decisions likely to have an environmental or social impact. Engaging a broader spectrum of individuals in the process incorporates a diverse array of experiences, multiple perspectives, and leverages insights into local conditions that might not be recognized.

The right to public participation was first recognized in Article 21 of the UDHR, which established everyone's right 'to take part in the government of his country, directly or through freely chosen representatives.' It was also recognized in Article 25 of the ICCPR as the right of every citizen 'to take part in the conduct of public affairs, directly or through freely chosen representatives.'

The right to take part in the conduct of public affairs 'covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels.'¹⁰² It can be exercised directly, when individuals are elected as public officers, or when they participate in consultative or decision-making processes, as well as indirectly when citizens elect government and parliament representatives.

'Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly, and association.'¹⁰³

Regarding environmental matters, this right entitles individuals to participate in a timely fashion in environmental decision-making processes by providing comments, observations, or expressions of concern that should be duly taken into consideration by the relevant authorities. It thus requires individuals to be informed, through effective and appropriate means, about environmental decision-making processes, from an early stage.

¹⁰¹ United Nations Economic Commission for Europe (2014). *The Aarhus Convention: An Implementation Guide (Second edition)*. <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

¹⁰² United Nations General Assembly (1996). *International Covenant on Civil and Political Rights. General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service*. Article. 25. Document No. CCPR/C/21/Rev.1/Add.7. para 5. <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>

¹⁰³ Ibid. para 8.

'This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection, and realization of human rights and fundamental freedoms.'¹⁰⁴

The right to participation includes everyone's right to engage with national, regional, and international human rights mechanisms and environmental protection agencies, as well as other relevant bodies, to, *inter alia*, cooperate in the development and implementation of their respective mandates, or claim their human rights.¹⁰⁵

Who is entitled to participate in environmental decision-making processes?

The right to participate in environmental matters is recognized as applying to the public in general, regardless of their citizenship or nationality. Nonetheless, in some processes, national laws may limit the scope of application of this right to the concerned or affected public. For example, activities or decisions with a localized geographical impact may be left only to residents of that specific area.

In any case, all communities and individuals whose rights are affected must always be allowed to participate in the corresponding proceedings, including, where applicable, in environmental and social impact assessments.¹⁰⁶

104 United Nations General Assembly (1998). *Resolution 53/144: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. Article 8.2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>

105 United Nations General Assembly (2009). *Resolution 12/2: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*. Document No. A/HRC/12/2. https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_12_2.pdf

106 Office of the United Nations High Commissioner for Human Rights (2009). *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Cambodia*. Document No. E/C.12/KHM/CO/1. <https://www.refworld.org/docid/4af181b20.html>

See, e.g., Office of the United Nations High Commissioner for Human Rights (2009). *United Nations Committee on Economic, Social and Cultural Rights. Concluding Observations of the Committee: Chad*. Document No. E/C.12/TCD/CO/3. para. 23. <https://www.refworld.org/docid/52e382cd4.html>

To achieve the realization of the right of the public to participate in environmental matters, States should, *inter alia*:

→ **Inform the public¹⁰⁷ about decision-making processes and opportunities to participate in them by providing all relevant information to this effect.**

The information must be comprehensive enough to include, among other things, the opportunities, and ways of participating in the corresponding procedures; the scope, objective, and nature of the relevant decision or activity; State and non-State actors involved in the decision-making process; expected environmental and social impacts and measures to prevent or mitigate such impacts.

The corresponding spaces and notification procedures must be accessible by the affected public, including in appropriate formats and languages, and should be mindful of social, economic, cultural, and geographic contexts and identities, including gender, ethnicity, and disability.

Regarding notifications, in *Baldzens v. Cabinet of Ministers*, the Supreme Court of Latvia explained that the public must be reached out through an understandable communication. For example, in Latvia, local regulations require 'public notice but also individually mailing the information about the public participation'¹⁰⁸ to affected individuals. In the referenced case, analyzing the Aarhus Convention, the Latvian Supreme Court explained that a 'small announcement in a newspaper among hundreds of advertisements would not be considered effective.'¹⁰⁹

107 The scope of this obligation may vary. For example, article 6.1 of the Aarhus Convention establishes States' duty to inform about the scope, objectives, and nature of the activity of the public concerned; while article 17 of the Escazú Agreement refer to this obligation with regard to the public, in general.

108 Latvia, The Constitutional Court (2003). *Case of Baldzens v. Latvia*. Case No. 2002-14-04. p. 12. https://www.satv.tiesa.gov.lv/web/viewer.html?file=wp-content/uploads/2002/07/2002-14-04_Spriedums_ENG.pdf

109 *Ibid.* p. 14.

- **Develop open and inclusive participatory procedures** for environmental decision-making that secure the early, safe, and genuine participation of the public, and include, at least, adequate communication channels, minimum standards for the observance of the right to access the information within the procedure, and clearly defined timeframes and decision-making criteria.

Environmental decision-making processes include not only proceedings related to concrete projects or activities, but also those leading to the adoption of norms, policies, plans, and programs related to the environment. This also 'includes ensuring meaningful consultation prior to the adoption of climate- and energy-related laws and projects.'¹¹⁰

Notably, States may need to build the public's capacities to participate in an informed and adequate manner. Special measures need to be taken to support the participation of groups and individuals in situations of vulnerability. For example, women's participation can be enhanced through tailored projects to empower them through 'non-binding funding and by supporting the development of independent women's funds.'¹¹¹
- **Promote public participation in international and regional decision-making processes** that have an environmental impact, including supranational, multilateral and international negotiations. This includes **consulting with affected communities about activities that have an adverse environmental impact**¹¹² such as review processes with environmental significance that was previously not considered as such (See Box 5 on Environmental Assessments).¹¹³
- **Inform the public, in a timely and effective manner, about decisions adopted**, the ways in which public observations were considered, adopted, or disregarded, and the relevant administrative or judicial avenues available for the public to contest such decisions. The information must be adequate, comprehensive, and made available in accessible and context-appropriate formats.
- **Inform the public of the options for legal recourse and remedy** in cases where decisions negatively affect them, as well as provide assistance to access those legal remedies (See Section 2.1.C for more information).
- **Take due account of the comments of the public**, acknowledging that it does not necessarily entail the State's obligation to adopt every comment or grant local communities veto authority. Nonetheless, it is essential to ensure that public participation is substantial and that their concerns are thoroughly examined and disregarded only when valid reasons exist.

110 United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Clément Nyaletsossi Voule. Report No. A/76/222. para. 12. <https://digitallibrary.un.org/record/3936774?ln=en>

111 United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, Clément Nyaletsossi Voule. Report No. A/76/222.

112 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox. *Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*. Report No. A/HRC/25/53. Section 3.1. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>

113 United Nations Environment Programme (2015). *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*. <https://wedocs.unep.org/handle/20.500.11822/11201>

BOX 6. THE RIGHT TO PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE

In 2012, the municipality of Piedras, in Colombia, was chosen by a gold company as the location to dump a large amount of mining waste. The waste included cyanide-laden residues likely to cause contamination of watersheds and water resources and result in negative effects on the quality of food, health of the population, and ecosystems, causing erosion and pollution and harming the environment and community livelihoods.

Considering the negative human rights impact that such activities could have, none of which were allegedly being taken into account by the government or mining company, the community sought local authorities' authorization to hold a popular consultation and vote in a local referendum on whether the population agreed to the metal mining project and any associated activities on their territory.¹¹⁴ The request was founded in the community's concern that their traditional livelihoods, as well as their sources of drinking water and food could be significantly harmed, should the dump project move forward.

The referendum was approved and 98% of the population voted against 'the development of exploration, exploitation, treatment, transformation, transport, washing of materials resulting from large scale gold exploitation activities in our territory; storage and use of harmful substances for health and the environment, like cyanide and/or any other toxic substance or material associated to these activities, and for these to use surface and underground water resources from our territory in mining activities or any other similar development that can affect or limit the provision of drinking water for human consumption and the traditional productive agricultural activities of our municipality.'¹¹⁵

The public participation mechanism successfully acted as a deterrent, effectively preventing extractive activities from occurring within the community's territory. The company that intended to develop the activities decided to cancel the project.

Moreover, the public consultation inspired other communities to follow the same path. In the aftermath of the Piedras referendum, nine more communities¹¹⁶ held similar votes, all with analogous results.

Although a subsequent ruling delivered by the Constitutional Court declared that the mechanisms lack binding effects due to the nation's ultimate ownership of the subsoil, they continue to play a pivotal role in undermining the legitimacy and social acceptance of activities that oppose community interests. As a result, these mechanisms effectively deter companies from pursuing their activities.

Furthermore, these mechanisms provide a crucial platform for communities to assert their rights, safeguard their environment, and protect their traditional livelihoods. This fosters a strong sense of unity and empowerment within the community. Importantly, these referendums also raised public awareness regarding the necessity to halt extractive industries in environmentally protected or vulnerable areas. This growing awareness serves as a catalyst for broader discussions on sustainable development and responsible resource management.

114 Grupo Semillas (2018). *Nuestra consulta popular en Piedras, Tolima*. <https://www.semillas.org.co/es/nuestra-consulta-popular-en-piedras-tolima>

115 EJOLT (2013). *A letter from Piedras, Tolima, Colombia: local referendum against Anglo Gold Ashanti*. <http://www.ejolt.org/2013/09/a-letter-from-colombia/>

116 See, e.g., Estudio de caso: *Auge y decadencia de las consultas populares como mecanismo de participación y referendación de la voz ciudadana en el sector extractivo en Colombia* María Teresa Muñoz Juliana Peña Niño. p. 17. <https://foro.org.co/wp-content/uploads/2020/07/Casos-Consultas-Populares.pdf>

C. Right to access justice in environmental matters

The right to access justice is recognized in Articles 8, 10, and 11 of the UDHR. These provisions recognize, respectively, everyone's rights to an effective remedy, to a fair and public hearing by an independent and impartial tribunal, and to be presumed innocent until proven guilty according to the law as applied in a public trial.

These rights are enshrined as legally binding obligations for States, *inter alia*, in Articles 9 and 14 of the ICCPR, which establish that all State parties must guarantee everyone's access to an effective remedy; equal treatment before courts and tribunals; and a fair and public hearing by a competent, independent, and impartial tribunal established by law.

The right to access justice gives *everyone* (individuals and organizations, where applicable under the relevant norms), regardless of their citizenship, nationality, or any other status or identity, the right to seek in conditions of equality (i.e., without discrimination on any grounds) remedy and redress before courts, tribunals and any other judicial or administrative body or authority, without restrictions, other than those established by law and justified on objective and reasonable grounds.

It also entitles everyone to challenge or appeal decisions, acts, or omissions by State and non-State actors that affect their human rights, including their procedural and substantive rights.

Under the right to access justice, everyone is entitled to complain about the policies and actions of individual officials and governmental bodies that may have an impact on the enjoyment of human rights and fundamental freedoms.

This means that all individuals and groups with standing (see Box 17 on sufficient and public interest) can file or present legal or administrative claims in response to actions or omissions by public authorities that may result in a human rights violation. Where relevant, this may include the right to communicate with international bodies, including human rights mechanisms, free from reprisal.¹¹⁷

Although the right of access to justice relates to breaches of any human right, when this right is incorporated in MEAs it usually refers (explicitly) to obligations pursuant to the three fundamental environmental procedural rights. In some cases, MEAs also refer to breaches to national laws related to the environment which may, in turn, refer to other substantive or procedural rights.

For example, the Aarhus Convention and Escazú Agreement establish the right to access justice, but these provisions mostly refer to instances in which remedy or redress are sought for breaches of the rights to access information and to participate in environmental decision-making, as established in relevant international instruments and under domestic environmental law (see Articles 9.1 and 8.2.a, 8.2.b, respectively). These MEAs, nonetheless, also refer to national laws related to the environment that are not limited to information or public participation (see article 9.3. of Aarhus and 8.2.c of Escazú Agreement).

¹¹⁷ United Nations General Assembly (2009). *Resolution 12/2: Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*. Document No. A/HRC/12/2. https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_12_2.pdf

CASE 6. ISAIAH LUYARA ODANDO & ANOTHER V. NATIONAL MANAGEMENT ENVIRONMENTAL AUTHORITY & 2 OTHERS¹¹⁸

In 2019, the Ufanisi Center, an environmental community-based organization located in Nairobi's Korogocho area, filed a petition against the National Environment Management Authority (NEMA) and other environmental and water authorities before the Kenyan Environment and Land Court (ELC).

The purpose of the petition was to address the violation of the right to a healthy environment, specifically concerning the pollution of the Nairobi and Athi Rivers. The petitioners requested the implementation of the precautionary principle to prevent further pollution and demanded an end to activities that contribute to the contamination of these rivers, such as waste disposal.

The petitioners argued that the ELC should approach their case from a public policy perspective, aiming to promote justice, efficiency, and preventive measures to avoid diseases, which they referred to as prophylaxis.

The Environment and Land Court explained that it is not necessary for a person bringing a lawsuit regarding the right to a clean and healthy environment to prove personal injury or loss caused by the defendant's actions or omissions. The person only needs to demonstrate that their lawsuit is not frivolous, vexatious, or an abuse of the ELC process. Under national law, the claimant does not have to establish a *prima facie* case with a probability of success or demonstrate the harm they would suffer if the requested orders were not granted.

The Kenyan Constitution establishes that individuals bringing claims related to the violation or threat of violation of their right to a clean and healthy environment are not required to demonstrate personal loss or injury. Therefore, the petitioners were not obligated to prove that they personally suffered harm from the air and water pollution they complained about. Every individual, including the petitioners, has the right to a clean and healthy environment free from pollution and the right to seek legal recourse.

According to the Kenyan Constitution, if an individual alleges the denial, violation, infringement, or threat to their right to a clean and healthy environment, they can seek redress from the ELC, along with any other available legal remedies. In response to such an application, the ELC has the authority to issue appropriate orders or directions to prevent, stop, or discontinue any harmful acts or omissions affecting the environment. Additionally, the ELC can compel public officials to take measures to prevent or discontinue any harmful acts or omissions and provide compensation to victims of violations of the right to a clean and healthy environment.



¹¹⁸ Kenya, The Environment and Land Court at Nairobi (2016). *Case of Isaiah Luyara Odando et al. v. National Management Environmental Authority et al.; County Government of Nairobi et al. (Interested Parties)*. <http://kenyalaw.org/caselaw/cases/view/217772/>

The Kenyan Environment and Land Court emphasized that Kenyans have a duty to sustain the environment for the benefit of future generations. The ELC must therefore apply the principles of intergenerational and intragenerational equity when deciding cases concerning the right to a clean and healthy environment. The present generation is obligated to maintain or enhance the health, diversity, and productivity of the Nairobi and Athi Rivers, ensuring a polluted river is not passed on to future generations. Thus, every person, including the petitioners, is entitled and responsible for protecting the environment from pollution and degradation.

While there are legal provisions and policies in place for the protection of natural resources like the Nairobi and Athi Rivers, the challenge lies in the implementation of these laws due to the failure of state agencies entrusted with the responsibility of safeguarding the water bodies.

Instead of waiting to react after scientific confirmation of the pollution's adverse effects on the health of Nairobi residents, including increased cases of cancers and respiratory diseases, the respondent State should adopt a precautionary strategy. The negative impacts of air and water pollution in the Athi River could disproportionately affect vulnerable communities such as Korogocho and Mukuru, who are least capable of self-protection.

Although the petitioners have not definitively proven a direct link between the mentioned illnesses and the air and water pollution in their locality, the ELC believes they have presented sufficient evidence to justify the application of the precautionary principle. One way to implement the precautionary principle is by shifting the burden of proof to the polluters and exploring alternatives to harmful actions.

The State should adopt a precautionary approach that focuses on minimizing harm rather than tolerating it. Establishing independent and public monitoring structures for the adopted alternatives is crucial to mitigate potential harm to the environment caused by pollution. Decisions regarding waste management and the prevention of Nairobi and Athi River pollution must prioritize health and environmental protection.

Considering the nature of pollution, the damage inflicted on the Nairobi and Athi Rivers, the aquatic life within them, and the impact of polluted water on human health, the ELC issued an injunction to remain in effect until pollution in the Athi and Nairobi rivers is controlled, and respondents were instructed to adopt the precautionary principle in environmental management.



In environmental matters, in order to achieve the realization of the right of access to justice,¹¹⁹ States should, *inter alia*:

- **Realize the right to due process¹²⁰ and fair trial**, including by ensuring that everyone has a fair and public hearing before a competent, independent, and impartial tribunal established by law, while securing the right to have sentences or convictions reviewed by a higher tribunal. This obligation notably pertains to environmental human rights defenders, among others (See Section 2.2.1.C below on the right to defend human rights).
- **Remove barriers to access justice**, including de facto barriers, such as unnecessary fees, information asymmetries, geographical remoteness, unjust burden of proof for victims, inadequate access to counsel, and lack of linguistic interpretation. Linguistic minorities, for example, are entitled to the free assistance of an interpreter if they speak a different language.

Judicial, appellate or review bodies must be competent in the relevant field of expertise, including, where relevant, in criminal law, human rights, or environmental matters. To achieve this, States must take steps to ensure officials' adequate legal training, education, awareness, and sensitization to environmental protection and human rights, including prosecutors, counsel, judges, law-enforcement agents, and policymakers.¹²¹

The availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way. While article 14 [of the ICCPR] explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3 (d), States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it.¹²²

Photo Explorer's Club of Kenya - Sand harvesting along the Athi River



119 United Nations General Assembly (2016). *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil, Victoria Tauli-Corpuz*. Report No. A/HRC/33/42/Add.1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/174/05/PDF/G1617405.pdf?OpenElement>

120 The right to due process requires States to inform promptly all persons charged with a criminal offense of the charges against them and their rights to defend themselves and communicate with a freely chosen counsel; provide access to all exculpatory information and documents; try everyone without undue delay; allow individuals to be present during the trial; do not compel individuals to testify against themselves or to confess guilt. It also includes the right not to be tried or punished again for an offense for which an individual has already been finally convicted or acquitted.

121 United Nations General Assembly (1990). *Guidelines on the Role of Prosecutors*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>

122 United Nations General Assembly (1966). *International Covenant on Civil and Political Rights*. Article 14. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

BOX 7. ALLOWING GROUPS (NGOS AND COMMUNITIES) TO ACCESS JUSTICE

Effective access to justice depends on States fulfilling their obligations to create appropriate judicial or alternative avenues for remedy, including collective legal actions, where applicable.¹²³ These actions entitle groups, which under the applicable laws may be communities or duly incorporated civil society organizations, to seek protection and respect for their rights through claims before Courts.

Collective actions are consistent with the collective dimension of the right to a healthy environment,¹²⁴ and the defense and the protection of the environment.¹²⁵ They are important because environmental deterioration usually impacts, not only one individual, but entire communities.

Moreover, as the IACtHR has explained, these actions:

*'act as mechanisms for societal oversight of policies and at the same time serve to activate accountability processes and systems of checks and balances among government organs. In these actions, environmental groups, users' organizations, indigenous peoples, women's groups, and human rights organizations, or, occasionally, public officials with standing to represent collective stakeholders --such as the Attorney General or the Ombudsman-- have managed, through the institution of judicial proceedings, to influence the direction of social policy in many different ways. Actions of this type have led to debate on public policy in a variety of areas... These remedies have also contributed to monitoring of companies that provide public services, in order to protect the rights of users, or private groups and companies which engage in economic activities that have an environmental impact. They have also served to secure the disclosure of information and demand participation mechanisms in processes prior to the design of policy or the award of concessions for potentially harmful economic activities.'*¹²⁶

The cases of SERAC v. Nigeria,¹²⁷ SERAP v. Nigeria and Save the Lamu¹²⁸ are examples of these. Likewise, the action filed by Advocates Coalition for Development and Environment (ACODE) v. Attorney General in Uganda¹²⁹ illustrates how groups can contribute to increased environmental protection when their right to access justice is recognized.



123 Inter-American Court of Human Rights (n.d.). *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*. <http://www.cidh.oas.org/countryrep/accesodesc07eng/Accessodescv.eng.htm#V>

124 Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17: The Environment and Human Rights*. https://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf

125 Alliance for Land, Indigenous and Environmental Defenders (2022). *Supporting Environmental Human Rights Defenders: Developing New Guidance for Donors and Civil Society Organizations*. <https://allied-global.org/project/supportsreport/>

126 Inter-American Court of Human Rights (n.d.). *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights*. <https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/r/dmujeres/derechos.asp>

127 African Commission on Human and Peoples' Rights (2010). *Case of the Social and Economic Rights Action Center v. Nigeria*. <https://www.hlrn.org/img/documents/SERAC%20v%20Nigeria%20Communication.pdf>

128 Kenya, National Environmental Tribunal (2016). *Case of Save Lamu et al. v. National Environmental Management Authority and Amu Power Co. Ltd.* Tribunal Appeal No. NET 196 of 2016. <http://kenyalaw.org/caselaw/cases/view/176697/>

129 Uganda, Supreme Court of Justice (2011). *Case of the Advocates Coalition For Development & Environment et al. v. Attorney General & Anor (Constitutional Petition No. 14 of 2011)*. Open Law Africa. <https://ulii.org/akn/ug/judgment/ugsc/2011/11/eng@2011-11-15>

Under ACODE, local communities challenged the decision of the Ugandan government to grant operation license to Kakira Sugar Works, a sugar company that 'embarked on a scheme to clear the existing forest estate and replace it with sugar cane plantations,'¹³⁰ without a prior EIA. The Ugandan High Court found, in line with the petition, that the operations amounted to a violation of the right to a clean and healthy environment, harmed Uganda's natural resources and breached local land regulations. The High Court of Uganda therefore ordered the permit to be revoked and requested Kakira Sugar Works to 'restore or take such measures as required of them under Ugandan Law to restore the environment and preserve the ecological integrity of Butamira Forest Reserve.'¹³¹

Another example where groups have brought about positive changes to contribute to protecting the environment is the *PSB et al. v. Brazil* case.¹³² In this litigation, the Brazilian Socialist Party - PSB, the Socialism and Freedom Party - PSOL, the Workers' Party - PT and Rede Sustentabilidade, argued that failure of the Brazilian Federal Government to allocate sufficient resources to the National Fund on Climate Change (Climate Fund) led to 'inadequate measures to mitigate climate change, in violation of the right to a healthy environment... as well as international commitments to which Brazil is a party.'¹³³ The Tribunal accepted the claims of the plaintiffs and explained that, according to the rights to a healthy environment and other international human rights, the adequate resourcing and functioning of the Climate Fund (i.e., adopting climate change mitigation measures) was an obligation of the government of Brazil.

130 Uganda, High Court of Uganda at Kampala (2004). *Case of the Advocates Coalition for Development and Environment v. Uganda. Miscellaneous Cause No. 0100 of 2004*. <https://www.globalhealthrights.org/wp-content/uploads/2013/02/HC-2004-Advocates-Coalition-for-Development-and-Environment-v.-Attorney-General.pdf>

131 Ibid. p. 2

132 Brazil, Federal Supreme Court (2020). *PSB et al. v. Brazil*. Climate Change Litigation Database. Accessed 19 December, 2023. <https://climatecasechart.com/non-us-case/psb-et-al-v-federal-union/#:~:text=Summary%3A,measures%20concerning%20the%20Climate%20Fund>

133 Ibid.

- **Adopt a binding decision set out in writing on all relevant complaints, petitions, or claims.** Binding decisions must be accompanied by appropriate mechanisms to enforce them in a timely and effective manner and should be appropriately disseminated. Second-instance mechanisms must be established to allow all decisions to be reviewed or reconsidered.
- **Guarantee everyone access to effective remedy or redress, including for violations to their economic, social and cultural rights.** Relevant legal frameworks may be criminal, civil, or administrative in nature, and may provide for judicial or non-judicial mechanisms to access justice.¹³⁴

*'A lack of adequate and effective remedies in the domestic law of a State for the protection of economic, social, and cultural rights is an infringement of the rules contained in international human rights instruments, which enshrine the right of access to such remedies and, consequently, to those rights... Recognition of rights imposes the obligation to create judicial or other remedies that enable their holders to invoke their protection in court or before another similarly independent authority when a person required to observe them fails to do so.'*¹³⁵

¹³⁴ United Nations General Assembly (2021). *Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary. Housing, land and property issues in the context of internal displacement.* Report No. A/HRC/47/37. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/093/11/PDF/G2109311.pdf?OpenElement>

¹³⁵ Ibid.

In environmental matters, the right to access justice also means that individuals and, where applicable,¹³⁶ groups whose substantive or procedural rights are affected are entitled to adequate compensation or reparation for environmental harm¹³⁷ or activities and decisions with environmental impact. These 'may take the form of restitution, compensation, satisfaction or guarantees of non-repetition.'¹³⁸

Restorative justice principles and approaches should guide effective remedy frameworks.¹³⁹ Remedies must be 'adequate,' meaning they should properly address the infringement of the right being protected, by addressing, and where appropriate, providing the relief sought by the claimant.¹⁴⁰

For example, in the cases of *Mendoza Beatriz Silva et al v. State of Argentina et al*, and *ACODE v. Uganda*, redress included comprehensive plans to restore the environment because the complainants sought redress for pollution and environmental damage.

¹³⁶ Some MEAs and national laws explicitly recognize and allow the participation of groups, for example, the Aarhus Convention recognizes the right of non-governmental organizations and community groups to the three fundamental access rights enshrined in this treaty. In contrast, other conventions and laws may not specifically address or permit group participation due to the legal traditions, political systems, or regulatory structures of the respective jurisdictions. For instance,

¹³⁷ United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John Knox. Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment.* Report No. A/HRC/25/53. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>

¹³⁸ Office of the United Nations High Commissioner for Human Rights (1999). *Committee on Economic, Social and Cultural Rights. General Comment No. 12: The Right to Adequate Food.* Document No. E/C.12/1999/5. Article 11. <https://www.refworld.org/pdfid/4538838c11.pdf>

¹³⁹ United Nations General Assembly (2011). *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Addendum - The situation of Māori People in New Zealand.* Report No. A/HRC/18/XX/Add.Y. https://www2.ohchr.org/english/issues/indigenous/rapporteur/docs/A.HRC.18_NewZealand.pdf

¹⁴⁰ Inter-American Court of Human Rights (1988). *Case of Velásquez Rodríguez v. Honduras. (Reparations and Costs).* https://www.corteidh.or.cr/docs/casos/articulos/seriec_07_ing.pdf

In *Kawas-Fernandez v. Honduras*, the victims sought redress for the violation to the right to life of Ms. Jeannette Kawas Fernandez, who had been killed. Thus, the IACtHR ordered the State, among other things, to give victims a monetary reparation; conclude criminal proceedings; conduct a public act of acknowledgment of international responsibility; erect a monument in memory of Ms. Kawas Fernández; and provide the victims free, immediate and for as long as necessary, psychological and/or psychiatric treatment.

Other measures include, *inter alia*, interim injunctive relief, provision of alternative accommodation and land for cultivation,¹⁴¹ resettlement of displaced communities, return of land¹⁴² or control over natural resources.

Remedies and redress must be context specific and tailored to the needs of victims.

For instance, the Committee on the Rights of the Child¹⁴³ has explained that, when assessing reparations, it is crucial to consider that children are more susceptible to the consequences of rights violations compared to adults. Moreover, these consequences can have irreparable and long-lasting effects throughout their lives. Additionally, mechanisms should acknowledge the dynamic process of children's growth and capabilities. Consequently, reparations should be provided promptly to minimize any continuing or potential harm to the affected child or children.

For example, in the case of children being identified as victims of environmental pollution, it is crucial for all relevant parties to take immediate action to prevent any additional harm to their health and overall development. Moreover, efforts should be made to rectify any existing damage. States have a responsibility to ensure that affected children receive necessary medical and psychological support, legal assistance, and rehabilitation services in situations where abuse and violence, instigated or facilitated by business entities, have occurred. Additionally, it is imperative for states to guarantee the prevention of similar abuses in the future. This can be achieved through various means, such as enacting reforms in relevant laws and policies, as well as effectively implementing them, including prosecution and appropriate sanctions against the implicated business actors.

→ **Guarantee adequate justice systems to secure accountability and guarantees of non-repetition.**

With regards to attacks on environmental human rights defenders, this means that in addition to providing remedies and redress to victims of threats, States must hold perpetrators accountable,¹⁴⁴ including, where applicable, law enforcement agents and private sector actors, by conducting independent, effective, and impartial investigations. This requires States to adequately resource¹⁴⁵ access to justice mechanisms and properly train officials.¹⁴⁶

141 Office of the United Nations High Commissioner for Human Rights (2006). *United Nations Committee on Economic, Social and Cultural Rights. Concluding Observations of the Committee: Mexico*. Document No. E/C.12/MEX/CO/4. <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuWytCsSqb%-2Bi05nV1YVV9BSQCcrH%2BKkC%2Fvk13HpFoPrwpuAigjQR1WC0s4KqHBEZdi%-2B0XBqJzAmTVDbmJhJ%2FLoLHbhrGChsCKArG5nlj51GvS6r>

142 United Nations General Assembly (2011). *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*. Report No. A/HRC/24/41. https://www.ohchr.org/sites/default/files/HRBodies/HRC/RegularSessions/Session24/Documents/A-HRC-24-41_en.pdf

143 United Nations General Assembly (2013). *Convention on the Rights of the Child. General comment No. 16 on State obligations regarding the impact of the business sector on children's rights*. Document No. CRC/C/GC/16. <https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.16.pdf>

Securing accountability and non-repetition also

144 United Nations General Assembly (2020). *Report of the Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz*. Report No. A/HRC/45/34. <https://undocs.org/en/A/HRC/45/34>

145 United Nations General Assembly (2018). *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, Victoria Tauli-Corpuz*. Report No. A/HRC/39/17/Add.2. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/39/17/Add.2&Lang=E>

146 United Nations General Assembly (2016). *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Honduras, Victoria Tauli-Corpuz*. Report No. A/HRC/33/42/Add.2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/162/03/PDF/G1616203.pdf?OpenElement>

entails establishing adequate and robust legal frameworks and enforcement mechanisms. Legal frameworks must not only address access to justice procedures, but also seek to prevent human rights and environmental harm. In this regard, adequate laws and policies on natural disasters, land tenure, access to land and housing, and environmental degradation, complement efforts to secure access to justice.¹⁴⁷

In the case of *Benito Oliveira Pereira and others v. Paraguay*, for instance, authors of the communication urged an investigation into the reported violations, emphasizing the need for thorough fact-finding. They requested that those responsible for the violations be held accountable and appropriately punished and preventive measures to ensure the non-reoccurrence of such acts in the future. One important step suggested by the authors is the establishment of an agroenvironmental entity and the implementation of a code of agricultural and environmental procedures by the Paraguayan State to serve as a safeguard against similar incidents.

- **Ensure that sentences or convictions are respectful of all human rights, including the rights of Indigenous Peoples, persons with disabilities, and women.** Likewise, 'security and protection measures and strategies to ensure justice and reparation for human rights violations should be designed with due regard for gender-related factors and the situation of children, young persons and other vulnerable sectors of the indigenous population.'¹⁴⁸

¹⁴⁷ United Nations General Assembly (2018). *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, Victoria Tauli-Corpuz*. Report No. A/HRC/39/17/Add.2. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/39/17/Add.2&Lang=E>

¹⁴⁸ Ibid.

Photo - Jetsandzeppelin



Photo OHS Insider - CROP SPRAY

BOX 8. REALIZATION OF THE RIGHT TO ACCESS TO JUSTICE AND THE ENVIRONMENT

The right to access to justice allows individuals and communities whose human rights related to the environment have been violated to make their grievances be heard and addressed and obtain redress. In environmental matters, the right to access to justice can stop or prevent a harm to the environment and the human rights related with it, by securing the implementation of the relevant environmental and human rights laws.

For example, Courts can help to enforce environmental laws to stop environmental deterioration, and negative human rights impacts. The judgment by India's National Green Tribunal (NGT), which halted illegal sand mining in the villages of Tondavali and Talashil in Maharashtra State,¹⁴⁹ on India's west coast, illustrates this.

In this case, the communities located between the Gad River and the Arabian Sea sought legal recourse to protect their rights and livelihoods from illegal sand mining. In the proceeding, they demonstrated that sand mining was causing a rise in sea level and soil erosion, which in turn reduced the lands of the villages, increased their risk from flooding, and affected their livelihoods by impacting, *inter alia*, fishing resources. The NGT ordered the companies, *inter alia*, to stop sand mining activities in the area until they conducted all assessments required by law, to comply with all regulations to protect the ecosystems, and to take steps to protect and restore the embankments including by ensuring no further damage is caused. Local authorities were requested to secure full observance of environmental applicable laws.

Another example is the case of *Save Lamu and others v. National Environment Management Authority (NEMA) and Amu Power Company Ltd. (APC)*, explained in Box 1 above. In this case, the Appellants requested that the Tribunal revoked the license, as a relief measure for breaches to their procedural rights.

“ **The right to freedom of expression entitles everyone to, *inter alia*, express views, ideas, or share information related to environmental concerns, online or offline, in private or public places...** ”

¹⁴⁹ India, National Green Tribunal (2022). *Original Application No. 23/2022 (WZ) Sanjay Chandrakant Keluskar v. State Of Maharashtra, Seiaa, Maharashtra, District Collector, Sindhudurg, District Mining Officer, Sindhudurg, Maharashtra Coastal Zone Management Authority*. <https://elaw.org/system/files/attachments/publicresource/Sand%20Mining%20Judgment.pdf>

2.2 SUBSTANTIVE RIGHTS

2.2.1 Civil and political rights

A. Right to freedom of opinion and expression in environmental matters

Article 19 of the UDHR recognizes that 'everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'¹⁵⁰

Echoing this provision, the ICCPR establishes in Article 19 that '[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.'¹⁵¹

The right to freedom of *opinion* cannot be restricted. In environmental matters, it entitles all individuals to hold ideas, concerns, or views on the environment, its elements, factors, or activities and decisions affecting them, without interference or reprisals of any kind from State or non-State entities.

For example, individuals may form confronting opinions about State development or environmental action plans, or business enterprises' activities. The enjoyment of this right is dependent on the fulfillment of the right of access to information (see Section 2.1.A above).

The right to freedom of *expression* entitles everyone to, *inter alia*, express views, ideas, or share information related to environmental concerns, online or offline, in private or public places through, among other means, public protests, audio-visual materials, social media, press, blogs, peaceful demonstrations, and many others, without interference from State or non-State entities.

Under this right, individuals are entitled to, for example, produce environmental protection or degradation reports; report on human rights violations and abuses in connection with the environment or its defense; report or comment on government activities that may affect or have affected the environment; comment and seek accountability on corruption in environmental and human rights matters; conduct peaceful civil disobedience or other peaceful resistance acts; communicate with governmental and non-governmental organizations; and to participate in peaceful activities against violations of human rights and fundamental freedoms; among many others.

For example, in *Vides Aizsardzibas Klubs v. Latvia*,¹⁵² the ECtHR affirmed that freedom of expression allows, among others, civil society organizations and the media to act as 'watchdogs' in environmental matters. This right, therefore, entitles them to draw attention to sensitive public interest topics, particularly those concerning the environment. 'Such participation of an association being essential for a democratic society, the Court considers that it is similar to the role of the press... to be able to disclose facts likely to interest the

¹⁵⁰ United Nations General Assembly (1948). *Universal Declaration of Human Rights*. <https://www.un.org/en/universal-declaration-human-rights/>

¹⁵¹ United Nations General Assembly (1966). *International Covenant on Civil and Political Rights*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁵² European Court of Human Rights (2004). *Case of Vides Aizsardzibas Klubs v. Latvia*. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22%3A%22001-66349%22%7D>

public, to give them an appreciation and thus contribute to the transparency of the activities of the public authorities.¹⁵³

Regarding the environment, to fulfill their obligations under the rights to freedom of opinion and expression, States should, *inter alia*:

- **Refrain from restricting the means of dissemination of information, opinions, or ideas**, as these limit the right itself.¹⁵⁴ Critical infrastructure bills,¹⁵⁵ for example, may contravene this obligation.
- **Permit and, where appropriate facilitate, the communication and expression of opinions, ideas, and information** about the environment and environment-related issues between citizens, candidates, and State officials.¹⁵⁶
- **Allow individuals to challenge and question State and private entities'** decisions, actions, or omissions that may result in environmental impact, **free from interferences, disturbances, or reprisals**, and implement effective measures to **protect against attacks** aimed at silencing those exercising their right to freedom of expression.

For example, establish safeguards to prevent threats against those who exercise their right to freedom of expression,¹⁵⁷ including surveillance, hate speech,¹⁵⁸ and misinformation campaigns; and refrain from making, sponsoring, encouraging, or disseminating statements States know or should reasonably know to be false.

- Guarantee and protect a free and independent press, broadcasting, and other media, capable of commenting on and informing the public about the environment and environment-related issues, with due respect for the right of freedom of movement inside and outside a State's territory, and without obstacles and barriers to research and reporting. Encourage and support information and digital literacy by the media.

“**In environmental matters, Article 19 entitles all individuals to hold ideas, concerns, or views on the environment, its elements, factors, or activities and decisions affecting them, without interference or reprisals of any kind from State or non-State entities.**”

¹⁵³ Ibid.

¹⁵⁴ Inter-American Court of Human Rights (1985). *Advisory Opinion OC-5/85: Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights)*. https://www.corteidh.or.cr/docs/opiniones/seriea_05_ing.pdf

¹⁵⁵ International Center for Not-for-Profit Law and European Center for Not-for-Profit Law (2020). *Closing Civic Space for Climate Activists*. <https://ecnl.org/sites/default/files/2020-08/Climate-Change-and-Civic-Space-Briefer-vf.pdf>

¹⁵⁶ United Nations General Assembly (2011). *International Covenant on Civil and Political Rights. General comment No. 34: Freedoms of opinion and expression*. Document No. CCPR/C/GC/34. Article 19, para. 13. <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

¹⁵⁷ United Nations General Assembly (2019). *Promotion and protection of the right to freedom of opinion and expression. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*. Report No. A/74/486. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/308/13/PDF/N1930813.pdf>

¹⁵⁸ Ibid.

Restrictions to the rights of opinion and expression

The only acceptable restrictions to the right to freedom of expression are those provided by law; which fulfill the tests of necessity and proportionality;¹⁵⁹ and seek to protect or uphold the human rights or reputation of others, or are carried out for reasons of national security, public order, public health, or public morals.

'Blanket prohibitions on protests surrounding the operations of mining, forestry or other resource extraction companies are unjustifiable¹⁶⁰ restrictions to the right to freedom of opinion and expression.

Strategic litigation against public participation lawsuits (SLAPPs), whether initiated by public or private actors, constitute a denial of the right to freedom of expression and may further violate other connected human rights, such as the right to defend human rights, participation in public affairs (including environmental matters), and others.¹⁶¹ States must vigorously investigate and, where appropriate, prosecute individuals and organizations misusing the judiciary in this way, and give victims appropriate redress. Strong frameworks to prevent criminalization and SLAPPs, and appropriate capacity-building and awareness raising strategies for the judiciary and law enforcement agents are effective steps in this regard (see Section 2.2.1.C).

Moreover, decisions that may cause a detriment to individuals, such as removing them from teaching or public positions, may constitute breaches of this right if they cause a 'significant detriment, even if no or only insignificant pecuniary damage is suffered,¹⁶² whenever such a detriment is imposed due to the expression of their views.

*'States may never respond to the exercise of these rights with excessive or indiscriminate use of force, arbitrary arrest or detention, torture or other cruel, inhuman or degrading treatment or punishment, enforced disappearance, the misuse of criminal laws, stigmatization, or the threats of such acts.'*¹⁶³

159 Ibid. para. 6

160 Boyd, D., Knox, J., & Limon, M. (2021). *The case for universal recognition of the right to a safe, clean, healthy and sustainable environment*. p. 3. <https://www.universal-rights.org/urg-policy-reports/the-time-is-now-the-case-for-universal-recognition-of-the-right-to-a-safe-clean-healthy-and-sustainable-environment-2/>

161 United Nations General Assembly (2016). *Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst. Situation of human rights defenders*. Report No. A/71/281. <https://digitallibrary.un.org/record/840291?ln=en>

162 United Nations General Assembly (2000). *Communication No. 736/1997: Human Rights Committee, 70th session*. <https://digitallibrary.un.org/record/452850?ln=es>

163 Boyd, D., Knox, J., & Limon, M. (2021). *The case for universal recognition of the right to a safe, clean, healthy and sustainable environment*. op. cit. p. 187.

BOX 9. REALIZATION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION AND THE PROTECTION OF THE ENVIRONMENT

It is through the exercise of freedoms of opinion and expression that civil society, including environmental human rights defenders and the media, have been able to raise public awareness on environmental challenges such as pollution, biodiversity loss, climate change, and pandemics, as well as the impact of these phenomena on the enjoyment of human rights.

Freedom of expression has also allowed civil society actors to contribute to public debate, increase transparency in decision-making processes, and mobilize political will to address environmental challenges.

Public advocacy through campaigning, for example, has been determinant in bringing about positive environmental outcomes. In the cases of *CJGEA v. Kenya* (See Box 21) and *Quintero and Puchuncaví* in Chile (See section 2.2.2.A), the legal actions were just one puzzle in the strategy developed by environmental defenders¹⁶⁴ to protect their rights and the environment. Likewise, the results of the popular consultation in Piedras (See Box 6) were only achieved thanks to the mobilization and expression of youth environmental activists. Equally, public campaigns are considered to have contributed to building political will to fight impunity in the cases of *Berta Cáceres*, *Bruno Pereira* and *Don Philipps* (See Box 14).

In addition, the exercise of these rights can contribute to raise environmental awareness and create political momentum around key environmental issues. Demonstrations by climate activists, such as Fridays for Future, through various means like peaceful protests, climate strikes, public speaking at multilateral fora, media campaigns etc., created a sense of urgency on citizens and policy-makers on the need to take effective steps to address climate change. Their work has increased the engagement of the public in holding governments accountable for their climate change commitments and actions.¹⁶⁵

The right to freedom of expression can also help to secure compliance with environmental regulations. The cases of *Vides Aizsardzibas Klubs v. Latvia* (See Case 7) and *Bladet Tromsø v. Norway* (See Case 4) where the publications in discussion resulted in regulatory investigations aimed at enforcing local environmental norms, are examples of this.

¹⁶⁴ Del Solar (2019). Mujeres de Zona de Sacrificio en Resistencia: La Lucha por Respirar un Aire Limpio. <https://radiojgm.uchile.cl/mujeres-de-zona-de-sacrificio-en-resistencia-la-lucha-por-respirar-un-aire-limpio/>

¹⁶⁵ Post, H. (2022). Youth Climate Movements: Achievements and Limitations. <https://trdsf.com/blogs/news/youth-climate-movements-achievements-and-limitations>

CASE 7. VIDES AIZSARDZIBAS KLUBS V. LATVIA¹⁶⁶

In *Vides Aizsardzibas Klubs v. Latvia*, the applicant argued before the ECtHR that the decision of a national court to consider defamatory a publication addressed to national authorities expressing concerns about the conservation of an area of coastal dunes constituted a violation to its right to freedom of expression.

The ECtHR ruled that, indeed, publications expressing concerns about environmental damage, regardless of an underlying prove of their accuracy, are a legitimate exercise of this right which entitles *everyone* 'to draw the public's attention to situations in which actions of a public figure could be considered unlawful.'¹⁶⁷

Separately, the contested publication had positive repercussion in Latvia's environment because it led competent authorities to undertake an investigation, ultimately finding a 'series of non-compliance with provisions in force,' securing accountability by sanctioning the individuals responsible for these breaches and issuing a warning to the local administration. In other words, it increased compliance with and enforcement of environmental regulation.

BOX 10. JOURNALISM AND THE PROTECTION OF THE ENVIRONMENT

In any democracy, journalism is based on the fundamental right to access information, including the right to inform and be informed. As such, the journalist's role is to disseminate information in a correct and precise manner, guided by the commitment to the true information and the public interest. As information mediators, journalists act like supervisors for public and private actions. Thanks to this role, journalism is often seen as extra power, in addition to the powers of the State – its capacity to investigate and disseminate information is essential for maintaining democracy and ensuring the enforcement of the rule of law.¹⁶⁸

¹⁶⁶ European Court of Human Rights (2004). *Case of Vides Aizsardzibas Klubs v. Latvia*. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-66349%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-66349%22]})

¹⁶⁷ European Court of Human Rights (2004). *Case of Vides Aizsardzibas Klubs v. Latvia*. op. cit.

¹⁶⁸ United Nations Environment Programme (2022). *Environmental Rights for Journalists: A Guidebook on Best Practices*. p. 39. <https://wedocs.unep.org/20.500.11822/38903>



B. Right to peaceful assembly and association in environmental matters

The rights to peaceful assembly and association were first recognized at the international level by the UDHR. Article 20 of this instrument establishes that 'Everyone has the right to freedom of peaceful assembly and association.' The ICCPR turned this recognition into a binding obligation for all States when it established, in Articles 21 and 22, respectively:

'The right of peaceful assembly shall be recognized.

(...)

Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.'



The right to peaceful assembly

The right to peaceful assembly 'enables individuals to express themselves collectively and to participate in shaping their societies... it protects the ability of people to exercise individual autonomy in solidarity with others.'¹⁶⁹

The right to peaceful assembly entitles all individuals to take part in, support (including by funding or disseminating), or organize peaceful assemblies without interference, such as disruptions to online communications or restraining actions by law enforcement agents. The right to privacy positively reinforces this aspect of the right to peaceful assembly, as it prohibits unwarranted surveillance.

'Together with other related rights, it also constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law, and pluralism.'¹⁷⁰ The right protects individuals but by doing so it also protects the collective group as a whole, as the right can only be fully enjoyed through these groups.

What constitutes peaceful assembly?

- A **non-violent gathering** offline (outdoors or indoors, and in public or private spaces) or online. This includes, among others, demonstrations, peaceful civil disobedience acts, protests, meetings, marches, and strikes.
- A core element of this right is that the gatherings must be **peaceful**.

¹⁶⁹ United Nations General Assembly (2020). *International Covenant on Civil and Political Rights*. General comment No. 37 on the right of peaceful assembly. Document No. CCPR/C/GC/37. Article 21. <https://digitallibrary.un.org/record/3884725?ln=en>

¹⁷⁰ Ibid.

'Violence' in the context of Article 21 of the ICCPR implies the use of physical force by participants, 'likely to result in injury or death, or serious damage to property.'¹⁷¹ The provision covers the use of violence, as well as incitement to or plans of violence.

Examples of violence include the destruction of goods and buildings; blockages that result in a negative impact on the rights to life or health of individuals, for example by preventing them to access health services; and physical assaults on State officials including law enforcement agents, among others.

If some participants act violently, the protection provided by this right is lost only by those who planned, incited, or perpetrated the violent acts.¹⁷² Violent episodes, however, do not mean that the entire assembly or individuals not involved in those violent acts lose the protection granted by the right to assembly. States must ensure that forceful dispersal is only used in cases of violence, and that it is enacted with the minimum proportionate use of force.¹⁷³

→ The purpose of the gathering does not define whether an assembly is protected by this right. Thus, the **objective or expressive content of a peaceful assembly can be any legitimate interest.** For example, celebrating or commemorating dates; expressing opinions; exchanging views or information; conveying a position; expressing solidarity; demanding State action, such as policy change; conducting a counterdemonstration against another peaceful assembly; criticizing the State, government officials, their actions or omissions; or demanding specific action by a company or criticizing its conduct.

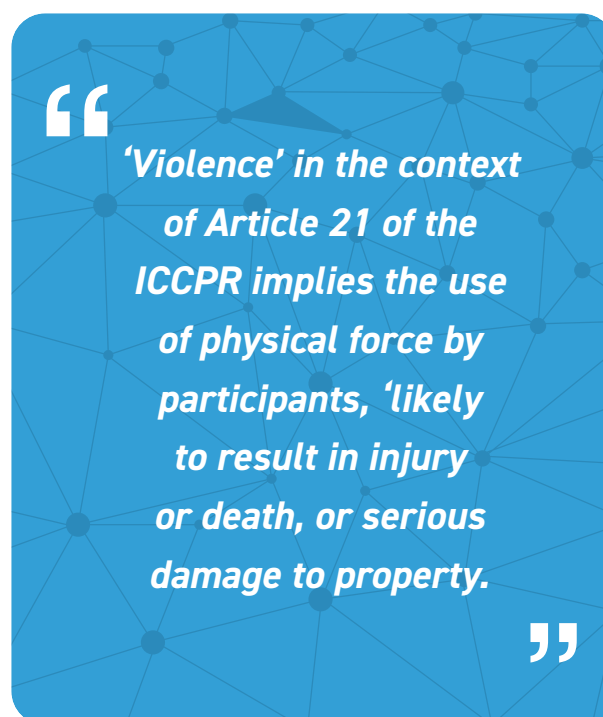
→ A peaceful assembly may have **contentious or controversial ideas or goals**, and can cause disruption, including hindering vehicular or pedestrian movement or disrupting economic activity.

→ A peaceful assembly may be organized in advance or be spontaneous. Requiring prior authorization or notification is deemed a restriction to this right, as it is a form of preventing spontaneous assemblies.

171 Ibid.

172 Notwithstanding, violent individuals still enjoy the protection granted by other human rights (i.e., due process, life, freedom from torture, etc.).

173 The Special Rapporteur on Freedom of Peaceful Assembly and Association ('SR FAA') explained: *'The right to life (Article 3 of the Universal Declaration on Human Rights and Article 6 of the Covenant on Civil and Political Rights) and the right to be free from torture or cruel, inhuman, or degrading treatment or punishment (Article 5 of the Declaration and Article 7 of the Covenant) should be the overarching principles governing the policing of public assemblies, as stated by several countries. In this regard, soft law provisions – the Code of Conduct for Law Enforcement Officials (in particular articles 2 and 3) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (in particular principles 4, 9, and 13) – aim at guiding law enforcement officials when policing peaceful protests. In this connection, the Inter-American Court of Human Rights stated that the "pretext of maintenance of public security cannot be invoked to violate the right to life ... the State must ensure that, if it is necessary to resort to physical means ... members of its armed forces and its security bodies will use only those means that are indispensable to control such situations in a rational and proportional manner, and respecting the rights to life and to humane treatment".*²² *The Special Rapporteur on extrajudicial, summary or arbitrary executions also stated that "the only circumstances warranting the use of firearms, including during demonstrations, is the imminent threat of death or serious injury" (A/HRC/17/28, para. 60). With regard to the use of tear gas, the Special Rapporteur recalls that gas does not discriminate between demonstrators and non-demonstrators, healthy people and people with health conditions. He also warns against any modification of the chemical composition of the gas for the sole purpose of inflicting severe pain on protestors and, indirectly, bystanders.'* [...] *The Special Rapporteur also refers to the Inter-American Commission on Human Rights List of administrative controls that should be put in place at the State level to ensure use of force during public assemblies on an exceptional basis. Among others, "(a) implementation of mechanisms to prohibit, in an effective manner, the use of lethal force as recourse in public demonstrations; (b) implementation of an ammunition registration and control system; (c) implementation of a communications records system to monitor operational orders, those responsible for them, and those carrying them out."* See, e.g., United Nations General Assembly (2012). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*. para. 35. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf



Regarding the environment, States should protect peaceful assemblies through, *inter alia*:

→ **Frameworks to enable and facilitate peaceful assemblies and secure their implementation.**

Concrete measures vary, but regularly include adopting norms and policies to secure an open civic space;¹⁷⁴ regulating the use of force by law enforcement officers in connection with public demonstrations;¹⁷⁵ and clarifying and restricting the scope¹⁷⁵ for the applicability of criminal and terrorism laws.¹⁷⁶

States also have the duty to facilitate and refrain from interfering with peaceful assemblies. For example, by proactively addressing barriers to peaceful assemblies, such as formal requirements to organize peaceful assemblies¹⁷⁷ (e.g., the legal incorporation of organizers) and de facto obstructions like the obligation to pay fees or lack of access to public or internet services.¹⁷⁸

Other measures include redirecting traffic, granting special protection to vulnerable individuals, avoiding to physically disperse demonstrations, or criminalizing or otherwise prosecuting peaceful participants.

→ **Guarantee the 'independent and transparent oversight of all bodies involved with peaceful assemblies.'**¹⁷⁹

The work of journalists, civil society organizations, and human rights defenders can deter violations¹⁸⁰ to this right and contribute to its fulfillment. In some cases, this oversight actions are hindered by reprisals from non-State actors – such as private security forces or armed groups – that attack or threaten NGOs and individuals overseeing protests or other forms of expression. States should prevent these reprisals.

→ **Investigate and sanction violations to the right to peaceful assembly and secure non-repetition of violations.**

174 United Nations General Assembly (2019). *Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst. Visit to Colombia*. Report No. A/HRC/43/51/Add.1. para. 74. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/354/05/PDF/G1935405.pdf?OpenElement>

175 Office of the United Nations High Commissioner for Human Rights (2012). *United Nations Committee on Economic, Social and Cultural Rights. Concluding Observations of the Committee on the 3rd periodic report of Ecuador as approved by the Committee at its 49th session, 14-30 November 2012*. Document No. E/C.12/EQU/CO/3. <https://www.refworld.org/docid/52d551274.html>

This includes 'ensuring that law enforcement officials are properly equipped and trained to apply proportionate use of force if needed,' and 'not arbitrarily reject requests to hold public assemblies.'

176 Ibid.

177 United Nations General Assembly (2020). *General comment No. 37*. para. 70.

In practical terms, authorization regimes should function as notification systems, where authorization is granted as a routine procedure. If prior notification procedures are put in place, it is essential for states to ensure that they are designed to enable state authorities to facilitate the exercise of the right to freedom of peaceful assembly and to take necessary measures to protect public safety, maintain order, and uphold the rights and freedoms of all individuals involved.

178 Ibid. para. 32

179 United Nations General Assembly (2007). Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani. Report No. A/62/225. para. 91. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/457/26/PDF/N0745726.pdf?OpenElement>

180 Ibid.



CASE 8. MAKHMUDOV V. RUSSIA¹⁸¹

In the case of *Makhmudov v. Russia*, the non-governmental organization “City-wide public council for the protection of citizens’ rights in town planning and for the protection of the environment” sought to organize a gathering of local residents to express their opposition to the town-planning policy of the Moscow government. However, permission for the assembly was revoked shortly before the scheduled date, and the police dispersed the meeting, resulting in the applicant, Mr Rustam Khamidovich Makhmudov, being fined for participating in an unauthorized assembly.

The ECtHR emphasized that the right to freedom of assembly encompasses both private and public meetings, including static meetings and public processions. This right can be exercised by both individual participants and organizers of the assembly.

In this case, the ECtHR concluded that the measures taken, both prior to, during, and after the planned meeting, constituted an interference with the applicant’s right to freedom of assembly. Restrictions on assemblies can occur before, during, or after the event, including punitive measures. The ECtHR acknowledges that the right to peaceful assembly, enshrined in Article 11, is a fundamental right in a democratic society and serves as one of the pillars of such a society.

States not only have a duty to protect the right to assemble peacefully but also must refrain from imposing unreasonable indirect restrictions on this right. Due to the fundamental nature of freedom of assembly and its close connection to democracy, any interference with this right must be justified by compelling reasons. When restricting peaceful assemblies States must exercise their discretion reasonably, carefully, and in good faith.

In this case, the State justified the restriction on the risk of a terrorist act linked with the assembly. The ECtHR applies the principle *affirmanti, non neganti, incumbit probatio*, meaning the burden of proof lies with the party making an assertion, not the one denying it; namely, the State. Proof may arise from the presence of sufficiently strong, clear, and consistent inferences or from unrebutted presumptions of fact. In certain situations, only the respondent Government possesses the information capable of substantiating or refuting specific allegations. If the Government fails to provide such information without a satisfactory explanation, it may lead to inferences regarding the validity of the applicant’s claims.

In the present case, the Government’s submissions were limited to affirming that information regarding a potential terrorist attack had been communicated to the prefect, who subsequently revoked permission for the applicant’s meeting. The ECtHR observed that the Government did not support this affirmation with any evidence or provide an explanation as to why they could not produce substantiating material. Given the sensitive nature of the information, only the respondent Government had access to it, not the applicant.



¹⁸¹ European Court of Human Rights (2007). *Case of Makhmudov v. Russia*. Application No. 35082/04. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-81966%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-81966%22]})

Additionally, the ECtHR noted that no evidence supporting the necessity to revoke permission for the applicant's meeting was presented or examined during the domestic proceedings. In light of these circumstances, the ECtHR concluded that the domestic judgments, which relied on a "terrorist threat" as the justification for banning the applicant's meeting, were based on assumptions rather than reasoned factual findings.

Consequently, the ECtHR found that the domestic authorities acted arbitrarily in prohibiting the applicant's meeting and that there was no justification for the interference with the applicant's right to freedom of assembly.

Right to freedom of association

The right to freedom of association entitles all individuals to join together for a common activity, purpose, or interest, which may be political, religious, social, economic, cultural, or of any other nature.

What is an association?

Any organized self-governing group with a defined structure, whether horizontal or hierarchical, is an association. Civil society organizations, trade unions, and foundations are examples of associations.

- An association does not require the establishment of a legal personality. 'Legislation should not compel associations to gain formal legal personality, but it should provide associations with the possibility of doing so.'¹⁸²
- Members in the association must be voluntary, can be restricted or open, and there should be no minimum or maximum limit to the number of members or participants.¹⁸³
- An association should be independent of interference from the State and other actors.
- The main or sole objective of an association must not be the generation of income.

¹⁸² European Commission for Democracy through Law (2014). *Joint Guidelines on Freedom of Association*. [https://www.venice.coe.int/webforms/documents/default.aspx?pdfid=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdfid=CDL-AD(2014)046-e)

¹⁸³ United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*. para. 54. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf



Because it is through the association that members are able to enjoy other rights and protections, including the rights to assembly and expression, 'associations shall themselves enjoy other human rights, including the right to freedom of peaceful assembly, the right to an effective remedy, the right to a fair trial, the right to the protection of their property, private life and correspondence and the right to be protected from discrimination.'¹⁸⁴ Subject to legitimate restrictions, associations also have the right to participation.

Regarding the environment, the right to freedom of association, means that States should, *inter alia*:

→ **Refrain from interfering with, and instead facilitating, the creation of associations.**

For instance, removing burdensome and lengthy registration procedures. 'A common feature of many laws that restrict freedom of associations is the criminalization of non-registered entities and the requirement to obtain authorizations or registration before carrying out human rights activities.'¹⁸⁵

Registration processes should be transparent, clear, inexpensive, and expedited, and an appeal process should be established to allow individuals to challenge the decisions adopted by registering bodies.¹⁸⁶ For example, notification procedures under which legal personality is granted automatically upon registration, as opposed to prior authorization procedures.¹⁸⁷

'Registration status should not limit associations' ability to monitor, report on, conduct advocacy concerning and challenge the environmental impacts of business ventures and decision-making processes exerting an impact on environmental issues.'¹⁸⁸

→ **Establish frameworks and safeguards allowing associations to operate without restrictions or interference.**

To operate freely, means letting associations define their objectives and the most appropriate ways and means to pursue them, the scope and geographic area of their work, their structure, staff and directives; to freely seek, receive, and use resources (See Section 2.2.1.C below on the right to defend human rights); and to form networks, including coalitions and federations.

Common measures to allow associations to operate include removing de facto barriers, such as undue oversight, a priori scrutiny, excessive taxes, and cumbersome bureaucratic procedures, and training authorities and State officials on how to implement applicable laws without violating human rights.

'When individuals are free to exercise their right to associate but are denied the resources to carry out activities and operate an organization, the right to freedom of association becomes void.'¹⁸⁹ Reporting and transparency requirements, if not excessively burdensome, are legitimate.

→ **Refrain from suspending or closing associations**

by, *inter alia*, unduly withdrawing legal personality or operation permits. It is advised that the law grants the power to suspend or dissolve associations only to courts or tribunals. For civil society organizations, this means that suspensions to their legal personality or operation permits should only occur when 'clear and imminent danger that could result directly from such activities, and that is objectively ascertained.'¹⁹⁰

184 European Commission for Democracy through Law (2014). *Joint Guidelines on Freedom of Association*. para. 19. [https://www.venice.coe.int/webforms/documents/default.aspx?pdfid=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdfid=CDL-AD(2014)046-e)

185 United Nations General Assembly (2007). *Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*. Report No. A/62/225. op.cit.

186 Ibid. para. 82.

187 United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*. para. 58. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

188 United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule. Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice*. Report No. A/76/222. para. 75. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/203/78/PDF/N2120378.pdf?OpenElement>

189 United Nations General Assembly (2011). *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. p. 95. <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

190 United Nations General Assembly (2004). *Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani*. Report No. A/62/225. op. cit.

Restrictions to the rights to freedom of peaceful assembly and association

As the Special Rapporteur on Freedom of Assembly and Association has emphasized, only “certain” restrictions may be applied, which clearly means that freedom is to be considered the rule and its restriction the exception.¹⁹¹

Similar to the right to freedom of expression, the only valid restrictions to the rights to freedom of assembly and association are ‘those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.’¹⁹² All restrictions must be based on a case-by-case assessment and be based on precise norms.

‘The fact that an assembly provokes or may provoke a hostile reaction from members of the public against participants, as a general rule, does not justify the restriction.’¹⁹³

Arguments of protection or security of those participating in the assembly can only justify a restriction if the State demonstrates that the alleged risks would materialize even in spite of significant and competent law enforcement efforts to prevent them.

Blanket restrictions are in contravention of international norms protecting this right. These norms shrink the civic space for the defense of human rights including the environment. Blanket prohibitions of gathering near, for example, business worksites, ports or extractive projects affect climate activists’ rights to assembly.

Governments cannot prohibit, repress, or allow third parties to repress peaceful gatherings or protests, nor can they impede the creation of social movements or organizations whose objective is to defend the environment, land, or territory. Bans, the closing of operations, removals of legal personality, or restrictions of operations in any other form constitute violations of this human right.

Norms and policies to legitimately combat terrorism and protect public order and security must not be misused as a justification for breaching the State’s obligations under the rights to freedom of peaceful assembly and of association. ‘States should not need to resort to derogation measures in the area of freedom of assembly and association. Instead, limitation measures, as provided for in ICCPR, are sufficient in an effective fight against terrorism.’¹⁹⁴

191 United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*. para. 16. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

192 United Nations General Assembly (2011). *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Special Rapporteur on the situation of human rights defenders, Michel Forst*. p. 95. <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

193 United Nations General Assembly (2020). *General Comment No. 37 on the Right of Peaceful Assembly*. Document No. CCPR/C/GC/37. Article 21. <https://digitalibrary.un.org/record/3884725>

194 United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*. para. 21. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

BOX 11. REALIZATION OF THE RIGHT TO FREEDOM OF ASSEMBLY AND ASSOCIATION AND THE PROTECTION OF THE ENVIRONMENT

Individuals working to protect the environment and the human rights that depend upon it 'rarely work alone but rather as part of groups – communities, networks, and movements. Because the causes they champion tend to be collective, so are their advocacy strategies.'¹⁹⁵

The Special Rapporteur on Freedom of Assembly and Association has explained that '[t]he rights to freedom of peaceful assembly and of association are essential to this work, as they form the essential means through which groups of individuals can gather together around shared goals.'¹⁹⁶

Acting through associations increases the strength, visibility, and outreach of environmental defenders. It is an essential factor behind their capacity to raise public awareness, draw governments' attention to environmental concerns, and catalyze changes to environmental policies and actions.

Consequently, from Indigenous communities in the Amazon, to children and youth climate activists in Europe, environmental defenders often assert their freedoms to assembly and association to advocate for environmental and climate action and raise the visibility of environmental challenges, affecting the defenders themselves and the world at large.

The climate movement, for instance, is comprised of multiple other movements and organizations seeking to raise awareness and catalyze climate action.¹⁹⁷ The main strategies implemented by climate activists are dependent upon their capacity to act collectively. Global strikes, peaceful civil disobedience demonstrations,¹⁹⁸ mass protests, and peaceful resistance strategies developed by indigenous and local communities are essentially collective activities.¹⁹⁹

'Unions, too, have played a key role. They have been involved in advancing a just transition agenda and have influenced employers at the workplace, sectoral, national and international levels.'²⁰⁰

Environmental and human rights civil society organizations have also played an important role in defending the environment. Their role in advancing climate change litigation in The Netherlands, for instance, has been well documented.²⁰¹ In addition to conducting direct advocacy, across the world, civil society organizations also implement direct measures to protect the environment²⁰² and even facilitate the activities of environmental defenders by offering protection.

195 Alliance for Land, Indigenous and Environmental Defenders, Universal Rights Group, Freedom House, Lifeline (2022). *Joint Briefer: Strengthening support for environmental and climate defenders: New reports present recommendations to donors and civil society organisations*. <https://www.universal-rights.org/wp-content/uploads/2022/05/Joint-briefer-4.pdf>

196 United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule. Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice*. Report No. A/76/222. para 12. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/203/78/PDF/N2120378.pdf?OpenElement>

197 Universal Rights Group, Freedom House, Lifeline (2022). *Understanding and responding to the protection needs of climate activists and movements: a guide for donors and support organisations*. <https://www.universal-rights.org/urg-policy-reports/understanding-and-responding-to-the-protection-needs-of-climate-activists-and-movements-2/>

198 Ibid.

199 Alliance for Land, Indigenous and Environmental Defenders, Universal Rights Group, Freedom House, Lifeline (2022). *Joint Briefer: Strengthening support for environmental and climate defenders: New reports present recommendations to donors and civil society organisation*. op. cit.

200 United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule. Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice*. Report No. A/76/222. para 17. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/203/78/PDF/N2120378.pdf?OpenElement>

201 Marseille, A., & Jans, J. (2010). *The Role of NGO's in Environmental Litigation Against Public Authorities: Some Observations on Judicial Review and Access to Court in the Netherlands*. *Journal of Environmental Law*. p. 22.

202 The Conversation (2023). *The new major players in conservation? NGOs thrive while national parks struggle*. <https://theconversation.com/the-new-major-players-in-conservation-ngos-thrive-while-national-parks-struggle-199880>

UN Women - Helda Khashmy,
Indonesian EHRD



C. Right to defend human rights in environmental matters

On 8 March 1999, the United Nations General Assembly adopted resolution 53/144 adopting the Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (United Nations Declaration on Human Rights Defenders).²⁰³

The United Nations Declaration on Human Rights Defenders declares that '[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.' This includes human rights related to the environment, both in terms of procedural and substantive rights.

Although the declaration itself is not a binding instrument, its content is legally binding because it compiles human rights obligations enshrined in the core United Nations Human Rights treaties. Thus, the Declaration contains enforceable obligations that have already been agreed upon by States. These obligations are bracketed together in the Declaration on Human Rights Defenders under the 'right to defend human rights.'

Marten van Dijk - Shell climate-case victory



²⁰³ United Nations General Assembly (1999). *Resolution 53/144: Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (United Nations Declaration on Human Rights Defenders)*. <https://digitallibrary.un.org/record/265855?ln=en>

Who is a human rights defender?

OHCHR explains that “human rights defenders” is a term used to describe people who, individually or with others, act to promote or protect human rights in a peaceful manner,²⁰⁴ ‘contributing to [...] the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals.’²⁰⁵

Although there is no one single definition of who a human rights defender is,²⁰⁶ it is generally accepted that a human rights defender:

- Can be an individual, an organization, or an individual working through an organization, regardless of the nature of the entity: State, civil society, private, grassroots, and formal or informal entities are included, and they may work on local, national, or international levels;
- Can defend human rights professionally, in a paid or voluntary manner, or outside a professional context, in any other capacity or interest;
- May have various overlapping identities, and therefore, defend a wide range of human rights, causes, or interests, *inter alia*: gender, women, children, youth, indigenous, afro-descendants, elderly persons, or persons with disabilities;
- Does not have to identify as a human rights defender, activist, or advocate; to address explicitly ‘human rights’ in their activities; or to work for an organization that includes ‘human rights’ in its name, purpose, or activities;
- Does not have to be correct (i.e., scientifically, or legally) in their aims, arguments, opinions, or ideas;²⁰⁷
- Must acknowledge the universality of human rights. ‘A person cannot deny some human rights and yet claim to be a human rights defender because he or she is an advocate for others.’²⁰⁸ However, it is sufficient that a defender addresses only one human rights concern (i.e., deforestation);
- Does not have to achieve any changes or specific outcomes; defenders are identified for what they do, rather than what they accomplish;

Does not have to be a victim or survivor of human rights violations, or a supporter of these individuals, although a defender may be either or both.

204 Office of the United Nations High Commissioner for Human Rights (n.d.). *About human rights defenders*. <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders>

205 Office of the United Nations High Commissioner for Human Rights (n.d.). *Declaration on human rights defenders*. <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders#:~:text=The%20declaration%3A,fundamental%20freedoms%20through%20peaceful%20means>

206 The EU Guidelines, for example, explain that ‘Human rights defenders are those individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms,’ including civil and political, as well as economic, social, and cultural rights and the rights of indigenous communities.’ https://www.eeas.europa.eu/sites/default/files/02_hr_guidelines_defenders_en_0.pdf CSOs define differently. For instance, Human rights defenders work to improve societies and contribute to peace and democracy. Defenders are agents for positive change and development. They are key in protecting against human rights violations and in advancing universal human rights. <https://humanrightshouse.org/we-stand-for/human-rights-defenders/>

207 As explained by the OHCHR in Fact Sheet 29: ‘The critical test is whether or not the person is defending a human right... whether or not they are legally correct is not relevant in determining whether they are genuine human rights defenders.’ <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet29en.pdf>

208 Office of the United Nations High Commissioner for Human Rights (2004). *Human Rights Defenders: Protecting the Right to Defend Human Rights*. para. 9. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet29en.pdf>

Who is an environmental defender?

Environmental defenders are human rights defenders who peacefully²⁰⁹ strive to promote and protect one or more human rights related to the environment, the environment itself, or any of its components.

Environmental defenders may work to address global environmental crises, such as, biodiversity loss, pollution, and climate change, or the effects of those crises, including their impacts on human rights – it can be said that environmental defenders work at the intersection of human rights and environmental protection.

In addition, environmental defenders may also defend the environment, including climate and biodiversity, due to its intrinsic value and not necessarily in connection with human rights. Even in this case, these individuals and groups should be considered human rights defenders because they exercise and promote human rights, particularly (but not exclusively) the rights to access information and participation, freedom of opinion and expression, assembly and association, the right to develop and discuss new human rights ideas; and many more.

The recognition of a right to a clean, healthy and sustainable environment as a human right only furthers the consideration of environmental defenders as true human rights defenders.

Examples of environmental defenders include, *inter alia*:

- Indigenous Peoples²¹⁰ protecting their territories;
- Young climate activists;
- Small-scale fishers protecting the ocean's health;
- Farmers refusing to use genetically modified seeds or fertilizers due to concerns about their impact on the health of ecosystems;
- Small-scale ranchers protecting their lands from environmental degradation;
- Academics striving to create awareness about the importance of better protecting the environment, including by producing information on climate change and its impacts;
- Individuals denouncing the adverse effects of certain economic activities, including megaprojects, on rivers or wetlands;
- Civil society organizations providing environmental capacity-building to local communities;
- Activists advocating for the rights of animals or nature;
- Prosecutors and lawyers who use legal systems to halt or modify economic activities that lead to environmental pollution or erosion;
- United Nations country teams helping rural communities to protect their natural resources;
- Women's organizations working on the protection of the environment, including protecting and conserving forests and rivers;
- Lawyers offering support to communities or individuals who have been criminalized for their work defending environmental rights;
- Strategic litigation lawyers working to strengthen environmental rights frameworks and implementation;
- Individuals or organizations providing environmental education or training;
- Individuals or organizations working to develop environmentally friendly income generation projects.

²⁰⁹ The United Nations Declaration on Human Rights Defenders establishes that 'No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so..., to the lawful exercise of his or her occupation or profession' (Article 10); 'Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.' (Article 12); and 'Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration. Article 13.

²¹⁰ 'The prevailing view today is that no formal universal definition of the term Indigenous Peoples is necessary; self-identification as indigenous is considered a fundamental criterion and has been the practice followed by the United Nations and its specialized agencies'. United Nations (2017). UNDG Guidance Note on Human Rights for Resident Coordinators and United Nations Country Teams. p. 68. <https://unsdg.un.org/sites/default/files/UNDG-Guidance-Note-on-Human-Rights-for-RCs-and-UNCTs-final.pdf>

CASE 9. MÁXIMA ACUÑA - CONQUERING ADVERSITY FOR ENVIRONMENTAL PROTECTION

The Yanacocha mining company has operated the Yanacocha copper and gold open-pit mine in Peru's Cajamarca region, the largest in Latin America, since 1993. It is a joint venture between Newmont Corporation (USA), Empresa Buenaventura (Peru), and the International Finance Corporation (IFC), a World Bank affiliate for the private sector.

In 2010, Yanacocha proposed the development of the Conga mine, which raised concerns about its impact on the region's water supply and ecosystem. Local communities, heavily reliant on agriculture and the affected lagoons for their livelihoods, strongly opposed the project due to its potential environmental consequences.

The Conga project threatened the headwaters of five watersheds and the Cajamarca páramo ecosystem, a high-altitude wetland known for its biodiversity. If implemented, it would have led to the destruction of rivers, lagoons, water sources, vegetation, and wetlands, while generating millions of tons of toxic waste. In an attempt to gain access to the lagoons, Yanacocha approached local communities to purchase their lands.

Máxima, a subsistence farmer, refused to sell her land as it would have meant losing her source of food, housing, water, and income. Aware of the project's environmental impact, Máxima became a prominent defender of water sources and ecosystems.

Despite international human rights declarations and the Peruvian Constitution guaranteeing the right to an adequate standard of living, including property, food, housing, and water, Máxima faced severe retaliation from the company. Yanacocha responded with physical violence and sued Máxima for land ownership. Initially found guilty of illegal occupation and sentenced to prison and a hefty fine, Máxima eventually secured a ruling in her favor from Peru's Supreme Court of Justice in 2014. Supported by the civil society organization GRUFIDES, she proved her ownership of the land with the help of land titles and other documents.

Since 2011, Máxima and her family have endured continuous physical violence, surveillance, intimidation, and harassment. They have been the target of attacks, including their house being set on fire, beatings, and death threats. Máxima's crops have been destroyed by the company's security guards. Nevertheless, she remains steadfast in asserting her human rights and inspiring others in her community to do the same. Currently, Newmont has suspended the Conga project indefinitely due to ongoing opposition and lack of support. The company acknowledges that the opposition and protests from the community and political spheres could continue to negatively impact the development of Conga and the operation of Yanacocha.

Despite ongoing judicial and physical harassment, Máxima's courage and contributions were recognized when she received the Goldman Environmental Prize in 2008. Máxima's dedication to defending ecosystems not only safeguards her own human rights but also protects the rights and quality of life of entire communities and all Peruvians.

Environmental human rights defenders, without distinction of any kind, like other human rights defenders, have the right to defend human rights, which comprises the following rights according to the Declaration on Human Rights Defenders:

1. Right to be protected (Articles 2 and 12).

States must adopt legislative, administrative, and other steps to ensure that human rights defenders are able to promote and protect human rights in a safe environment and to prevent violence, threats, retaliation, de *facto* or de *jure* adverse discrimination, pressure, or any other arbitrary action, including by authorities and State officials.

The IACHR has explained that this

*'obligation is not limited to providing material measures to protect life and personal integrity but entails the obligation to act to address the structural causes that have a detrimental impact on the security of the persons threatened. This obligation includes investigating and punishing the persons responsible for harassment, threats, and attacks against human rights defenders.'*²¹¹

The right to protect, therefore, has two dimensions: '[o]n the one hand, States must refrain from violating human rights (which includes imposing restrictions to their exercise) [...] On the other hand, States should act with due diligence to prevent, investigate, and punish any violation of the rights enshrined in the Declaration.'²¹²

*Although States bear the primary responsibility for protecting human rights defenders, it is necessary to recall that the Declaration on Human Rights Defenders is addressed not only to States and human rights defenders but to everyone... the Declaration reaffirms the responsibility of everyone not to violate the rights of others, encompassing the responsibility of non-State actors to respect the rights of human rights defenders, in the preamble as well as in articles 11, 12.3 and 19.'*²¹³

The duty to protect environmental defenders also implies that States should take effective steps to secure a safe and enabling environment for human rights defenders. One way to achieve this is by debunking misconceptions that they are terrorists, enemies of the State, or anti-development, and instead showing that their work is essential to advance human rights and sustainable development. For instance, States can actively consult and collaborate with environmental defenders in environmental policy planning and can recognize the role they play in advancing the right to development, especially in the defense of land, natural resources, and the environment, as well as in the fight against corruption and the pursuit of social and environmental justice.²¹⁴

2. **The rights to freedom of assembly and association** (see Section 2.2.1.B of this report for detailed information on this right, including on the international instruments that recognize and regulate it).
3. **The right to access information** (see Section 2.1.A above for detailed information on this right, including on the international instruments that recognize and regulate it).

211 Inter-American Commission on Human Rights (n.d.). *Report on the situation of human rights defenders in the Americas*. para. 47. <https://www.cidh.org/countryrep/defenders/defenderschap1-4.htm>

212 United Nations General Assembly (2011). *Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. Special Rapporteur on the situation of human rights defenders, Michel Forst. p. 10. <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

213 United Nations General Assembly (2019). *Report of the Special Rapporteur on the situation of human rights defenders*, Michel Forst. Human Rights Defenders. Report No. A/65/223. para. 22. <https://www2.ohchr.org/english/issues/defenders/docs/a-65-223.pdf>

214 Ibid.

4. **The rights to freedom of opinion and expression** (see Section 2.2.1.A of this report for detailed information on this right, including on the international instruments that recognize and regulate it).
5. **The right to participation in public matters** (see Section 2.1.B above for detailed information on this right, including on the international instruments that recognize and regulate it).
6. **The right to develop and discuss new human rights ideas** (Article 7). 'This right may be seen as an elaboration of the right to freedom of opinion, expression, peaceful assembly, and association which are protected under the Declaration as well as under other regional and international instruments'²¹⁵ (see Sections 2.2.1 A and C for more information about these rights, including the international instruments that recognize and regulate them).

The right to formulate new human rights ideas entitles individuals to advocate for and promote the recognition of human rights or other entitlements that have not yet been recognized in international, regional, or national instruments, despite the disruptions or discomfort that this work may create. It acknowledges that human rights law is constantly evolving, and defenders are the ones who help adapt and update this body of law.

Examples include advocating for the recognition of the rights of groups in situations of vulnerability, such as women or Indigenous Peoples, or human rights that have not yet been expressly recognized, such as the international movement that led to the recognition of the right to a clean, healthy, and sustainable environment, among others. The work of individuals advocating the rights of nature is also protected under this provision.

²¹⁵ Ibid. p. 83.

7. **The rights to access to justice and effective remedy** (see Section 2.1.C for detailed information on these rights, including the international instruments that recognize and regulate them).

Access to justice systems, including those for criminal accountability, should not be used to unduly prosecute or criminalize environmental defenders, including Indigenous Peoples, 'who are legitimately defending their rights, or the organizations that assist them.'²¹⁶ For example, SLAPPs, or Strategic Lawsuits Against Public Participation, are one of the most common threats faced by environmental defenders. These legal actions seek to silence or intimidate individuals, groups, or organizations defending the environment. Some States have implemented laws and measures to protect defenders from abusive litigation tactics.

One example is the Protection of Public Participation Act 2008 adopted by the Australian Capital Territory, with the purpose of protecting public participation and discouraging civil proceedings that could be considered as interferences with engagement in public participation.²¹⁷

“ Access to justice systems, including those for criminal accountability, should not be used to unduly prosecute or criminalize environmental defenders. ”

²¹⁶ United Nations General Assembly (2018). *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, Victoria Tauli Corpuz*. Report No. A/HRC/39/17/Add.2, para 119. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/192/94/PDF/G1819294.pdf?OpenElement>

²¹⁷ Australia, Australian Capital Territory (2008). *Protection of Public Participation Act 2008* (A2008-48). <https://www.legislation.act.gov.au/View/a/2008-48/current/html/2008-48.html>

The judiciary can also play a role in this regard. For instance, the United States District Court for the Northern District of California rendered a significant ruling in this regard, in the case of *Resolute Forest Products, Inc. against Greenpeace International, and others*. The District Court dismissed all claims under the Racketeer Influenced and Corrupt Organizations Act (RICO), for considering that all of these were ill-founded. Previously, in October 2017, the same court had dismissed the entire case and ordered Resolute Forest Products to pay the defendants' legal fees.²¹⁸

8. The right to solicit, receive, and utilize funds

and in-kind resources required to defend human rights and use them without undue restrictions (Article 13). This includes the right to freedom of association, or the possibility of receiving foreign funding (see Section 2.2.1.B). Demanding prior authorization to receive international funds is considered a restriction of this right; the only restrictions deemed legitimate are those imposed in the interest of transparency.²¹⁹

*States and international development partners should provide adequate financial and other resources to non-governmental organizations, human rights defenders, and other stakeholders whose work supports the realization of all human rights, including the right to development.*²²⁰

The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, or the Escazú Agreement,²²¹ is the only binding international instrument to explicitly mention environmental human rights defenders. Article 9 of the Escazú Agreement crystalizes States' rights and duties enshrined in the Declaration on Human Rights Defenders (as well as in other international instruments, such as the ICCPR) into concrete obligations.

It establishes the following obligations for States regarding environmental human rights defenders specifically (Article 9):

- Guarantee a safe and enabling environment so defenders are able to act free from threat, restriction, and insecurity.
- Take adequate and effective measures to recognize, protect and promote the rights of environmental human rights defenders and their ability to exercise human rights.
- Take appropriate, effective, and timely measures to prevent, investigate and punish attacks, threats, or intimidations faced by environmental human rights defenders, exercising the rights set forth in the agreement.

²¹⁸ United States, District Court, Northern District Of California (2019). *Resolute Forest Products, Inc., et al. v. Greenpeace International, et al., Order Granting in Part and Denying in Part Motions to Dismiss and Strike*. <https://www.greenpeace.org/usa/wp-content/uploads/2019/01/MTD-Decision-GP-RFP-2019.pdf>

²¹⁹ Ibid. p. 96.

²²⁰ United Nations General Assembly (2019). *Report of the Special Rapporteur on the right to development, Saad Alfaragi. Right to development*. Report No. A/HRC/42/38, para. 158. <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/42/38&Lang=E>

²²¹ The Economic Commission for Latin America (2018). *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*. <https://www.cepal.org/en/escazuagreement>

BOX 12. DEROGATION OF HUMAN RIGHTS IN TIMES OF EMERGENCY

Human rights cannot be restricted, aside from those exceptions established in the core international human rights instruments, developed through national laws consistent with these binding principles and obligations.

According to the ICCPR (Article 4) and ICESCR (Articles 4 and 5), rights may be derogated or suspended in public emergency situations that threaten the life of the nation, provided that the State party has officially proclaimed a state of emergency. In any case, such measures must be proportionate to the respective situation.

The Special Rapporteur on human rights defenders has explained that derogations to human rights 'should be required to meet a higher standard when they are applied to human rights defenders. This should be the case with regard to security legislation. It should be even more rigorously the case in the context of emergencies during which the most atrocious and large-scale human rights violations are committed.'²²² Nonetheless, some human rights, such as the right to a fair trial may never be subject to measures of derogation.²²³

Photo Goldman Prize - Maxima Acuña



²²² United Nations General Assembly (2003). *Report of the Special Representative of the Secretary-General on human rights defenders, Hina Jilani. Human rights defenders*. Report No. A/58/380. para. 66. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/457/26/PDF/N0745726.pdf?OpenElement>

²²³ United Nations General Assembly (2007). *International Covenant on Civil and Political Rights. General Comment No. 32 on the Right to equality before courts and tribunals and to a fair trial*. Document No. CCPR/C/GC/32. Article 14. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>

BOX 13. REALIZATION OF THE RIGHT TO DEFEND HUMAN RIGHTS AND THE PROTECTION OF THE ENVIRONMENT

The vital work of environmental human rights defenders has been acknowledged, *inter alia*, by United Nations Human Rights Council Resolution 40/11,²²⁴ which recognized 'the positive, important and legitimate role played by human rights defenders in the promotion and protection of human rights as they relate to the enjoyment of a safe, clean, healthy and sustainable environment.'²²⁵

Through their determination and perseverance, environmental human rights defenders have catalyzed positive actions to secure the protection of the environment and the human rights of all people. Asserting their human rights has allowed environmental human rights defenders to secure stronger environmental and human rights policies and frameworks, unveil corruption, increase transparency in environmental matters, and halt polluting and environmentally harmful projects, thereby protecting, among others, water ecosystems, forests, and traditional territories.²²⁶

These victories have resulted in increased protection of the natural resources upon which the rights to life, food, adequate housing, health, as well as clean and healthy environment.²²⁷

The work of EHRDs has been dependent on the recognition and enjoyment of their right to defend human rights, as well as other related rights. As John Knox, former UN Special Rapporteur on Human Rights and the Environment, explains, '[i]deally, all EHRDs should be able to exercise their human rights to freedom of expression and association, to information, to participation in decision-making, and effective remedies to help to protect the environment – and the rights that depend upon it – from unsustainable exploitation. In this way, the relationship between human rights and the environment should be a virtuous circle: the exercise of human rights helps to protect the environment, and a healthy environment helps to ensure the full enjoyment of human rights.'²²⁸

Unfortunately, as has been widely reported,²²⁹ the civic space for environmental defense is under threat. Increasing attacks against environmental human rights defenders, aimed at silencing these brave individuals and groups, threaten not only their vital work, but also their human rights to life, liberty, personal security, health, and freedom of expression, opinion, association, and assembly. Countering these threats is indispensable to allow environmental human rights defenders to continue enjoying their right to defend human rights.



224 United Nations General Assembly (2019). *Resolution adopted by the Human Rights Council on 21 March 2019. Recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development*. Resolution No. 40/11. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/088/48/PDF/G1908848.pdf?OpenElement>

225 Ibid.

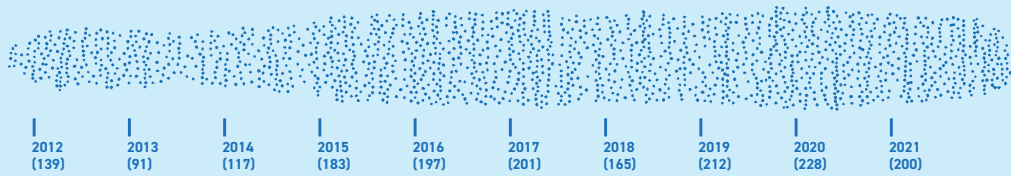
226 The Goldman Environmental Prize (2020). *Nemonte Nenquimo, 2020 Goldman Prize Winner*. <https://www.goldmanprize.org/recipient/nemonte-nenquimo/>

227 The Goldman Environmental Prize (2022). *Indigenous Communities: Protectors of our Forests*. <https://www.goldmanprize.org/blog/indigenous-communities-protectors-of-our-forests/>

228 Knox, J. (2007). *Environmental Human Rights Defenders: a Global Crisis*. p.1. <https://www.universal-rights.org/urg-policy-reports/environmental-human-rights-defenders-ehrds-risking-today-tomorrow-2/>

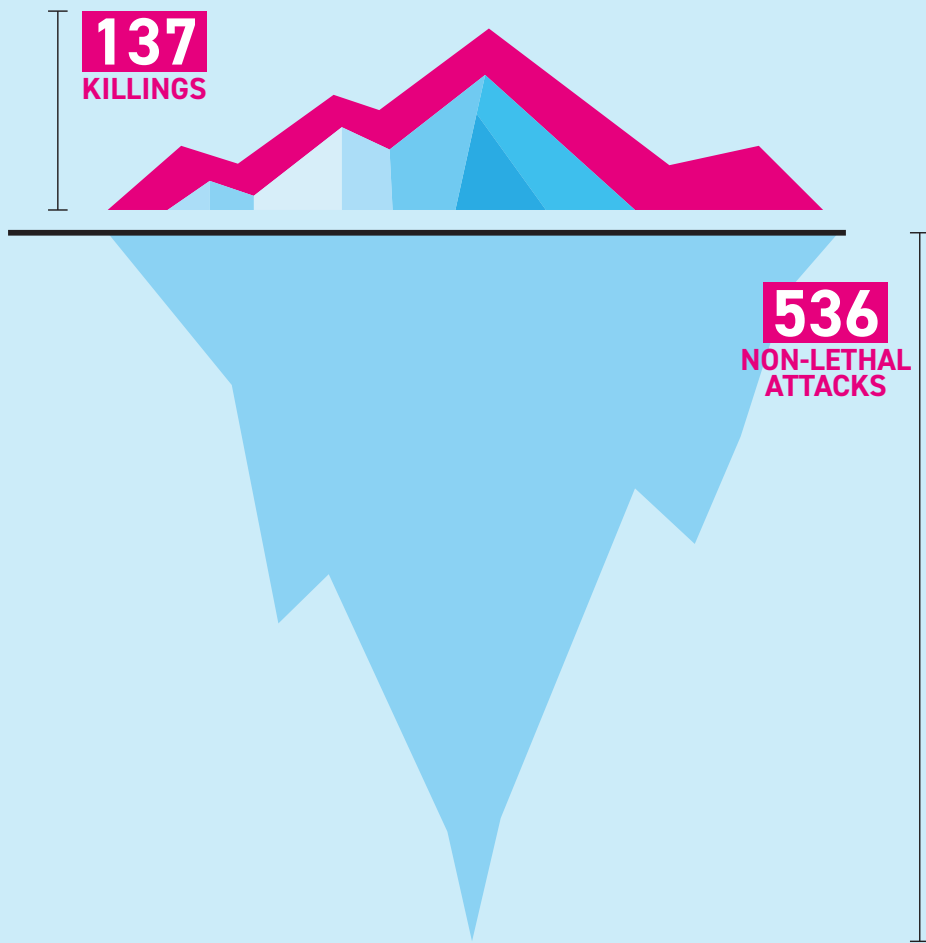
229 Global Witness reported at least 177 defenders killed in 2022 for protecting our planet, bringing the total number of killings to 1,910 since 2012. At least 1,390 of these killings took place between the adoption of the Paris Agreement on 12 December 2015 and 31 December 2022. Global Witness (2022). *Standing firm: The Land and Environmental Defenders on the frontlines of the climate crisis*. <https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/>

HOW ARE DEFENDER KILLINGS CHANGING OVER TIME?



Source: Global Witness, [1910 land and environmental defenders were killed between 2012 and 2022.](#)

THE HIDDEN ICEBERG: NON-LETHAL ATTACKS AGAINST DEFENDERS



Source: ALLIED, [Uncovering the Hidden Iceberg.](#)

BOX 14. SECURING ACCOUNTABILITY IN CRIMES AGAINST ENVIRONMENTAL DEFENDERS

Impunity rates against environmental defenders remain alarmingly high. In some countries, the unprosecuted cases are as high as 95%.²³⁰ Unpunished crimes perpetuate a vicious cycle of fear mounting attacks against those defending the environment. Impunity further denies justice to the victims and their families and discourages defenders from continuing their work to safeguard the planet, hence shrinking the civic space for the protection of the environment.

Addressing impunity requires robust and impartial investigations, fair trials, and the implementation of effective measures to protect environmental defenders.

Two cases have played a crucial role in securing accountability and fighting impunity for attacks against environmental defenders.

Conviction against high-level officials involved in Berta Cáceres' assassination

In 2016, indigenous defender Berta Cáceres was killed in La Esperanza, Honduras. Her assassination sparked international outrage. Berta Cáceres was fighting against the construction of the Agua Zarca dam, a project that threatened the ancestral lands of the Lenca indigenous community. Campaigns like #BertaVive, #JusticiaParaBerta, and 'Berta no murió, se multiplicó' built solidarity and mobilized political pressure, ultimately contributing to the prosecution and conviction of seven Desarrollos Energéticos S.A. (DESA) officials in 2018.

The months following Berta's assassination saw slow progress in the criminal prosecution; initially, only low-level gunmen were convicted. However, in response to the concerted efforts of numerous international civil society organizations, experts, and multilateral entities such as the Organisation of American States, the Office of the United Nations High Commissioner for Human Rights, United Nations Special Rapporteurs, and the Costa Rican and European Union governments, pressure mounted for efficient and transparent investigations.

The investigation into her murder revealed a complex network of individuals involved in planning and executing the crime, including former and active-duty members of the Honduran military, as well as hired assassins. It was finally revealed that employees of DESA, the company responsible for the dam project against which Berta opposed, were involved in her murder. On July 5, 2021, the Higher Court of Honduras delivered a groundbreaking verdict by convicting David Castillo, DESA's former top executive and president, for ordering, coordinating and planning Berta's murder. This ruling was hailed as a significant milestone and was celebrated by civil society organizations and human rights experts worldwide. It is seen as a crucial step towards ending the systems of impunity that enable and perpetuate attacks against defenders like Berta Cáceres.

²³⁰ Global Witness (2021). *Last line of defense*. <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>



D. Right to life and the environment

The right to life is recognized in Article 3 of the UDHR, 'Everyone has the right to life, liberty and the security of person.' Article 6 of the ICCPR establishes that 'every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.'

As the supreme right, it 'concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity.'²³¹

In environmental matters, the right to life includes the right to live in an environment that does not threaten life and the right to defend the environment free from deadly reprisals.

²³¹ United Nations General Assembly (2018). *International Covenant on Civil and Political Rights. General comment No. 36 on the Right to Life*. Document No. CCPR/C/GC/36. <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>

CASE 10. ONERYILDIZ V. TURKEY²³²

Mr. Ahmet Nuri Çınar and Mr. Maşallah Öneriyıldız jointly lodged an application with the ECtHR. They asserted that the State of Turkey bears responsibility for the demise of their close family members and the devastation of their property. The incidents occurred as a result of a methane explosion at the municipal rubbish tip located in Ümraniye, Istanbul. The overflow of waste from the landfill, triggered by mounting pressure and subsequent landslide, engulfed numerous dwellings, including the residence of the applicants.

The ECtHR reiterated the State's obligation to protect the right to life, which encompasses the adoption of appropriate measures to safeguard the lives of individuals within its jurisdiction. This obligation extends to all activities, whether public or private, in which the right to life is at stake. Particularly in the case of hazardous industrial activities like waste-collection sites, the duty to protect life is paramount.

The State's positive obligation to ensure the protection of life necessitates the establishment of legislative and administrative frameworks aimed at effectively deterring threats to this fundamental right. In the context of dangerous activities, specific regulations tailored to the associated risks should govern the licensing, operation, security, and supervision of such activities. Those responsible for these activities must take practical measures to ensure the effective protection of citizens whose lives may be endangered.

The ECtHR also highlighted the importance of guaranteeing the public's right to information in relation to these preventive measures. In cases involving hazardous activities, access to transparent and comprehensive information is a fundamental human right.

When lives are lost under circumstances that potentially implicate the State's responsibility, it becomes the duty of the State to ensure an appropriate response, be it judicial or otherwise. This response should effectively implement the legislative and administrative framework established to protect the right to life and address any violations of that right through appropriate repression and punishment.

The ECtHR also emphasized that when lives are lost due to events occurring under the responsibility of public authorities in hazardous activities, a comprehensive investigation is indispensable. However, this obligation –which is part of States' duty to establish an effective judicial system – does not always require criminal proceedings in cases where the infringement of the right to life or physical integrity is not intentional. Civil, administrative, or disciplinary remedies may satisfy this obligation if they are available to the victims.

The authorities must diligently and promptly initiate investigations to ascertain the circumstances of the incident, identify shortcomings in the regulatory system, and establish the chain of events involving State officials or authorities.



²³² European Court of Human Rights (2004). *Case of Öneriyıldız v. Turkey*. Application No. 48939/99. <https://hudoc.echr.coe.int/eng?i=001-67614>

In the present case, the ECtHR determined that the danger and immediacy of the risk were indisputable. The risk of an explosion had existed long before it was officially acknowledged, and the continued operation of the landfill under the same conditions would have only escalated the risk until it inevitably materialized. The administrative and municipal departments responsible for supervising and managing the landfill were undoubtedly aware of the risks and the necessary preventive measures, given the existence of specific regulations. Various authorities were also aware of these risks.

Consequently, the Turkish authorities, operating at multiple levels, possessed, or should have possessed, knowledge regarding the real and immediate risk faced by individuals residing near the Ümraniye municipal rubbish tip. Hence, they had a positive obligation to implement necessary and sufficient operational measures to protect those individuals.

The ECtHR concluded that the State's regulatory framework was defective, as the landfill was opened and operated without adhering to pertinent technical standards, and there was a lack of a coherent supervisory system to ensure adequate implementation of the relevant regulation.

With regards to environmental matters, the right to life means that States should, *inter alia*:

- **Prohibit and prevent arbitrary²³³ deprivation of life (negative obligation) and adopt appropriate measures to protect and preserve the right to life (positive obligation).**²³⁴ For example, prevent deaths due to pollution or killings (by State and non-State actors) of environmental defenders.
- **Investigate and, where appropriate, prosecute and sanction situations that may potentially result in arbitrary deprivation of life,** including allegations of excessive use of force with lethal consequences by law enforcement or private security agents against defenders of the environment. Securing accountability for and fighting against impunity for killings of defenders is directly related to States' obligations to secure the realization of the right to life.

For example, in the case of *Kawas Fernández v. Honduras*,²³⁵ the IACtHR reminded that the State responsibility arises from acts or omissions of any State body or agency, regardless of their authority. It explained that the obligation to guarantee the right to life involves State's duty to use best efforts (rather than securing results) to conduct *ex officio*, prompt, serious, and impartial investigations. This duty exists when the right to life is breached by State or non-State actors.

In *Kawas Fernández v. Honduras*, the IACtHR found that the State had not fulfilled its duty to guarantee the right to life of Blanca Jeannette Kawas Fernández, as the investigation had been inadequate, evidence was not properly preserved, and threats and intimidation were present.

Noting that some witnesses of the case had been threatened, the IACtHR affirmed that the duty to guarantee the right to life also requires States to grant overall measures regarding any act of coercion, intimidation and threat towards witnesses and investigators.

²³³ Ibid. A deprivation of life can be arbitrary even when authorized by national law if it is inappropriate, unjust, unpredictable, and against due process of law, or when it lacks elements of reasonableness, necessity, and proportionality.

²³⁴ Inter-American Court of Human Rights (2009). *Case of Kawas-Fernández v. Honduras. (Merits, Reparations and Costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf

²³⁵ Ibid.

CASE 11. PORTILLO CÁCERES V. URUGUAY²³⁶

In the case of *Portillo Cáceres v. Uruguay*, Norma Portillo and other members of her family submitted a communication to the UN Human Rights Committee because the use by a company of agrochemicals to fumigate soy crops had resulted in the death of one of their relatives and in severe affectations to their life with dignity and physical integrity, among others.

The Human Rights Committee explained that the spraying of heavily toxic agrochemicals constitutes a foreseeable threat to life due to its impact on food, water, and other basic resources.²³⁷ To address this threat, the State should have enforced domestic environmental legislation to avert the fumigations, but in this case, it failed to do so.

To protect, among others, the rights to life, life with dignity and physical integrity of the authors, the Committee required the State to provide effective remedies and therefore to conduct impartial thorough investigation into the events, impose administrative and criminal penalties to all responsible parties, provide full reparation and compensation to the authors of the communication and 'take steps to prevent similar violations in the future.'²³⁸

Photo - ESCR.Net



²³⁶ United Nations General Assembly (2016). *International Covenant on Civil and Political Rights. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2751/2016*. Document No. CCPR/C/126/D/2751/2016. https://www.eschr-net.org/sites/default/files/caselaw/portillo_caceres_v_paraguay_-_english_g1927913.pdf

²³⁷ Ibid.

²³⁸ Ibid.

→ **Take appropriate measures²³⁹ to address any and all situations that may threaten life, or human dignity.**

Respecting and realizing 'the right to life, and in particular life with dignity, depends, *inter alia*, on measures taken by State parties to preserve the environment and protect it against harm, pollution, and climate change caused by public and private actors.'²⁴⁰

In other words, the realization of the right to life may depend on measures to address environmental degradation; deprivation of land, territories, and resources; biodiversity loss; pollution; climate change; violence against persons and groups that work to protect the environment or its components, among many others such threats.

Examples 'include, *inter alia*, preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies.'²⁴¹ Efforts to mitigate climate change, increase the resiliency of populations to climate-related events, and prevent foreseeable loss of life in connection with these matters are an integral part of this obligation too.

Breaches to this obligation give rise to State responsibility if 'authorities knew or should have known of the existence of a situation of real and imminent danger for the life of a specific individual or group of individuals and failed to take the necessary measures within their area of responsibility that could reasonably be expected to prevent or to avoid that danger, and that there was a causal link between the impact on life and integrity and the significant damage caused to the environment.'²⁴²

“ **The realization of the right to life may depend on measures to address environmental degradation; deprivation of land, territories, and resources; biodiversity loss; pollution; climate change...** ”

239 States have 'the positive obligation to take all appropriate steps to safeguard life ... [and] entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life.' European Court of Human Rights (2012). *Case of Kolyadenko and Others v. Russia*. Application No. 17423/05. <https://legal.earthrefuge.org/kolyadenko-and-others-v-russia/#:~:text=Russia,-Date%3A%2028%20February&-text=Six%20Russian%20applicants%20brought%20a,possessions%20from%20a%20dangerous%20food.>

240 Ibid.

241 Office of the United Nations High Commissioner for Human Rights (1990). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*. Document No. E/1991/23. <https://www.refworld.org/pdfid/4538838e10.pdf>

242 Ibid.

BOX 15. OBLIGATION TO PREVENT DEPORTATION, EXTRADITION, OR TRANSFER OF INDIVIDUALS TO COUNTRIES ENDANGERING THEIR RIGHT TO LIFE.

The right to life requires States to refrain from deporting, extraditing, or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real threat exists to their right to life. To protect life in these cases, States adopted the Convention and Protocol Relating to the Status of Refugees (Refugee Convention).²⁴³

These instruments apply, for instance, to EHRDs, including climate activists, who face risks of persecution and death in their countries of residence due to their activities and therefore need to be relocated abroad as a protection measure.

Whether this protection extends to threats arising from environmental conditions is still contested. On one hand, some argue that the Refugee Convention and its Protocol should be applied to environmental refugees, particularly to individuals displacing to protect their lives and their families from climate change and its effects.²⁴⁴ Some representatives of Small Islands Developing States, for example, have argued that effectively protecting environmental refugees requires their formal recognition.²⁴⁵

Others, however, explain that the Refugee Convention requires the element of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion and thus does not necessarily apply to individuals fleeing from environmental threats. The case of *Ioane Teitiota v. New Zealand* (below) illustrates this stance.

Consequently, at the moment, the way in which international law protects the rights of individuals seeking refuge due to threats arising from the environment is not clear.²⁴⁶

²⁴³ Office of the United Nations High Commissioner for Refugees (2010). *Convention and Protocol Relating to the Status of Refugees*. <https://www.unhcr.org/media/28185>

²⁴⁴ Office for the Coordination of Humanitarian Affairs (2017). *Should Environmental Refugees be Granted Asylum Status?* Reliefweb. <https://reliefweb.int/report/world/should-environmental-refugees-be-granted-asylum-status>

²⁴⁵ Ibid.

²⁴⁶ Baker-Jones, M., & Baker, M. (2015). *Case of Teitiota v. The Chief Executive Of Ministry Of Business, Innovation And Employment - A Person Displaced*. QUT Law Review. p. 102. <https://tr.law.qut.edu.au/article/view/640>

CASE 12. IOANE TEITIOTA V. THE CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT, NEW ZEALAND²⁴⁷

In 2009, Mr Teitiota, a Kiribati citizen, applied for refugee status before the New Zealand High Court, arguing that 'his homeland, Kiribati, is facing steadily rising sea water levels as a result of climate change. The fear is that, over time, the rising sea water levels and the associated environmental degradation will force the inhabitants of Kiribati to leave their islands.'²⁴⁸

Acknowledging the seriousness of the impacts of climate change, New Zealand's High Court denied the request for considering that Mr Teitiota was not a refugee under the Refugee Convention because he did not face persecution, nor was him a protected person under the ICCPR.

Mr Teitiota appealed the decision. The Court of Appeals dismissed Mr Teitiota's application because there was no evidence of harm to himself upon return to Kiribati, nor prove that the Government of Kiribati was not taking steps to address environmental harm caused by climate change. It, nonetheless, clarified that the ruling does not 'mean that environmental degradation resulting from climate change or other natural disasters could never create a pathway into the Refugee Convention or protected person jurisdiction.'²⁴⁹

Bob Strong - Reuters - Tuvalu, New Zealand



²⁴⁷ New Zealand, Supreme Court of New Zealand (2015). *Case of Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment*. Climate Change Litigation Databases. <https://climatecasechart.com/non-us-case/ioane-teitiota-v-the-chief-executive-of-the-ministry-of-business-innovation-and-employment/>

²⁴⁸ Ibid.

²⁴⁹ Ibid. para. 13.

- **Take effective steps to reduce child mortality and increase life expectancy.** To protect the life of children, States must address infant mortality associated with poor water, food, and air conditions that can lead to diseases, starvation, and malnutrition, as well as taking steps to prevent and mitigate the impacts of pandemics, epidemics and other factors that reduce the lifespan of individuals, such as inadequate diets and indoor or outdoor air pollution.
- **'Take special measures of protection towards persons in situations of vulnerability** whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. These include human rights defenders,²⁵⁰ workers,²⁵¹ and Indigenous Peoples.
- **Refrain from 'any practice or activity that denies or restricts access, in equal conditions, to the requisites of a dignified life,** such as adequate food and water, and [from] unlawfully polluting the environment in a way that has a negative impact on the conditions that permit a dignified life for the individual; for example, by dumping waste from State-owned facilities in ways that affect access to or the quality of potable water and/or sources of food.²⁵²
- Take steps to guarantee the **sustainable use of natural resources,**²⁵³ and **develop and implement substantive environmental standards** to guarantee the right to life of present and future generations.

Andrew Quilty - Le Monde - Tuvalu



250 United Nations General Assembly (2018). *International Covenant on Civil and Political Rights. General comment No. 36 on the Right to Life.* Document No. CCPR/C/GC/36. op. cit. p. 130.

251 United Nations General Assembly (2019). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak. Principles on human rights and the protection of workers from exposure to toxic substances.* Report No. A/HRC/42/41. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/217/70/PDF/G1921770.pdf>

252 Inter-American Court of Human Rights (2017). *Advisory Opinion OC-23/17 Of November 15, 2017. Requested by the Republic of Colombia.* op. cit. p. 112.

253 United Nations General Assembly (2018). *International Covenant on Civil and Political Rights. General comment No. 36 on the right to life.* Document No. CCPR/C/GC/36. op. cit. p. 14.

BOX 16. REALIZATION OF THE RIGHT TO LIFE AND THE PROTECTION OF THE ENVIRONMENT

Climate change, environmental degradation, and unsustainable development are 'some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.'²⁵⁴ Pollution arising from 'the indiscriminate use of toxic agrochemicals'²⁵⁵ has been linked with premature deaths of children and adults.

On its side, climate change is expected to cause approximately 250,000 additional deaths per year, from malnutrition, malaria, diarrhea, and heat stress.²⁵⁶ ²⁵⁷ ²⁵⁸ Although climate change has disproportionate impacts on individuals in situations of vulnerability (see Section 3 below), it poses a risk to the life of all individuals in all countries.

Concerns over the impact of climate change in the lives of people have motivated climate litigation cases including, *inter alia*, Friends of the Earth Netherlands (Milieudefensie) and others,²⁵⁹ the Urgenda Climate Case against the Dutch Government,²⁶⁰ and the French Case of the Century.²⁶¹

By moving States to fulfill their obligation to protect the right to life, these decisions also contribute to securing stronger responses to climate change.

For instance, in the Urgenda Climate Case, the Dutch Court of Appeal confirmed a District Court decision to order the Dutch State to reduce emissions by the end of 2020 by at least 25% compared to 1990.

In line with the Plaintiffs' arguments, the Court explained, *inter alia*, that 'there is a real threat of dangerous climate change, resulting in the serious risk that the current generation of Dutch inhabitants will be confronted with losing their lives or having their family lives disrupted.'²⁶² Hence, the State must reduce its emissions to protect their lives.

254 United Nations General Assembly (2022). *Resolution A/76/300: The human right to a clean, healthy and sustainable environment*. Document No. A/RES/76/300. <https://undocs.org/Home/Mobile?FinalSymbol=A%2FRES%2F76%2F300&Language=E&DeviceType=Desktop&LangRequested=False>

United Nations General Assembly (2021). *Resolution 48/13: The human right to a clean, healthy and sustainable environment*. Document No. A/HRC/RES/48/13. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>

255 Office of the United Nations High Commissioner for Human Rights (2007). *United Nations Committee on Economic, Social and Cultural Rights. Concluding Observations of the Committee: Paraguay*. Document No. E/C.12/PRY/CO/3, para. 10. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/400/39/PDF/G0840039.pdf?OpenElement>

256 World Health Organization (2021). *Climate change and health*. <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health#:~:text=Climate%20change%20affects%20the%20social,malaria%2C%20diarrhoea%20and%20heat%20stress>

257 World Health Organization (2021). *Air Pollution*. https://www.who.int/health-topics/air-pollution#tab=tab_2

258 United Nations Environment Programme (2019). *Global Environment Outlook – GEO-6: Healthy Planet, Healthy People*. <https://wedocs.unep.org/handle/20.500.11822/27539>

259 The Netherlands, The Hague District Court (2019). *Case of Milieudefensie et al. v. Royal Dutch Shell plc*. Climate Change Litigation Database. Accessed December 18, 2023. <https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>

260 The Netherlands, Supreme Court of Justice (2015). *Case of Urgenda Foundation v. the Netherlands*. Climate Change Litigation Database. Accessed December 18, 2023. <https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>

261 France, The Paris Administrative Court (2021). *Case of Oxfam France et al v. France*. http://paris.tribunal-administratif.fr/content/download/179704/1761585/version/2/file/CP%20affaire%20du%20si%C3%A8cle_EN.pdf

262 The Netherlands, Supreme Court of Justice (2019). *Judicial order to the Dutch State to take measures against climate*. p. 13. <https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf>

CASE 13. CARLOS ROBERTO MEJÍA CHACÓN V. COSTA RICA²⁶³

Carlos Roberto Mejía Chacón, a minor, filed a legal appeal against the Municipality of Santa Ana and the Costa Rican Ministry of Health, alleging the violation of his community's rights to life and a healthy environment. The appeal asserted that these entities allowed the Virilla River to become a dumping site for garbage, resulting in contamination that has adversely affected all residents.

The Supreme Court of Justice explained that environmental issues arise when the exploitation of natural resources leads to ecosystem degradation beyond their regenerative capacity. This harm affects a significant portion of the population, resulting in high environmental and social costs, and a decline in the quality of life. The primary goal of environmental use and protection is to foster favorable development and well-being for human beings, with environmental quality serving as a fundamental parameter for this quality of life.

Human life is inviolable and is intricately connected with the natural environment, which sustains our physical and mental health. Living in a contamination-free environment is the right of every citizen and forms the foundation of a just and productive society.

In the present case, authorities responsible for resolving the conflict did not adopt effective and diligent measures to prevent and stop pollution. The participation of competent authorities in meetings to prevent environmental contamination or the issuance of orders by the Ministry of Health to find alternative places for the dump does not excuse them from taking practical actions to address pollution in the Virilla River.

The local government justified its conduct based on the lack of economic resources. The Supreme Court did not accept that the lack of economic resources is a limit between the respect and the violation of the essential rights of human beings, such as life, health and the environment. The State can limit or condition activities that may affect the environment, and authorities could have taken action to halt pollutions. Instead, the appealed institutions allowed the Virilla river to be used as a garbage dump, thus infringing the constitutional rights to life and health.

The Court ordered the immediate closure of the municipal dump, in such a way that does not represent any danger to the safety and health of the residents of the place, and local authorities to provide remedy and redress to all victims.

²⁶³ Costa Rica, Supreme Court of Justice (1993). *Case of Carlos Roberto Mejía Chacón v. Costa Rica*. Yumpu Publishing Database. Accessed December 18, 2023.

<https://www.yumpu.com/es/document/read/49650524/carlos-roberto-mejia-chacon-casepdf>

CASE 14. SERAP V. NIGERIA, COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)²⁶⁴

In 2009, the Socio-Economic Rights and Accountability Project (SERAP) filed a complaint before the Court of Justice of the Economic Community of West African States (ECOWAS) and against various Nigerian entities, including the President, the Attorney General, and several petroleum companies, alleging violations in the Niger Delta region. The Niger Delta is a region abundant in land, water, forests, and wildlife, but it has suffered severe degradation due to oil exploration activities.

For decades, the Niger Delta has experienced oil spills that have destroyed crops, damaged soil productivity, and contaminated water sources used for fishing, drinking, and other domestic and economic purposes. These spills, resulting from infrastructure negligence, human error, deliberate vandalism, or oil theft, have exacerbated poverty, fueled conflict, and created a sense of powerlessness and frustration among the affected communities.

SERAP argued that the destructive activities of oil industries in the Niger Delta harm the health and livelihoods of the local population, depriving them of basic necessities such as clean water, education, healthcare, food, and a clean environment.

ECOWAS Court explained that the justiciability or enforceability of economic, social, and cultural rights should be analyzed individually to determine if these impose specific enforceable obligations on States and public authorities. While the availability of State resources may affect the enjoyment of economic, social and cultural rights in some cases, State's obligations under these rights also include duties of immediate observance, such as enforcing laws that protect vulnerable individuals from powerful entities.

In this case, the Court explained that the dispute centered not on the failure to allocate resources for improving the quality of life in the Niger Delta but on the failure to use State authority, in line with international obligations, to prevent environmental harm caused by the oil extraction industry and safeguard the well-being of the region's people. The State must not only take legislative and administrative measures but also apply vigilance and diligence to achieve concrete results.



²⁶⁴ The Court of Justice of the Economic Community of West African States (2012). General List No. ECW/CCJ/APP/08/09. Judgement No. ECW/CCJ/JUD/18/12. <https://africanlii.org/akn/aa-au/judgment/ecowascj/2012/51/eng@2012-12-14/source>

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The Court acknowledged the well-known fact that oil spills pollute water, destroy aquatic life, and negatively impact the health and livelihoods of people in the affected areas. Article 24 of the African Charter imposes a duty on every State to maintain the quality of the environment for the well-being of its inhabitants and sustainable development. By evaluating the state of the environment and its objective indicators, it can be determined whether a State has fulfilled this obligation.

The Federal Republic of Nigeria presented a comprehensive defense, listing various measures taken to address the environmental situation in the Niger Delta and promote balanced development in the region. These measures included the enactment of laws regulating the oil and gas industry, the establishment of agencies to enforce legislation, and the allocation of 13% of resources produced in the region for its development.

However, the Court found that the adoption of advanced legislation, the creation of agencies, and the allocation of financial resources alone are insufficient to comply with international obligations regarding environmental protection. Concrete measures must accompany these initiatives to prevent damage and ensure accountability, including the effective reparation of environmental harm.

From the evidence presented to the Court, it became evident that the lack of enforcement of existing legislation and regulations by the regulatory authorities in charge of supervising the oil industry is at the core of the problem in addressing environmental degradation in the Niger Delta. The responsibility for addressing the damage caused by the oil industry cannot be left solely to the discretion of the companies holding oil exploration licenses. It is imperative to establish measures that hold these polluting companies accountable and provide compensation to the affected communities.

The Court recognized that the continuous environmental degradation in the Niger Delta has had devastating effects on the livelihoods of the population, forcing some to leave their homes in search of better living conditions and causing health problems.

The failure of the Federal Republic of Nigeria to take action in preventing environmental damage and holding offenders accountable, thereby allowing them to continue their harmful activities with impunity, constitutes a violation of the country's international obligations under the right to a healthy environment.



2.2.2 Economic, social, and cultural rights and the right to development

A. Right to a clean, healthy, and sustainable environment

*'A safe, clean, healthy, and sustainable environment is necessary for the full enjoyment of many human rights, including the rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living, and to participate in cultural life and development, as well as the overarching right to a healthy environment itself. At the same time, the exercise of human rights, including the rights to freedom of expression and association, to education and information, and participation and effective remedy, is vital to the protection of the environment.'*²⁶⁵

The understanding of the scope and legal implications of the interrelationship between human rights and the environment has evolved²⁶⁶ from the premise that environmental protection and a quality environment are prerequisites for the effective enjoyment of human rights, to the recognition of a standalone human right to a clean, healthy, and sustainable environment, 'as a fundamental right for the existence of humankind.'²⁶⁷

While the right to a clean, healthy, and sustainable environment had already been recognized by over 155 nations, through regional treaties, constitutions and legislation,²⁶⁸ as mentioned in the introduction of this report, it was only recognized globally following the adoption of Human Rights Council resolution 48/13, which proclaimed 'the right to a clean, healthy and sustainable environment as a human right that

is important for the enjoyment of human rights.'²⁶⁹ In 2022, the United Nations General Assembly echoed this important acknowledgment in its resolution A/76/300, which 'Recognizes the right to a clean, healthy and sustainable environment as a human right,' and notes that it 'is related to other rights and existing international law.'²⁷⁰

*'While there is not a universally agreed definition of the right to a healthy environment, the right is generally understood to include substantive and procedural elements. The substantive elements include clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study, and play; and healthy biodiversity and ecosystems. The procedural elements include access to information, the right to participate in decision-making, and access to justice and effective remedies, including the secure exercise of these rights free from reprisals and retaliation.'*²⁷¹

The right to a clean, healthy, and sustainable environment has both **individual and collective implications**. Its individual dimension recognizes that every person can be directly or indirectly affected by the environment, and hence, everyone has the right to protect it. 'In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations...'²⁷²

265 Boyd, D., Knox, J., & Limon, M. (2021). *The case for universal recognition of the right to a safe, clean, healthy and sustainable environment*. op. cit. p. 27.

266 Boyd, D. (2010). *The Environmental Rights Revolution*. p. 50. <https://dx.doi.org/10.14288/1.0058239>

267 Inter-American Court of Human Rights (2017). *Advisory Opinion Oc-23/17 of November 15, 2017*. Requested by the Republic of Colombia. https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf

268 Boyd, D. (2018). *Catalyst for change: evaluating forty years of experience in implementing the right to a healthy environment. The Human Right to a Healthy Environment*, Knox, J. & Pejan eds. p. 19-23.

269 United Nations General Assembly (2021). *Resolution 48/13: The human right to a clean, healthy and sustainable environment*. Document No. A/HRC/RES/48/13. op. cit.

270 United Nations General Assembly (2022). *Resolution A/76/300: The human right to a clean, healthy and sustainable environment*. Document No. A/RES/76/300. op. cit.

271 Office of the United Nations High Commissioner for Human Rights, United Nations Environment Programme, United Nations Development Programme (n.d.). *What is the Right to a Healthy Environment?* Information Note. p. 9. <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>

272 Inter-American Court of Human Rights (2017). *Advisory Opinion Oc-23/17 Of November 15, 2017*. Requested by the Republic of Colombia. op. cit. p. 112.

Figure 2**The Right to Breathe Clean Air** ²⁷³

Clean air comprises ambient and household air pollution. States should take seven key steps to fulfill their obligations under this right: ²⁷⁴



²⁷³ United Nations General Assembly (2019). *Report of the Special Rapporteur on the right to breathe clean air, John H. Knox. Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.* Report No. A/HRC/40/55, para. 61. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/002/54/PDF/G1900254.pdf?OpenElement>

²⁷⁴ Ibid.

BOX 17. WHO HAS STANDING TO FILE ACTIONS FOR ENVIRONMENTAL PROTECTION?

Under the public interest approach, individuals or organizations can file lawsuits or complaints to protect the environment, even if they have not personally suffered harm or been negatively impacted by environmental degradation. See, for example, Case 6 on the case of *Isaiah Luyara Odando & another v. National Management Environmental Authority & 2 others*.

This approach recognizes that a violation to the right to a clean, healthy, and sustainable environment may occur even in the 'absence of the certainty or evidence of a risk to individuals,'²⁷⁵ or in other words, without a proven impact on humans. While some argue that the reason for this is the intrinsic value of natural resources,²⁷⁶ others explain that all of the components that constitute the environment are interconnected and that, as a result, any impact on natural resources, irrespective of their direct effect on humans, can spark a chain of events with implications for humanity,²⁷⁷ this affects the right in its collective dimension.

This perspective acknowledges the broader implications of environmental issues for the global community and the need to protect and preserve the environment for present and future generations. In some legal orders, it may even extend to the protection of nature's rights.

For example, in Ecuador²⁷⁸ or Colombia²⁷⁹, any person can bring claims to protect the environment without having to demonstrate a breach of their own rights.

In Chile, in the case of *Antonio Horvath Kiss and others v. National Commission for the Environment*, the Chilean Supreme Court explained that the collective dimension of the right to a healthy environment means that the protection of the environment is in the interest of the entire population, even of individuals on which environmental damage has less severe effects. The right to a healthy environment protects all natural resources that surround people and allow life, 'everything that makes up nature.' Hence, any person should be entitled to seek and secure the protection of the environment, independent of the existence of a harm or violation to their rights.²⁸⁰



275 Ibid.

276 Ibid.

277 European Environment Agency (2021). *Complex challenges in an interconnected world*. <https://www.eea.europa.eu/signals/signals-2011/articles/complex-challenges-in-an-interconnected-world>

278 See, e.g., The Economic Commission for Latin America (2018). *Law recognizing the rights of Nature and the State's obligations related to these rights (Law No. 287)*. <https://observatoriop10.cepal.org/es/instrumento/ley-que-reconoce-derechos-la-naturaleza-obligaciones-estado-relacionadas-estos-derechos>

279 See, e.g., Colombia, Supreme Court of Justice (2018). *Case of Andrea Lozano Barragan et al. v. Colombia*. Document No. STC4360-2018. <https://cortesuprema.gov.co/corte/wp-content/uploads/2018/04/STC4360-2018-2018-00319-011.pdf>

280 Chile, Supreme Court of Justice (1997). *Case of Antonio Horvath Kiss et al. v. Comisión de Evaluación Ambiental de la Región de Aysén, Chile*. https://sistemabibliotecario.scjn.gob.mx/sisbib/indices_2014/97619/97619.pdf

At the regional level, the African Commission on Human and Peoples' Rights (ACHPR) allows individuals or NGOs to bring claims before it for the protection of the environment, even if their own rights have not been violated. However, the harm to the environment must be linked to specific human rights violations, and complainants must identify the victims as much as possible. This means that NGOs or individuals can present cases on behalf of affected communities, individuals, or groups, highlighting the connection between environmental harm and human rights violations, including violations to the right to a healthy environment – which is protected under the African Charter.

Under the Aarhus Convention, individuals or groups seeking access to justice should have *sufficient interest*, determined under each domestic order. This provision should be understood to include not only individuals whose legal interests or rights may be affected by a proposed activity but also those whose social rights, like the right to a healthy environment, may be impacted. Additionally, it includes a category of the public with unspecified interests in the decision-making process. In summary, it emphasizes the need to consider a broader range of interests and stakeholders when making decisions that could have societal implications.²⁸¹

However, not all legal regimes grant standing to individuals whose rights have not been violated. Instead, some require those who initiate legal actions to protect the environment to have a direct and substantial connection (i.e., harm) to the environmental issue or decision-making process in question.

For example, individuals or NGOs filing a case before the ECtHR must be rightsholders of a recognized right under the European Convention – it is important to note that this Convention does not recognize the right to a healthy environment and hence protects the environment in connection with the civil and political rights or social and economic rights therein enshrined.

The Inter-American System, albeit recognizing the right to a healthy environment, requires applicants to be victims or representatives of victims of human rights violations to bring a case before the Commission or Court. In other words, this system requires a connection between the claimant and the alleged environmental harm.

281 United Nations Economic Commission for Europe (2014). *The Aarhus Convention. An Implementation Guide*. p. 57. https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf



As explained in Section 1, although the human right to a clean, healthy, and sustainable was only recently recognized at the international level, its content has already been, with different degrees, addressed and developed through treaties, jurisprudence, and doctrine. Moreover, regional and national laws and rulings have contributed to giving clarity to the content and scope of this right.

Under the right to a clean, healthy, and sustainable environment, States should, *inter alia*:

→ **Enact strong environmental protection frameworks.**

As part of this, apply a human rights-based approach to all laws, regulations, policies, and actions related with the environment including water, hazardous or polluting substances, and environmental disasters. A rights-based approach should apply to all states, from early planning to, where applicable, clean-up, remediation, restoration and relocation of affected individuals and groups.²⁸²

Another way of strengthening local frameworks is incorporating as binding norms international standards on environmental protection, such as WHO guidelines on ambient air quality, indoor air quality, drinking water quality and toxic chemicals.²⁸³

→ **Ensure certain levels of environmental protection and conservation.** This means safeguarding²⁸⁴ the environment and promoting its protection, conservation, and improvement.²⁸⁵

282 United Nations General Assembly (2022). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. The right to a clean, healthy and sustainable environment: non-toxic environment*. Report No. A/HRC/49/53. para 48. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/004/48/PDF/G2200448.pdf?OpenElement>

283 Ibid.

284 United Nations General Assembly (2017). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*. Report No. A/HRC/34/49. para. 65. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>

285 Inter-American Court of Human Rights (2017). *Advisory Opinion Oc-23/17 of November 15, 2017*. Requested by the Republic of Colombia. op. cit. p. 112.

→ Not causing pollution or otherwise affecting the quality, availability, and adequacy of environmental components, such as water, air, flora and fauna.

For example, States should refrain from causing pollution or exposure to toxic substances and prevent non-State actors, like businesses from doing it as well. As an illustration, in the *Mecheros* case (refer to Case 16) the Ecuadorian Supreme Court compelled the government to regulate the practice of gas flaring in the oil industry and seek alternative solutions to mitigate air pollution. This decision was made to bring the State into compliance with its substantive obligations under the right to a healthy environment, in particular by addressing the harmful effects of air pollution, which has a significant impact on human health, with a disproportionate impact on individuals residing near gas flaring areas.

→ Promoting and implementing strategies and programs to identify and protect at-risk populations. For example, States should take positive actions to end Sacrifice Zones (See Box 20) and restore the health and rights of affected communities.

An example of this, is the case of the *Quintero y Puchuncaví* areas in Chile. These areas are considered sacrifice zones due to the high levels of pollution faced by inhabitants, which have led to serious illnesses especially in women and children. In response to a series of protection actions, the Chilean Supreme Court of Chile found that the Chilean State had violated the right to a clean environment and ordered it to: develop studies to identify the nature and characteristics of polluting elements and determine their impacts on health, the environment and its elements (water, air and soil), implement measures to clean up the air and the environment, such as installing pollution filters and air-quality monitoring mechanisms, safeguard the health of affected individuals through a diagnosis and

adequate treatment, put in place effective and comprehensive contingency plans and relocate individuals in safe areas.²⁸⁶

- Preventing environmental degradation and the unsustainable use of natural resources, including by non-State actors. For example, encouraging sustainable practices in food production, such as occurred in the *S. Jagannath vs Union Of India & Ors*, the Indian State case.
- Like other economic, social, and cultural rights, this right 'must be governed by the criteria of **availability, accessibility, sustainability, acceptability, and adaptability.**'²⁸⁷
- **Prevent or mitigate negative environmental impacts of human and non-human activities**, including those caused by non-State actors. For example, environmental or human rights hazards related with extractive activities²⁸⁸ or with the management of hazardous, polluting, and toxic wastes, substances, and materials.
- An example of concrete measures are those identified by the ACHPR in the case of *SERAC v. Nigeria* (See Case 26). To mitigate pollution and prevent future damage in Ogoniland, the ACHPR appealed to Nigeria to engage in a thorough restoration of the damaged lands and rivers, ensuring a comprehensive cleanup that addresses all environmental harm caused, conduct meticulous environmental and social impact assessments before proceeding with any forthcoming oil development activities, and provide accurate and detailed information concerning the health and environmental risks associated with such endeavors to regulatory authorities and decision-making bodies within communities that are anticipated to be impacted by oil development.

- **Prevent, monitor, and mitigate 'damage to the environment of other States or of areas beyond the limits of national jurisdiction,'**²⁸⁹ by, *inter alia*, conducting environmental assessments that take into account possible significant adverse transboundary impacts and providing appropriate access to information on environmental hazards.

In cases of significant transboundary environmental harm, all concerned States must cooperate to prevent and mitigate harm to the human rights of affected individuals. To this end, States must consult each other about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies, and observe the principle of prior consent of affected States.

- **Take immediate and effective steps, in parallel to meeting obligations of progressive realization**, to secure the full enjoyment of this right by everyone, including by **fully observing and implementing the 16 Framework Principles on Human Rights and the Environment**, see Box 18.



286 Chile, Supreme Court of Justice (2019). Case of the Quintero and Puchuncaví Community v. ENAP Refinerías et al. Observatory on Principle 10 (ECLAC). https://observatoriop10.cepal.org/sites/default/files/documents/5888-2019_corte_suprema.pdf

287 Ibid.

288 Office of the United Nations High Commissioner for Human Rights (2013). Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment Individual Report on the International Covenant on Economic, Social and Cultural Rights. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>; and United Nations General Assembly (2019). International Covenant on Civil and Political Rights. Concluding Observations of the Committee on Economic, Social and Cultural Rights: Mauritania. Document No. E/C.12/MRT/CO/1. para. 8. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/251/82/PDF/G1925182.pdf?OpenElement>

289 United Nations Conference on Environment and Development (1992). Rio Declaration on Environment and Development. Document No. A/CONF.151/26. op. cit. principle 2. https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf

CASE 15. VELLORE CITIZENS WELFARE FORUM VS UNION OF INDIA & ORS²⁹⁰

On August 28, 1996, the Supreme Court of India ruled on a lawsuit filed by the Vellore Citizens Welfare Forum (VCWF) alleging that the discharge of untreated effluent by tanneries and other industries in the State of Tamil Nadu was polluting the Palar River, which is the main source of water supply for the area's residents.

VCWF argued that discharges had contaminated the surface and sub-soil water of the river, leading to a scarcity of potable water in the region. The effluents had also adversely affected the physio-chemical properties of the soil and contaminated groundwater through percolation. As a result, women and children had to travel long distances to obtain drinking water.

While acknowledging the significance of the leather industry in generating foreign exchange and providing employment opportunities, the Court emphasized that it had no right to destroy the environment, degrade ecosystems, or pose health hazards. The industry could not expand or even continue its current production unless it addressed the pollution problem caused by its operations.

Referring to the Stockholm and the Rio Declarations, the Court explained that sustainable development and its principles should guide efforts to achieve development while protecting ecosystems for present and future generations.

The Court affirmed fresh air, clean water, and a pollution-free environment are protected under the inalienable human right to a clean environment.

If the existing conditions under which tanneries operate are allowed to continue, it would lead to the pollution of all rivers and canals over time, contamination of underground water sources, infertility of agricultural lands, and exposure of residents to severe diseases. Therefore, the Court deemed it necessary to direct the Central Government to take immediate action in accordance with the national Environmental Act.

The Court established three important conditions regarding the precautionary principle. Firstly, it emphasized that State governments and statutory authorities have a responsibility to anticipate, prevent, and address the underlying causes of environmental degradation. Secondly, when there are indications of significant and irreversible harm, the absence of complete scientific certainty should not be used as an excuse for delaying measures aimed at preventing environmental degradation. Lastly, the burden of proof lies with the actor, developer, or industrialist to demonstrate that their actions are not harmful to the environment.



²⁹⁰ India, Supreme Court of Justice (1996). *Case of Vellore Citizens Welfare Forum v. Union Of India et al.* <https://indiankanoon.org/doc/1934103/>



The Court highlighted the need for comprehensive legislation on environmental protection, which would coordinate the efforts of various regulatory agencies, establish authorities with sufficient powers for environmental protection, regulate the release of environmental pollutants and handling of hazardous substances, enable quick response to environmental accidents, and impose strong penalties on those who endanger the environment, safety, and human health.

The Central Government was directed to create an empowered authority to implement the "precautionary principle" and the "polluter pays" principle, determine compensation for affected individuals and families, and calculate the cost of reversing the environmental damage.

The authority established by the Central Government would determine compensation in two categories: one for reversing the ecological damage and another for compensating affected individuals. If a polluter evaded or refused to pay the awarded compensation, the authority would order the closure of the industry owned or managed by the polluter. Additionally, the authority could recover the compensation as arrears of land revenue. Even if an industry had currently implemented pollution control measures, it would still be held responsible for past pollution that caused environmental degradation and harm to the local residents.

Photo EPS - Garbage accumulated at the Palar river bed



CASE 16. 'CASO MECHEROS' (GAS FLARING CASE) IN ECUADOR²⁹¹

In 2020, nine girls from the Amazon region of Ecuador challenged the oil industry's gas flaring practice in a case known as 'Caso Mecheros' (Gas flaring case). Their objective was to protect their rights to health and to a clean and healthy environment, as well as the rights of nature (protected under the Constitution of Ecuador). They all suffered from chronic diseases due to the impacts of gas flaring in the environment.

The competent Court recalled that the right to a healthy environment includes, among others, the conservation, sustainable management and recovery of the natural heritage, biodiversity and all its components, with respect for the rights of the nature and human rights; the sustainable management of ecosystems, with special attention to fragile and threatened ecosystems such as wetlands, cloud forests, dry and humid tropical forests, mangroves and marine and marine-coastal ecosystems; and the conservation, preservation and recovery of water resources.

It further recalled the principles that should guide environmental management:

- Comprehensive responsibility. Whoever promotes an activity that generates or may generate impact on the environment has full responsibility for it through all relevant stages, from generation to disposal. This includes shared and differentiated responsibilities.
- Best available technology and best environmental practices. The development and use of environmentally clean, low-impact and non-polluting technologies and energy shall be promoted by the State, as well as the implementation of best practices in the design, production, exchange and sustainable consumption of goods and services.



Mongabay Latam - Caso Mecheros, Ecuador



²⁹¹ Ecuador, Court of Sucumbios (2020). *Case of Kerly Herrera Carrion et al. v. Ecuador*. Climate Change Litigation Database. Accessed December 18, 2023. <https://climatecasechart.com/non-us-case/herrera-carrion-et-al-v-ministry-of-the-environment-et-al-caso-mecheros/>

- Sustainable Development. In a dynamic way, the areas of economic, social, cultural, and environmental development are met to respond to the needs of current generations, without jeopardizing the satisfaction of the needs of future generations.
- The polluter pays. Whoever performs or promotes an activity that pollutes or will pollute, must incorporate into its production costs all the necessary measures to prevent, avoid or reduce its impacts. Likewise, whoever pollutes shall make full reparation and compensation to those harmed, including nature where applicable.
- Access to information, participation, and justice in environmental matters.
- Precautionary principle. In the absence of scientific certainty about the impact or damage an activity entail for the environment, the State through its competent authorities will adopt effective and timely precautionary or preventative measures aimed at avoiding, reducing, mitigating, or ceasing the affectation.
- Prevention. When there is certainty or scientific certainty about the environmental impact or damage that an activity or product can generate, the State through its competent authorities will require whoever promotes the activity full compliance with provisions, rules, procedures, and measures aimed at eliminating, avoiding, reducing, mitigating, and ceasing the affectation.
- Comprehensive Reparation. The need to reverse negative environmental impacts, avoid their recurrence; and give full and adequate remedy and redress to individuals and groups affected.
- Subsidiarity. The State will intervene in a subsidiary and timely manner to repair the damage caused to the environment, when the person who promotes or operates an activity does not assume responsibility for the comprehensive reparation of said damage, in order to safeguard the rights of nature, as well as the right of citizens to a healthy environment.

Regarding gas flaring, the Court found that the practice has generated a serious environmental impact. Gas flaring affects the climate, air and biodiversity because it emits greenhouse gases. This constitutes a breach to the rights to a healthy environment of all people and of nature, and also harms the health and life of most affected communities.

Based on the above set principles, the Court dismissed the State's arguments of insufficient evidence of the harm caused by gas flaring and restated that the precautionary principle had to be applied. The presence of scientific doubt or insufficient information should not be used as an excuse for inaction or the absence of proactive measures and effective mechanisms to protect nature and the environment.

The State had authorized the gas flaring practice without promoting the use of environmentally clean, non-polluting, and low-impact technologies and energies. It, therefore, overlooked the best available technology and best environmental practices principle. This led to a violation to the right to health of the plaintiffs.

Finally, the Court warned that gas flaring violates the international commitments of the Ecuadorian State, regarding the fight against climate change.

The Court, therefore, applied the polluter pays and subsidiarity principles and ordered comprehensive reparations including, *inter alia*:

- Gradual and progressive elimination of gas flaring until its complete elimination in 2030, prioritizing those located near population centers.
- Verification of the restoration of the natural environments affected by gas flaring, including water sources.
- Research to determine the level of harm caused by gas flaring in the environment and the health of people and the provision of oncological care.
- Public apology to the plaintiffs and the people in the Amazon for bad environmental decision-making.

The right to a clean, healthy, and sustainable environment does not mean that all environmental harm or impact is prohibited.

States have the discretion to strike a balance between environmental protection and other legitimate societal goals. But the balance must be reasonable, and it should never result in unjustified, foreseeable infringements of human rights. In the context of environmental harm generally, human rights bodies have identified factors that help to clarify whether a reasonable balance has been struck, which include whether the measure in question is the result of a process that complied with the procedural obligations [or rights] described in the previous section [see Section 2.1 of this document], whether it is non-retrogressive, whether it is non-discriminatory and whether it accords with international and domestic standards. Finally, States should fully implement their laws protecting human rights related to the environment.²⁹²

²⁹² United Nations General Assembly (2017). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*. Report No. A/HRC/34/49. para. 34. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>



Waterfall in Colombia- Envato Elements

BOX 18. THE FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

In 2018, with a view to setting out the basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy, and sustainable environment, the Special Rapporteur on Human Rights and the Environment presented to the Human Rights Council 16 non-exhaustive Framework Principles on Human Rights and the Environment (the Framework Principles), which provide detailed guidance for States on how to implement and fulfill their obligations related to this right.

Principles 1 and 2: States should ensure a safe, clean, healthy, and sustainable environment to respect, protect and fulfill human rights, and States should respect, protect, and fulfill human rights to ensure a clean, healthy, and sustainable environment

Principles 1 and 2 recognize the interdependence of human rights and the environment and highlight that the obligations of all States to respect, protect and fulfill human rights also apply in the context of environmental matters. This further entails that 'States should therefore refrain from violating human rights through causing or allowing environmental harm; protect against harmful environmental interference from other sources, including business enterprises, other private actors and natural causes; and take effective steps to ensure the conservation and sustainable use of the ecosystems and biological diversity.'

Principle 3: States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy, and sustainable environment

Principle 3 reinforces that the principle of non-discrimination applies equally to States' human rights and environmental obligations and clarifies that States 'to protect against environmental harm that results from or contributes to discrimination, to provide for equal access to environmental benefits and to ensure that their actions relating to the environment do not themselves discriminate.'

Principle 4: States should provide a safe and enabling environment in which individuals, groups, and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation, and violence

Principle 4 recognizes the vital work of environmental human rights defenders for the enjoyment of all human rights and the protection of the environment and restates the obligation of all States to secure a safe and enabling context to operate free from threats, harassment, intimidation, and violence by, inter alia, adopting laws and measures for protection, publicly recognizing their work, and developing early-warning programs.

Principle 5: States should respect and protect the rights to freedom of expression, association, and peaceful assembly in relation to environmental matters



Principle 5 highlights that the obligations of States to respect, protect, and fulfill the rights to freedom of expression, association, and peaceful assembly apply in environmental matters. This includes States' obligations to restrict these rights only in exceptional circumstances, as established by the United Nation's core human rights treaties, and to protect against interference from private actors.

Principle 6: States should provide education and public awareness on environmental matters

Principle 6 highlights the importance of providing context-appropriate environmental education from the earliest stages and raising public awareness on environmental matters by, *inter alia*, building knowledge on areas such as environmental risks and their impact on human rights, and by providing any other relevant information to allow the public to exercise their '*rights to express their views on environmental issues (framework principle 5), understand environmental information, including assessments of environmental impacts (framework principles 7 and 8), participate in decision-making (framework principle 9) and, where appropriate, seek remedies for violations of their rights (framework principle 10).*'

Principle 7: States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective, and timely access to information to any person upon request

Principle 7 remarks that to fulfill the right to access information (See Section 2.1.A), States must collect, update, and disseminate environmental information and provide affordable, effective, and timely access to it.

Principle 8: To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require a prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights

Principle 8 clarifies that prior assessment of the possible environmental and social impact of projects and policies is a requirement that States must fulfill. It stresses that the elements, scope, and objectives of such assessments, including the duty to observe human rights obligations and assess any possible negative implication for their enjoyment, are already clearly defined in binding international instruments.

Principle 9: States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in decision-making processes

Principle 9 addresses the role of the right to participation in environmental matters, and highlights the concrete steps that States need to observe to fulfill this right.

Principle 10: States should provide access to effective remedies for violations of human rights and domestic laws relating to the environment

Principle 10 recalls that the 'obligations of States to provide for access to judicial and other procedures for effective remedies for violations of human rights encompass remedies for violations of human rights relating to the environment.' This includes a right to remedies for violations by both State and private (i.e., non-State) actors, through appropriate judicial and administrative procedures, as per the State's obligations under the right to access justice.

Principle 11: States should establish and maintain substantive environmental standards that are non-discriminatory, nonretrogressive, and otherwise respect, protect and fulfill human rights

This principle recalls that 'States must establish, maintain, and enforce effective legal and institutional frameworks for the enjoyment of a safe, clean, healthy, and sustainable environment. Such frameworks should include substantive environmental standards, including with respect to air quality, the global climate, freshwater quality, marine pollution, waste, toxic substances, protected areas, conservation, and biological diversity.' It also lays out the factors that should be considered when assessing whether environmental standards respect, protect, and fulfill human rights.

Principle 12: States should ensure the effective enforcement of their environmental standards against public and private actors

Principle 12 remarks on States' obligations to secure the observance of relevant environmental standards by both State and non-State actors (e.g., business enterprises), pointing to the guidance of the Guiding Principles on Business and Human Rights²⁹³ for the latter.

Principle 13: States should cooperate with each other to establish, maintain, and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights

Principle 13 restates States' duty to cooperate to achieve universal respect for, and observance of, human rights. It clarifies that this does not require every State to take the same actions or assume the same responsibilities, but rather recalls the need to comply with differentiated obligations in good faith and constantly monitor to ensure adequate compliance.

States' obligations related to the environment must also be observed in the context of other international frameworks, including finance and cooperation agreements.

²⁹³ For further information on the UN Guiding Principles on Business and Human Rights, see Section 4 of this report.

◀

Principle 14: States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their specific needs, risks, and capacities

Principle 14 reminds States of their duty to address the consequences of environmental damage on populations in a situation of vulnerability, such as 'women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, ethnic, racial, or other minorities and displaced persons.' It provides concrete examples of how environmental damage most acutely affects these groups and guides States' tailored actions.

Principle 15: States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities

Because Indigenous Peoples and traditional or local communities are particularly vulnerable to environmental harm due to their close relationship with natural ecosystems, States must take specific measures to respect, protect, and fulfill their human rights. This includes, recognizing and protecting their rights to lands, territories, and resources; securing their full and effective participation in decision-making processes; observing free, prior and informed consent; protecting their knowledge and practices, their traditional knowledge and genetic resources, or other activities in relation to their lands, notably when they are affected by extractive industries; and providing effective remedies for violations of their rights.

Principle 16: States should respect, protect, and fulfill human rights in the actions they take to address environmental challenges and pursue sustainable development

Principle 16 recalls that human rights obligations must be observed during efforts to pursue environmental and development goals. 'That a State is attempting to prevent, reduce or remedy environmental harm, seeking to achieve one or more of the Sustainable Development Goals, or taking actions in response to climate change does not excuse it from complying with its human rights obligations.'



BOX 19. REALIZATION OF THE RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT AND THE PROTECTION OF THE ENVIRONMENT

As explained before, the substantive elements of the right to a clean, healthy, and sustainable environment require meeting minimum quality and protection standards for the environment and its components.

Regional courts,²⁹⁴ international instruments,²⁹⁵ and human rights experts²⁹⁶ have stressed that minimum environmental standards are a 'necessary precondition' for the enjoyment of multiple human rights and highlighted that the interlinked planetary crises, including biodiversity loss, climate change,²⁹⁷ pollution and zoonotic origin diseases represent a threat to and may violate multiple human rights.

Environmental degradation, whether in the form of climate change,²⁹⁸ biodiversity loss, or pollution, directly and immediately affects the enjoyment of the right to a clean, safe and sustainable environment.

The relationship between the protection of the environment and the realization of the right to a clean, healthy, and sustainable environment is straightforward: measures to protect the environment and secure '*clean air, safe and sufficient water, healthy and sustainably produced food, non-toxic environments where people can live, work, study and play, healthy ecosystems and biodiversity, and a safe climate,*²⁹⁹ directly concern State's substantive obligations with regards to this right.

At the same time, the recognition and realization of the right to a clean, healthy, and sustainable environment leads to environmental protection. As explained by the #TheTimelsNowReport³⁰⁰ such recognitions have led to, *inter alia*, strengthened environmental laws; improved implementation and enforcement of environmental laws; strengthen accountability of those who harm or contribute to harming the environment; increase public involvement in environmental protection and environmental decision-making processes; advance screening of new laws and regulations, preventing negative effects on the environment and associated human rights; increase protection for environmental human rights defenders; close legal gaps in the legal and policy protection of the environment; prevent future weakening of environmental laws and policies or 'rollbacks;' ensure environmental justice; and ensure that the natural environment cannot be compromised in favor of the progressive realization of economic and social rights.

*'In a 2011 study on the subject, Boyd found that countries that have recognized the right to a healthy environment in their constitutions have smaller ecological footprints, rank higher in comparative environmental indices, are more likely to ratify international environmental agreements, and have made faster progress in reducing emissions of Sulphur dioxide, nitrogen oxides, and greenhouse gases than States that are yet to do so. For example, between 1980 and 2005, wealthy industrialized countries that have recognized R2E reduced Sulphur dioxide emissions by 84.8 per cent, while those that do not have constitutional provisions on R2E reduced their emissions by just 52.8 per cent.'*³⁰¹

294 Inter-American Court of Human Rights (2017). *Advisory Opinion Oc-23/17 of November 15, 2017. Requested by the Republic of Colombia*. op. cit. 112.

295 Stockholm Declaration, WCED Legal Principles, Rio Declaration, American Charter.

296 See, e.g., Report No. A/HRC/34/49, op. cit. p. 115; and Report No. A/74/161. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/42/PDF/N1921642.pdf?OpenElement>

297 See, e.g., The Organization of American States General Assembly (2008). *Resolution entitled 'Human Rights and Climate Change in the Americas'*, adopted at the fourth plenary session held on June 3, 2008. AG/RES. 2429 (XXXVIII/O8). <https://www.acnur.org/fileadmin/Documentos/BDL/2009/6977.pdf>

298 Ibid.

299 Boyd, D. (2022). *The Human Right to a Healthy Environment: Protecting Life on Earth*. op. cit. p. 115.

300 Boyd, D., Knox, J., & Limon, M. (2021). *The case for universal recognition of the right to a safe, clean, healthy and sustainable environment*. op. cit. p. 42.

301 Boyd, D., Knox, J., & Limon, M. (2021). *The case for universal recognition of the right to a safe, clean, healthy and sustainable environment*. op. cit. p. 47.

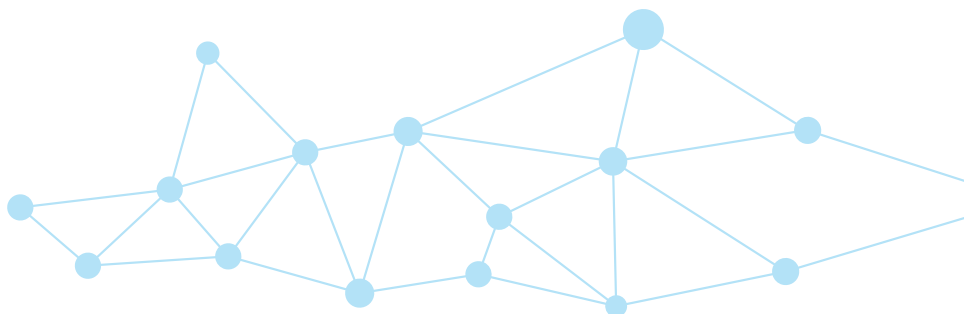
BOX 20. ENVIRONMENTAL INJUSTICES AND SACRIFICE ZONES

While pollution and toxic chemicals affect all individuals, there is strong evidence indicating that disadvantaged individuals, groups, and communities facing poverty, discrimination, and systemic marginalization bear a disproportionate burden of contamination. Environmental injustices often transcend borders, as affluent countries' consumption habits lead to severe health, ecosystem, and human rights impacts in other nations. Wealthy nations continue to export hazardous materials like pesticides, plastic waste, electronic waste, used oil, and derelict vehicles, along with the associated risks to low- and middle-income countries. They take advantage of weaker regulations and limited enforcement in these countries. Impoverished, vulnerable, and marginalized communities are less likely to access environmental information, participate in environmental decision-making, or obtain justice and effective remedies when their rights are compromised or violated by pollution and toxic substances.³⁰²

Certain communities endure environmental injustices to the extent that their living areas become extreme 'sacrifice zones.' Sacrifice Zones are areas exposed to high levels of pollution or toxic contamination. People living these areas 'suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and massively toxic areas.'³⁰³

Sacrifice zones include areas close to open-pit mines, smelters, petroleum refineries, chemical plants, coal-fired power stations, oil and gas fields, steel plants, garbage dumps, and hazardous waste incinerators. These facilities, or clusters of them, are often situated in close proximity to impoverished and marginalized communities. Sacrifice zones are typically created by governments and businesses and stand in stark contrast to sustainable development, as they harm the interests of both present and future generations.

Inhabitants of sacrifice zones are exploited, traumatized, and stigmatized.³⁰⁴ They are treated as disposable, with their voices ignored and their presence excluded from decision-making processes. Their dignity and human rights are trampled upon. Sacrifice zones exist in both affluent and impoverished states, encompassing regions in the North and the South.³⁰⁵



³⁰² United Nations General Assembly (2022). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. The right to a clean, healthy and sustainable environment: non-toxic environment*. Report No. A/HRC/49/53. See, e.g., para. 21-46. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/004/48/PDF/G2200448.pdf?OpenElement>

³⁰³ Boyd, D. (2021). *Sacrifice Zones: 50 of the most polluted places on Earth*. p. 4. <https://www.ohchr.org/sites/default/files/2022-03/SacrificeZones-userfriendlyversion.pdf>

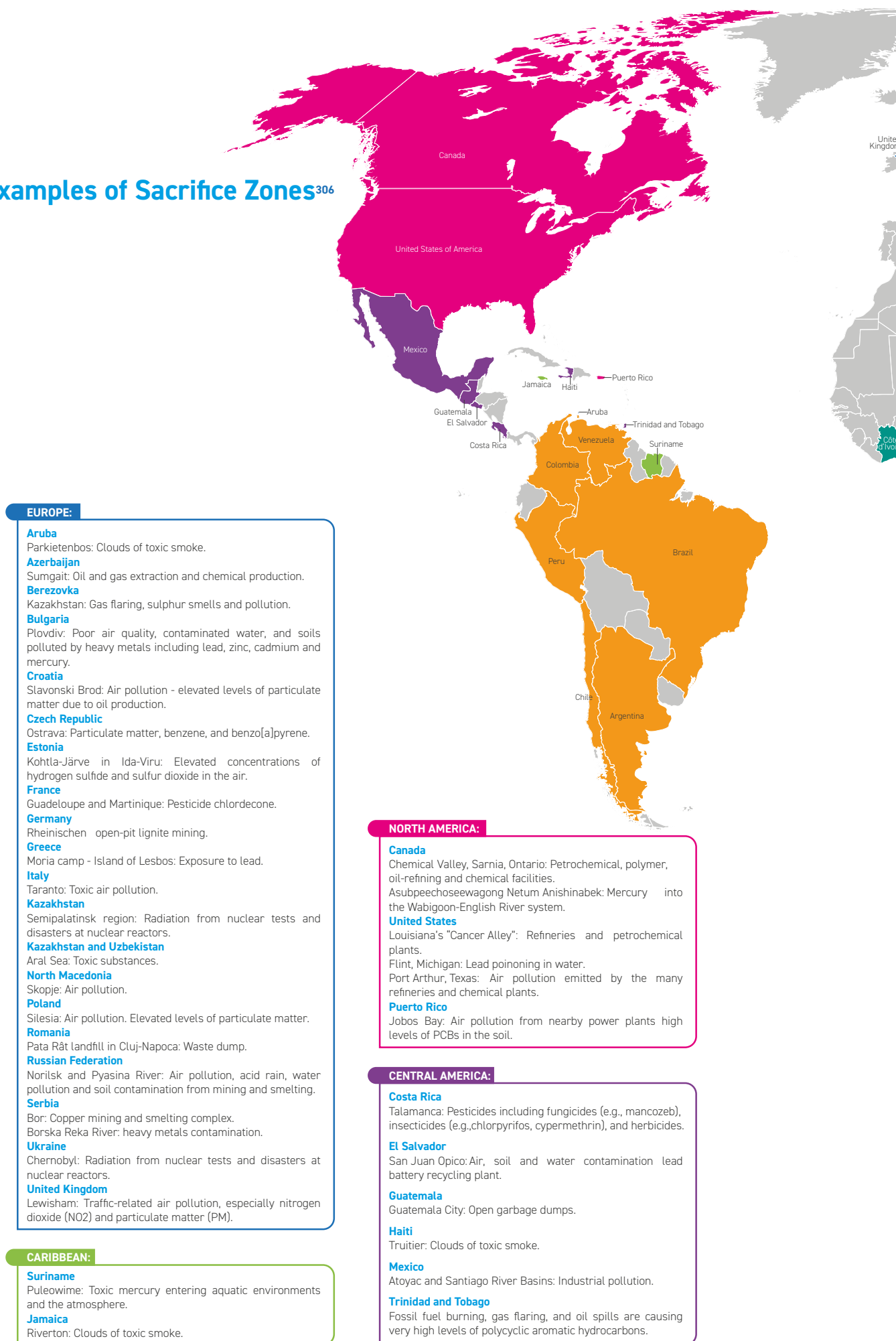
³⁰⁴ United Nations General Assembly (2022). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. The right to a clean, healthy and sustainable environment: non-toxic environment*. Report No. A/HRC/49/53. para. 21-46. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/004/48/PDF/G2200448.pdf?OpenElement>

³⁰⁵ Ibid.

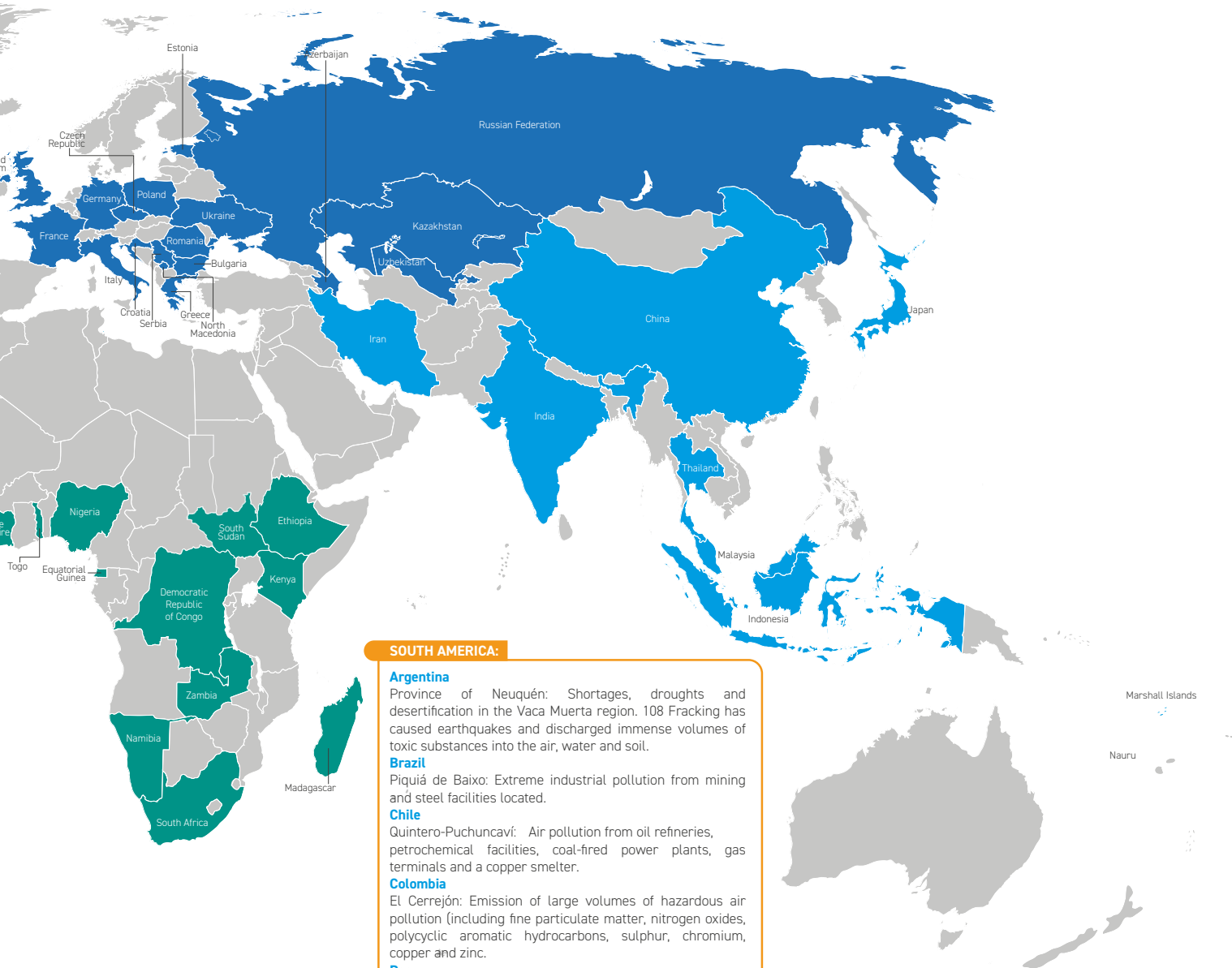
Photo Reuters - Ecuador



Figure 3
Some Examples of Sacrifice Zones³⁰⁶



³⁰⁶ Boyd, D. (2021). *Sacrifice Zones: 50 of the most polluted places on Earth*. <https://www.ohchr.org/sites/default/files/2022-03/SacrificeZones-userfriendlyversion.pdf>, p. 4.

**SOUTH AMERICA:****Argentina**

Province of Neuquén: Shortages, droughts and desertification in the Vaca Muerta region. 108 Fracking has caused earthquakes and discharged immense volumes of toxic substances into the air, water and soil.

Brazil

Piquiá de Baixo: Extreme industrial pollution from mining and steel facilities located.

Chile

Quintero-Puchuncaví: Air pollution from oil refineries, petrochemical facilities, coal-fired power plants, gas terminals and a copper smelter.

Colombia

El Cerrejón: Emission of large volumes of hazardous air pollution (including fine particulate matter, nitrogen oxides, polycyclic aromatic hydrocarbons, sulphur, chromium, copper and zinc).

Peru

La Oroya: Poisoning due to lead smelter.
Cerro de Pasco: Heavy metals due to open-pit mine.

Venezuela

Paraguaná Peninsula: Air and water pollution, including polycyclic aromatic hydrocarbons, oil spills, particulate matter, sulfur compounds and heavy metals.

AFRICA:**Côte d'Ivoire**

Abidjan: Toxic waste containing high levels of hydrogen sulfide.

Democratic Republic of Congo

Kasulo: Cobalt mining.

Equatorial Guinea

Malabo: Air pollution.

Ethiopia

Lega Dembi Gold Mine: Cyanide, arsenic and mercury.

Madagascar

Anosy Region: Uranium.

Kenya

Mombasa, Owino Uhuru: A lead battery and recycling facility.

Namibia

Tsumeb: Arsenic, copper and lead.

Nigeria

Niger Delta: Oil pollution and gas flaring.

South Africa

Mpumalanga: Coal mining and coal-fired power plants.

South Sudan

Thar Jath Oilfield: Oil contamination of streams, groundwater and wells.

Togo

Kpémé, Hahotoé, and Kpogamé: Lead, cadmium and fluoride into the air, water and soil.

Zambia

Kabwe: Lead mining and smelting.

ASIA:**China**

Bayan Obo and Baotou: Air pollution and toxic emissions from rare earth minerals.

India

New Delhi: Air pollution.

Jharia: Coal mines and air pollution.

Sukinda Valley: Chromite mining.

Iran

Ahvaz: Air pollution.

Jakarta

Indonesia: Emissions from coal-fired power plants.

Japan

Fukushima: Radiation from nuclear tests and disasters at nuclear reactors.

Malaysia

Kim Kim River: Hazardous waste.

Thailand

Klity Creek in Kanchanaburi Province: Lead-contaminated.

OCEANIA:**Marshall Islands**

Bikini and Enewetak atolls: Radiation from nuclear tests and disasters at nuclear reactors.

Nauru

Pleasant Island: Phosphate mining.

B. Right to the highest attainable standard of physical and mental health and the environment

The right to the highest attainable standard of physical and mental health (right to health) was first recognized at the international level in 1946, in the preamble of the World Health Organization's constitution, as 'one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.'

It was later embedded in Article 25 of the UDHR, which states that 'everyone has the right to a standard of living adequate for the health and well-being of themselves and of their families,' and in Article 12 of the ICESCR which states that 'the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.'

The right to health is not the right to be healthy.³⁰⁷

'The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water, and adequate sanitation, safe and healthy working conditions, and a healthy environment.

(...)

*A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.*³⁰⁸

The right to health gives individuals freedoms (i.e., freedom from interferences that may affect physical and mental health, like the right to be free from toxic substances) and entitlements (equal opportunity and timely access to basic health care services for physical and mental health; prevention, treatment, and control of diseases; health-related education and information; and others).

The CESCR and successive Special Rapporteurs have clarified that the right to health is anchored in four interdependent and interrelated principles, which must also be respected in environmental matters:

1. **Availability:** sufficient in quantity within a State.
2. **Accessibility:** physically and financially accessible for all individuals, without discrimination.
3. **Acceptability:** medically and culturally acceptable.
4. **Quality:** scientifically and medically appropriate and of good quality.

While the right to health is subject to progressive realization,³⁰⁹ it also entails a number of concrete immediate obligations for States.

With regards to environmental matters, to fulfill their obligations under the right to health, States should, *inter alia*:

- **Take effective steps to secure access by all individuals, without any form of discrimination, to**³¹⁰

³⁰⁷ Office of the United Nations High Commissioner for Human Rights (2008). *The Right to Health*. Fact Sheet No. 31. <https://www.ohchr.org/sites/default/files/Documents/Publications/Factsheet31.pdf>

³⁰⁸ United Nations General Assembly (2018). *International Covenant on Civil and Political Rights. General comment No. 36 on the right to life*. Document No. CCPR/C/GC/36. op. cit. p. 140.

³⁰⁹ Office of the United Nations High Commissioner for Human Rights (2008). *The Right to Health*. Fact Sheet No. 31. op. cit. p. 154.

³¹⁰ Ibid.



- Safe drinking water and adequate sanitation.
 - Safe food.
 - Adequate nutrition and housing.
 - Healthy working and environmental conditions.
 - Health-related education and information, including environmental information about situations or factors that can impact their health.
 - Gender equality.
 - Conserved natural habitats.³¹¹
- **Take effective steps to secure access by all individuals, in conditions of full equality, to health services and essential drugs, and guarantee the equitable distribution of all health facilities, goods, and services, taking special measures to secure effective access.**

For example, taking positive measures to secure that groups and individuals in situations of vulnerability, such as residents of Sacrifice Zones (See Box 20), are able to enjoy their right to health. In the case of Quintero y Puchuncaví, the Chilean Supreme Court ordered health authorities to conduct a thorough diagnosis of diseases caused by pollution, track prevalence and survival rates, implement epidemiological surveillance in the zone, develop and implement targeted health programs for affected communities, design a policy to address contingency situations and increased healthcare demand, and provide necessary resources for patient transfers during critical episodes.

- Likewise, States should **generate information on the specific needs** of individuals living in natural disaster-prone, polluted or environmentally degraded areas (i.e., sacrifice zones³¹²) in context appropriate languages.
- **Monitor, address, prevent, and mitigate the health effects of environmental challenges, including pollution, climate change, and biodiversity loss.**

For example, in 2015, after considering the World Health Organizations' report 'health and the environment: addressing the health impact of air pollution'³¹³ the World Health Assembly identified concrete measures to improve air quality and reduce air pollution to prevent diseases and improve human health. At its sixty-eight meeting, the Assembly urged States to, *inter alia*, identify, prevent, and address the health impacts of air pollution; strengthen health systems to take a leading role in raising awareness among the public and stakeholders about the health effects of air pollution; develop information on the issue; and improved cooperation, coordination and foster a multisectoral approach to address the health impacts of air pollution.

Other concrete examples include taking immediate steps to prevent damage to the health and development of children and repairing any damage done when they are identified as victims of environmental pollution;³¹⁴ or addressing health and safety risks in rural areas, through standardized systems of chemical waste disposal.³¹⁵

311 Statement in the context of the Rio+20 Conference on 'the green economy in the context of sustainable development and poverty eradication', adopted by the Committee at its forty-eighth session, 30 April–18 May 2012. E/C.12/2012/1. para 5. The Committee noted that natural habitats can promote the enjoyment of the right to health through providing access to potable water, as well as by preventing water degradation and pollution, which can lead to epidemics and waterborne diseases.

312 The SR on environment explains that 'Today, a sacrifice zone can be understood to be a place where residents suffer devastating physical and mental health consequences and human rights violations as a result of living in pollution hotspots and heavily contaminated areas.'

313 World Health Organization (2015). *Health and the environment: addressing the health impact of air pollution*. Report No. A68/18. https://apps.who.int/gb/ebwha/pdf_files/WHA68/A68_18-en.pdf

314 United Nations General Assembly (2020). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd*. Report No. A/HRC/40/55. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/002/54/PDF/G1900254.pdf?OpenElement>

315 United Nations General Assembly (2013). *Declaration on the Rights of Peasants and Other People Working in Rural Areas*. Article. 14. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGPLeasants/A-HRC-WG-15-1-2_En.pdf

→ **Enact human rights-based norms, policies, and strategies to ensure the enjoyment of the right to health by all.**

This framework should consider all relevant aspects of the interaction between human rights and the environment. For instance, 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.'³¹⁶ Another example of a theme is water and vector-borne diseases and their relationship with the environment. The Pan American Health Organization developed a guiding document to promote key interventions in this regard. The document outlines strategic lines of action to secure the surveillance and control of key vectors and reduce the transmission of vector-borne diseases.³¹⁷

It is also important that these frameworks and strategies provide steps to protect and fulfill the right to the highest attainable standards of mental health for all individuals, including environmental human rights defenders and victims of natural disasters, who may be at a higher risk of developing mental health conditions.

Moreover, as explained in Section XX, these frameworks should explicitly enact provisions and mechanisms to safeguard the right to health of individuals in situation of vulnerability. For example, **mainstreaming 'best interests of the child' considerations**, with due regard of specific groups of children at greater risk.³¹⁸

→ **Refrain from unlawfully polluting the environment or allowing non-State actors to pollute it.**

For example, prohibiting the generation and dumping of industrial waste from State-owned facilities; banning the use or testing of nuclear, biological, or chemical weapons if such activities result in the release of substances harmful to human health;³¹⁹ or refraining from carrying out or authorizing activities that result in significant contamination of the environment.

States must enforce laws to protect against pollution or contamination by non-State actors, such as extractive and manufacturing industries,³²⁰ and assess and prevent the impact of their activities on the population's right to health.

The Supreme Court of Costa Rica has explained that State's duty to protect public health implies the obligation to take concrete and affective positive measures that go beyond requesting reports or carrying out studies to determine environmental impact. In a lawsuit filed by M.S.A. against the local government of Tibás, the Costa Rican Ministry of Health, and the landowner responsible for a landfill that was causing pollution, including noxious odors and toxic waste, the Court ordered the authorities to take all necessary legal measures to resolve the pollution issue originating from the garbage dump.³²¹ The pollution from the landfill was found to be a violation of the affected individuals' right to a healthy environment and the right to health.

316 United Nations General Assembly (2000). *International Covenant on Economic, Social, and Cultural Rights. General Comment No. 14: The right to the highest attainable standard of health*. Document No. E/C.12/2000/4. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/C.12/2000/4&Lang=E>

317 Pan American Health Organization (2019). *Addressing the environmental determinants of health in vector surveillance and control strategies: promoting key interventions*. <https://iris.paho.org/handle/10665.2/51782>

318 United Nations General Assembly (2016). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, the impacts of toxics and pollution on children's rights, Baskut Tunçak*. Report No. A/HRC/33/41. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/169/26/PDF/G1616926.pdf?OpenElement>

319 Ibid. para. 34.

320 Office of the United Nations High Commissioner for Human Rights (2003). *Statement of the Committee on Economic, Social and Cultural Rights to the Commission on Sustainable Development as the Preparatory Committee for the World Summit on Sustainable Development (Bali, Indonesia, 27 May-7 June 2002)*. Document No. E/C.12/2002/13. para. 3. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/414/55/PDF/G0341455.pdf>

321 Costa Rica, Constitutional Chamber of the Supreme Court of Justice (1994). *Judgment of Substance [Sentencia de fondo]*. 94-001328-0007-CO. <https://vlex.co.cr/vid/-497297322>

→ **Adopt preventive measures to protect the right to health of the population**, through context-appropriate strategies that, among other things, minimize or avert exposure to harmful substances such as radiation and harmful chemicals that directly or indirectly impact human health,³²² and avoid the contamination of water and food associated with this type of pollution. In this regard, for example, States should guarantee health and environmental impact assessments that clarify the potential or actual risks caused by activities that may affect human health and the environment, such as oil operations.³²³

Preventative measures also include strategies to prevent zoonotic diseases,³²⁴ such as the adoption of strong frameworks to prevent the transmission of infectious diseases from fauna to humans,³²⁵ and monitoring mechanisms to identify 'hotspots of emerging infectious diseases and high-risk interfaces between wildlife, livestock, and humans.'³²⁶

“ States must enforce laws to protect against pollution or contamination by non-State actors, such as extractive and manufacturing industries. ”

322 United Nations General Assembly (2019). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. Principles on human rights and the protection of workers from exposure to toxic substances, Baskut Tuncak*. Report No. A/HRC/42/41. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/217/70/PDF/G1921770.pdf>

323 African Commission on Human & Peoples' Rights (2002). *Case of The Social and Economic Action Rights Centre and Centre for Economic and Social Rights v. Federal Republic of Nigeria*. Document No. ACHPR/COMM/A044/1. <https://www.escri-net.org/sites/default/files/serac.pdf>

324 United Nations General Assembly (2021). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd*. Report No. A/76/179. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/197/68/PDF/N2119768.pdf?OpenElement>

325 United Nations General Assembly (2021). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. Human rights and the global water crisis: water pollution, water scarcity and water-related disasters*. Report No. A/HRC/46/28. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/012/23/PDF/G2101223.pdf?OpenElement>

326 Ibid.

→ **Adopt frameworks to secure healthy working conditions and improve all aspects of industrial hygiene**, through for example, protective and rights-based laws and policies on occupational health. This includes taking preventive measures in respect of occupational accidents and diseases related to hazardous or toxic substances or materials, and the prevention and reduction of worker exposure to substances or materials that can negatively affect their health.³²⁷



CorteIDH - SARAYAKU v. ECUADOR.
Audiencia de Supervisión de Cumplimiento
de Sentencia Caso Pueblo Indígena Kichwa
de Sarayaku Vs. Ecuador

327 United Nations General Assembly (2019). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. Principles on human rights and the protection of workers from exposure to toxic substances, Baskut Tuncak*. Report No. A/HRC/42/41. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/217/70/PDF/G1921770.pdf>

BOX 21. REALIZATION OF THE RIGHT TO HEALTH AND THE PROTECTION OF THE ENVIRONMENT

The right to health, through both its physical and mental health components, is deeply intertwined with the environment.

First, as asserted by multiple international instruments, and implicitly recognized by many MEAs (see Table 3), the full enjoyment of the right to health is dependent on a clean, healthy, and sustainable environment.

Regarding physical health, the World Health Organization, United Nations human rights mechanisms, UN agencies, and civil society organizations (CSOs) have documented how pollution, biodiversity loss, and climate change affect individuals' physical well-being and how health depends extensively on environmental conditions. Environmental degradation and pollution can lead to increased incidences of respiratory and cardiovascular diseases, malnutrition, allergies, injuries, and many more. 'One in six deaths in the world involves diseases caused by pollution, three times more than deaths from AIDS, malaria and tuberculosis combined and 15 times more than from all wars, murders and other forms of violence.'³²⁸

Further, exposure to harmful substances such as radiation and hazardous chemicals may lead to skin, lung, and thyroid cancer, and cataracts, among other ailments.³²⁹ Zoonotic diseases are also linked with damages to the biosphere. The SARS-CoV-2 virus, for example, which had deep implications for the health and life of millions of people, originated from an animal species and then passed to humans.³³⁰

'Climate change has many other harmful effects on human health, including increasing the frequency and severity of heatwaves, compounding the toxicity of fossil-fuel pollutants such as ozone, and contributing to wildfires. Children are, again, more vulnerable to all of these effects.'³³¹ Climate change is further associated with water and vector-borne diseases, as well as with malnutrition, and cardiovascular and respiratory diseases, among others.³³²



³²⁸ United Nations General Assembly (2022). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. The right to a clean, healthy and sustainable environment: non-toxic environment*. Report No. A/49/53, para 5. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/004/48/PDF/G2200448.pdf>

³²⁹ World Health Organization (n.d.). *Radiation*. https://www.who.int/health-topics/radiation#tab=tab_1

³³⁰ United Nations General Assembly (2020). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. Report No. A/75/161. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/184/48/PDF/N2018448.pdf>

³³¹ United Nations General Assembly (2018). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd*. Report No. A/HRC/37/58, para. 25. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/29/PDF/G1801729.pdf?OpenElement>

³³² Smith, K., et. al. (2014). *Human health: impacts, adaptation, and co-benefits*. In C.B. Field et al. *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*. p. 11. https://www.ipcc.ch/site/assets/uploads/2018/02/WGIIAR5-Chap11_FINAL.pdf

Regarding mental health, the World Health Organization has stressed that 'climate change also exacerbates many social and environmental risk factors for mental health and psychosocial problems, and can lead to emotional distress, the development of new mental health conditions and a worsening situation for people already living with these conditions.'³³³ This, in addition to climate anxiety, mostly affects children and youth.³³⁴ Air pollution can lead to depression and conduct disorders in adults,³³⁵ and environmental degradation leads to poor quality food that in turn can result in mental health disorders.³³⁶ Natural disasters, on the other hand, increase the risk of post-traumatic stress disorder and suicide.³³⁷ These general issues are in addition to the mental health concerns specific groups such as environmental defenders suffer as a result of threats they face for defending the environment.³³⁸

Second, there is a virtuous cycle between the protection of the right to health and the protection of the environment. When States, companies, and individuals take steps to protect health from pollution or environmental degradation, these health-oriented measures become effective tools for the protection of the environment. The case of Marangopoulos Foundation for Human Rights (MFHR) v. Greece (see Case 17) illustrates this.

Another example is the triumph of Phyllis Omido and the Center for Justice, Governance, and Environmental Concerns (CJGEA) in Kenya, who filed a claim against the Metal Refinery EPZ, a smelting plant that recycled used lead-acid batteries in Owino Uhuru. According to the claimants, a growing number of individuals, mainly children, had suffered various health problems and the environment had been severely degraded. Deaths had also resulted from lead poisoning and respiratory illnesses. Finding violations to the rights to life, health and a healthy environment, the Court ordered EPZ to initiate the process of cleaning up the soil, water, and removing any waste. If EPZ failed to comply, it would be liable to pay a sum of around USD 6.5 million to CJGEA for coordinating the soil and environmental clean-up exercise. Ms. Omido and CJGEA's pressure and advocacy efforts eventually led to EPZ ceasing operations in 2014.

333 World Health Organization (2022). *Mental health and Climate Change: Policy Brief*. p. 1. <https://www.who.int/publications/i/item/9789240045125>

334 Marks, E., & Hickman, C. (2021). *Young People's Voices on Climate Anxiety, Government Betrayal and Moral Injury: A Global Phenomenon*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3918955

335 Roberts, S., et.al. (2019). *Exploration of NO2 and PM2.5 air pollution and mental health problems using high-resolution data in London-based children from a UK longitudinal cohort study*. *Psychiatry Research*, 272, p. 8-17. <https://doi.org/10.1016/j.psychres.2018.12.050>

336 United Nations General Assembly (2016). *Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Panel discussion on climate change and the right to health: Statement by Dainius Pūras*. <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Impact/DainiusPuras.pdf>

337 Alfonso, C. (2018). *PTSD and Suicide After Natural Disasters*. <https://www.psychiatrytimes.com/view/ptsd-and-suicide-after-natural-disasters>

338 See, e.g., Universal Rights Group, Freedom House, Lifeline (2022). *Understanding and responding to the protection needs of climate activists and movements: a guide for donors and support organisations*. <https://www.universal-rights.org/urg-policy-reports/understanding-and-responding-to-the-protection-needs-of-climate-activists-and-movements-2/>

Finally, a clean and safe environment can improve physical and mental health. As the Special Rapporteur on human rights and the environment has reported, exposure to diverse natural habitats can positively impact psychological and cardiovascular health.³³⁹ Moreover, 'healthy ecosystems provide a buffer against emerging infectious diseases.'³⁴⁰ They are also source of medicines and medical insights, hence having a lifesaving and life-changing potential.³⁴¹

The reinforcing links between the environment and health are captured by the One Health approach, which seeks to inform the design of programs, policies, laws, and research for better public health outcomes. 'The One Health approach sees human health as deeply interconnected with the health of animals and plants, and with the health of the environment and natural ecosystems. Thus, any area of human health – physical, mental and social – can benefit from an understanding of human connections to the surrounding world.'³⁴² In the One Health, the environment has three functions: reservoir, where substances and nutrients are accumulated and transported; substrate for ecological processes that provide myriad ecosystem services to humans, including those essential for human health, and health mediator, producing positive or negative effects on animal and human health, depending on the health condition of the environment itself.³⁴³

“ Climate change has many other harmful effects on human health, including increasing the frequency and severity of heatwaves, compounding the toxicity of fossil-fuel pollutants such as ozone, and contributing to wildfires. ”

339 United Nations General Assembly (2017). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox. Report No. A/HRC/34/49. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>; and *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. Report No. A/75/161. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/184/48/PDF/N2018448.pdf?OpenElement>

340 United Nations General Assembly (2020). *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. Report No. A/75/161. para 40. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/184/48/PDF/N2018448.pdf?OpenElement>

341 Ibid. para 41.

342 World Health Organization (2022). *A health perspective on the role of the environment in One Health*. Copenhagen: WHO Regional Office for Europe. p. 2. <https://apps.who.int/iris/bitstream/handle/10665/354574/WHO-EURO-2022-5290-45054-64214-eng.pdf?sequence=1&isAllowed=y>

343 Ibid. p. 2.

CASE 17. MARANGOPOULOS FOUNDATION FOR HUMAN RIGHTS (MFHR) V. GREECE³⁴⁴

The Marangopoulos Foundation for Human Rights (MFHR), a civil society organization based in Greece, lodged a complaint before the European Committee of Social Rights against the State of Greece, asserting that it failed to comply with its obligation to protect the right to health, under the European Social Charter. The complaint argued that the State had not adequately considered the environmental effects or formulated an appropriate strategy to prevent and combat public health risks in the main areas where lignite mining was taking place.

According to MFHR, lignite mining resulted in elevated concentrations of suspended particulates (TSP) that surpass the exposure limit values established by the European Union (EU) and the World Health Organization (WHO) internationally. The organization further explained that air pollution in these mining areas was associated with a significantly higher prevalence of respiratory diseases, including rhinitis, atrophic rhinitis, chronic bronchitis, and chronic obstructive pulmonary disease (COPD) among both residents and non-residents.

It argued that the State could have taken measures to prevent the dispersion of particulate matter by implementing appropriate transportation, dumping, and stockpiling methods for lignite. Moreover, the use of depleted mines as dumping sites for hazardous waste resulted in additional pollution.

The Government argued that the utilization of lignite and the continuation of its mining are justified by the general interest, including energy independence, affordable electricity access for the entire population, and Greece's economic growth and industrial development comparable to other EU countries.

The European Committee of Social Rights acknowledged that these are undoubtedly legitimate objectives within the scope of the Charter. However, the Committee reminded the State of its constitutional obligation to protect the environment and the health of all citizens.

While lignite has a significant role in energy production, it also has adverse effects on the environment, human health and life.

Measures should be implemented to ensure individuals can enjoy the highest possible standard of health by addressing the causes of ill-health stemming from environmental threats like pollution. National authorities are obliged to develop and regularly update comprehensive environmental legislation and regulations, take specific actions to prevent and reduce air pollution at local and global levels, ensure effective enforcement of environmental standards, inform and educate the public about environmental issues, and assess health risks through monitoring of affected groups.



³⁴⁴ European Committee of Social Rights (2006). *Case of Marangopoulos Foundation for Human Rights (MFHR) v. Greece*. Complaint No. 30/2005. Climate Change Litigation Database. Accessed December 18, 2023. <https://climatecasechart.com/non-us-case/marangopoulos-foundation-human-rights-mfhr-v-greece/#:-:text=Summary%3A,and%20coal%2Dfired%20power%20plants>

While acknowledging that overcoming pollution is a gradual process, States are expected to strive towards this objective within a reasonable timeframe, demonstrating measurable progress and making the best use of available resources. The Committee evaluates the efforts made by States based on their national legislation, regulations, and commitments to the European Union and the United Nations.

The Committee noted that the Greek Constitution obligates the State to protect the natural environment as both a collective and individual right. It further recognized that Greek environmental legislation and regulations are well-developed, regularly updated, and largely aligned with the numerous standards set by the European Union in this field.

Photo Reuters - Vassilis Triandafyllou - Greek Coal Mine



CASE 18. FADEYEVA V. RUSSIA³⁴⁵

In 1999, Nadezhda Fadeyeva initiated a lawsuit against the Russian Federation at the European Court on Human Rights (ECtHR). Ms. Fadeyeva sought legal redress for the violations of her right to privacy and family life caused by air and noise pollution resulting from the operation of the nearby Severstal steel plant. The pollution endangered her health and well-being.

Based on indirect evidence and presumptions, the Court determined that the applicant's health had deteriorated as a result of the pollution generated by the Severstal steel plant. Even if the emissions did not cause measurable harm, it was inevitable that the pollution would heighten the applicant's vulnerability. Furthermore, it is undeniable that pollution had a detrimental effect on her quality of life within her residence.

The Severstal steel plant was not owned, controlled, or operated by the State, but the Court explained that 'the State's responsibility in environmental cases may arise from a failure to regulate private industry.'³⁴⁶

In this case, the plant was required, under domestic legislation, to establish a sanitary security zone, which acts as a buffer area, separating sources of pollution from residential areas in a city. Although a buffer zone was established, the applicant lived in an area with higher levels of pollution than those admitted by law.

The ECtHR determined that the State could have reasonably been expected to take action to secure respect for the applicant's human rights by enforcing domestic legislation. The Court noted that the plant was initially State-owned and then privatized, and that local authorities had conducted inspections and even fined the plant after its privatization. The environmental situation did not arise suddenly or unexpectedly; instead, it had been an ongoing and well-known issue. Based on this, the Court concludes that the authorities involved in the case were undoubtedly aware of the pollution risks and had the ability to assess them accurately. Therefore, the authorities were in a position to implement appropriate measures to prevent or minimize the pollution.

The Court also noted that insufficient environmental information may have led the applicant to underestimate the extent of pollution's impact.

The Court emphasized that the burden is on the State to provide detailed and rigorous data justifying a situation where certain individuals bear a significant burden on behalf of the rest of the community. In this particular case, when local authorities regulated the industrial activities of the steel plant, they failed to adequately consider the interests of the nearby community.

For the Court, asserting that the State or the polluting enterprise had the obligation to offer the applicant free housing in a safer location would be excessive. It also exceeds its jurisdiction to prescribe specific measures for States to fulfill their positive human rights obligations. However, in this particular case, despite the need for special consideration for individuals residing near the plant, the State failed to provide the applicant with any effective solution to facilitate her relocation from the hazardous area. Consequently, the State's actions resulted in an unfair balance between the interests of the community and the applicant's right to enjoy her home and private life. Additionally, the State did not implement effective measures that would consider the interests of the local population affected by the pollution and reduce industrial pollution to acceptable levels. The State, thus, had to provide redress to the applicant.

³⁴⁵ European Court of Human Rights (2005). *Case of Fadeyeva v. Russia*. Application no. 55723/00. <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22%3A%22fadeyeva%20v.%20rus-sia%22%22%22documentcollectionid%22%3A%22GRANDCHAMBER%22%22CHAMBER%22%22itemid%22%3A%22001-69315%22%7D>

³⁴⁶ *Ibid.*, para 89.

C. Right to an adequate standard of living and the environment

The right to an adequate standard of living was first recognized by the UDHR in Article 25. It was later enshrined in Article 11 of the ICESCR as a binding obligation for States: 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.'

The right to an adequate standard of living refers to the entitlement of all individuals to enjoy adequate subsistence conditions, so everyone can have a dignified life, without unreasonable obstacles or interference, and without being deprived from other basic rights and freedoms. What adequate means is determined by prevailing social, economic, cultural, climatic, ecological, and other conditions.³⁴⁷

This right has two types of components:³⁴⁸

- Private or family requirements, such as food, adequate housing, and clothing; and
- Community requirements, which refer to access to essential services, such as safe drinking water and sanitation, health and social security services, and educational and cultural facilities.

The right to an adequate standard of living is a right of progressive realization, but it implies immediate obligations for States, namely:

- To guarantee non-discriminatory treatment with regard to access to adequate food, water, and housing, and other relevant components.
- To continuously improve *everyone's* living conditions.
- To refrain from adopting retrogressive measures.

Thus, the realization of this right is dependent, in turn, on the realization of other human rights which emanate from it, namely, the rights to adequate food, adequate housing, and safe and clean drinking water and sanitation (see below for more information about these rights).³⁴⁹

The core elements and relationship of these rights and the environment are explained below.

Photo Andrey Rudakov - Bloomberg - Smoke rises from chimneys at the Cherepovets Steel Mill, operated by Severstal PJSC, in Cherepovets.



347 Office of the United Nations High Commissioner for Human Rights (1999). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 12: The Right to Adequate Food*. Document No. E/C.12/1999/5. Article. 11. <https://www.refworld.org/pdfid/4538838c11.pdf>

348 International Labour Organization (1976). *World Employment Conference 1976*. In N. Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*. p. 1025-1040. Cambridge: Cambridge University Press. doi:10.1017/9781139059121.033. <https://assets.cambridge.org/97805217/80421/sample/9780521780421ws.pdf>

349 Office of the United Nations High Commissioner for Human Rights (2003). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 15: The right to water*. Document No. E/C.12/2002/11. para. 3. <https://www.refworld.org/pdfid/4538838d11.pdf>

D. Right to adequate food and the environment

The right to food beyond the minimum intake of nutrients, means the right of all individuals to a diet that supports a healthy and active life. Therefore, its realization requires, *inter alia*, the adoption of appropriate economic, environmental, and social policies aimed at securing the full enjoyment of all human rights.

The right to food requires nutrients 'in a quantity and quality sufficient to satisfy the dietary needs of individuals, *free from adverse substances*, and acceptable within a given culture.' As such, States must guarantee that food is:

1. **Accessible:** Individuals should have 'physical and economic access at all times to adequate food or means for its procurement,'³⁵⁰ meaning that food must be affordable and physically reachable by everyone, including groups and individuals in situations of vulnerability, victims of natural disasters, and minority groups.
2. **Available:** Food should be accessible by utilizing natural resources, whether it involves food production through farming, cultivation of land, or animal husbandry. Additionally, alternative methods such as fishing, hunting, or gathering should also be considered as means of obtaining food.³⁵¹ The availability of food may be determined by an individual or community's capacity to directly feed themselves from productive land or natural resources.³⁵² Damage to elements of the environment or hindered access to the land may, therefore, constitute a violation of the right to food.

³⁵⁰ Ibid. para 6.

³⁵¹ Ibid.

³⁵² Ibid.

3. **Adequate:** Food should be safe and sufficient to meet dietary needs, acceptable under the values or vision of rights-holders. **Safe food** refers to food that is free from toxic or harmful substances arising from adulteration, bad environmental hygiene, inappropriate handling at different stages throughout the food chain, pollution of the air, soil or water used to grow it, or the use of agrochemicals, among others.

Moreover, the IACtHR has explained that food must also align with the cultural values of a specific group. This means that considerations beyond nutrition alone must be taken into account. Food plays a crucial role in enabling the enjoyment of other rights, and its adequacy can be influenced by environmental and cultural factors.³⁵³ Food can be seen as one of the defining aspects that characterize a social group. Consequently, protecting the right to cultural identity includes safeguarding these distinctive features, without denying the historical, dynamic, and evolving nature of culture.³⁵⁴ The adequacy of food, thus, must be assessed on a case-by-case basis.

The right to food is deeply interlined with the environment. In environmental matters, it requires States to make every effort (and demonstrate that they have done so, notwithstanding their ability to fully deliver) to, *inter alia*:

³⁵³ Lhaka Honhat (Our Land) Association of Aboriginal Communities, in collaboration with the Center for Justice and International Law (CEJIL) and the Centro de Estudios Legales y Sociales (CELS).

³⁵⁴ Ibid.

- **Create a context that allows individuals to produce or buy food.** States do not have the obligation to feed all individuals; instead, 'individuals are expected to meet their own needs, through their own efforts and using their own resources.'³⁵⁵ However, States must guarantee an appropriate environment that allows all persons to buy or produce their own food. For the latter, 'a person needs land, seeds, water, and other resources,'³⁵⁶ which can be secured strengthening their access to and utilization of natural resources.³⁵⁷

As part of this obligation, States must guarantee food production processes and methods acceptable for rightsholders. For instance, States must protect traditional methods that are culturally appropriate for Indigenous Peoples and other minority groups,³⁵⁸ and must ban the use of pesticides, chemicals, or genetically modified organisms or extractive activities by State and non-State actors where these can affect such food production methods.

- **Ensure that everyone has access to sufficient, adequate, and safe food, without discrimination.** Regarding the environment, access to food refers to safe land and natural resources 'related to the right to access adequate and nutritious food, such as water sources, access to land, and seed production,'³⁵⁹ protected through norms and enforcing mechanisms.

The obligation to secure access to food implies positive and negative duties for States. An example of a positive obligation is to **provide food directly to individuals who, in exceptional situations,** do not have access, due to, for example, natural disasters or detention.³⁶⁰

*'Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.'*³⁶¹

An example of a negative duty is the obligation to refrain from destroying or contaminating food sources or tolerating their contamination or destruction. In the case of *SERAC and CESR v. Nigeria* (see Case 26), the ACHPR highlighted that the actions of the Nigerian government towards the Ogoni people resulted in violations of three fundamental obligations related to the right to food. Firstly, the government, with the involvement of its security forces and State Oil Company, used force in raids that resulted in the destruction of food sources. Secondly, it allowed private oil companies to engage in activities that lead to the poisoning and subsequent destruction of food sources. Lastly, through acts of terror, the government created significant barriers for Ogoni communities in their efforts to sustain themselves through food production.

355 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004). *Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Conclusions and recommendations of the Committee against Torture.* Document No. CAT/C/CR/33/1, para. 6. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/451/09/PDF/G0445109.pdf?OpenElement>

356 Office of the United Nations High Commissioner for Human Rights (2010). *The Right to Adequate Food.* Factsheet No. 34, p. 3. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>

357 Ibid. p. 18.

358 United Nations General Assembly (2018). *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, Victoria Tauli-Corpuz.* Report No. A/HRC/39/17/Add.2. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/39/17/Add.2&Lang=E>

359 United Nations General Assembly (2014). *Report of the Special Rapporteur on the right to food, Hilal Elver. Access to justice and the right to food: the way forward.* Report No. A/HRC/28/65, para. 72. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/003/04/PDF/G1500304.pdf?OpenElement>

360 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004). *Consideration of Reports Submitted by States Parties under Article 19 of the Convention. Conclusions and recommendations of the Committee against Torture.* Document No. CAT/C/CR/33/1, para. 6. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/451/09/PDF/G0445109.pdf?OpenElement>

361 Office of the United Nations High Commissioner for Human Rights (1999). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 12: The Right to Adequate Food.* Article. 11. <https://www.refworld.org/pdfid/4538838c11.pdf>

- **Adopt a national strategy to ensure food and nutrition security for all, and to address and prevent or mitigate potential negative impacts of food systems.** In terms of environmental matters, the strategy should:
 - Seek to ensure the equitable and sustainable management and use of natural resources for food at the national, regional, local, and household levels.³⁶²
 - Identify populations prone to food insecurity, for example, those likely to be affected by extreme weather events, and adopt concrete strategies to secure the enjoyment of their right to food.
 - Establish mechanisms to ensure accountability so that rights-holders are able to claim their right to food, and to ensure their effective participation in designing and monitoring relevant legislation and policies, including those that may affect the environment.
 - Implement context-appropriate measures to strengthen the protection of the human rights of groups in situation of vulnerability, including land-users whose land tenure is insecure, landless laborers, women, displaced persons, Indigenous Peoples, minorities, the disabled and the rural and urban poor.³⁶³
- Guarantee that energy production and development projects do not compromise the right to food or food security³⁶⁴ by, for example, depleting natural resources or impeding access to land.
- Include effective measures to 'strengthen the resilience and adaptive capacity of food systems and people's livelihoods in response to climate variability and extremes.'³⁶⁵
- **Adopt legal and policy frameworks to ensure that the activities of business enterprises and civil society are consistent with the right to food** and 'ensure that State or non-State actors do not deprive individuals of their access to adequate food,'³⁶⁶ by, *inter alia*, polluting or depleting or impeding access to natural resources.

International agreements with other States and international organizations for, *inter alia*, the development of energy generation and other large-scale projects that may threaten food accessibility or availability, shall be consistent with States' obligations under the right to food.

- **Information about healthy and sustainable food** should be accessible to the public and integrated in educational curricula.³⁶⁷ For example, the United States, through its Departments of Agriculture (USDA) and Health and Human Services (HHS) publishes the Dietary Guidelines for Americans.³⁶⁸ These guidelines provide recommendations on healthy and sustainable diets to all citizens. The objective is to promote adequate food consumption practices and therefore, also protect their health.

³⁶² Ibid.

³⁶³ United Nations General Assembly (2008). *Report of the Special Rapporteur on the right to food, Olivier De Schutter. Building resilience: a human rights framework for world food and nutrition security.* Report No. A/HRC/9/23. para. 54. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/155/08/PDF/G0815508.pdf?OpenElement>

³⁶⁴ United Nations General Assembly (2019). *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.* Report No. A/74/161. para. 7. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/42/PDF/N1921642.pdf?OpenElement>

³⁶⁵ Ibid. para. 86.

³⁶⁶ Office of the United Nations High Commissioner for Human Rights (1999). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 12: The Right to Adequate Food.* Article. 11. <https://www.refworld.org/pdfid/4538838c11.pdf>

³⁶⁷ United Nations General Assembly (2021). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. Healthy and sustainable food: reducing the environmental impacts of food systems on human rights.* Report No. A/76/179. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/197/68/PDF/N2119768.pdf?OpenElement>

³⁶⁸ United States, U.S. Department of Agriculture and U.S. Department of Health and Human Services (2020). *Dietary Guidelines for Americans 2020-2025.* https://www.dietaryguidelines.gov/sites/default/files/2020-12/Dietary_Guidelines_for_Americans_2020-2025.pdf

→ **Guarantee the sustainability of food production.**

'The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present and future generations [...] "sustainability" incorporates the notion of long-term availability and accessibility'³⁶⁹ of food.

This requires ecosystem and natural resource conservation, as well as healthy environmental conditions, including climatic and ecological conditions, to secure the provision of a healthy and sufficient diet for all.

The sustainability of food systems is endangered by multiple factors,³⁷⁰ many of which relate to the environment, such as climate and wide-scale ecosystem change, pollution, and environmental degradation.

Some food production methods may threaten environmental sustainability, and therefore, food sustainability. States must assess and consider the costs and benefits of allowing such projects to move forward, from a rights-based approach. In this case, policy and project decisions should consider their human rights implications, including, *inter alia*, on the right to food of the population. For instance, large monoculture farming operations are known to be efficient food producers in the short term, but have negative environmental impacts, such as risk of pest outbreaks and soil infertility.³⁷¹ In the mid and long-term, these risks may threaten the sustainability of food production. Likewise, infrastructure or extractive projects in biodiverse-rich areas or wetlands may significantly reduce the capacity of these zones to produce food and hence threaten food sustainability.

369 Ibid.

370 United Nations Environment Programme (n.d.). *Food and food waste*. <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/sustainable-lifestyles/food-and-food-waste>

371 European Commission (2021). *The rise and fall of monoculture farming*. <https://ec.europa.eu/research-and-innovation/en/horizon-magazine/rise-and-fall-monoculture-farming>



Figure 4

Steps to improve the sustainability and equity of food systems globally

Source and more information. Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, presented in the report 'Healthy and sustainable food: reducing the environmental impacts of food systems on human rights.' A/76/179

Key changes that would improve the sustainability and equity of food systems globally, especially industrial food systems:



Fulfilling the rights to food and a healthy and sustainable environment requires additional **policy and governance changes**:



CASE 19. S. JAGANNATH VS UNION OF INDIA & ORS³⁷²

In 1996, the Supreme Court of India rendered a judgment on a public interest petition aimed at securing the observance of a national norm (the Coastal Zone Regulation Notification) which protected coastal areas, halting the practice of intensive and semi-intensive prawn farming in environmentally fragile coastal regions, and prohibiting its expansion into fragile areas.

Deciding this case, the Supreme Court of India discussed the impact of intensive food production methods in the environment and food sustainability.

The Supreme Court recognized that the impact of prawn production varies depending on the farming methods employed. While traditional rotating shrimp/rice aquacultures historically had minimal environmental and social repercussions, the emerging trend of intensified shrimp farming, driven by investments from multinational corporations and large private entities, now poses a significant threat to the environment and the rights of local communities.

The Supreme Court emphasized the need for sustainable development in shrimp aquaculture, which entails striking a balance between economic progress, environmental preservation, and the protection of vulnerable communities' rights.

Intensive and semi-intensive shrimp farms pose a risk for the sustainability of food production because they negatively impact the environment and natural resources, on which other forms of food production depend.

The socio-environmental changes resulting from the expansion of the shrimp industry along coastal areas predominantly stem from the conversion of lands, waters, and forests into shrimp farms. This conversion adversely affects other agricultural practices, aquaculture, forest use, and fisheries, which often better serve local food and employment needs. Intensive and semi-intensive shrimp production hinder the development of other aquacultures.

The conversion of mangroves into shrimp farms not only diminishes the natural production of wild capture shrimp and other fisheries but also hampers their crucial role in low-lying coastal regions, as they are gradually replaced by shrimp ponds. These shrimp ponds can be rarely re-utilized for other types of foods.

The escalating demand for land by shrimp entrepreneurs has caused a significant surge in land prices in many areas. Following the establishment of shrimp farms near village lands, prices soar astronomically. Local farmers can no longer afford to purchase land, while indebted farmers are tempted to sell their holdings. Much of the coastal land recently converted into shrimp farms was previously used for food crops and traditional fishing. This significantly affects the capacity of local farmers to own land and destine it for diverse agriculture and aquaculture activities.



³⁷² India, Supreme Court of Justice (1996). Case of S. Jagannath v. Union of India et al. Indian Kanoon Database. Accessed December 18, 2023. <https://indiankanoon.org/doc/507684/>

In the light of the above socio-economic impacts, the Supreme Court of India highlighted that it is imperative for the industry to operate under the shared principles of environmental sustainability and development. The adoption of environmentally friendly technologies is essential to achieve sustainable food production while safeguarding the environment.

Regarding redress and non-repetition, the Court directed the Central Government to establish an authority to protect ecologically fragile coastal areas and address issues caused by the shrimp culture industry. The authority must implement the precautionary principle and the polluter pays principle. The Court further ordered demolishing and prohibited shrimp culture ponds within the coastal regulation zone, except for traditional methods in certain low-lying areas. Industries operating in prohibited areas must compensate for all affectations, and collected funds will be used for restoration and compensation purposes.

BOX 22. REALIZATION OF THE RIGHT TO ADEQUATE FOOD AND THE PROTECTION OF THE ENVIRONMENT

The realization of the right to food is largely dependent on a clean, healthy, and sustainable environment.

Healthy and diverse ecosystems enable the availability, stability, and resilience of food. They can increase the yield of commercial crops and the productivity of freshwater fisheries, as well as the adaptation capacity of agroecosystems.³⁷³ "Access to a diverse variety of local plants helps to protect vulnerable rural communities in particular, which may rely on them when harvests fail or sudden expenses occur."³⁷⁴ Healthy ecosystems also support food security by ensuring that the factors required to grow crops are present and interact appropriately, helping to strengthen and secure the fertility of the soil and the capacity of plants to produce nutritious food.

Pollution and climate change can affect the availability, accessibility, and adequacy of food. For example, contamination of land, water, and soil,³⁷⁵ improper use of pesticides, oil spills, and the improper disposal of heavy metals³⁷⁶ can lead to the presence of toxic or hazardous substances in food.³⁷⁷ The Food and Agriculture Organization (FAO) has warned that plastics may cause negative effects on different elements of the environment, particularly soil and fauna, which in turn affect the ecosystem's capacity to produce safe food in sufficient quantities.³⁷⁸

373 United Nations General Assembly (2017). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. Report No. A/HRC/34/49. para. 19. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>

374 Ibid.

375 Office of the United Nations High Commissioner for Human Rights (1997). *United Nations Committee on Economic, Social and Cultural Rights. Concluding observations: Russian Federation*. Document No. E/C.12/Add.13. para. 14

376 Ibid. para. 24

377 Ibid. para. 24

378 The Food and Agriculture Organization of the United Nations (2021). *Assessment of agricultural plastics and their sustainability: A call for action*. <https://www.fao.org/publications/card/en/c/CB7856EN>

Natural disasters,³⁷⁹ environmental degradation, desertification, and global climate change are exacerbating destitution and desperation, negatively impacting the realization of the right to food, especially in developing countries.³⁸⁰ Depletion or shortage of natural resources needed for food,³⁸¹ caused by weather events like droughts or floods, mainly affects vulnerable groups³⁸² that directly depend on these resources, such as Indigenous Peoples,³⁸³ rural communities, small-scale fisherpersons, and peasants.

Certain food production methods pose dangers to the environment.³⁸⁴ Some food production systems, particularly large-scale and resource-intensive ones, contribute to exacerbating air and water pollution, climate change, loss of biodiversity, and diseases of zoonotic origin, thus violating human rights.

Trends of land ownership concentration, such as land grabbing for monoculture plantations or intensive livestock farming, along with the widespread use of toxic chemicals, increase environmental degradation and the vulnerabilities faced by local communities. Deforestation in Latin America is linked to the expansion of agricultural land for commodities. Agriculture is the leading cause of biodiversity loss and is linked to air, water, and soil pollution. Water resources are at risk due to overexploitation, pollution, and habitat destruction.³⁸⁵

Adopting a **rights-based approach to food-related frameworks and decisions** can help to minimize the negative impacts that food production can have on human rights and the environment. See Figure 4.

Acknowledging that human rights can help counter the negative social and environmental impacts of food production methods, particularly, agriculture, the United Nations Development Program developed a tool to assess national legal and policy frameworks that underpin the realization of the right to food and help States adopt a human rights-based approach to food security. The tool, called **'Towards a Human Rights-Based Approach to Food Security: A Self-Assessment Tool to Achieve Balanced Plant Regimes,'**³⁸⁶ acknowledges that although the agricultural sector plays an essential role in food production, employment, and trade, certain practices, such as intellectual property rights, seed privatization and monocultures, may harm biodiversity and the livelihoods and rights of farmers and communities that depend on traditional agriculture. The tool assists States in establishing rights-based participatory systems that help to protect human rights and establish plant variety laws to counter the possible negative impacts of agriculture.

379 Office of the United Nations High Commissioner for Human Rights (1999). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 12: The Right to Adequate Food*. Article 11. <https://www.refworld.org/pdfid/4538838c11.pdf> 'Even where a State faces severe resource constraints, whether caused by a process of economic adjustment, economic recession, climatic conditions or other factors, measures should be undertaken to ensure that the right to adequate food is especially fulfilled for vulnerable population groups and individuals'.

380 United Nations General Assembly (2008). *Resolution 7/14: The right to food*. https://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_14.pdf

381 Human Rights Council, Resolution 10/12, entitled "The right to food", adopted on March 26, 2009, A/HRC/RES/10/12; and Human Rights Council, Resolution 13/4, entitled "The right to food", adopted on March 27, 2008, A/HRC/RES/13/4. Human Rights Council, Analytical study of the relationship between human rights and the environment, Report of the United Nations High Commissioner for Human Rights, adopted on December 16, 2001, A/HRC/19/34, para. 49. See, e.g., ESCR Committee, 'Concluding Observations: Russian Federation', May 20, 1997, E/C.12/Add.13, para. 24 and 38.

382 Climate Change Litigation Databases (2020). *Case of the Center for Food and Adequate Living Rights et al. v. Tanzania and Uganda*. <http://climatecasechart.com/non-us-case/center-for-food-and-adequate-living-rights-et-al-v-tanzania-and-uganda/>. Accessed 1 December, 2023.

383 See, e.g., *Report of the Committee on Economic, Social and Cultural Rights for the Twentieth and Twenty-First sessions, Consideration of reports of States parties: Cameroon. 26 April-14 May 1999. 15 November-3 December 1999. E/C.12/1999/11. para. 337. See, also, Report of the Committee on Economic, Social and Cultural Rights for the Forty-Second and Forty-Third sessions, Consideration of reports of States parties: Madagascar. 4-22 May 2009. 2-20 November 2009. E/C.12/2009/3, para. 372 (expressing apprehension that investment laws permitting land acquisition by foreign investors were adversely impacting the access of people living in rural areas to cultivable lands and their natural resources, thereby leading to a negative impact on the realization by the Malagassupray population of the right to food).*

384 United Nations General Assembly (2021). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. Healthy and sustainable food: reducing the environmental impacts of food systems on human rights*. Report No. A/76/179. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/197/68/PDF/N2119768.pdf?OpenElement>

385 Ibid.

386 United Nations Development Programme (2012). *Towards a Human Rights-Based Approach to Food Security: A Self-Assessment Tool to Achieve Balanced Plant Regimes Facilitating Farmers' Participation to Ensure Sustainable Access to Food*. <https://www.undp.org/publications/towards-human-rights-based-approach-food-security-self-assessment-tool-achieve-balanced-plant-regimes>

CASE 20. ATRATO RIVER RULING³⁸⁷

In the ruling on the Atrato River, the Colombian Constitutional Court emphasized the interconnectedness of the right to food and food sovereignty of indigenous, ethnic, and rural communities with the protection of the environment and their territories. The Court recognized the significance of the Atrato River in ensuring the rights of local communities.

Access to clean and safe water was acknowledged as essential for the realization of the right to water. Moreover, the Court stated that the right to water is a prerequisite for the exercise of other rights, including the right to food, as water is necessary for food production. Pollution and unsustainable exploitation of water resources and river basins hinder the ability of local communities to produce food and maintain their traditional ways of life.³⁸⁸

Pollution stemming from illegal mining activities in the Atrato River Basin violates the right to water and other components of the right to a healthy environment because it affects the availability, accessibility and quality of water, the production of food (trees, crops and fish), health conditions, traditional ways of life and the cultural practices of ethnic communities.

The Court reminded that, in the Inter-American system, the right of ethnic communities over their ancestral territories goes beyond demarcation and includes the right they have to the use and respect natural resources, such as forests, animals, rivers, lakes and lagoons. In this way, access to their ancestral lands and the use and enjoyment of the resources found in them is directly linked to obtaining food and access to clean water.

In particular, the IACtHR explained that natural water sources are often the only places where Indigenous Peoples can access water and even obtain many of their foods.

Thus, it is the duty of the States to protect the indigenous territory from extractive activities. Although this does not mean that these activities cannot be carried out, it must be borne in mind that the property of the ethnic communities and their resources warrant special protection.

As a result, States have an obligation to ensure that these activities do not damage drinking water sources so that members of ethnic communities have access to water necessary for drinking, cooking, bathing, washing, irrigating, watering, and fishing.



³⁸⁷ Colombia, Constitutional Court of Colombia (2016). *Case of the Center for Social Justice Studies et al. v. Colombia et al. The Atrato River Case*. The United Nations General Assembly on Harmony with Nature Database. Accessed December 18, 2023. <http://files.harmonywithnatureun.org/uploads/upload838.pdf>

³⁸⁸ Ibid. Section 5.43

Additionally, the Colombian Constitutional Court highlighted the duty of the Colombian State, in accordance with its human rights obligations under the rights to culture, environment and food, to protect the traditional subsistence methods of local communities, including their food production practices.

Sustainable development projects and decisions related to the use of natural resources must consider the interests of these communities when their food depends on the resources they traditionally exploit and produce.³⁸⁹ Sustainable development should not only ensure natural resources for future generations but also preserve the historical and cultural values of the most vulnerable populations, and that includes their traditional food production methods and access to their natural resources.

The Court emphasized the importance of safeguarding the cultures and territories of ethnic, indigenous, and rural communities to protect their right to food and other rights. Food sovereignty encompasses not only the autonomy of States and peoples in determining their food production processes but also the respect and preservation of artisanal and small-scale production communities in accordance with their own cultures and diverse farming and fishing practices.³⁹⁰

Food security and sovereignty are deeply intertwined with the protection of water and forests. Therefore, the preservation of the environment, the protection of marine and terrestrial ecosystems, the conservation of flora and fauna, and the defense of animal and plant species are essential to fulfill the States' human rights obligations.

Photo Bram Ebus - via Mongabay, Atrato River, Colombia



³⁸⁹ Ibid.

³⁹⁰ Specifically, to stop the intensive and large-scale use of various methods of illegal mining and logging, which include heavy machinery -dredgers and backhoes- and highly toxic substances -such as mercury- in the Atrato River (Chocó), its basins, swamps, wetlands and tributaries.

E. Right to safe drinking water and sanitation and the environment

The human right to safe drinking water and sanitation was first recognized in 2010 by the United Nations General Assembly resolution 64/292 as 'a human right that is essential for the full enjoyment of life and all human rights.' This recognition was later reaffirmed by Human Rights Council resolution 15/9 which affirms that 'the human right to safe drinking water and sanitation is derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.'

The human right to safe drinking water and sanitation (right to water) has been since recognized as an integral element of the right to an adequate standard of living and covers access to water to sustain life and health, and to meet basic needs. It does not, however, entitle individuals to an unlimited amount of water.³⁹¹

The rights to water and sanitation acknowledge that water is an enabler of basic human conditions for a dignified life, including food, environmental and personal hygiene standards, and participation in cultural life, among others.³⁹²

“ The freedoms refer to the ability to maintain access to existing water sources without interference or contamination. ”

391 Office of the United Nations High Commissioner for Human Rights (2010). *The Right to Water*. Factsheet No. 35. <https://www.ohchr.org/sites/default/files/2021-09/FactSheet35en.pdf>

392 Office of the United Nations High Commissioner for Human Rights (2023). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 15: The Right to Adequate Food*. Document No. E/C.12/2002/11. Articles 11-12. <https://www.refworld.org/pdfid/4538838c11.pdf>

In 2020,³⁹³ the Food and Agriculture Organization of the United Nations explained that although the normative content of this right was initially developed in terms of access to water for personal and domestic use, more recently, it has been understood as extending to water for food and agricultural production in its interactions with, *inter alia*, the right to food.³⁹⁴ 'Such contextual reading of the right to water is supported by the fact that both the right to water and the right to food are inextricably connected to the right to an adequate standard of living and understood to be inherent also in the right to health and the right to life.'³⁹⁵

The right to water, as other human rights, grants freedoms and entitlements. The freedoms refer to the ability to maintain access to existing water sources without interference or contamination. These rights also guarantee individuals the right to be free from arbitrary and illegal disconnection of water sources; water resource pollution; discrimination in access to water and sanitation, including on the basis of land or housing status; interference with access to water supplies, especially traditional water sources; and threats to personal security when accessing water or sanitation outside the home.³⁹⁶

On the other hand, the entitlements relate to a water supply and management system that ensures equal opportunities for individuals to exercise their right to water.³⁹⁷ The rights to water and sanitation also entitle individuals to participate in water- and sanitation-related decision-making at the national and community levels.³⁹⁸

393 The 2010 Office of the United Nations High Commissioner for Human Rights Fact Sheet on the Right to Water, explain that this right includes only personal and domestic uses, and the use water for agriculture or pastoralism are covered under the right to food, except 'when necessary to prevent starvation.'

394 Food and Agriculture Organization of the United Nations (2020). *The right to water for food and agriculture*. p. 116. <https://www.fao.org/3/ca8248en/ca8248en.pdf>

395 Ibid.

396 Ibid.

397 Inter-American Court of Human Rights (2020). *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_400_ing.pdf

398 Ibid.

Groups in situation of vulnerability are entitled to adequate access to water. For instance, the IACtHR has explained that, regarding indigenous and tribal communities, States must secure water for their subsistence farming and livelihoods. The right to water, along with the rights to food and cultural life, are recognized as rights that are particularly vulnerable to environmental impact. In fulfilling their obligation to ensure the right to water, States must provide protection against actions by private individuals that may impede access to water.³⁹⁹

“ On November 5, 2018, the Canton of Cotacachi and the Municipality of Cotacachi filed a protective action against the Minister of the Environment of Ecuador and ENAMI EP (the national mining company). ”



CorteIDH - SARAYAKU v. ECUADOR. Audiencia de Supervisión de Cumplimiento de Sentencia Caso Pueblo Indígena Kichwa de Sarayaku Vs. Ecuador

399 Ibid.

CASE 21. BOSQUE PROTECTOR LOS CEDROS, ECUADOR⁴⁰⁰

On November 5, 2018, the Canton of Cotacachi and the Municipality of Cotacachi filed a protective action against the Minister of the Environment of Ecuador and ENAMI EP (the national mining company). The action challenged a series of mining licenses granted to ENAMI EP in the Los Cedros Forest, of Cotacachi.

The Constitutional Court revised the case in 2021. Regarding the right to water, the Court highlighted the strong connection between this right and the management of water sources.

The local communities rely on Los Cedros' water sources for personal and domestic use. The agricultural and livestock activities conducted by these communities depend on the preservation of water sources. Therefore, water also serves as a crucial resource for the economic subsistence of these communities.

Water sources are interconnected with the ecosystem of the Los Cedros Protected Forest. Mining activities require substantial amounts of water and pose risks such as deforestation, land removal, and acid contamination; alterations to the ecosystem in the feeding zone of the local communities within the Los Cedros Protected Forest will impact the quantity and quality of water necessary for their needs. Under the right to water and sanitation, the State has an obligation to ensure access to clean, sufficient, acceptable, accessible, and affordable water for local communities.

The right to water is closely intertwined with the right to a healthy environment and the rights of nature, as water is an essential element for life on Earth.

Consequently, the Court implemented the precautionary principle and asserted that it must be applied within the framework of laws, public policies, and judicial decisions related to the exercise of the right to water. To determine the applicability of the precautionary principle in protecting water, the Court assessed the following factors: i) the risk of serious or irreversible harm, ii) scientific uncertainty, iii) adoption of appropriate measures.

Environmental consultation can play a significant role in implementing the precautionary principle. The right to water should be safeguarded through environmental consultation with the potentially affected communities. For instance, consultations can help to identify and adopt effective protective measures or pinpoint potential risks. This consultation process should take place at least before the issuance of the environmental registration and prior to granting the environmental license. It is essential to adhere to the parameters of prior, free, and informed consultation.

The Court declared that the mining concessions and environmental permits granted to ENAMI in Los Cedros had violated the rights of nature (protected by the Constitution of Ecuador) and the human rights to water and a healthy environment, as well as the right of local communities to prior consultation.

⁴⁰⁰ Caso No. 1149-19-JP/20. El pleno de la Corte Constitucional del Ecuador, en ejercicio de sus atribuciones constitucionales y legales, expide la siguiente sentencia: Revisión de garantías Caso No. 1149-19-JP/20. Sentencia No. 1149-19-JP/21. Juez ponente: Agustín Grijalva Jiménez. 10 de noviembre de 2021. http://esacc.corteconstitucional.gob.ec/storage/api/v1/10_DWL_FL/e2NhcBldGE6J3RyYW1pdGUnLCB1dWtkOic2MmE3MmIxNy1hMzE4LTQyZmMtYjJkOS1mYzYzNWE5ZTAwNGYucGRmJ30=

Water must be:⁴⁰¹

- **Adequate** for human dignity, life, and health, and acceptable in colour, odour, and taste. Adequacy means that the water should be:
- **Sufficient** (in terms of its availability) and continuous for personal and domestic uses,⁴⁰² which comprises water for drinking, washing clothes, food preparation, personal and household hygiene.⁴⁰³ 20 litres of water per-person per-day is understood as the 'minimum quantity required to realize minimum essential levels of the right' to water, but States should provide 50-100 litres to fully realize the right.⁴⁰⁴
- **Safe⁴⁰⁵ and of quality:** free from micro-organisms, chemical substances and radiological hazards that constitute a threat to a person's health.^{406, 407}
- **Available in facilities and through services that are culturally appropriate⁴⁰⁸** and sensitive to gender, lifecycle, and privacy requirements.⁴⁰⁹
- **Accessible,** both physically and economically,⁴¹⁰ without discrimination, for all. Water sources should be located within 1,000 meters of the home and collection time should not exceed 30 minutes. Although the human rights framework does not recognize a right to free water, it should be affordable.⁴¹¹



Photo José Schreckinger - Bosque del Parque Nacional Yasuní

401 United Nations Water (2018). Human Rights to Water and Sanitation. https://www.unwater.org/app/uploads/2018/10/WaterFacts_water_and_human_rights_sep2018.pdf

Office of the United Nations High Commissioner for Human Rights (2003). United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 15: The right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights). Document No. E/C.12/2002/11. <https://digitallibrary.un.org/record/486454?ln=en>

402 United Nations Water (2018). Human Rights to Water and Sanitation. op. cit. 287.

403 Office of the United Nations High Commissioner for Human Rights (2010). The Right to Water. Factsheet No. 35., op. cit. 283.

404 Office of the United Nations High Commissioner for Human Rights (n.d.). Special Rapporteur on the human right to water and sanitation. Frequently Asked Questions. https://sr-watersanitation.ohchr.org/en/rightstowater_5.html

405 United Nations Water (2018). Human Rights to Water and Sanitation. op. cit. 287.

406 Ibid.

407 Office of the United Nations High Commissioner for Human Rights (2010). The Right to Water. Factsheet No. 35. op. cit. 283.

408 Ibid.

409 United Nations Water (2018). Human Rights to Water and Sanitation. op. cit. 287.

410 'To ensure that water is affordable, States parties must adopt the necessary measures that may include, inter alia: (a) use of a range of appropriate low-cost techniques and technologies; (b) appropriate pricing policies such as free or low-cost water; and (c) income supplements. Any payment for water services has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with water expenses as compared to richer households.' CESCR General Comment No. 15: The right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11, 2003, op. cit. 254, para. 27.

411 Office of the United Nations High Commissioner for Human Rights (2010). *The Right to Water*. Factsheet No. 35. op. cit.

Photo DAN Fotografía



Photo Elisa Levy - Bosque Protector Los Cedros en Ecuador

Regarding the environment, the right to safe drinking water implies that States must take every effort (and demonstrate that they have made such efforts, notwithstanding their ability to fully deliver on this) to, *inter alia*:

- Incorporate a perspective that emphasizes human rights and gender equality in every aspect related to the distribution, utilization, preservation, safeguarding, and rehabilitation of water resources.
- Provide information on water by among others, including it in educational curriculum at all levels.
- **Adopt and implement a legal framework and national strategy to guarantee access to a minimum essential amount of water by all in equal conditions, integrating gender equality.**

These instruments must guide analyses and considerations regarding the development or approval of water-intensive activities that may compromise access to water, such as large-scale agriculture or mining projects. For example, offering guidance on how to prioritize water allocation to fulfill the right to water for personal and domestic uses,⁴¹² specially to prevent starvation and disease.⁴¹³

Inappropriate resource allocation can lead to discrimination that may not be overt. For example, investments should not disproportionately favor expensive water supply services and facilities that are often accessible only to a small, privileged fraction of the population, rather than investing in services and facilities that benefit a far larger part of the population.⁴¹⁴

Implementing this framework means that States must take positive actions, such as providing water or relevant facilities to individuals and groups that do not have means to access at least minimum amounts of safe water, or 'address the shortage of water resources, improve water management, in particular in the agricultural sector, and rationalize the use of non-renewable groundwater reserves.'⁴¹⁵

- **Enforce frameworks to ensure that business enterprises do not interfere with people's ability to exercise their right to water,**⁴¹⁶ including land ownership laws; water management, pollution and water extraction regulations that address natural sources, wells, and other water distribution systems;⁴¹⁷ mandatory EIAs, and measures to protect traditional water sources, among others.

For instance, regarding indigenous peoples, States have a responsibility to protect their access to water resources on their ancestral lands. This entails safeguarding these resources from encroachment and unlawful pollution. States should allocate resources to support indigenous Peoples in designing, delivering, and managing their own access to water, and must consult before granting licenses or allowing business enterprises to develop activities in their territories. Nomadic and traveler communities should also be guaranteed access to adequate water at their traditional halting sites.⁴¹⁸

412 Ibid.

413 Office of the United Nations High Commissioner for Human Rights (2003). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 15: The right to water.* Articles 11-12. para. 6.

414 Office of the United Nations High Commissioner for Human Rights (2003). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 12: The Right to Adequate Food.* Article. 11. op. cit.

415 Office of the United Nations High Commissioner for Human Rights (2011). *United Nations Committee on Economic, Social and Cultural Rights. Concluding Observations of the Committee: Yemen.* Document No. E/C.12/YEM/CO/2. para. 26. <https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=E/C.12/YEM/CO/2&Lang=E>

416 Office of the United Nations High Commissioner for Human Rights (2012). *United Nations Committee on Economic, Social and Cultural Rights. Concluding Observations of the Committee on the 3rd periodic report of Ecuador as approved by the Committee at its 49th session, 14-30 November 2012.* Document No. E/C.12/EQU/CO/3. para. 25. <https://www.refworld.org/docid/52d551274.html>. See, also, *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Azerbaijan.* Document No. E/C.12/1/Add.20. para. 28. <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/Mappingreport/1.ICESCR-24-Feb.docx>

417 Office of the United Nations High Commissioner for Human Rights (2003). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 15: The right to water.* Articles 11-12. op. cit.

418 Ibid.

→ **Refrain from reducing and take steps to maintain water adequacy, availability, and accessibility.**

This includes abstaining from 'unlawfully diminishing or polluting water';⁴¹⁹ 'arbitrarily and illegally disconnecting water and sanitation services; reducing the provision of safe drinking water to slums in order to meet the demand of wealthier areas; destroying water services and infrastructure as a punitive measure during an armed conflict; depleting water resources that Indigenous Peoples rely upon for drinking,' or 'arbitrarily interfering with customary or traditional arrangements for water allocation.'⁴²⁰ States must also protect water sources from unlawful encroachment.⁴²¹

A concrete example is adopting positive measures to secure peasants and people working in rural areas' access to safe drinking water by reducing water collection times and providing adequate sanitation systems.

Additional measures can be found in the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment's report 'Human rights and the global water crisis: water pollution, water scarcity and water-related disasters',⁴²² which includes specific recommendations for States to maintain or improve water quality, prevent, or alleviate water scarcity and improve water governance, and achieve water and climate co-benefits.

→ **Guarantee access to safe water by effectively preventing and addressing pollution, harmful substances, and pathogenic microbes of watersheds and water resources.**

This includes regulating and, where applicable, banning activities that can result in the contamination of watersheds and water sources. Cooperating and engaging with Indigenous and local communities to strengthen their efforts to protect their traditional water sources can be an effective strategy to fulfill this obligation.⁴²³

→ **States should also implement strategies to address the risks that water pollution may pose to human health or life.**⁴²⁴

This includes the duty to monitor and address water pollution, including presence of toxic elements, chemicals, industrial waste, and other harmful substances for human health. Likewise, State parties should monitor and combat situations where aquatic eco-systems serve as a habitat for vectors of diseases wherever they pose a risk to human living environments'⁴²⁵ and assess the effects of actions that may affect water availability, such as changes in climate, desertification, deforestation, biodiversity loss and other environmental challenges.

Improving the management of chemicals and other polluting materials by the industrial, mining, and agricultural sectors can lead to healthier ecosystems, safer water resources and, therefore, increased availability, accessibility, and adequacy of water.⁴²⁶

419 Ibid. para. 10, 23, 28, 44 (a).

420 Ibid. para. 21.

421 Ibid. para. 16 (c).

422 United Nations General Assembly (2021). Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. Human rights and the global water crisis: Water pollution, water scarcity and water-related disasters. Report No. A/HRC/46/28. <https://undocs.org/A/HRC/46/28>

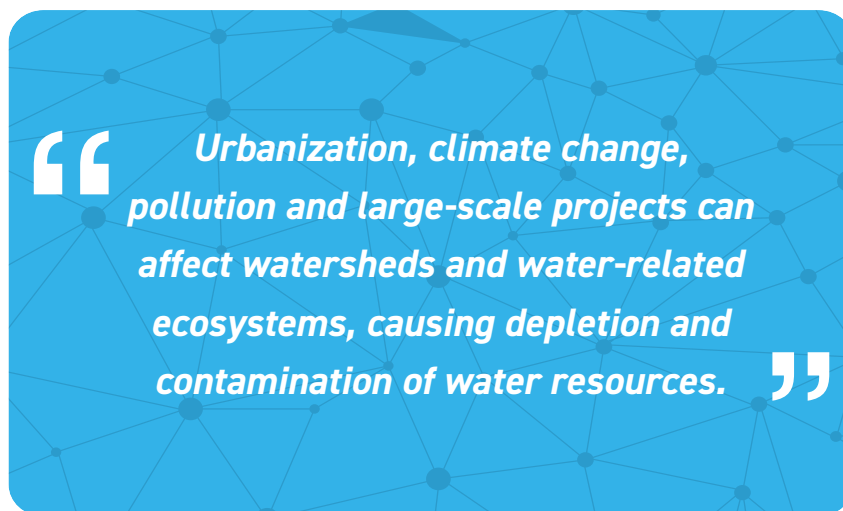
423 Ibid.

424 Office of the United Nations High Commissioner for Human Rights (2009). *Report of the Committee on Economic, Social and Cultural Rights for the Forty-Second and Forty-Third sessions, Consideration of reports of States parties: Chad*. Document No. E/C.12/2009/3. para. 348. <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/Mappingreport/1.ICESCR-24-Feb.docx>

425 Office of the United Nations High Commissioner for Human Rights (2003). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 12: The Right to Adequate Food*. Article 11. op. cit.

426 United Nations Environment Programme (2019). *Global Environment Outlook – GEO-6: Healthy Planet, Healthy People*. <https://www.unep.org/resources/global-environment-outlook-6#:~:text=GEO%2D6%3A%20Healthy%20Planet%2C,meet%20the%20Sustainable%20Development%20Goals>

- **Adopt comprehensive and integrated strategies and programs to ensure that there is sufficient and safe water for present and future generations (i.e., sustainability).**⁴²⁷ This requires taking effective steps to:⁴²⁸
 - Reduce depletion of water resources through unsustainable extraction, diversion, and damming.
 - Reduce and eliminate contamination of watersheds and water-related ecosystems by substances such as radiation, harmful chemicals, and human excreta.
 - Assess the impacts of actions that may impinge upon water availability and natural-ecosystem watersheds, such as climate change, desertification, increased soil salinity, deforestation, and loss of biodiversity.
 - Increase efficient use of water by end users.
- Monitor water reserves.
- Ensure that developments do not interfere with access to adequate water.
- Reduce water wastage in distribution.
- Create emergency response mechanisms.
- Establish implementation institutions.
- Evaluate the potential environmental, social, health, cultural, and human rights impacts of projects that could harm water and freshwater ecosystems through pollution, waste, damage, destruction, or depletion.
- Ensure the equitable and sustainable management of transboundary rivers, lakes, and aquifers through international cooperation.



⁴²⁷ Office of the United Nations High Commissioner for Human Rights (2003). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 15: The right to water*. Articles. 11-12. Document No. E/C.12/2002/11. op. cit.

⁴²⁸ Ibid.

BOX 23. REALIZATION OF THE RIGHT TO SAFE DRINKING WATER AND SANITATION AND THE PROTECTION OF THE ENVIRONMENT

Water is one of the elements of the environment. Healthy ecosystems improve water flow and help clean water resources.⁴²⁹ Water is interconnected with other environmental components such as soil, biodiversity, and air. Healthy ecosystems and a safe climate are indispensable for drinking water. As the three planetary crises affect the environment, they threaten availability, safety, and accessibility of water, and therefore, the right to safe drinking water and sanitation.

Urbanization, climate change, pollution and large-scale projects can affect watersheds and water-related ecosystems, causing depletion and contamination of water resources.⁴³⁰ 'The extensive usage of land required for the implementation and the massive exploitation of water sources may have dire consequences for the availability and quality of water and, in general, how the population accesses water and sanitation services.'⁴³¹ At the same time, 'climate change is affecting precipitation patterns across the world, with some dry areas receiving less precipitation and wet areas receiving more frequent and intense precipitation.'

It is estimated that polluted water and water scarcity cause around 2 million deaths that could be prevented with safe and sufficient water. Contaminated water is further linked to diseases such as cholera, diarrhea, dysentery, hepatitis A, typhoid and other infections, including parasitic worms caused. 'Lack of water security harms mental health, through psychological effects such as fear, victimization, low self-esteem, anxiety, shame, anger and depression.'⁴³²

What is more, the protection of the right to water can lead to improvement on the protection of the environment and vice versa.



⁴²⁹ United Nations General Assembly (2017). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd*. Report No. A/HRC/34/49. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement>

⁴³⁰ United Nations Environment Programme (2019). *Global Environment Outlook – GEO-6: Healthy Planet, Healthy People*. op.cit

⁴³¹ United Nations General Assembly (2019). *Report of the Special Rapporteur on the human rights to safe drinking water and sanitation. The impact of mega-projects on the human rights to water and sanitation*. Report No. A/74/197. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/223/90/PDF/N1922390.pdf?OpenElement>

⁴³² United Nations General Assembly (2021). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. Human rights and the global water crisis: water pollution, water scarcity and water-related disasters*. Report No. A/HRC/46/28. op.cit. para. 29.



For example, in El Salvador, Vidalina Morales,⁴³³ along with other defenders, claimed their right to safe drinking water to prevent contamination of their water sources by a mining company. She argued that metal mining, rather than bringing benefits to her community and to the Salvadorian population large, was threatening their right to safe drinking water and sanitation by significantly reducing the quantity of available water, given the large amounts of water required for metal mining. Morales also claimed that the quality of the water was compromised, as the extraction of metals caused water pollution, particularly due to the dumping of toxic chemicals. Vidalina's campaign and legal battle resulted in the enactment of a national law prohibiting the exploration, extraction, exploitation, and processing of metal mining activities, whether open pit or underground. In March 2017, El Salvador made history by becoming the first country worldwide to pass a law explicitly banning metal mining. The law nullifies mining license requests, and gives artisanal, 'small-scale' and 'family subsistence' miners a period of two years to 'reconvert' their activities to others, with support from the State. It further prohibits the use of 'toxic chemicals such as cyanide, mercury and others.' Experts explain that the law is intended to protect not only human life, health, and access to safe water, but also wild and aquatic ecosystems that were being severely affected by toxic chemicals. At large, it is expected to contribute to a healthy and safe environment in El Salvador.

“ It is estimated that polluted water and water scarcity cause around 2 million deaths that could be prevented with safe and sufficient water. Contaminated water is further linked to diseases such as cholera, diarrhea, dysentery, hepatitis A, typhoid and other infections, including parasitic worms caused. ”

⁴³³ ACAFEMIN (2018). Vidalina Morales: El Salvador libre de minería metálica. <https://acafremin.org/es/multimedia/videos/92-vidalina-morales-el-salvador-libre-de-mineria-metalica>

F. Right to adequate housing and the environment

The right to adequate housing was recognized as part of the right to an adequate standard of living in article 25 of the 1948 Universal Declaration of Human Rights and in article 11 of the ICESCR.

The right to adequate housing entails more than the right to have a place to live. It is 'the right to live somewhere in security, peace and dignity.' States are not obliged to provide housing to all individuals, but they must take effective steps to prevent homelessness, and guarantee that everyone, regardless of their citizenship, nationality or other status, or identity, enjoys the following freedoms and entitlements:

- **Security of tenure and protection** from forced evictions, forced displacement, harassment, and other threats, including natural disasters; and where applicable, guarantees of housing, land, and property restitution. Security of land tenure does not imply everyone's right to property⁴³⁴ or land.⁴³⁵
- The **right to choose one's residence**, where to live and **freedom of movement**.
- **Equal and non-discriminatory** access to adequate housing.
- **Participation** in housing-related decision-making processes.

⁴³⁴ The right to own property is enshrined in the Universal Declaration of Human Rights and other human rights treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (d)(v)) and the Convention on the Elimination of All Forms of Discrimination against Women (Article 16 (h)), although absent from the two Covenants.

⁴³⁵ The right to adequate housing is NOT the same as the right to land. It is sometimes argued that the right to adequate housing equates to a right to land. Access to land can constitute a fundamental element of the realization of the right to adequate housing, notably in rural areas or for indigenous peoples. Inadequate housing or the practice of forced evictions can be the consequence of being denied access to land and common property resources. As such, the enjoyment of the right to adequate housing might require, in certain cases, securing access to and control over land. Nevertheless, international human rights law does not, currently, recognize a self-standing right to land.

What is adequate housing?⁴³⁶

*'Adequate shelter means more than a roof over one's head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting, heating and ventilation; adequate basic infrastructure, such as water-supply, sanitation and waste-management facilities; suitable environmental quality and health-related factors; and adequate and accessible location with regard to work and basic facilities: all of which should be available at an affordable cost.'*⁴³⁷

As such, adequate housing is:

- **Accessible:** Tailored to the specific needs of groups in situation of vulnerability.
- **Adequately located:** Close to employment opportunities, health-care services, schools, childcare centers, and other social facilities, and away from polluted or dangerous areas.
- **Affordable:** Its cost must not threaten or compromise the occupants' enjoyment of other human rights.
- **Equipped with** services, materials, facilities, and infrastructure to respond to basic needs. Water and sanitation services and access to natural and common resources must also be available.
- **Culturally appropriate:** Acceptable under its residents' culture.

⁴³⁶ See, e.g., Office of the United Nations High Commissioner for Human Rights (1991). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 4: The right to adequate housing.* Document No. E/1992/23. para. 8 (f). <https://www.refworld.org/pdfid/47a7079a1.pdf>

⁴³⁷ The Habitat Agenda (1996). *Chapter IV: B. Adequate shelter for all.* Document No. A/CONF.165/14. <http://www.un-documents.net/ha-4b.htm>

- **Habitable:** Guarantying physical safety and adequate space, including against weather events, threats to health, and structural hazards.
- **Legally secure:** Regardless of the type of tenure, individuals must have safeguards that protect them against forced evictions.

Regarding the environment, the right to adequate housing implies that States must take every effort (and demonstrate that they have made such efforts, notwithstanding their ability to fully deliver on this) to, *inter alia*:

- **Guarantee access to adequate housing and prevent violations and interference with this right.** This includes: adopting normative and policy frameworks to secure equal access to housing; allocation of sufficient resources and criteria to ensure the prioritization of the needs of marginalized or vulnerable individuals or groups; and specifically addressing the needs and situation of populations in natural disaster-prone areas, as well as in areas of environmental degradation, pollution, or people living close to industrial, agricultural, or extractive activities that can affect the environment.

“The right to adequate housing does NOT prohibit development projects which could displace people. It is sometimes believed that the protection against forced evictions prohibits development or modernization projects that entail displacement. There are inevitable needs for the redevelopment of certain areas

in growing cities and for public agencies to acquire land for public use and infrastructure. The right to adequate housing does not prevent such development from taking place but imposes conditions and procedural limits on it. It is the way in which such projects are conceived, developed, and implemented that is important.”⁴³⁸

In that regard, States must observe and fulfill the access to rights of information, participation, and access to justice, and guarantee the protection and respect of all human rights of all individuals whose right to adequate housing is likely to be affected.

- **Eliminate homelessness, including when it is caused by natural disasters,** by providing access to safe, secure, and dignified emergency accommodation to, *inter alia*, environmental migrants and victims of natural disasters. States must also take effective steps to ensure that evictions do not result in homelessness. Moreover, States should address climate and other weather-related events that may cause forced displacement to prevent these situations from leading to homelessness or inadequate housing conditions. States can do so, for example, by mainstreaming a rights-based approach to monitoring and early-warning systems and mitigation measures.

⁴³⁸ Office of the United Nations High Commissioner for Human Rights, United Nations Settlements Programme (2009). *The Right to Adequate Housing*. Fact Sheet No. 21. <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-21-rev-1-human-right-adequate-housing>

- **Prohibit forced evictions and prevent forced displacement.** Adopt norms to adequately prohibit forced evictions⁴³⁹ and establish mechanisms to secure access to justice and effective remedy in these cases.⁴⁴⁰
- **Adopt frameworks and mechanisms to prevent businesses from interfering with the right to adequate housing.** This includes preventing land-grabbing and other activities that may result in forced evictions or homelessness, as well as the development of activities that may have an impact on this right, for example, by causing excessive noise, air pollution, interfering with access to water, or physically damaging infrastructure among others, through environmental (i.e., landscape) changes.
- **Integrate the right to adequate housing into climate change adaptation and mitigation strategies.** 'States should ensure that these strategies do not undermine or impede the realization of the right to adequate housing. In situations where communities are particularly vulnerable to the effects of climate change and climate change-related disasters, such as those living on or near waterways and shorelines, priority should be given to adaptation measures to preserve existing communities.'⁴⁴¹



⁴³⁹ United Nations Settlements Programme (2014). *Guidelines on forced evictions*. Factsheet No. 25. <https://www.ohchr.org/sites/default/files/Documents/Publications/FS25.Rev.1.pdf>

⁴⁴⁰ The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies. Depending on the legal system, such areas might include, but are not limited to: (a) legal appeals aimed at preventing planned evictions or demolitions through the issuance of court-ordered injunctions; (b) legal procedures seeking compensation following an illegal eviction; (c) complaints against illegal actions carried out or supported by landlords (whether public or private) in relation to rent levels, dwelling maintenance, and racial or other forms of discrimination; (d) allegations of any form of discrimination in the allocation and availability of access to housing; and (e) complaints against landlords concerning unhealthy or inadequate housing conditions. In some legal systems it would also be appropriate to explore the possibility of facilitating class action suits in situations involving significantly increased levels of homelessness. United Nations Office of the High Commissioner for Human Rights (1991). *CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant)*, para. 17. <https://www.refworld.org/pdfid/47a7079a1.pdf>

⁴⁴¹ Office of the United Nations High Commissioner for Human Rights (2019). *Guidelines for the implementation of the right to adequate housing*. <https://www.ohchr.org/en/special-procedures/sr-housing/guidelines-implementation-right-adequate-housing>

BOX 24. REALIZATION OF THE RIGHT TO ADEQUATE HOUSING AND THE PROTECTION OF THE ENVIRONMENT

The right to adequate housing can be severely affected by environmental challenges. 'Climate change, natural disasters and armed conflict pose a threat to the enjoyment of the right to adequate housing and displace millions every year. Infrastructure development, hydro-power dams, and mega-events, such as Olympic Games or football World Cups,⁴⁴² have also undermined this right. Moreover, 'hazards resulting from the increasing intensity and frequency of extreme weather events, such as abnormally heavy rainfall, prolonged droughts, desertification, environmental degradation, or sea-level rise and cyclones are already causing an average of more than 20 million people to leave their homes and move to other areas in their countries each year.'⁴⁴³

Communities and groups in situation of vulnerability, such as internally displaced persons, marginalized communities, people living in poverty or vulnerable situations, are the most affected. 'People already displaced for reasons other than disasters linked to hazards – including refugees, stateless people, and the internally displaced – often reside in climate change "hotspots" where they may be exposed to secondary displacement and reduced chances of being able to return home.'⁴⁴⁴

These situations have created a new constituency of displaced persons, namely, persons displaced in the context of disasters and climate change:⁴⁴⁵ individuals forced to leave their homes and resettle either within or outside their home country because their homes are threatened or destroyed or 'their livelihoods are rendered unsustainable by proliferating natural disasters or the irreversible degradation of environmental resources.'⁴⁴⁶

In addition to the displacement caused by natural disasters, environmental degradation, and climate change, millions of individuals around the world are forced to leave their houses for the construction of major urban works, infrastructures and large industrial projects, mining sites, and other projects resulting in forced rural⁴⁴⁷ and urban⁴⁴⁸ evictions.⁴⁴⁹ In these situations, respecting the three fundamental environmental procedural rights (i.e., access to information, public participation, and justice) is indispensable to ensure that the relevant projects do not result in forced evictions, leading instead to an acceptable relocation under international human rights law.⁴⁵⁰

442 Ibid.

443 United Nations High Commissioner for Refugees (n.d.). *Climate change and disaster displacement*. <https://www.unhcr.org/climate-change-and-disasters.html>

444 Ibid.

445 Westing, A. (1992). *Environmental Refugees: A Growing Category of Displaced Persons*. *Environmental Conservation*. 19(3), p. 201-207. doi:10.1017/S037689290003099X.

446 Oxford University (n.d.). *Environmentally Displaced People*. <https://www.rsc.ox.ac.uk/policy/environmentally-displaced-people#:~:text=%27Environmentally%20displaced%20people%27%20are%20those,rising%20sea%20levels%20and%20desertification>

447 Environmental Justice Atlas (n.d.). *Mapping the mining impacts of the energy transition in the Americas*. https://ejatlas.org/featured/met_america

448 Everett, M. (2001). *Evictions and human rights: Land disputes in Bogotá, Colombia*. *Habitat International*. p. 453-471. doi: 10.1016/S0197-3975(01)00015-7.

449 Cabannes, Y. (2021). *Climate Change, Land and Housing-induced Evictions: Another Round of Accumulation through Dispossession? Rethinking Urban Risk and Resettlement in the Global South*. Cassidy Johnson et al. UCL Press. p. 186-212. <https://doi.org/10.2307/j.ctv1ctgr0k.20>

450 Office of the United Nations High Commissioner for Human Rights (2019). *Guidelines for the implementation of the right to adequate housing*. <https://www.ohchr.org/en/special-procedures/sr-housing/guidelines-implementation-right-adequate-housing>

CASE 22. LÓPEZ OSTRA V. SPAIN⁴⁵¹

On May 14, 1990, Gregoria López Ostra lodged a complaint with the European Commission on Human Rights against the Spanish State. She alleged that the State's inaction regarding the odors, noise, and polluting emissions emanating from a nearby solid and liquid waste treatment plant violated her rights to physical integrity (Article 3 of the European Convention on Human Rights) and to respect for her home and private life (Article 8 of the Convention). The waste-treatment plant was built to solve a pollution problem caused by tanneries. Yet it caused nuisance and health problems to many local people.

The European Court on Human Rights explained that, 'Naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.'⁴⁵²

Whether analyzed as a positive duty on the State or as an "interference by a public authority," the principles applicable to the case are similar. The State must strike a fair balance between the individual's interests and the interests of the community as a whole, while enjoying a certain margin of appreciation. The waste-treatment plant in question caused nuisance and health problems to local residents, despite initial actions taken by the town council to address the situation.

Ms López Ostra's family had to live in close proximity to a source of pollution and endure the nuisance caused by the plant for more than three years before deciding to move. They made the decision to relocate when it became clear that the situation could persist indefinitely, and it was further prompted by the recommendation of Ms López Ostra's daughter's pediatrician. The move involved various inconveniences for the family.

The municipality failed to fulfill its duty to act, and even resisted judicial decisions to protect the applicant's rights. The State did not successfully balance the economic interests of the town with the applicant's right to respect for her home and private life. Consequently, the State was ordered to provide compensation for the damages caused to Ms López Ostra.

Photo - Julio Cesar Herrera



⁴⁵¹ European Court of Human Rights (1994). *Case of López Ostra v. Spain*. <https://hudoc.echr.coe.int/fre#%7B%22itemid%22%3A%22002-10606%22%7D>

⁴⁵² *Ibid.*, para 51.

Photo Alamy - Cavan Images Leather



G. Right to participation in cultural life and the environment

The right to participate in cultural life was first recognized in article 27 of the UDHR, which states that 'everyone has the right freely to participate in the cultural life of the community,' and article 15 of the ICESCR, according to which everyone is entitled to take part in *cultural life*.

The right to participation in cultural life may be enjoyed individually or collectively – i.e., within a community or in association with others (see Section 2.2.1.B above), and entitles individuals to participate, access or contribute to cultural life.⁴⁵³

'*Cultural life* is a broad term that references culture as a living process, historical, dynamic, and evolving, with a past, a present and a future.'⁴⁵⁴ Among other things, it encompasses ways of life, language, rites and ceremonies, methods of production, natural and man-made environments, food, clothing, shelter, customs, forms of expression, and traditions through which individuals and groups 'express their humanity and the meaning they give to their existence, and build their world view.'⁴⁵⁵

Core elements of this right include:⁴⁵⁶

- **Availability:** Cultural goods and services should be open for everyone to enjoy and benefit from them. This includes 'shared open spaces essential to cultural interaction, such as parks, squares, avenues, and streets; 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 [...] as well as values, which make up identity and contribute to the cultural diversity of individuals and communities.'

- **Accessibility:** Individuals and groups must have effective and concrete physical and financial opportunities to enjoy culture fully.
- **Acceptability:** Frameworks and strategies to secure the enjoyment of cultural rights should be acceptable to the individuals and communities involved.
- **Adaptability:** Frameworks and strategies in any area of cultural life must be flexible, relevant, and respectful of cultural diversity.
- **Appropriateness:** Frameworks and strategies to guarantee the right to cultural life must be respectful of the culture and cultural rights of individuals and communities, including minorities and Indigenous Peoples.

Regarding the environment, to fulfill their obligations under the right to participate in cultural life, States should, *inter alia*:

- **Ensure preconditions for participation, facilitation, and promotion of cultural life, and access to and preservation of cultural goods.**⁴⁵⁷ Access and preservation of cultural heritage, traditional territories, and natural resources and ecosystems that are part of culture are preconditions for the enjoyment of this right by, among others, Indigenous and local communities.

⁴⁵³ Office of the United Nations High Commissioner for Human Rights (2009). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 21: Right of everyone to take part in cultural life*. Document No. E/C.12/GC/21. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/469/22/PDF/G0946922.pdf>

⁴⁵⁴ Ibid.

⁴⁵⁵ Ibid.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

For example, The Ogiek population possesses a unique lifestyle centered on the Mau Forest Complex. Their survival depends on hunting, gathering, and utilizing the forest's resources. They have distinctive traditional attire, language, burial customs, rituals, and traditional medicine. Their spiritual and traditional values distinguish them from neighboring communities living within and outside the Mau Forest Complex.⁴⁵⁸ Their culture, therefore, depends on the Mau Forest's integrity and on their capacity to reside in this area.

In this, and other similar cases, States must monitor and take special measures to prevent and mitigate the impact of environmental degradation, biodiversity loss, and depletion or destruction of natural resources and sites that form part of cultures as standalone elements (i.e., by providing hunting opportunities).

Access to cultural-life elements may also be obstructed by the privatization of natural resources, such as watersheds and forests. States must ensure that these resources remain physically accessible to the concerned individuals or communities. These measures must be taken vis-à-vis climate and weather-related events and human and non-human activities affecting the environment.

Enforcing frameworks on the use of space and the protection of the environment are effective steps to create conditions that can enable individuals and groups to take part in cultural life.⁴⁵⁹

→ **Protect and avoid damage caused by State and non-State actors to the natural resources or environmental elements that are part of cultural life and take efforts to conserve them.** 'The quality of the natural environment is essential to the full development of the human personality.'⁴⁶⁰ Pollution, erosion, depletion, or loss of the environment or any of its elements, like biodiverse ecosystems, reduces the availability of the elements needed to take part in cultural life. States must adopt frameworks and effective steps to guarantee their integrity and conservation.

For instance, in the case of Bosque Protector Los Cedros, Ecuador (See Case 21), the competent Ecuadorian Court acknowledged that the State had the duty to conserve water sources not only to protect the right to water but also the traditional livelihoods of local communities.

→ **Eliminate barriers and obstacles that prevent individuals' or groups' access to their own culture** without discrimination and consideration for frontiers of any kind.⁴⁶¹ Examples of barriers related to the environment include circulation-banning for conservation or development purposes; prohibition of specific uses of natural resources; privatization of watersheds, water resources, or forests; among others.

→ **'Respect and protect cultural heritage** of all groups and communities, in particular the most disadvantaged and marginalized individuals and groups, in economic development and environmental policies and programs,' and take appropriate measures to support these groups in their efforts to preserve their culture.⁴⁶²

⁴⁵⁸ African Court on Human and Peoples' Rights (2022). *Case of the African Commission on Human and Peoples' Rights v. Republic of Kenya, Judgment*. Application No. 006/212. <https://africanlii.org/afu/judgment/african-court/2017/28>

⁴⁵⁹ United Nations Educational, Scientific and Cultural Organization (n.d.). *United Nations Documents. Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It*. <http://www.un-documents.net/ppcl.htm>

⁴⁶⁰ Ibid.

⁴⁶¹ Office of the United Nations High Commissioner for Human Rights (2009). *United Nations Committee on Economic, Social and Cultural Rights. General comment No. 21 Right of everyone to take part in cultural life*. Document No. E/C.12/GC/21. op. cit. p. 332.

⁴⁶² Ibid.

- **Adopt and implement norms and policies to guarantee non-discrimination and gender equality** in the enjoyment of the right of everyone to take part in cultural life.⁴⁶³

States should prevent and actively combat direct or indirect discrimination, for instance, by taking efforts to uphold and sustain the cultural heritage of minorities and communities, including migrant communities, through the implementation of suitable measures and programs. This includes supporting or permitting these groups to defend their natural surroundings and natural resources from pollution, degradation, or destruction.

Implementing development or infrastructure projects requires striking a balance that promotes inclusive and equitable development while simultaneously safeguarding the rights and interests of local community members. States should acknowledge that certain projects have the potential to disproportionately affect local communities, such as by restricting their access to territories or resources, and take positive steps to redress these situations. Failing to address these impacts adequately may result in a breach of the obligation to prevent indirect discrimination.

- **Respect the right of everyone to exercise cultural practices that are dependent upon the environment or its elements.**⁴⁶⁴ States must take steps to grant access to and permit the use of natural resources for food, medicines, and shelter. 'States parties must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life.'⁴⁶⁵ To this end, States must obtain the free, prior and informed consent of Indigenous Peoples 'when the preservation of their cultural resources, especially those associated with their way of life and cultural expression, are at risk.'⁴⁶⁶

Regarding indigenous and local communities, the exercise and preservation of their cultural practices may be intrinsically linked with their territories, the protection of their environment, the preservation of their land and resources' productive capacity, and the recognition of traditional activities tied to their subsistence economy, such as hunting and gathering. The IACtHR has emphasized that the denial of access to territories and their corresponding natural resources not only exposes indigenous communities to numerous human rights violations but also causes them suffering and jeopardizes the preservation of their way of life, customs, and language.⁴⁶⁷

Moreover, the Court has acknowledged that the right to cultural identity safeguards individuals' freedom, whether acting individually or collectively, to identify with societies, communities, or social groups, and to embrace a way of life associated with their culture while actively participating in its development. This right protects the distinct characteristics that define a particular social group, all the while recognizing the dynamic and evolving nature of culture.

- **Respect and protect cultural expressions.** States must actively protect the right of individuals and communities to defend the environment through cultural expressions, and relatedly, their right to use the environment to participate in culture.

States must refrain from obstructing the cultural productions of Indigenous Peoples and must instead support them, including their traditional knowledge, natural medicines, folklore, rituals, and other forms of expression that rely on the environment or its elements. This includes preventing illegal or unjust exploitation of their lands, territories, and resources by state entities, private entities, transnational enterprises, and corporations.

463 Ibid.

464 Ibid.

465 Ibid.

466 Ibid.

467 See, e.g., Inter-American Court of Human Rights (2020). *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. op.cit.

→ **Grant assistance and support public and private organizations**, including science academies and scientists to take part in scientific activities.⁴⁶⁸ This can include, for example, supporting groups (communities, associations, etc.) or individuals working to produce information on the health or status of the environment or the impact of different environmental factors on human life; and individuals or groups working to develop adaptation or mitigation strategies, or alternatives to existing good production processes.

Restrictions to the right to participate in cultural life:⁴⁶⁹

The exercise of the right to participate in cultural life must not infringe upon human rights guaranteed by international law, nor limit their scope, for example, by restricting the right to health, water, freedom of expression or others. As such, clashes between the right to participate in cultural life and rights to access food or water must be cautiously pondered by States, and the criteria used to tackle these clashes must be clearly predefined by law.

The Goldman Environmental Prize - Ruth Buendía



⁴⁶⁸ Office of the United Nations High Commissioner for Human Rights (2009). *United Nations Committee on Economic, Social and Cultural Rights. General comment No. 21 Right of everyone to take part in cultural life*. Document No. E/C.12/GC/21. op. cit. p. 332.

⁴⁶⁹ Ibid.

BOX 25. REALIZATION OF THE RIGHT TO PARTICIPATE IN CULTURAL LIFE AND THE PROTECTION OF THE ENVIRONMENT

As the Human Rights Committee has explained, the right 'to enjoy a particular culture - may consist in a way of life which is closely associated with [a] territory and use of its resources. This may particularly be true of members of indigenous communities,'⁴⁷⁰ but extends to other groups, such as Afro-descendent communities.⁴⁷¹ In these cases, experts explain, the relationship between the rights to land, a healthy environment, water, and cultural identity may be indissoluble.⁴⁷²

Due to the interrelatedness of cultural life and the environment, environmental degradation or ecosystem transformation caused, for example, by deforestation, pollution, or other environmental challenges, may constitute violations of the right to participate in cultural life,⁴⁷³ as these factors may result in loss of 'sacred places, forests, dwellings, crops, animals, and medicinal plants'⁴⁷⁴ that are an essential part of indigenous and local communities' cultural lives.

Conversely, enforceable frameworks that guarantee the protection from and prevention of illegal exploitation and encroachment⁴⁷⁵ of traditional lands, territories, and sites, in addition to protecting cultural lives and the right to participate in them, can result in increased environmental protection.

*In fact, 'there is increasing evidence of the important role that indigenous territories play in the conservation of biodiversity and protection of critical spaces for the maintenance of ecological processes and provision of ecosystem services. Although the main purpose of these territories is to secure the tenure of the ancestral lands of indigenous peoples and safeguard their cultures, the conservation of the biodiversity in their territories is fundamental for their survival and is strongly tied to their livelihoods and to ensuring their access to the natural resources they depend on.'*⁴⁷⁶

470 United Nations Human Rights Committee (1994). United Nations Human Rights Committee. *CCPR General Comment No. 23: Article 27 (Rights of Minorities)*. Document No. CCPR/C/21/Rev.1/Add.5. <https://www.refworld.org/docid/453883fc0.html>

471 Inter-American Court of Human Rights (2013). *Corte Interamericana de Derechos Humanos: Caso de las Comunidades Afrodescendientes Desplazadas De La Cuenca Del Río Cacarica (Operación Génesis)* V. Colombia, Sentencia de 20 de Noviembre de 2013. https://www.corteidh.or.cr/docs/casos/articulos/seriec_270_esp.pdf

472 Inter-American Court of Human Rights (2020). *Case of the Indigenous Communities Of the Lhaka Honhat (Our Land) Association V. Argentina* Judgment of February 6, 2020. op. cit.

473 Inter-American Commission on Human Rights (2012). *Report No. 125/12: Case 12.354 - Merits - Kuna Indigenous People of Madungandi and Embera Indigenous People of Bayano and Their Members - Panama*. <https://www.oas.org/en/iachr/decisions/court/12.354FondoEng.pdf>

474 Ibid.

475 Ibid.

476 World Wildlife Fund (2020). *Spaces for conserving biological and cultural diversity and for contributing to reduction of poverty and of social exclusion*. https://wwf.panda.org/discover/knowledge_hub/where_we_work/amazon/vision_amazon/living_amazon_initiative222/protected_areas_and_indigenous_territories/

CASE 23. TORRES STRAIT ISLANDERS V. AUSTRALIA⁴⁷⁷

In the communication filed by eight Australian nationals residing in the Torres Strait region, it was argued that rising sea levels have adversely affected traditional crops, which are crucial for the authors' traditional diet. The authors claimed that despite their repeated requests for assistance and funding, the State failed to implement and fund an adequate adaptation program to ensure the long-term habitability of the islands. Furthermore, the State did not address the mitigation of climate change impacts, as it had the second-highest per capita greenhouse gas emissions in the world in 2017. The authors contended that this failure by the State to implement appropriate measures to mitigate and adapt to climate change violates their rights under the ICCPR.

The Committee, emphasizing that the right to life should not be narrowly interpreted, highlighted the need for positive measures from States to protect this right. Referring to its general comment No. 36 (2018) on the right to life, the Committee stated that the right to life includes the right to enjoy life with dignity and to be free from acts or omissions that may cause unnatural or premature death. It recognized that adverse climate change impacts, including environmental degradation, climate change, and unsustainable development, pose severe threats to the right to life of present and future generations.

The interdependence of civil, political, economic, social, and cultural rights was underscored by the Committee, noting that environmental degradation can undermine the effective enjoyment of the right to life, and severe environmental degradation can result in a violation of the right to life. While the authors did not claim immediate threats to their lives or health, the Committee acknowledged that the lack of alternatives to subsistence livelihoods could increase their vulnerability to climate change impacts. The Committee recognized that, without strong national and international efforts, climate change can infringe upon individuals' rights to life with dignity.

The erosion of the islands has caused significant distress to the authors, and flooding disrupts their privacy, family, and home. The Committee emphasized that States have a duty to prevent serious interference with the privacy, family, and home of individuals under their jurisdiction when environmental damage poses a threat.

The Committee concluded that climate change impacts, particularly environmental degradation on traditional indigenous lands, directly affect the right to one's home and result in significant adverse consequences in terms of intensity, duration, and harm, they may constitute foreseeable and serious violations of the right to private and family life and the home.



⁴⁷⁷ United Nations Human Rights Committee (2019). *Case of Daniel Billy et al. v. Australia*. Climate Change Litigation Database. Accessed December 18, 2023. <https://climatecasechart.com/non-us-case/petition-of-torres-strait-islanders-to-the-united-nations-human-rights-committee-alleging-violations-stemming-from-australias-inaction-on-climate-change/#:~:text=Human%20Rights%20Committee%20found%20that,private%20life%2C%20family%20and%20home>.

The authors primarily based their claims on their ability to maintain their culture, which falls within the scope of Article 27 of the Covenant. The Committee emphasized that for Indigenous Peoples, the enjoyment of culture is closely linked to their way of life, including the utilization of territory and its resources such as fishing and hunting. The purpose of protecting this right is to ensure the survival and continuous development of their cultural identity. The Committee further highlighted that Article 27 of the Covenant, in conjunction with the UN Declaration on the Rights of Indigenous Peoples, recognizes the inherent right of Indigenous Peoples to enjoy the territories and natural resources they have traditionally relied upon for their subsistence and cultural identity. While Article 27 protects individual rights, the realization of these rights depends on the group's ability to preserve its culture, language, and religion.

The Committee acknowledged the authors' claim that their ability to maintain their culture has already been compromised due to the adverse impacts of climate change on the viability of their islands and surrounding seas. They asserted that these impacts have led to the erosion of their traditional lands and natural resources used for fishing, farming, and conducting cultural ceremonies specific to the islands. The authors stressed the intimate connection between the well-being of their land, surrounding seas, and the preservation of their cultural integrity.

Based on the presented facts, the Committee determined that the climate impacts described by the authors represent a foreseeable threat that has been brought to the attention of the community members since the 1990s. Delay in initiating these projects indicates an inadequate response from the State party in addressing the threat faced by the authors. Building upon the findings mentioned in paragraph 8.14, the Committee found that the available information indicates that the State party's failure to timely and adequately implement adaptation measures to safeguard the authors' collective ability to maintain their traditional way of life, preserve their culture and traditions, and utilize land and sea resources violates the State party's obligation to protect the authors' right to enjoy their minority culture. Consequently, the Committee determined that the presented facts amount to a violation of the authors' rights under Article 27 of the Covenant.

Photo Escape.com.au - The Torres Strait Islands



CASE 24. BENITO OLIVEIRA PEREIRA ET AL V. PARAGUAY⁴⁷⁸

Sr. Benito Oliveira Pereira, as leader of the indigenous community Campo Agua', submitted a communication to the Human Rights Committee in 2014. The communication explained that the community, belonging to the Ava Guarani people, faced encroachments on their traditional territory by extractive businesses, resulting in severe consequences. Despite obtaining legal recognition of their territory, the community suffered from the harmful effects of fumigation with agrochemicals from neighboring industrial farms. These farms engaged in monoculture of genetically modified soybeans and that sprayed toxic agrochemicals near the community's homes, school, and water sources without appropriate protective measures.

The Committee highlighted the State's failure to oversee and regulate these activities, leading to significant impacts such as biodiversity loss, destruction of natural resources, health issues (including among children), and contamination of water and crops. The State's inadequate monitoring allowed large-scale, illegal fumigation to persist for an extended period, causing harm to community members and affecting their private life, family life, and home.

In their submission, the authors emphasized the adverse effects of the contamination on the community's cultural identity. The disappearance of natural resources essential for their subsistence, as well as the loss of materials used in traditional practices, threatened their ancestral knowledge and religious rituals. The erosion of the community structure due to poverty and displacement further endangered the transmission of their cultural heritage.

The Committee reiterated that the right to enjoy one's culture, particularly for Indigenous Peoples, is closely linked to their way of life and their relationship with their territory and its resources. It emphasized the importance of effective participation of Indigenous Peoples in decisions concerning their territories and highlighted the need for measures to ensure the survival and continued development of their cultural identity.

Examining the State party's actions, the Committee found that the State did not adequately monitor the illegal activities leading to contamination, despite being aware of their impact. The State's inaction allowed the fumigation to continue, resulting in further harm to the community's rivers, livestock, crops, and resources for foraging and hunting.

The State party's failure to protect the community's right to privacy, family life, and home, as well as their right to enjoy their culture, constituted breaches of their fundamental human rights.

⁴⁷⁸ United Nations Human Rights Committee (2021). *CCPR Opinion approved by the Committee under Article 5, paragraph 4, of the Optional Protocol, concerning communication No. 2552/2015. Case of Benito Oliveira et al. v. Paraguay.* CCPR/C/132/D/2552/2015. https://ccprcentre.org/files/decisions/Benito_Oliveira_Pereira_et_al_v_Paraguay.pdf

BOX 26. THE RIGHTS TO SELF-DETERMINATION, AUTONOMY, AND TERRITORY OF INDIGENOUS COMMUNITIES

To protect their human rights, States should recognize and secure the full enjoyment of Indigenous Peoples' rights to self-determination and autonomy. In environmental matters, this includes their right to participate in decisions that result in activities or projects that may affect their territories and natural resources, including development and extractive projects,⁴⁷⁹ mainly (but not exclusively) those that would require a dispossession of their lands, territories, or resources. 'In particular, Indigenous Peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.'⁴⁸⁰ The right to self-determination of Indigenous Peoples includes their ability to freely manage their natural resources and wealth. This is essential to prevent the deprivation of their inherent means of subsistence.⁴⁸¹ The right to self-determination has other concrete implications for States:

- **Observe and fulfill the free, prior, and informed consent principle, consulting and cooperating in good faith with the Indigenous Peoples concerned.**⁴⁸² The right to actively participate in the formulation, evaluation, and adoption of all (legislative or administrative) decisions and activities related to their territories and the environment,⁴⁸³ and the duty of States to consult with Indigenous Peoples⁴⁸⁴ about projects that might have an impact on their lives, mean that such decisions and activities must be subject to Indigenous Peoples' free, prior and informed consent.⁴⁸⁵ For example, storage or disposal of hazardous materials, marine litter, plastic pollution,⁴⁸⁶ and exploitation of resources⁴⁸⁷ should not be implemented without exhausting a free, prior, and informed consultation in which the affected communities express their concerns, observations and give their consent.

'Any consultations on activities or measures that may affect Indigenous Peoples should be held in advance and should include the provision of appropriate information on the social, environmental and cultural impacts of the project and any mitigation measures, compensation and benefits.'⁴⁸⁸ This is a "fundamental guarantee" of the rights of Indigenous Peoples.⁴⁸⁹



479 United Nations General Assembly (2013). *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. Extractive industries and indigenous peoples*. Report No. A/HRC/24/41.

480 United Nations General Assembly (2007). United Nations Declaration on the Rights of Indigenous Peoples. Document No. A/RES/61/295. Article 23. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

481 See, e.g., Inter-American Court of Human Rights (2007). *Case of the Saramaka People v. Suriname. (Preliminary Objections, Merits, Reparations, and Costs)*. https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf

482 United Nations General Assembly (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

483 International Labour Organization (1989). *Indigenous and Tribal Peoples Convention*. 1989 (No. 169). Article 7. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

484 United Nations Special Rapporteur on the Right to Development (2019). *Guidelines and Recommendations on the Practical Implementation of the Right to Development*. op. cit.

485 Inter-American Court of Human Rights (2007). *Case of the Saramaka People v. Suriname*. op.cit. para. 134.

486 United Nations General Assembly (2021). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana. Implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*. Report No. A/76/207.

487 United Nations General Assembly (2015). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr. Baskut Tuncak*. Report No. A/HRC/30/40.

488 United Nations General Assembly (2017). *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Mexico, Victoria Tauli-Corpuz*. Report No. A/HRC/39/17/Add.2.

489 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*. Mapping Report. Report No. A/HRC/25/53.

Free, prior, and informed consent (FPIC) *"is not just a result of a process to obtain consent to a particular project; it is also a process in itself, and one by which Indigenous Peoples are able to conduct their own independent and collective discussions and decision-making. They do so in an environment where they do not feel intimidated, and where they have sufficient time to discuss in their own language, and in a culturally appropriate way, on matters affecting their rights, lands, natural resources, territories, livelihoods, knowledge, social fabric, traditions, governance systems, and culture or heritage (tangible and intangible)"*⁴⁹⁰

FPIC does not mean that Indigenous Communities have veto power over final environmental decisions. It means that they are entitled to their meaningful participation. It also means that in cases in which projects affect their rights, Indigenous communities are entitled to receive 'a reasonable benefit from any such development arising from activities taking place on their traditional territories, especially in relation to natural resource exploitation.'

- **Adopt measures and mechanisms to allow and support Indigenous Peoples' decisions over their own priorities for development, including natural resource management.** 'States should provide resources for Indigenous Peoples to design, deliver and control their access to water. Nomadic and traveler communities... access to adequate water at traditional and designated halting sites'⁴⁹¹ should also be granted.
- **Adopt norms and mechanisms to ensure recognition and protection of the right to property of Indigenous Peoples.** The right to maintain and administrate the lands they have historically owned⁴⁹² must be recognized with due acknowledgment that 'the right of Indigenous Peoples to lands, territories and natural resources originates in their own customary law, values, habits and customs and, therefore, is prior to and independent of State recognition in the form of an official property title.'⁴⁹³

This requires recognizing their right to individual and collective ownership, as 'linked to the protection of, and access to, the resources to be found in their territories, because those natural resources are necessary for the very survival, development and continuity of their way of life.'⁴⁹⁴

⁴⁹⁰ Food and Agriculture Organization of the United Nations (2016). *Free Prior and Informed Consent An indigenous peoples' right and a good practice for local communities*. <https://www.fao.org/3/i6190e/i6190e.pdf>

⁴⁹¹ United Nations Committee on Economic, Social and Cultural Rights (2002). *United Nations Committee on Economic, Social and Cultural Rights. General Comment 15, Right to water*. <https://www.refworld.org/pdfid/4538838d11.pdf>

⁴⁹² United Nations General Assembly (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. op. cit. Article 26.

⁴⁹³ Ibid.

⁴⁹⁴ Inter-American Court Of Human Rights (2017). *Advisory opinion OC-23/17 requested by the Republic of Colombia*. op. cit.

The IACtHR has clarified that recognizing Indigenous collective property and ownership of their ancestral lands entails granting a title that aligns with the specific forms of the right to use and enjoy property, taking into account the culture, traditions, customs, and beliefs of each Indigenous group. In other words, the property title should acknowledge and respect the ethnic and cultural uniqueness of these communities.

For instance, in the case of nomadic communities, this recognition may necessitate acknowledging the specific circuits they follow based on their cultural traditions and ensuring the availability of natural resources necessary for their subsistence.

The IACtHR has highlighted that failure to recognize Indigenous communal property rights could result in the violation of other interconnected rights, including the right to cultural identity, the right to the organized survival of the Indigenous People, and the right to food.

To uphold the use and enjoyment of collective property, the State should implement certain safeguards. These include ensuring the effective participation of indigenous communities based on their customs and traditions, conducting prior EIAs for concessions, and ensuring that communities receive reasonable benefits from projects on their territory.

These measures aim to protect indigenous rights, promote meaningful engagement, and safeguard environmental considerations and fair benefit-sharing. The mentioned requirements aim to safeguard the special relationship that Indigenous Peoples have with their territory, which is crucial for ensuring their subsistence.

Recognizing Indigenous Peoples' rights with respect to the territory that they have traditionally occupied includes acknowledging their relationship with the natural resources on which they rely.⁴⁹⁵ Indigenous traditions, culture, and practices are related to or dependent upon the environment.⁴⁹⁶ Thus, they have the right to environmental conservation⁴⁹⁷ and protection, as well as to the protection of the productive capacity of their lands and resources,⁴⁹⁸ adapting relevant socioeconomic and environmental policies where necessary.⁴⁹⁹

For example, 'access to safe drinking water by Indigenous Peoples is closely linked to their control over their ancestral lands, territories, and resources. Lack of legal recognition or protection of these ancestral lands, territories or resources can, therefore, have far-reaching implications for their enjoyment of the right to water.'⁵⁰⁰

495 Ibid.

496 Inter-American Court of Human Rights (2007). *Case of the Saramaka People v. Suriname: Judgment of November 28, 2007 (Preliminary Objections, Merits, Reparations, and Costs)*. op. cit.

497 United Nations General Assembly (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. op. cit.

498 United Nations General Assembly (2007). *United Nations Declaration on the Rights of Indigenous Peoples*. Article 29. op. cit.

499 United Nations (2015). *Paris Agreement*. https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf

500 Office of the United Nations High Commissioner for Human Rights and World Health Organization (2021). *The Right to Water*. Fact Sheet No. 35. <https://www.ohchr.org/sites/default/files/2021-09/FactSheet35en.pdf>

◀ **Take special measures to guarantee the rights to water, food, and health of Indigenous Peoples, recognizing their deep and intertwined relationship with the environment.**

Indigenous Peoples rights depend on a clean and healthy environment⁵⁰¹ capable of producing adequate food,⁵⁰² giving proper shelter and producing items required for traditional medicines.⁵⁰³ Displacement from their territories and natural resources can have negative effects on their health.⁵⁰⁴

Their dependence on natural resources make them more vulnerable to environmental challenges and consequently special measures to address this situation are essential to adequately secure the realization of Indigenous Peoples' rights. Examples of concrete measures include providing support to prevent loss of traditional means of subsistence and supporting traditional livelihoods projects,⁵⁰⁵ and protecting their natural resources from encroachment and unlawful pollution.

*'The lack of access to the corresponding territories and natural resources may expose indigenous communities to precarious and subhuman living conditions and increased vulnerability to disease and epidemics, and subject them to situations of extreme neglect that may result in various violations of their human rights in addition to causing them suffering and undermining the preservation of their way of life, customs and language.'*⁵⁰⁶

For instance, their rights to food and safe drinking water may be hindered by land expropriation, encroachment, pollution, over-extraction, diversion to provide safe drinking water to urban areas, and other situations that may require States' positive actions to protect the human rights of Indigenous Peoples.

501 Office of the United Nations High Commissioner for Human Rights (2004). *Report of the Committee on Economic, Social and Cultural Rights for the Thirty-Second and Thirty-Third sessions. Consideration of reports of States parties: Ecuador*. Document No. E/C.12/2004/9.

502 United Nations General Assembly (2011). *Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya: Extractive industries operating within or near indigenous territories*. Report No. A/HRC/18/35. note 13. supra. 33.

503 Inter-American Court of Human Rights (2022). *Yakye Axa Indigenous Community v. Paraguay. Report on Merits Inter-Am. Comm'n H.R., Case No. 12.313*. Report No. 67/02.

504 United Nations Human Rights Committee (2000). *General Comment No. 14: The right to the highest attainable standard of health*. Document No. E/C.12/2000/4.

505 United Nations General Assembly (2011). *Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya: Extractive industries operating within or near indigenous territories*. Report No. A/HRC/18/35.

506 Inter-American Court of Human Rights (2017). *Advisory opinion OC-23/17, requested by the Republic of Colombia*. op. cit.

Efe Cristóbal Basaure - Case of Quintero and Puchuncavi



H. Right to development and the environment

The right to development was recognized at the United Nations level in 1986, in the Declaration on the Right to Development adopted by the United Nations General Assembly through resolution 41/128.⁵⁰⁷ Article 1 of this Declaration establishes that:

'The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized.'

The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.'

This right has been reaffirmed in various international instruments, including the 1992 Rio Declaration, the 1993 Vienna Declaration and Program of Action, the Millennium Declaration, the 2005 World Summit Outcome Document and the Declaration on the Rights of Indigenous Peoples. At the regional level, the right to development is indirectly recognized in Article 26 of the American Convention, Article 22 of the African Charter, and Article 37 of the Arab Charter.

According to the Declaration on the Right to Development, development is 'a comprehensive economic, social, cultural, and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free, and meaningful participation in development and in the fair distribution of benefits resulting therefrom.'

As such, development is threatened by climate change and natural disasters, new pandemics,⁵⁰⁸ pollution, and other environmental challenges that exacerbate inequalities, result in further disadvantages for individuals and communities whose livelihoods depend on the environment and increase the vulnerabilities of those who already have least resources, including women and girls.⁵⁰⁹

States have the obligation to create national and international conditions favorable to the realization of the right to development. Regarding the environment, this means, that States should, *inter alia*, individually and collectively:

- **Include well-being and the environment in development measures**, rather than solely focusing on economic growth,⁵¹⁰ and identify and develop consistent methods to effectively collect and report data on the environmental impacts of development policies.⁵¹¹

⁵⁰⁷ United Nations General Assembly (1996). *Resolution 41/128: Declaration on the Right to Development*. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-development>

⁵⁰⁸ United Nations General Assembly (2018). *Report of the Special Rapporteur on the right to development, Saad Alfarangi. Right to development*. Report No. A/73/271. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/242/93/PDF/N1824293.pdf>

⁵⁰⁹ United Nations General Assembly (2018). *Report of the Special Rapporteur on the right to development, Saad Alfarangi. Report No. A/HRC/39/51*. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/230/06/PDF/G1823006.pdf>

⁵¹⁰ United Nations General Assembly (2019). *Report of the Special Rapporteur on the right to development, Saad Alfarangi. Right to development*. Report No. A/HRC/42/38. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/197/03/PDF/G1919703.pdf>

⁵¹¹ Ibid.

Mainstream good governance, environmental protection, and human rights principles in all national and international arrangements, including multilateral financial, trade and development institutions,⁵¹² and development-related activities of all relevant stakeholders; and measure human rights and environmental impacts of these arrangements.⁵¹³

"Governments should specifically evaluate the right to development in their impact assessments in order to understand the broader picture of a project's or a policy's impact (for example, its effect on individuals, groups, nations and peoples; the impact of international dimensions of equality, the fair distribution of benefits and the impact on the environment; and the processes of participation, inclusiveness, non-discrimination, indivisibility of human rights and equality of opportunity) rather than solely the impact of the policy or project on a narrow subset of individual rights."⁵¹⁴

- Involve all members of the population as participants in formulating development policies,⁵¹⁵ including discussions that lead to the formulation of sustainable development policies⁵¹⁶ and disaster risk-reduction planning.

States should adopt environmental and social safeguards that guarantee the meaningful engagement⁵¹⁷ and participation of affected communities and populations in decision-making processes and related social and environmental assessments, including compliance with the requirement to obtain Indigenous Peoples' free, prior, and informed consent.⁵¹⁸

Under Principle 22 of the Rio Declaration, Indigenous Peoples and their communities play a pivotal role in environmental management and development due to their knowledge and traditional practices. States should recognize, support, and enable their effective participation in sustainable development, while respecting their identity, culture, and interests.

States should also adopt monitoring⁵¹⁹ and enforcement mechanisms to ensure compliance with these norms.

- **Ensure that development policies benefit all people equally.**⁵²⁰ This requires *inter alia* evaluating the human rights and environmental impact of development and trade agreements,⁵²¹ policies and programs.
- Adopt frameworks to ensure that private investments and undertakings comply with environmental and human rights norms and standards, including the United Nations Guiding Principles on Business and Human Rights and other relevant soft- and hard-law instruments (See Section 4). This includes making environmental and social safeguards binding and enforceable for private enterprises and investment banks.⁵²²

For example, 'public-private partnerships promoted through loans, projects and other financing arrangements involving multilateral development banks and development finance institutions should be subject to independent reviews of their development outcomes, including a thorough examination of their human rights and environmental impacts, as well as the accumulation of off-balance sheet debts.'⁵²³

512 United Nations General Assembly (2020). *Report of the Special Rapporteur on the right to development, Saad Alfarargi. Right to development.* Report No. A/75/167. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/185/78/PDF/N2018578.pdf>

513 United Nations General Assembly (2019). *Report of the Special Rapporteur on the right to development, Saad Alfarargi. Right to development.* Report No. A/HRC/42/38. op. cit. p. 358.

514 Ibid.

515 Ibid.

516 United Nations General Assembly (2020). *Report of the Special Rapporteur on the right to development, Saad Alfarargi. Right to development.* Report No. A/75/167. op. cit.

517 Ibid.

518 Ibid.

519 Ibid.

520 United Nations General Assembly (2019). *Report of the Special Rapporteur on the right to development, Saad Alfarargi. Right to development.* Report No. A/HRC/42/38. op. cit. p. 358.

521 Ibid.

522 Ibid.

523 United Nations General Assembly (2020). *Report of the Special Rapporteur on the right to development, Saad Alfarargi. Right to development.* Report No. A/75/167. op. cit. p. 362.

- When designing, implementing, or monitoring disaster preparedness and disaster risk reduction strategies, address 'underlying disaster and conflict risk drivers, such as the consequences of poverty, inequality and marginalization';⁵²⁴ adopt safeguards to guarantee good governance and public participation,⁵²⁵ and mainstream a rights-centered approach.
- 'States that have contributed disproportionately to climate change should meet their corresponding financial commitments, in accordance with Principle 16 of the Rio Declaration on Environment and Development.'⁵²⁶
- Conduct far-reaching and independent environmental, social, and human rights impacts assessments of transboundary policies and projects.⁵²⁷



ENDS Europe - Uganda v. Dutch Government

⁵²⁴ United Nations General Assembly (2019). *Report of the Special Rapporteur on the right to development, Saad Alfaragi. Right to development. Report No. A/74/163.* op. cit. p. 366.

⁵²⁵ Ibid.

⁵²⁶ United Nations General Assembly (2019). *Report of the Special Rapporteur on the right to development, Saad Alfaragi. Right to development. Report No. A/HRC/42/38.* op. cit. p. 358.

⁵²⁷ Ibid.

BOX 27. THE RIGHT TO DEVELOPMENT AND THE ENVIRONMENT

The right to development acts as a connector between human rights (civil, political, economic, social, and cultural) and development-related decisions and activities. As such, it reinforces the need to respect procedural and substantive rights at all stages and in all activities implemented by States and international organizations to achieve sustainable development, including its economic growth component.

The right to development 'demands comprehensive and human-centered development policy, participatory development processes, social justice and equity' and 'implies the principles of self-determination and full sovereignty over natural wealth and resources.'⁵²⁸ It therefore elevates and contributes to putting the protection of human rights and the environment at the front and center of all development-related decisions and activities.

The right to development has contributed to harmonizing economic growth, environmental protection, and human and social development agendas. 'In this sense, development and environmental protection are no longer understood as contradictory goals but rather as complementary.'⁵²⁹

The Human Rights Council, for example, recognized 'that sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for present and future generations.'⁵³⁰

The link between development and the right to a healthy environment is also recognized by the Framework Principles (See Box 18), which affirm that '[a] safe, clean, healthy, and sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation, to housing, to participation in cultural life and to development, as well as the right to a healthy environment itself.'

The Declaration on the right to development further informed the 2030 Agenda for Sustainable Development, which integrates human rights and the environment into the international development goals (See Section 6 below).

⁵²⁸ Office of the United Nations High Commissioner for Human Rights (2016). *Frequently Asked Questions on the Right to Development*. Fact Sheet No. 37. <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-37-frequently-asked-questions-right-development>

⁵²⁹ Environment-rights.org (n.d.). *Know your rights, the right to development*. <https://environment-rights.org/rights/right-to-development/#:~:text=In%20this%20sense%2C%20development%20and,sustainable%20development%20and%20environmental%20protection>.

⁵³⁰ United Nations General Assembly (2021). *Resolution 48/13: The human right to a clean, healthy and sustainable environment*. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf>

3. INDIVIDUALS AND GROUPS IN VULNERABLE SITUATIONS

The UDHR establishes that '[a]ll human beings are born free and equal in dignity and rights,' and thus 'everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

Everyone, therefore, is entitled without any discrimination to equal protection of the law. The principle of non-discrimination, and the right to equality are also enshrined in the ICCPR and ICESCR, which establish binding obligations for States to ensure everyone's enjoyment of all human rights recognized by these treaties 'without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' The ICCPR, moreover, asserts that all persons shall be equal before courts and tribunals, and have equal protection before the law.

The obligations of States to prohibit discrimination and to ensure equal treatment for all persons apply in environmental cases. 'These obligations apply not only to direct discrimination, but also to indirect discrimination, when facially neutral laws, policies or practices have a disproportionate impact on the exercise of human rights as distinguished by prohibited grounds of discrimination.'⁵³¹

In environmental matters, direct discrimination takes place when States fail to recognize or guarantee members of certain population groups the same rights as others, including both procedural) and substantive rights. Indirect discrimination takes place when, for example, 'measures that adversely affect ecosystems, such as mining and logging concessions, have disproportionately severe effects on communities that rely on the ecosystems.'⁵³² Another example of indirect discrimination is the authorization of toxic and hazardous facilities next to communities composed of racial minorities or affected by extreme poverty (See Box 20 on Sacrifice Zones).

In the context of environmental rights, existing patterns of discrimination and marginalization, which often overlap, may increase the vulnerabilities and risks derived from, or connected with, environmental challenges. For this reason, some population groups⁵³³ experience the negative effects of, *inter alia*, deforestation, climate change, toxic waste, air and water pollution and desertification more acutely.⁵³⁴

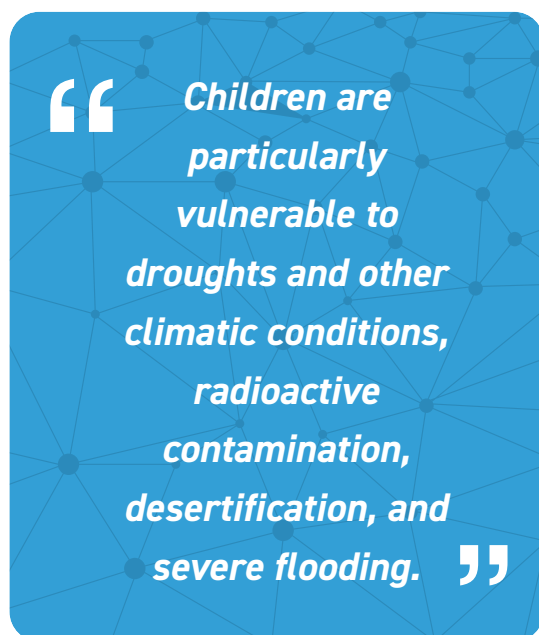
⁵³¹ United Nations General Assembly (2018). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. Report No. A/73/188. <http://srenvironment.org/sites/default/files/Reports/2018/Boyd%20Knox%20UNGA%20report%202018.pdf>

⁵³² Knox, J., & Morgera, E. (2022). *Human Rights and the Environment: The Interdependence of Human Rights and a Healthy Environment in the Context of National Legislation on Natural Resources*. Italy: Food & Agriculture Organization of the United Nations (FAO).

⁵³³ The Special Rapporteur on human rights and the environment has acknowledged that segments of the population that might be particularly vulnerable to environmental harm include indigenous populations, women and girls, children, people living in poverty, older persons, persons with disabilities, marginalized minorities, and displaced persons.

⁵³⁴ Jesenko, K. (2018). *Freedom of expression in environmental cases before the European Court of Human Rights*. *ERA Forum*, vol. 19, p. 295-305. <https://doi-org.ezproxy.uniandes.edu.co/10.1007/s12027-018-0518-3>

For example, climate change,⁵³⁵ environmental degradation,⁵³⁶ pollution,⁵³⁷ natural disasters,⁵³⁸ and loss of biodiversity⁵³⁹ among others, that have a more disproportionate effect on women,⁵⁴⁰ than they have in men. Such unbalanced impacts emerge from intersecting patterns of exclusion and discrimination. Women make up most of the population living in poverty, they have less access to decision-making processes, lack access to the same information and resources, and tend to work and live in less secure environments, as compared to men.



Similarly, children are particularly vulnerable to droughts and other climatic conditions, radioactive contamination, desertification, and severe flooding.⁵⁴¹ Exposure to chemicals used in plastics can lead to child cancer, endocrine disruption, physical development,⁵⁴² and toxic substances can lead to neurological development, causing lifelong cognitive deficits, blindness, paralysis, and death.⁵⁴³ 'More than 1 million premature deaths among children under the age of 5 are caused by pollution and toxic substances annually.' 'Millions of children are employed in potentially hazardous sectors including agriculture, mining, and tanning. Low-income housing may contain asbestos, lead, formaldehyde, and other toxic substances.'⁵⁴⁴

Pollution, natural resource extraction,⁵⁴⁵ and climate change also have devastating and disproportionate impacts on the rights of Indigenous Peoples, including on their rights to food, health,⁵⁴⁶ land and natural resources.⁵⁴⁷ For instance, the Special Rapporteur on the rights of Indigenous Peoples has highlighted that the execution of projects involving natural resource extraction and other forms of development in or near indigenous territories has emerged as a major global concern for Indigenous Peoples. It is potentially the most widespread cause that hinders their complete enjoyment and exercise of their rights.⁵⁴⁸

535 International Labour Organization (2008). *Report of the Committee on Employment and Social Policy, Employment and labour market implications of climate change. Fourth Item on the Agenda. 303rd Session.* http://www.ilo.int/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_099711.pdf

536 Ibid.

See, e.g., Consideration of reports of States parties: Uzbekistan (2001). A/56/38(SUPP). https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=A%2F56%2F38%28SUPP%29&Lang=en;and

Mongolia (2008). CEDAW/C/MNG/CO/7. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/602/98/PDF/N0860298.pdf?OpenElement>

537 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women.* Report No. A/HRC/25/53. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>

538 Ibid.

539 Ibid.

540 United Nations Committee on the Elimination of Discrimination against Women (2009). *Concluding Observations of the Forty-fourth session, Tuvalu.* CEDAW/C/TUV/CO/2. p. 55-56. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N09/460/74/PDF/N0946074.pdf?OpenElement>; and *Concluding Observations of the Committee on the Elimination of Discrimination against Women for the Forty-sixth session, Papua New Guinea.* CEDAW/C/PNG/CO/3. p. 5. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/485/39/PDF/N1048539.pdf?OpenElement>

541 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping Report.* Report No. A/HRC/25/53. op. cit.

542 United Nations General Assembly (2021). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana.* Report No. A/76/207. op. cit.

543 United Nations General Assembly (2022). *Supplementary information to the report of the Special Rapporteur, David R. Boyd, on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.* Report No. A/HRC/49/53.

544 Ibid.

545 United Nations General Assembly (2011). *Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya: Extractive industries operating within or near indigenous territories.* Report No. A/HRC/18/35. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/146/39/PDF/G1114639.pdf?OpenElement>

546 United Nations General Assembly (2012). *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. The situation of indigenous peoples in the United States of America.* Report No. A/HRC/21/47/Add.1. <https://digitallibrary.un.org/record/733435?ln=es>

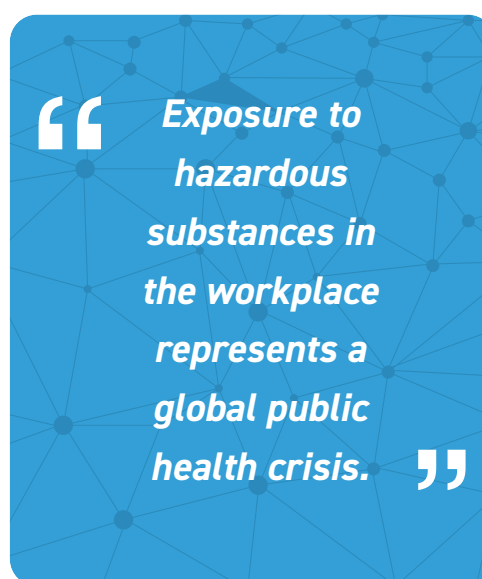
547 United Nations General Assembly (2012). *Report of the Special Rapporteur on the rights of indigenous peoples, James Anaya. The situation of indigenous peoples in Argentina.* Report No. A/HRC/21/47/Add.2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/149/47/PDF/G1214947.pdf?OpenElement>

548 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping Report.* Report No. A/HRC/25/53. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/192/11/PDF/G1319211.pdf?OpenElement>

Another vulnerable group are individuals working with toxic and hazardous elements or in poor environmental conditions.⁵⁴⁹ Exposure to hazardous substances in the workplace represents a global public health crisis.⁵⁵⁰ In addition, poor air quality in work environments can lead to non-respiratory illness, diabetes; dismantling of specific plastic products, such as electronics, causes disturbance of thyroid and brain functions.⁵⁵¹ Workers are one of the groups most exposed to the impacts of the plastics cycle. 'Over 750,000 workers die annually because of exposure to toxic substances on the job, including particulate matter, asbestos, arsenic and diesel exhaust.'⁵⁵²

States must respect the rights of individuals and, where applicable groups, in situation of vulnerability, including women, children, elderly, persons with disabilities, sexual orientation and gender identity diverse individuals, Indigenous Peoples, tribal and rural communities, Afro descendants and peasants, among others in all actions related to the environment, including water, food production, land management and the management of natural resources. This includes realizing their substantive and procedural rights to access information, effective and timely justice, and public participation.

The Special Rapporteur on human rights and the environment mapped, in its report on human rights obligations relating to the environment additional obligations with respect to groups particularly vulnerable to environmental harm.⁵⁵³



549 International Labour Organization (2022). *World Statistic*. https://www.ilo.org/moscow/areas-of-work/occupational-safety-and-health/WCMS_249278/lang-en/index.htm

550 United Nations General Assembly (2018). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Mr. Baskut Tuncak*. Report No. A/HRC/39/48. op. cit.

551 United Nations General Assembly (2021). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana*. Report No. A/76/207. op. cit.

552 United Nations General Assembly (2022). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David Boyd. The right to a clean, healthy and sustainable environment: non-toxic environment*. Report No. A/HRC/49/53. op. cit. para 5.

553 Ibid. p. 19-22.

BOX 28. INTERSECTIONALITY

Individuals in situation of vulnerability face intersecting risks and challenges that heighten their vulnerabilities. In order to effectively address the challenges faced by individuals in situations of vulnerability States should adopt an intersectionality approach in decision-making and the implementation of activities. This approach recognizes that individuals may experience overlapping forms of violence, discrimination and marginalization based on multiple factors such as age, gender, race, ethnicity, socio-economic status, and disability.

States should take positive steps to realize the rights of individuals that face intersecting patterns of exclusion and discrimination by implementing specific positive measures to mitigate the disproportionate negative impacts of environmental challenges. This includes ensuring equitable access to productive resources, facilitating opportunities for meaningful participation, and guaranteeing access to essential services such as water and healthcare.⁵⁵⁴

Right Livelihood - Phyllis Omido, Kenyan EHRD



⁵⁵⁴ The United Nations Entity for Gender Equality and the Empowerment of Women, Food and Agriculture Organization of the United Nations, The International Fund for Agricultural Development, The World Food Programme (2011). CEDAW, Rural Women and Climate Change. Document No. EGM/RW/2011/RP.1. <https://www.un.org/womenwatch/daw/csw/csw56/egm/IAW-RP-1-EGM-RW-Sep-2011.pdf>

Some common obligations with regards to groups in situation of vulnerability include:

- **Take effective steps and positive measures to guarantee their procedural rights to access to information, public participation in environmental and development decision-making processes, and access to justice.**⁵⁵⁵ This extends to environmental management, **disaster risk reduction,**⁵⁵⁶ **climate change, disaster response, or activities related with environment elements like water resources and entitlements.**

One way to guarantee their access to information in providing in language and context-appropriate formats, information on their rights and how to claim them. An example of how to convey tailored information to children are the 'Tools for young climate activists' developed by UNICEF and Voices of Youth.⁵⁵⁷

Other steps regarding the right to information, include generating and disseminating information on risks and harms associated with the use of chemicals and toxic substances at work, as well as on safer alternatives to these. This information should be provided to workers to secure their capacity to assert their right to access to justice.⁵⁵⁸ The case of *Brincat and Others v. Malta* (See Case 25) illustrates this.

Likewise, States should generate and adequately disseminate information on the negative environmental effects of materials and substances used in rural areas, such as pesticides.

Additional special measures include providing language interpretation; establishing legal mechanisms adequate and consistent with their rights and realities and securing that remedies are effective and adequate.

For instance, regarding Indigenous and Tribal communities, reparation measures should be consistent with their culture and needs for survival as a group.⁵⁵⁹ Adequate compensation and redress measures may require the guarantee to return to their territories and halt expropriations instead of compensations, depending on their survival needs balanced with the general interest of the public.⁵⁶⁰

As mentioned in section XX, guaranteeing access to justice and providing an effective remedy for children affected by toxic substances involves various essential components. These include remediation of polluted sites, implementation of preventative and precautionary measures, ensuring access to necessary medical and psychological assistance, and providing appropriate compensation to address the harm caused by such violations.⁵⁶¹

Moreover, States should guarantee 'the equal participation in all relevant planning and decision-making processes of those who are most disadvantaged, including persons with disabilities, women, children and young people, minorities, indigenous peoples, persons of African descent and members of other disempowered and marginalized groups.'⁵⁶²

555 United Nations Committee on the Elimination of Discrimination against Women (2018). *General Recommendation No. 37 on Gender-related dimensions of disaster risk reduction in the context of climate change*. Document No. CEDAW/C/GC/37; and Rio Convention. Article. 20. https://tbinternet.ohchr.org/_layouts/15/Treaty-BodyExternal/Download.aspx?symbolno=CEDAW%2FC%2F37&Lang=en

556 United Nations Office for Disaster Risk Reduction (2012). *Sendai Framework for Disaster Risk Reduction 2015 – 2030. The Third UN World Conference in Sendai, Japan*. https://www.preventionweb.net/files/43291_sendaiframeworkfordrren.pdf

557 The United Nations Children's Fund and Voices of Youth (2019). *Tools for young climate activists*. <https://www.voicesofyouth.org/climate-toolkit>

558 United Nations General Assembly (2021). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana*. Report No. A/76/207.

559 United Nations General Assembly (2017). *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Mexico, Victoria Tauli-Corpuz*. Report No. A/HRC/39/17/Add.2. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/192/94/PDF/G1819294.pdf?OpenElement>

560 United Nations General Assembly (2011). *Report of the Special Rapporteur on the rights of Indigenous Peoples, James Anaya: Extractive industries operating within or near indigenous territories*. Report No. A/HRC/18/35. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/146/39/PDF/G1114639.pdf?OpenElement>

561 United Nations Committee on the Rights of the Child (2013). *General comment No. 16 on State obligations regarding the impact of the business sector on children's rights*. Report No. CRC/C/GC/16. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/428/21/PDF/G1342821.pdf?OpenElement>

562 United Nations General Assembly (2019). *Report of the Special Rapporteur on the right to development, Saad Alfarargi. Right to development*. Report No. A/74/163. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/61/PDF/N1921661.pdf>

Regarding women, concrete measures include expressly integrating women's concerns in these processes, proactively engaging with women including by providing them the necessary resources to secure their participation,⁵⁶³ and developing training programs to ensure women's leadership in these spaces.

'In addition to a general obligation to ensure equal participation, State parties' duty to promote and facilitate the participation of women in policies and programs can be broken down further within the issues of climate change, development, and relief from natural disasters.'⁵⁶⁴ States must secure that climate change and disaster risk-reduction measures are gender-responsive and sensitive,⁵⁶⁵ and that development policies are designed with women's inclusion and participation, and integrate a gender perspective and women's human rights.⁵⁶⁶

States should also address barriers to participation, by providing adequate resources (i.e., transport) for participation to farmers, elderly, people with disabilities and individuals living in rural isolated areas, especially in decision-making processes regarding environmental protection, land redistribution and administration that may affect them.

→ **Take positive steps to fulfill the substantive obligations regarding the right to a clean, healthy, and sustainable environment,** namely, protecting and preserving the environment.

Regarding the substantive elements of the right to a clean, healthy, and sustainable environment, States may need to build national capacities and awareness to secure that State officials are informed about the specific rights of individuals in situations of vulnerabilities. 'This should be accompanied by effective procedures for monitoring, supervising and assessing public and private officials on their respect for and implementation of these international standards.'⁵⁶⁷

Positive measures to secure the realization of children's rights include, for instance, providing adequate water to educational institutions,⁵⁶⁸ avert and battle the impacts of environmental including water pollution on children and strengthen relevant procedures for inspection,⁵⁶⁹ prevent and redress disease and malnutrition through the delivery of adequate nutritious foods and clean drinking water,⁵⁷⁰ give environmental education in schools, linking environment and sustainable development matters with socioeconomic, sociocultural and demographic issues,⁵⁷¹ provide children 'access to landscaped green areas, large open spaces and nature for play and recreation, with safe, affordable and accessible transport; [and] [r]oad traffic measures, including speed limits, levels of pollution, school crossings, traffic lights, and calming measures to ensure the rights of children to play safely within their local communities...' ⁵⁷²

563 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Individual Report on the United Nations Convention on the Elimination of All Forms of Discrimination against Women*. op. cit.

564 Ibid.

565 Ibid.

566 Ibid.

567 United Nations General Assembly (2016). *Report of the Special Rapporteur on the Rights of Indigenous Peoples on her visit to Honduras, Victoria Tauli-Corpuz*. Report No. A/HRC/33/42. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/178/84/PDF/G1617884.pdf?OpenElement>

568 Office of the United Nations High Commissioner for Human Rights (2002). *United Nations Committee on Economic, Social and Cultural Rights. General Comment 15. Right to water*. E/C.12/2002/11. op. cit.

569 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Individual Report on the United Nations Convention on the Rights of the Child*. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>

570 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. Mapping Report*. Report No. A/HRC/25/53. op. cit.

571 Ibid.

572 Ibid.

Regarding Indigenous and tribal communities States should adopt norms and policies to realize their rights over their lands and natural resources (See Box 26), including access and use of seeds,⁵⁷³ 'enabling them to apply customary laws, traditional ecological knowledge and their own governance systems to the sustainable stewardship of water.'⁵⁷⁴ This includes regulating business enterprises activities and rights over natural resources traditionally used by peasants and people working in rural areas, in particular, seeds.

Similarly, States should support the right of peasants and people living in rural areas to preserve the environment according to their knowledge⁵⁷⁵ and strengthen local and sustainable environmental trade policies.⁵⁷⁶

Concrete steps to protecting natural resources in indigenous territories and rural areas include regulating the use and disposal of pesticides and agrochemicals, and substances used in extractive and industrial activities in these places and implementing measures to mitigate their effects on human health, surface and groundwater and soil.

Fulfilling their substantive obligations, also requires that States assess, monitor, prevent, and address the environmental and social effects that any decision or activity may have on the most vulnerable, including those related to health, development, consumer, labor, and environment.

For example, States must take 'measures to safeguard against or to mitigate environmental and other impacts that could adversely affect the rights of Indigenous Peoples in relation to their territories.'⁵⁷⁷ Fulfilling this responsibility entails conducting comprehensive EIAs before undertaking any projects, with the active involvement of affected Indigenous Communities and respecting the principle of Free, Prior, and Informed Consent (FPIC). Moreover, the obligations of States may extend beyond the initial assessment phase to include ongoing monitoring and evaluation of the impacts arising from specific projects. Environmental authorities often bear the responsibility of regular monitoring and assessment of environmental consequences. Furthermore, agreements established with extractive industries can incorporate provisions to monitor potential effects on factors such as health conditions, subsistence activities, and locations of cultural or religious significance.⁵⁷⁸

573 United Nations General Assembly (2007). *Report of the Special Rapporteur on the right to food, Jean Ziegler. Preliminary note on the mission to Bolivia*. Report No. A/HRC/4/30/Add.2. <https://digitallibrary.un.org/record/601244?ln=es>

574 United Nations General Assembly (2021). *Human rights and the global water crisis: water pollution, water scarcity and water-related disasters*, David Boyd. Report No. A/HRC/46/28. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/012/23/PDF/G2101223.pdf?OpenElement>

575 Ibid.

576 Ibid.

577 United Nations General Assembly (2013). *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox. *Individual Report on the Rights of Indigenous Peoples*. <https://www.ohchr.org/en/special-procedures/sr-environment/mapping-report>

578 United Nations General Assembly (2013). *Extractive industries and indigenous peoples, report of the Special Rapporteur on the rights of indigenous peoples, James Anaya*. Report No. A/HRC/24/41. op. cit.



The visit Ljubljana website - Constitutionalizing the right to water through popular initiative in Slovenia

Regarding children, for instance, States must prevent and, if prevention is not possible, mitigate⁵⁷⁹ environmental risks that pose a threat to their rights, including their access to food, housing, water, sanitation, an adequate standard of living,⁵⁸⁰ health, and physical integrity,⁵⁸¹ among others. It is crucial for States to actively monitor, assess, and address the risks posed to children by environmental hazards and activities that could potentially infringe upon their rights. This includes the responsibility to explicitly state, within all regulations and agreements with private entities, the imperative of preventing children's exposure to pesticides and toxic substances. This obligation also extends to employers when it comes to child workers, emphasizing the need to safeguard them from such hazards.⁵⁸² Likewise, States should take enhanced measures to prevent children's exposure to pollution, plastics,⁵⁸³ pollutants, toxic and hazardous substances and wastes.

- In addition to the impact of decisions and activities related to the environment, States should also **monitor, prevent, address, and control the specific risks faced by individuals in situation of vulnerability**, especially regarding their safety, health, and physical integrity. States should **take positive steps to ensure the inclusion of individuals in vulnerable situations by implementing measures that consider their specific contexts.**

This requires recognizing the disproportionate impact that climate change, pollution and biodiversity loss may have on these populations. With regards to women, for example, it entitles acknowledging the risks to their sexual and reproductive health and generating adequate information and health-prevention and response systems. Women workers *'may also be exposed to toxic substances at work before and during the earliest stages of pregnancy, or even before they may know they are pregnant. This reality requires special care on the part of States and businesses to protect women's reproductive health by preventing their exposure to toxic substances without limiting employment in a discriminatory fashion.'*⁵⁸⁴

Also related to women, is addressing the disproportionate burden women bear in the collection of water.⁵⁸⁵

Women environmental defenders, for example, also face differentiated risks as men. They are prone to sexual violence, their work as defenders tends to be punished for not conforming to gender-stereotypes. Offering tailored protection, such as including self-care elements in security strategies, and education to increase their capacity to identify and respond to risks may be needed to secure their protection.

Similarly, regarding women and children, it is crucial for States to recognize that the effects of pollution, climate change, and natural disasters extend beyond direct harm and can contribute to issues such as domestic violence.⁵⁸⁶

579 United Nations General Assembly (2016). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, the impacts of toxics and pollution on children's rights, Baskut Tuncak*. Report No. A/HRC/33/41. op. cit.

580 United Nations General Assembly (2018). *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox*. Report No. A/HRC/37/58. op. cit.

581 United Nations Committee on the Rights of the Child (2006). *General Comment No. 7: Implementing child rights in early childhood*. CRC/C/GC/7/Rev.1. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/443/80/PDF/G0644380.pdf?OpenElement>

582 United Nations General Assembly (2018). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak*. Report No. A/73/567. op. cit.

583 United Nations General Assembly (2021). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana*. Report No. A/76/207. op. cit.

584 United Nations General Assembly (2021). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana*. Report No. A/76/207. op. cit.

585 Office of the United Nations High Commissioner for Human Rights (2002). *United Nations Committee on Economic, Social and Cultural Rights. General Comment 15. Right to water*. Document No. E/C.12/2002/11. <https://www.refworld.org/pdfid/4538838d11.pdf>

586 Children in emergencies are extremely vulnerable to violence when, as a consequence of social and armed conflicts, natural disasters and other complex and chronic emergencies, social systems collapse, children become separated from their caregivers and caregiving and safe environments are damaged or even destroyed. United Nations Committee on the Rights of the Child (2011). *General Comment No. 13: the right of the child to freedom from all forms of violence*. CRC/C/GC/13. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/423/87/PDF/G1142387.pdf?OpenElement>

Adequately addressing the impacts of decisions related to the environment on the most vulnerable may require generating, disseminating, and specific data. For instance, gender and sex-disaggregated data can help to promote gender-sensitive programs and policies.

Regarding workers, for examples, States should adopt appropriate safeguards to prevent or mitigate toxic and hazardous exposures⁵⁸⁷ and enforce health-protective laws and policies on occupational health.⁵⁸⁸ Another example is recognizing, supporting, and protecting informal workers in hazardous contexts, such as waste pickers by, *inter alia*, providing social security or protection equipment.⁵⁸⁹

Another example is adopting positive measures to respond to natural disaster and climate events that affect the livelihood and remuneration of peasants and people living in rural areas to secure their adequate standard of living.

Enforcing gender-responsive and non-discriminatory policies and activities in the areas of climate change,⁵⁹⁰ biodiversity protection and conservation, development, and others, and integrate a gender approach in international⁵⁹¹ and national frameworks is another obligation owed to individuals in situations of vulnerability. Key areas to focus on in policymaking include non-discrimination, participation, capacity building and accountability and access to justice.⁵⁹² All such policies and mechanisms must afford equal protections to the rights of women.

→ **Another step to fulfill substantive obligations, is to recognize and protect the most vulnerable as human rights defenders, including environmental defenders.** Not all environmental defenders identify as such. Many women, children and indigenous leaders and communities defend the environment in order to secure their own survival. They may not be aware of their role as environmental or human rights defenders, though. Regardless of how they identify themselves, as they work to protect the environment from pollution, climate change or biodiversity loss, they are entitled – as other human rights defenders – to special protection measures and the rights enshrined in the UN Declaration on Human Rights Defenders.

587 United Nations General Assembly (2019). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. Principles on human rights and the protection of workers from exposure to toxic substances. Mr. Baskut Tuncak*. Report No. A/HRC/42/41. op. cit.

588 Ibid.

589 Ibid.

590 United Nations Framework Convention on Climate Change (2015). *Report of the Conference of the Parties on its twentieth session, held in Lima from 1 to 14 December 2014. Addendum Part two: Action taken by the Conference of the Parties at its twentieth session*. Report No. FCCC/CP/2014/10/Add.3. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/018/33/PDF/G1501833.pdf?OpenElement>

591 United Nations Framework Convention on Climate Change (2017). *Gender and climate change Draft conclusions proposed by the Chair Recommendation of the Subsidiary Body for Implementation*. Report No. FCCC/SBI/2017/L.29. <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G17/339/01/PDF/G1733901.pdf?OpenElement>

592 United Nations Committee on the Elimination of Discrimination against Women (2020). *General recommendation No. 38 on trafficking in women and girls in the context of global migration*. Report No. CEDAW/C/GC/38. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/324/45/PDF/N2032445.pdf?OpenElement>

CASE 20. BIOCULTURAL RIGHTS. THE ATRATO RIVER CASE (CONT)⁵⁹³

From the biocultural rights perspective, safeguarding rivers, forests, food sources, and biodiversity is intricately tied to the fundamental rights encompassing life, health, culture, and territory. An essential element of this approach is the interconnectedness between nature, the human species, and diverse life forms. Conserving biodiversity leads to the preservation protection of the lifestyles and cultures that coexist with it. Hence, policies addressing biodiversity conservation should encompass the preservation of cultural diversity.

The biocultural rights approach offers a framework to protect those communities whose livelihoods, cultures and rights depend upon their territory, and hence, their environment. This approach emphasizes the interrelation between culture and nature and promotes the active involvement of ethnic communities in shaping public policies and regulatory frameworks. It also ensures conducive conditions for the creation, preservation, and revitalization of their knowledge systems. The responsibility of the State to shield and preserve the ways of life of Indigenous, afro descendent, and farmer communities entails not only ensuring their existence but also protecting their perception and understanding of the world.

The Constitutional Court of Colombia acknowledged that indigenous, tribal, and Afro-Colombian peoples possess a concept of territory and nature that diverges from Western legal canons. For these communities, territory and its resources are intimately tied to their existence and survival, encompassing religious, political, social, economic, and recreational aspects. The territory is perceived as an essential component of the ecosystems and biodiversity with which they interact on a daily basis. In their view, individual ownership of territory is replaced by collective ownership, crucial for their perpetuity and well-being.

For ethnic communities, territories and natural resources are not assessed or represented in economic or market terms. Instead, they are integral to their existence and survival as culturally distinctive groups. Recognizing their rights to possess, own, and utilize ancestral lands and territories is vital for their continued welfare. The collective property rights of local communities encompass the authority to utilize, enjoy, and manage renewable natural resources within their territories, adhering to sustainability principles.

In this way, protecting the environment and the collective rights over their territories are two sides of the same coin which, in turn, is an indispensable part of protecting the human and collective rights of local communities.

The Constitutional Court reminded that the IACtHR has also acknowledged the spiritual and cultural significance of communal land and its natural resources for Indigenous communities. The relationship between the community and the territory, even if not formally codified, is an integral part of their everyday life and cultural identity, transmitted from one generation to another.



⁵⁹³ Colombia, Constitutional Court of Colombia (2016). *Case of the Center for Social Justice Studies et al. v. Colombia et al. The Atrato River Case*. The United Nations General Assembly on Harmony with Nature Database. Accessed December 18, 2023. <http://files.harmonywithnatureun.org/uploads/upload838.pdf>

In the specific case of the Atrato river, local communities share a profound bond with nature, which is allegedly under threat due to illicit mining activities utilizing hazardous chemicals and heavy machinery. Such activities not only endanger the physical existence of local communities, but also jeopardize the perpetuation of their traditions, ancestral culture, habitat, and natural resources, which are indispensable for the construction, fortification, and development of their collective identity.

In addition to protecting the rights of local communities, the biocultural rights perspective advocates for nature to be acknowledged as a rights-bearing entity. The contemporary challenge faced by constitutionalism, the Court explained, in environmental matters lies in safeguarding nature, associated cultures, ways of life, and biodiversity, not merely for their utilitarian or economic value, but as bearers of rights. In this case, the Court declared that the Atrato River is subject of rights.

BOX 29. PRINCIPLES ON HUMAN RIGHTS AND THE PROTECTION OF WORKERS FROM EXPOSURE TO TOXIC SUBSTANCES⁵⁹⁴

Workers often find themselves in vulnerable situations due to their exposure to toxic substances in various occupational settings. The nature of certain jobs exposes individuals to hazardous materials, putting their health and well-being at risk. Their direct contact with toxic substances and wastes, compounded with limited access to information and training, inadequate resources, job insecurity, insufficient legal protections, and barriers to healthcare further increase the risk of their human rights related to the environment being violated. In certain industries or regions, workers may face heightened risks without proper safeguards, leading to potential life, health and safety hazards. Addressing these vulnerabilities requires a multifaceted approach, including the implementation of robust workplace safety regulations, comprehensive education and training initiatives, strengthened labor laws and enforcement mechanisms, and efforts to eliminate discrimination and exploitation. Such measures are essential to ensure the well-being of workers and create a safer and more equitable working environment.

Recognizing this situation, the UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes developed a series of principles to address the challenges faced by workers in such circumstances. These principles aim to safeguard the rights of workers, ensuring their protection from the adverse effects of toxic substances. By highlighting the importance of occupational safety and health, the principles promote international standards that prioritize the well-being of workers, contributing to a safer and healthier working environment globally.

Principle 1 – Everyone must be protected from exposure to toxic substances at work. States have a duty to protect the human rights of all workers through the prevention of exposure to toxic substances, even in the face of scientific uncertainty.

⁵⁹⁴ United Nations General Assembly (2019). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. Principles on human rights and the protection of workers from exposure to toxic substances.* Mr. Baskut Tunçak. Report No. A/HRC/42/41.



Principle 2 – Business enterprises have a responsibility to prevent occupational exposures to toxic substances as part of their human rights due diligence responsibility. This includes the duty to eliminate “toxic substances from their products and production processes to the maximum extent possible. If hazards cannot be eliminated, business enterprises should rigorously and systematically apply the hierarchy of hazard controls to prevent exposure (principle 4) and mitigate adverse impacts on health, with the provision of personal protective equipment the protection measure of last resort... The responsibilities of businesses regarding safe and healthy working conditions require the continuous improvement of working conditions and extend to their business relationships, both at home and abroad, and their products’ life cycles.”

Principle 3 – Hazard elimination is paramount in preventing occupational exposures. This is reflected in the good practice known as the hierarchy of hazard controls encouraged by the International Labour Organisation (ILO) and national bodies concerned with occupational safety and health.

Principle 4 – Workers have the right not to be exposed to toxic substances without their prior informed consent. Workers have the right to remove themselves from situations where they are exposed to toxic chemicals and other hazardous substances that they have a reasonable justification to believe present a danger.

Principle 5 – Duties and responsibilities to prevent the exposure of workers to toxic substances extend beyond borders. ‘The transboundary transfer of hazardous production processes, materials and substances to countries with lower levels of protection should be considered a form of exploitation if appropriate measures are not taken to protect workers from toxic exposures.’⁵⁹⁵

Principle 6 – States must prevent third parties from distorting scientific evidence or manipulating processes to perpetuate exposure. States must prevent, through legislation or other measures, the deliberate tampering with, obfuscation or distortion of scientific evidence or the manipulation of processes by business enterprises and other third parties to the detriment of workers’ health and safety, while ensuring that such efforts respect the right to freedom of expression.

Principle 7 – Protecting workers from exposure to toxic substances protects their families, their communities and the environment. States should recognize the mutually reinforcing nature of protecting workers from occupational exposures to toxic substances and the protection of the environment.

Principle 8 – Every worker has the right to know, including to know their rights. States, employers and business enterprises must efficiently communicate health and safety information, including the results of medical examinations, to workers, trade unions and other workers’ representatives. States are duty-bound to generate, collect, assess and update information on hazards and risks encountered by workers, as well as epidemiological evidence of occupational diseases and disabilities.

Principle 9 – Health and safety information about toxic substances must never be confidential. States have a duty to ensure that claims that information about toxic substances are confidential business information or trade secrets are legitimate.



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Principle 10 – The right to safe and healthy work is inseparable from freedom of association, the right to organize and the right to collective bargaining. Without freedom of association, including to form unions, and the right to collective bargaining workers stand little chance of defending their right to safe and healthy work and other human rights.

Principle 11 – Workers, representatives of workers, whistle-blowers and rights defenders must all be protected from intimidation, threats and other forms of reprisals. States should have in place national protection programmes for defenders of labour rights and initiate appropriate disciplinary, civil and criminal proceedings against perpetrators of reprisals, intimidation or threats of reprisals against defenders.

Principle 12 – Governments should criminalize allowing workers to be exposed to substances that are known or should be known to be hazardous. States should ensure that national legislation provides for criminal liability of employers and other responsible individuals and entities for exposing workers to substances that are or should be known to be hazardous.

Principle 13 – Workers, their families and their communities must have immediate access to an appropriate and effective remedy, which should be available from the time of exposure. An appropriate and effective remedy includes prompt reparation for harms suffered, health care, compensation, guarantees of non-repetition and adequate training for rehabilitation, reinsertion, and reasonable accommodation. An effective remedy also includes bringing to justice those responsible for exposure to toxic substances. States have an obligation to automatically investigate the possible existence of widespread violations after a minimum threshold is reached and to engage in international cooperation in doing so.

Principle 14 – Workers or their families should not bear the burden of proving the cause of their illness or disability to access an effective remedy. Placing the burden of proof on those harmed by toxic substances at work can be an enormous and often insurmountable challenge. States should ensure that when there is information that a worker may have been exposed to toxic substances at work and where such exposure has been demonstrated to cause harm in similar situations, the burden should shift to the employer to prove no harm.

Principle 15 – States should ensure accountability for cross-border cases of workers harmed by occupational exposure. States have the duty to prevent a denial of justice and ensure the right to effective remedy for victims of occupational exposure to toxic substances.



CASE 25. BRINCAT AND OTHERS V. MALTA⁵⁹⁶

Former full-time employees at the Malta Drydocks Corporation (MDC) lodged an application with the ECtHR against the State of Malta. MDC was a State-owned enterprise that operated from 1968 to 2003. Throughout their employment, the applicants were consistently and extensively exposed to asbestos. They argued that asbestos particles would settle on their clothing and be carried home, affecting the lives of their family members, and causing distress that impacted their private and family life. However, the employees had not been informed about or protected from the dangers of asbestos in any way.

Deciding the case, the Court emphasized that, under the European Convention on Human Rights, States have the positive obligation to take appropriate measures to protect the lives of individuals within their jurisdiction (Article 2). This obligation applies to any activity, whether public or private, that poses a risk to the right to life, particularly in the case of inherently hazardous industrial activities such as waste-collection sites, toxic emissions, or nuclear testing. The duty also encompasses situations where individuals are exposed to asbestos in the workplace.

The Court explained that violations of the right to life may arise in cases where an individual has died or where there is a serious risk of death, even if the applicant is alive at the time of the application. However, this does not apply to individuals with health issues that do not pose a life-threatening risk or serve as an inevitable precursor to the development of that disease.

The Court insisted that States have a positive duty to take reasonable and appropriate measures to protect an individual's rights under Article 8 of the European Convention, which safeguards the right to respect for private and family life. This duty includes providing access to essential information that enables individuals to assess risks to their health and lives. In certain circumstances, this obligation may also encompass the duty to provide such information, particularly in the context of dangerous activities. The positive obligations under Articles 2 and 8 often overlap, requiring the same practical measures from national authorities.

The Court assessed whether the Government knew or should have known about the dangers of asbestos exposure at the relevant time. To this end, it acknowledged that the International Labour Organization (ILO) adopted the Asbestos Recommendation and subsequent Convention, which established minimum standards for asbestos use, in 1986. The adoption of such texts followed extensive preparatory work, including meetings with representatives from governments, employers' organizations, and workers' organizations of ILO member countries. Before concrete proposals were made, consensus was sought among stakeholders, including public authorities, employers, and workers. Asbestos-related issues had been widely debated worldwide, and given the various interests involved, recognizing its harmful effects had not been easy.



⁵⁹⁶ European Court of Human Rights (2014). *Case of Brincat and Others v. Malta. Judgment. Strasbourg: European Court of Human Rights*. Applications No. 60908/11, 62110/11, 62129/11, 62312/11 and 62338/11. <https://hudoc.echr.coe.int/fre#%22itemid%22%2A22001-145790%22>

According to Maltese law, it was the duty of the Superintendent of Public Health to stay informed about such developments and advise the Government accordingly. The Government failed to present any signed statement from a medical expert or authority attesting that medical professionals in Malta were unaware of the concerning medical findings related to asbestos at the time. Therefore, the Court concluded that the Maltese Government knew or should have known about the dangers of asbestos exposure at least since the early 1970s.

The Court also noted that the regulations enacted by Malta were deficient. They failed to adequately regulate asbestos-related activities in specific or provide practical measures to protect employees from the inherent risks of asbestos exposure. Moreover, these regulations did not address the right to access information. It was not until 2003 and 2006 that legislation was enacted to introduce such measures, including the duty to provide information about health and safety risks to the applicants and individuals in their situation. However, enacting specific legislation fifteen years after the Government acknowledged the risks cannot be considered an adequate response in terms of fulfilling the State's positive obligations.

In addition, the Court acknowledged that, in certain specific circumstances, positive obligations can still be fulfilled in practice even in the absence of relevant legal provisions. However, in this case, the only practical measure taken by the State, as the employer, was the distribution of masks, the timing and frequency of which remained unspecified. The masks presented to the Court were deemed of inadequate quality and did not align with the scientific knowledge available at the time. Therefore, these practical measures were insufficient too.

Regarding the duty to provide access to essential information enabling individuals to assess risks to their health and lives, the Court noted that the Government stated that no information reports were available, and they faced difficulties providing details about the extent of informative material given to the applicants. The Occupational Health and Safety Authority (OHSA) provided preventive information and guidelines concerning the management and use of asbestos, but it seems that no specific information, studies, or reports were collected about the asbestos situation at the applicants' workplace. The Court found the Government's contention that the distribution of masks implicitly provided information to be inappropriate.

The authorities have failed to fulfill their positive obligations, such as enacting appropriate legislation or implementing practical measures, as required under Articles 2 and 8 of the European Convention.



4. THE SPECIFIC RESPONSIBILITIES OF BUSINESS ENTERPRISES

While business activities can contribute to development and innovative solutions to address environmental challenges, they can also be connected to serious cases of environmental degradation and human rights abuse, including attacks on environmental human rights defenders.

Under international standards, business enterprises that are commercial or for-profit entities are expected to respect internationally recognized human rights. This means that businesses should avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved. States have the duty to protect against human rights abuse by third parties, including business enterprises.⁵⁹⁷ However, the corporate responsibility to respect human rights exists independently of States' abilities and/or willingness to fulfill their own human rights obligations, and does not diminish those obligations. Further, it exists over and above compliance with national laws and regulations protecting human rights.

The United Nations Guiding Principles on Business and Human Rights (hereinafter 'United Nations Guiding Principles'), ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, and Guidelines for Multinational Enterprises of the Organization for Economic Cooperation and Development (OECD) set the global standards for responsible business conduct. These provide specific guidance for governments and companies to fulfill their respective duties and responsibilities.

Various multilateral environmental agreements include provisions that concern business enterprises, for example, by obliging States to require or encourage entities that are in the business and industry sectors to share information regarding pollutants and chemicals that could directly affect civilians.

Under the Aarhus Convention, States must encourage industries whose activities have a significant impact on the environment to inform the public regularly of the impact their activities and products generate (Article 5, Par. 6). Moreover, the Kyiv Protocol on Pollutant Release and Transfer Registers obliges States to require certain private institutions to release information on the use of pollutants if the quantities exceed the maximum values established in the protocol or if they are transferred off-site (Article 7). The Escazú Agreement establishes that States Parties shall encourage private companies, in particular large companies, to prepare sustainability reports reflecting their social and environmental performance (Article 6, Par. 13).⁵⁹⁸ States parties to this agreement are responsible for promoting access to environmental information belonging to private entities. In this case, private entities are encouraged to share information on their operations and the possible risks and effects on human health and the environment (Article 6, Par 12).⁵⁹⁹ In terms of soft-law instruments, for instance, under Agenda 21 (Chapter 30), businesses are encouraged to promote cleaner production, as well as responsible entrepreneurship, which could involve establishing policies on sustainable development, and ethical management.

Additionally, business enterprises are subject to an increasing web of regional and national laws relevant to human rights related to the environment. Such laws (for instance, those protecting the environment, fundamental labor rights, or consumers; reporting requirements; or mandatory human rights and environmental due diligence regimes) can require businesses to avoid and/or address human rights harms connected to environmental impacts and may form the basis for legal liability.

⁵⁹⁷ UN Guiding Principles on Business and Human Rights directly (UNGP 1).

⁵⁹⁸ The Economic Commission for Latin America (2018). *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*. op. cit. p. 235.

⁵⁹⁹ Ibid.

The baseline expectations of business under international standards are found in the United Nations Guiding Principles,

which provide the internationally-accepted framework for enhancing standards and practices with regard to human rights. Under this framework, business enterprises are expected to “respect human rights”, meaning that they should (a) avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur, as well as (b) seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships (throughout their value chains). The responsibility to respect human rights refers to internationally recognized human rights, which included the right to a clean, healthy, and sustainable environment.

In order to meet their responsibility to respect human rights, business enterprises are expected to have in place policies and processes appropriate to their size and circumstances, including:

1. A publicly-available policy commitment to meet their responsibility to respect human rights,
2. Human rights due diligence process to identify, prevent, mitigate, and account for how they address their impacts on human rights and
3. Processes to enable the remediation of any adverse human rights impacts they caused or to which they contributed to by businesses.

“ **Businesses should consider all those who are or may be affected, including workers and environmental human rights defenders (who are at particular risk of intimidation, harassment, and attacks, including on their rights of peaceful assembly, freedom of association, opinion and expression).** ”

Human rights due diligence is a key tool for businesses to know and show that they respect human rights related to the environment. Under the Guiding Principles, human rights due diligence consists of:

- **Identifying and assessing any actual or potential adverse human rights impacts:** Business enterprises should continuously assess the adverse (environmental) human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. Such impacts could, for instance, be connected to the extraction or exploitation of natural resources (including water),⁶⁰⁰ pollution, hazardous substances⁶⁰¹ or the right to adequate food.⁶⁰² Businesses should consider all those who are or may be affected, including workers (see Section 3 of this report) and environmental human rights defenders (who are at particular risk of intimidation, harassment, and attacks, including on their rights of peaceful assembly, freedom of association, opinion and expression).⁶⁰³ The process of identifying and assessing such impacts should include meaningful consultation with these and other potentially affected stakeholders.

⁶⁰⁰ See, e.g., Office of the United Nations High Commissioner for Human Rights (2002). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 15: The right to water.* Document No. E/C.12/2002/11. op. cit. Articles. 11-12. p. 254. para. 23, 44(b). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/402/29/PDF/G0340229.pdf?OpenElement>

⁶⁰¹ See, e.g., United Nations General Assembly (2018). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Başkut Tunçak.* Report No. A/HRC/30/40. op. cit. p. 384.

⁶⁰² Office of the United Nations High Commissioner for Human Rights (2011). *United Nations Committee on Economic, Social and Cultural Rights. General Comment No. 12: The Right to Adequate Food (Art. 11).* op. cit. p. 252; As regards nutrition-based interventions and sustainable diets, see, e.g., *Report submitted by the Special Rapporteur on the right to food, Oliver De Schutter.* Report No. A/HRC/19/59. <https://www.unscn.org/uploads/web/news/A-HRC-19-59-0D1.DOC>.

⁶⁰³ See, e.g., United Nations General Assembly (2021). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule.* Report No. A/76/222. p. 220. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/203/78/PDF/N2120378.pdf?OpenElement>; United Nations General Assembly (2012). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai.* Report No. A/HRC/20/27. https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf; United Nations General Assembly (2015). *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai.* Report No. A/HRC/29/25. <https://daccess-ods.un.org/tmp/517478.659749031.html>.

- Integrating the findings and taking appropriate action to prevent and mitigate impacts:** Businesses should take the necessary steps to prevent and mitigate potential impacts on human rights related to the environment, whereas actual impacts (those that have already occurred) should be a subject for remediation. For instance, where businesses supply or use hazardous substances, measures to reduce potential harms could include disclosing the chemicals used and the risks they may pose to the environment and the health of individuals arising from the production, use, disposal or reuse of them.⁶⁰⁴ The Guiding Principles detail the different actions expected of a business enterprise depending on its connection to a harm. Where other entities share a connection to the harm, a business is expected to use whatever leverage it can mobilize over the entities with which it has business relationships to prevent or mitigate the harm (for instance to ensure compliance with climate and environmental standards, or to cooperate to address transboundary harms). If sufficient leverage is lacking, the business should consider ending the relationships, taking into account credible assessments of potential adverse human rights impacts of doing so.⁶⁰⁵
- Tracking the effectiveness of responses:** Businesses are expected to track the effectiveness of their responses to verify whether adverse impacts are actually being addressed. Such tracking should draw on a range of sources, including affected stakeholders.
- Communicating how they address their human rights impacts externally:** Businesses should account for how they address their impacts, for instance by publicly providing information that is sufficient to evaluate the adequacy of their response to harms of human rights related to the environment. This could involve reporting on what has been done to address emissions, the use and disposal of toxic chemicals, and environmental impacts more broadly.

Where a business identifies that it has caused or contributed to impacts on human rights related to the environment, whether through its human rights due diligence process or other means, its responsibility to respect human rights requires active engagement in remediation, by itself or in cooperation with other actors.⁶⁰⁶

For instance, Friends of the Earth Netherlands (Milieudefensie) and others⁶⁰⁷ filed a lawsuit before a Court in the Hague against Shell, for considering that this company's emissions represent a threat to the human rights to life and undisturbed family life. The Court found that indeed Shell's climate policy is not concrete enough threatening the rights to life of present and future generations, and ordered the company to reduce its net CO2 emissions by 45% by the end of 2030 (compared to 2019 levels). Now under appeal, the ruling sought to protecting the life of present and future generations by contributing to a safer climate.⁶⁰⁸

⁶⁰⁴ In some countries, businesses are not required to produce any information to determine the safety of a chemical before production by workers and use in products sold to consumers, such as toys and furniture. For 85 per cent of tens of thousands of new substances, regulators in one country did not receive any toxicity data from the chemical manufacturer when they were notified of the intent to manufacture the new substance. See, e.g., United Nations General Assembly (2018). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*. Başkut Tuncak. Report No. A/HRC/30/40. <https://documents-dds-ny.un.org/doc/UNDLOC/GEN/G15/152/14/PDF/G1515214.pdf?OpenElement>

See, also, United Nations General Assembly (2018). *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes*, Başkut Tuncak. Report No. A/73/567. <https://documents-dds-ny.un.org/doc/UNDLOC/GEN/N18/381/27/PDF/N1838127.pdf>; Strategic Approach to International Chemicals Management Preparatory Committee (2006). *Dubai Declaration on International Chemicals Management*, para. 20. <https://www.saicm.org/About/Overview/tabid/5522/language/en-US/Default.aspx>

⁶⁰⁵ Office of the United Nations High Commissioner for Human Rights (2011). *Guiding Principles on Business and Human Rights*, principle 19. https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf

⁶⁰⁶ See, e.g., Office of the United Nations High Commissioner for Human Rights (2011). *Guiding Principles on Business and Human Rights*, principle 22. <https://www.ohchr.org/en/business/ohchr-accountability-and-remedy-project>. See, also, United Nations General Assembly (2017). *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Human rights and transnational corporations and other business enterprises*. Report No. A/72/162. <https://documents-dds-ny.un.org/doc/UNDLOC/GEN/N17/218/65/PDF/N1721865.pdf>

⁶⁰⁷ Action Aid Netherlands, Both ENDS, Fossil Free Netherlands, Greenpeace Netherlands, Young Friends of the Earth Netherlands, and the Wadden Sea Association (Waddervereniging), along with 17,000 individuals as co-plaintiffs.

⁶⁰⁸ The Netherlands, The Hague District Court (2019). *Case of Milieudefensie et al. v. Royal Dutch Shell plc*. Climate Change Litigation Database. Accessed December 18, 2023. <https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>

In 2015, Greenpeace Southeast Asia, along with various organizations and individuals, urged the Commission on Human Rights of the Philippines (CHRP) to examine the human rights implications of climate change and ocean acidification. The focus was on whether Carbon Majors, investor-owned entities, violated the rights of people in The Philippines. The petition named 50 publicly traded corporations, citing the UN Human Rights Commission's Guiding Principles on Business and Human Rights. In December 2019, the CHRP determined that while legal responsibility for climate damage isn't covered by current international human rights law, fossil fuel companies bear a moral responsibility, and individual countries must enact strong legislation and establish legal liability. The May 2022 final report concluded that major fossil fuel companies are obligated to respect human rights in accordance with the United Nations Guiding Principles on Business and Human Rights. The report identified their contributions to global emissions, willful obfuscation of climate science, and investments in speculative oil explorations as potential grounds for liability. Emphasizing the importance of corporate responsibility, the report highlighted the need for human rights due diligence and remediation to address abuses arising from business operations.⁶⁰⁹

A number of resources are available that detail the implications of international standards on responsible business conduct in the context of harms to human rights related to the environment, as well as additional measures that could be considered to avoid and address such harms, for instance in relation to climate change,⁶¹⁰ corporate political engagement,⁶¹¹ the right to adequate food,⁶¹² and environmental human rights defenders.⁶¹³



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⁶⁰⁹ Commission on Human Rights of the Philippines (2022). *National Inquiry on Climate Change Report*. https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20220506_Case-No.-CHR-NI-2016-0001_judgment-1.pdf

⁶¹⁰ Office of the United Nations High Commissioner for Human Rights (2020). *Key Messages on human rights, climate change and business*. <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/KMBusiness.pdf>

⁶¹¹ See, e.g., United Nations General Assembly (2017). *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Corporate influence in the political and regulatory sphere: ensuring business practice in line with the Guiding Principles on Business and Human Rights*. Report No. A/77/201. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/432/83/PDF/N2243283.pdf>

⁶¹² See, e.g., Office of the United Nations High Commissioner for Human Rights (2016). *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*. Report No. A/71/291. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/249/06/PDF/N1624906.pdf>; Committee on Economic, Social and Cultural Rights (1999). *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*. <https://www.refworld.org/pdfid/4538838c11.pdf>

⁶¹³ See, e.g., United Nations General Assembly (2021). *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Report No. A/HRC/47/39/Add.2; Report of Special Rapporteur on the situation of human rights defenders, Michel Forst. Report No. A/72/170; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. Report No. A/HRC/29/25.*

5. MONITORING AND ENFORCEMENT MECHANISMS

The international human rights mechanisms provide an avenue for individuals affected by environmental degradation or whose human rights related to the environment have been violated, to prevent or respond to such impacts. These mechanisms can help secure or catalyze State action to improve human rights implementation whenever such violations occur as a result of the failure of the State to fulfill its human rights obligations, either by action or omission, including not regulating non-State actors.

5.1 International human rights mechanisms

At the United Nations level, three main mechanisms have been established to improve States' implementation of their international human rights obligations. Two of them, namely, the Treaty Bodies and Special Procedures, can receive communications from individuals and groups regarding violations to their human rights or human rights concerns.

A. Treaty bodies

The Treaty Bodies are committees of experts created under specific human rights agreements to monitor compliance with and promote the implementation of the obligations contained in the Core Human Rights Treaties.

There are three principal avenues through which the Treaty Bodies achieve this objective:

First, States that ratify or accede to a relevant treaty undertake to present, for consideration by the Committee, periodic reports on the relevant measures adopted to implement the relevant convention, and therefore, to fulfill their obligations thereto. The relevant Committee studies the reports, engages in dialogue with the State Party concerned, and presents recommendations and observations for improved implementation. Based on the resulting conclusions, the Secretary-General may, after consultation with the relevant Committee, transmit this information 'to the specialized [United Nations] agencies concerned'⁶¹⁴ for follow-up (e.g., to provide capacity-building or technical assistance).

Second, State Parties may bring to the attention of the Committee the failure by another State Party to comply with the obligations established in the relevant covenant. The Committee will then make efforts to address and solve the situation.

Third, Treaty Bodies may receive and consider communications from individuals or groups of individuals within the jurisdiction of State Parties that have accepted or declare this competence. These communications or complaints bring to the attention of the Committee allegations of violations. The Committee in turn transmits them to the concerned State, requesting 'written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.'⁶¹⁵ On the basis of the information received, the Committee concludes the procedure by presenting concrete observations and recommendations, if any, to the State Party concerned and to the petitioner.

⁶¹⁴ United Nations (2009). *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*. HRI/GEN/2/Rev.6. https://www.ohchr.org/Documents/HRBodies/TB/HRI-GEN-2-REV-6_en.doc

⁶¹⁵ United Nations General Assembly (1965). *International Convention on the Elimination of All Forms of Racial Discrimination*. www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial

BOX 30. EXAMPLES OF RECOMMENDATIONS PRESENTED BY THE TREATY BODIES TO ENSURE INCREASED COMPLIANCE BY STATES WITH HUMAN RIGHTS RELATED TO THE ENVIRONMENT

'The Committee urges the State party to enforce the moratorium on concessions until the mapping and zoning exercise is completed and to ensure that future forest concessions do not deprive the indigenous peoples of the full enjoyment of their rights to their ancestral lands and natural resources, and that the benefits thereof contribute to their poverty alleviation. The State party should ensure that forestry projects are centered on advancing the rights of forest-dependent peoples and conducted only after comprehensive studies are carried out, with the participation of the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned activities. The Committee encourages the State party to consider ratifying ILO Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries.'

CESCR Committee, 2019, Periodic Review of the Democratic Republic of the Congo

'The Committee recommends that the State party conduct an assessment of the effects of polluted air, water and soil on children's health, as a basis for designing a well-resourced strategy to remedy the situation and regulate the maximum concentrations of air and water pollutants.'

CRC Committee, 2016, Periodic Review of Pakistan

'In the light of general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights and given the fact that extractive industries continue to cause the destruction of lands, ecosystems and the livelihoods of families, in particular indigenous families with children, and forcing them into situations of internal displacement, the Committee recommends that the State party establish and implement regulations to ensure that extractive industries comply with international and national human rights, labour, environment and other standards, particularly with regard to children's rights.'

CRC Committee, 2017, Periodic Review of the Democratic Republic of the Congo

'Ensure that prior consultations on the implementation of natural resource development projects, including mining projects, that are to be conducted on indigenous peoples' lands or in their territories are carried out in each and every case and in a systematic, timely and reasonable manner and that the indigenous peoples concerned are provided with sufficient and appropriate information.'

CERD Committee, 2018, Periodic Review of Peru





'Include a gender perspective in national policies and action plans relating to climate change, disaster response and risk reduction, as well as to the negative environmental and socioeconomic consequences of industrial operations, principally those of the mining sector, focusing on women not only as victims but also as active participants in the formulation and implementation of such policies.'

CEDAW Committee, 2016, Periodic Review of Mongolia

'The State party should continue and expand its efforts to develop its resilience to climate change through adaptation and mitigation measures. All projects that affect sustainable development and resilience to climate change should be developed with the meaningful and informed participation of the affected population, including indigenous peoples.'

Human Rights Committee, 2021, Periodic Review of Kenya

Revista Energiminas - La Oroya v. Perú



B. Special Procedures

United Nations Special Procedures are considered 'the eyes and ears' of the international human rights system. Special Procedures are independent experts in their respective human rights field, hailing from States and the United Nations. Their objective is to increase understanding and implementation of human rights through reports and advice, from a thematic or a country-specific perspective.

While the Treaty Bodies' capacity is limited to only examining the human rights situations of the State parties to their respective covenants, the Special Procedures mechanism has been created to ensure the promotion and protection of everyone's human rights everywhere. This means that Special Procedures' capacity is not bound by treaty ratification, nor do their sources of information depend on submissions by United Nations Member States.

Special Procedures contribute to improved human rights implementation in three main ways:

First, **mandate holders carry out country missions at the invitation of States**. Some States have extended standing invitations, namely, an open invitation to all Special Procedures to undertake country missions. By extending such an invitation, States announce that they will always accept visit requests from all thematic mandates. Through visits, mandate-holders are able to assess and gain a first-hand understanding of a State's progress and obstacles in promoting and protecting the right(s) covered by the mandate. Special Procedures can also provide counsel to duty-bearers on how to overcome challenges and drive progress. After concluding a mission, Special Procedures mandate-holders present a report containing their main findings and recommendations to the State concerned and to the Council. These recommendations offer tailored assistance. Field missions also allow Special Procedures to offer face-to-face support to vulnerable or marginalized groups, civil society organizations, and victims of human rights violations, and to engage with

United Nations Country Teams and other development partners to mobilize international support for improved implementation.

Second, Special Procedures, like Treaty Bodies, **can receive and act upon individual complaints or petitions alleging violations of rights**. Individuals from any country in the world can submit a complaint to the mandate-holders they consider appropriate. There are no formal requirements to present a complaint before a Special Procedure mandate-holder, and individuals are not required to exhaust local remedies prior to submitting a complaint to the Special Procedures.

Individuals or groups may submit complaints regarding past, ongoing or potential human rights violations, or 'concerns relating to bills, legislation, policies or practices that do not comply with international human rights law and standards.'⁶¹⁶ OHCHR has developed a guide for interested individuals or groups.⁶¹⁷

Where the relevant mandate-holder finds a complaint to be admissible, they communicate with the State concerned to seek information on the allegations made and measures taken to prevent, stop or provide due remedy and redress for the corresponding human rights violations. Petitions represent a direct mechanism for individuals to interact with the United Nations system.

Finally, **thematic Special Procedures mandate holders produce annual reports** (presented to the Council and also often to the Third Committee of the General Assembly), which seek to explore, clarify and set-down human rights norms related to their mandate. Thematic mandate holders will sometimes take this norm-setting role one stage further by proposing the drafting of international standards, guidelines, or other soft-law instruments.

It is important to note, however, that the recommendations and the communications issued by Special Procedures mandate holders are not binding.

⁶¹⁶ United Nations General Assembly (n.d.). What are Communications? <https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications>

⁶¹⁷ Ibid.

BOX 31. EXAMPLES OF RECOMMENDATIONS PRESENTED BY THE SPECIAL PROCEDURES TO SECURE INCREASED COMPLIANCE BY STATES WITH HUMAN RIGHTS RELATED TO THE ENVIRONMENT

'To comply with their human rights obligations, developed States and other large emitters must reduce their emissions at a rate consistent with their international commitments. To meet the Paris target of limiting warming to 1.5°C, States must submit ambitious nationally determined contributions by 2020 that will put the world on track to reducing greenhouse gas emissions by at least 45 per cent by 2030 (as calculated by the Intergovernmental Panel on Climate Change). All States should prepare rights-based deep decarbonization plans intended to achieve net zero carbon emissions by 2050, in accordance with article 4, paragraph 19, of the Paris Agreement. Four main categories of actions must be taken: addressing society's addiction to fossil fuels; accelerating other mitigation actions; protecting vulnerable people from climate impacts; and providing unprecedented levels of financial support to least developed countries and small island developing States.'

SR on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, 2019, Thematic Report

The Special Rapporteur calls on the Human Rights Council to urgently study the impact of climate change on human rights generally and the right to the highest attainable standard of health in particular.

SR on the right to health, 2007, Thematic Report

'The Special Rapporteur calls on the Human Rights Council to urgently study the impact of climate change on human rights generally and the right to the highest attainable standard of health in particular.'

SR on the right to health, 2007, Thematic Report

'Research, investigate, provide information, and build policies on the impacts of extractive and agricultural industries on the right to health in specific areas of the country, where the population is exposed to dangerous chemicals and the water and soil where they live are polluted.'

Special Rapporteur on the right to health, 2020, Report on the mandate-holder's visit to Ecuador

'Strengthen environmental governance to address the destruction of nature as an essential measure to prevent exposure to health hazards, such as further outbreaks of zoonotic diseases, creating effective long-term collaboration between stakeholders, including policymakers and local communities.'

Special Rapporteur on toxics and human rights, 2020, Thematic report



◀ 'Adopt all necessary measures to ensure that individuals, organizations, communities, and indigenous people exercising their rights to freedom of peaceful assembly and of association in support of climate justice are not subject to attacks, harassment, threats, and intimidation, including conducting thorough, prompt, effective and impartial investigations into killings and violence against civil society actors, ensuring that perpetrators are brought to justice and refraining from issuing official and unofficial statements stigmatizing civil society groups engaged in climate justice.'

Special Rapporteur on freedom of peaceful assembly and of association, 2021, Thematic report

'Brazil should also eliminate tax incentives and subsidies for pesticides; revise permissible maximum residue levels; ban aerial spraying; prohibit the use of pesticides near dwellings, schools, water resources, protected areas, and agroecological production; introduce three-to-five-year limits for the registration of pesticides; promote the agroecological transition via Government subsidies; and establish a technical agency focusing on organic and ecological pesticides. In line with the right to benefit from scientific progress and its applications stated in article 15 of the ICESCR, the Government should disseminate scientific information in society on the risks and impacts of pesticides, provide information for consumers regarding the risks of pesticides, and systematically train public health professionals on the effects of pesticides on the population's health, including their reproductive health.'

Mandates of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes; the Working Group of Experts on People of African Descent; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to food; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the rights of indigenous peoples; the Independent Expert on the enjoyment of all human rights by older persons; the Special Rapporteur on the human rights to safe drinking water and sanitation and the Working Group on discrimination against women and girls, 2002, Joint Allegation Letter submitted to Brazil, AL BRA 8/2022



◀

'We wish to draw your attention that under the United Nations Guiding Principles on Business and Human Rights (United Nations Guiding Principles), the State has a duty to protect against actual and potential negative impact caused by business operations on human rights and the environment. This requires taking appropriate steps to prevent, investigate, punish, and redress such abuse through effective policies, legislation, regulations, and adjudication (Guiding principle 1). In this context, we would like to remind your Excellency's Government of the importance of ensuring that the provisions of the new trade agreement with Kenya comply with the obligation of the United States of America under the United Nations Guiding Principles, more particularly with the duty of your Excellency's Government to protect against actual and potential negative impacts caused or contributed by or linked to business operations on human rights and the environment by taking appropriate steps to prevent, investigate, mitigate and remedy such abuse through effective policies, legislation, regulations and adjudication.'

Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on the promotion of a democratic and equitable international order; the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, 2021, Letter submitted to the United States, OL USA 24/2021

'To reduce the risk of zoonotic pandemics and their devastating impacts on health and human rights, urgent action is required to target the key drivers, including deforestation, agricultural intensification and the wildlife trade. States should: (a) End deforestation and the conversion of wildlife habitat for agriculture, settlements and infrastructure; (b) Strictly regulate wildlife trade by targeting illegal, unsustainable and unhygienic practices and high-risk species while supporting sustainable trade in wildlife that fulfills the rights to food and livelihood for poor and marginalized rural populations and contributes to protecting species and their habitat; (c) Tighten regulations for industrial agriculture, including biosecurity measures to prevent transmission of infectious diseases from wildlife and livestock to people; (d) Monitor high-risk wildlife and vulnerable human populations, focusing on hotspots of emerging infectious diseases and high-risk interfaces between wildlife, livestock and humans; (e) Systematically implement a "One Health" approach, an integrated strategy for the complex interconnections between humans, animals and ecosystems, both internationally (through collaboration among WHO, FAO, UNEP and the World Organisation for Animal Health) and nationally (through cooperation among health, agriculture and environmental agencies).'

SR on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment, 2020, Thematic Report

C. Universal Periodic Review

When United Nations Member States adopted General Assembly resolution 60/251 establishing the Human Rights Council, States agreed that the newly formed Council would 'undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States.'

The Universal Periodic Review (UPR) mechanism was formally established in the Council's institution-building package contained in resolution 5/1. The main input of the UPR is a national report submitted by the State under review. The report is presented to the UPR Working Group, composed of the 47 members of the Council. Only States are allowed to speak during the review and to present recommendations to the State under review, although stakeholders, including non-governmental organizations, can attend the UPR Working Group sessions. The reviews are also based on information contained in the Special Procedures, Treaty Bodies and United Nations entities reports and on information from other stakeholders including national human rights institutions and non-governmental organizations.

When receiving the recommendations, States under review are entitled to decide whether to accept or merely take note of them. The final outcome is then considered during the regular session of the Human Rights Council. Stakeholders are able to participate and present statements during this session.

UPR recommendations are not binding. However, resolution 16/21 stipulated that 'States may request the United Nations representation at the national or regional level to assist them in the implementation of follow-up to their review [...] The Office of the United Nations High Commissioner for Human Rights may act as a clearing house for such assistance.'

In addition to catalyzing capacity-building for the State under review, the UPR can contribute to increased implementation of human rights norms and standards because 'peer-to-peer dialogue and recommendation, especially when it involves senior members of national governments, can help persuade States (that might otherwise be unmoved by independent experts) to: provide a more honest 'assessment of positive developments and challenges faced, '[fulfill their] human rights obligations and commitments;' 'share best practices;' and improve overall 'cooperation and engagement with the Council.'⁶¹⁸

“ UPR recommendations are not binding. However, resolution 16/21 stipulated that 'States may request the United Nations representation at the national or regional level to assist them in the implementation of follow-up to their review. ”

⁶¹⁸ Limon, M., & Montoya, M. (2019). *Clustering and the integrated implementation of recommendations: The key to unlocking the complementary power of the United Nations's compliance mechanisms*. https://www.universal-rights.org/wp-content/uploads/2019/06/Clustering_and_the_integrate.pdf

BOX 32. EXAMPLES OF RECOMMENDATIONS PRESENTED DURING THE UNIVERSAL PERIODIC REVIEW TO SECURE INCREASED COMPLIANCE BY STATES WITH HUMAN RIGHTS RELATED TO THE ENVIRONMENT

'Pursue its efforts in incorporating sustainable environmental development into its policies, considering the impact of natural disaster and degradation of natural resources on human rights despite all existing challenges.'

Recommendation presented by Palestine, Periodic Review of Bangladesh, 1st UPR cycle

'Continue and strengthen with international cooperation its efforts in environmental conservation and protection, which contribute significantly to global efforts to safeguard the common heritage of mankind.'

Recommendation presented by Iran, Periodic Review of Bhutan, 1st UPR cycle

'Adopt a comprehensive approach that includes providing a healthy environment, safe water and sanitation and proper childcare, encouraging exclusive breastfeeding, and improving the education and the health of mothers, in order to reduce the mortality rate of children under 5.'

Recommendation presented by Ireland, Periodic Review of Bhutan, 2nd UPR cycle

'Review, with a human rights approach, the legal framework for the promotion of investment so that provisions favor industries which respect human rights and the environment.'

Recommendation presented by Costa Rica, Periodic Review of Burkina Faso, 2nd UPR cycle

'Ensure the full and meaningful participation of affected communities in the preparation of environmental impact assessments prior to the approval of major projects.'

Recommendation presented by Botswana, Periodic Review of Australia, 3rd UPR cycle

'Ensure that the implementation of its climate change policies and resiliency frameworks are gender-responsive and disability-inclusive, consistent with the United Nations Framework Convention on Climate Change and the Sendai Framework for Disaster Risk Reduction, to address the economic, cultural and social impacts and challenges that climate change represents, for the full and effective enjoyment of human rights for all.'

Recommendation presented by Fiji, Periodic Review of Lesotho, 3rd UPR cycle

5.2 Multilateral Environmental Agreements compliance mechanisms

Centre for Justice, Governance and Environmental Action (CJGEA) - CJGEA v. Kenya

Compliance mechanisms are the systems adopted under MEAs to promote implementation of each relevant agreement. Most of these mechanisms are based on periodic reports submitted by the State parties and can be defined as performance reviews, responses to non-compliance, or dispute settlement procedures.⁶¹⁹

Only four of the Multilateral Environmental Agreements that directly or indirectly reference human rights related to the environment accept communications from the public, namely: the International Treaty on Plant Genetic Resources for Food and Agriculture, the Aarhus Convention, the protocol on water and health, and the Kyiv Protocol on PRTRs (see Table 3).

At the regional level, the Carpathian Convention allows these types of complaints, and the draft Rules of Procedure of the Escazú Agreement also include this avenue for increased implementation (See Table 3).

“ **Compliance mechanisms are the systems adopted under MEAs to promote implementation of each relevant agreement.** ”



⁶¹⁹ United Nations Environment Programme (n.d.). *Compliance Mechanisms under Selected Multilateral Environmental Agreements*. <https://wedocs.unep.org/bitstream/handle/20.500.11822/7507/-Compliance%20Mechanisms%20under%20selected%20Multilateral%20Environmental%20Agreements-2007761.pdf?sequence=3&isAllowed=>

BOX 33. SPECIAL RAPPORTEUR ON ENVIRONMENTAL DEFENDERS UNDER THE AARHUS CONVENTION⁶²⁰

In 2021, to work towards enhanced implementation of the Convention and increase protection of environmental human rights defenders, State parties to the Aarhus Convention agreed to establish a rapid response mechanism, in the form of a Special Rapporteur, in charge of taking measures to protect any person at risk of penalization, persecution, or harassment for seeking to exercise their rights under the Convention.

The Special Rapporteur on Environmental Defenders is the first established under an international legally binding instrument, and the first human rights compliance mechanism ever created under an MEA. The mechanism will contribute to increased implementation of the right to a clean, healthy, and sustainable environment and the right to defend human rights, among others.

The Special Rapporteur has authority to receive communications from any member of the public (individual or organizations), State parties to the Aarhus Convention, or the Aarhus Convention Secretariat. Complainants are not required to exhaust local remedies and the information they submit may be kept confidential, if so desired.

*'This landmark decision is a clear signal to environmental defenders that they will not be left unprotected. It demonstrates a new level of commitment to upholding the public's rights under the Aarhus Convention, as well as Parties' willingness to respond effectively to grave and real-time challenges seen in the Convention's implementation on the ground.'*⁶²¹

⁶²⁰ See, e.g., United Nations Economic Commission for Europe (2022). *Extraordinary session of the Meeting of the Parties to the Aarhus Convention*. <https://unece.org/environmental-policy/events/extraordinary-session-meeting-parties-aarhus-convention-0>

⁶²¹ United Nations (2021). *Landmark decision gives legal teeth to protect environmental defenders*. <https://news.un.org/en/story/2021/10/1103792>

5.3 Regional human rights mechanisms

At the regional level, States have created a series of monitoring and implementation mechanisms that seek to increase on the ground compliance with human rights norms.

A. African System

In 1981, African States members of the Organization of African Unity (which in 2001 was legally changed to the African Union (AU)) adopted the 'African Charter on Human and Peoples' Rights.' This treaty is the main regional human rights instrument in Africa and compliance with it is overseen by the ACHPR and the African Court on Human and Peoples' Rights.

I. African Commission on Human and Peoples' Rights (ACHPR)

The ACHPR is a quasi-judicial body tasked with interpreting the African Charter and promoting and protecting human rights and collective rights throughout the African continent. To achieve this, the ACHPR considers States' reports on their measures for implementation, receives and acts upon inter-State and individual complaints of violations of the African Charter, and creates various Special Mechanisms.

Inter-State communications

Inter-State communications are complaints of violations submitted by State parties to the African Charter claiming that another State party has violated one or more of the provisions thereto (articles 48 and 49). There are two types of inter-State communications:

Under article 48 of the African Charter, the ACHPR receives and considers complaints three months or later following a State's failed attempt to settle a dispute with the other State regarding the implementation of the Charter.

Under article 49, States not willing to enter into bilateral negotiations with other State parties directly submit allegations of human rights violations to the ACHPR; in this case the Secretary General of the Organization of African Unity is also notified.

In both cases, communications must be addressed to the Chairman of the Commission; the State party accused of human rights violations must be notified; and local remedies must be exhausted.

After finding a communication admissible, the Commission requests both States to submit any relevant information, based on which it tries to achieve a friendly settlement. It then prepares a report with recommendations that is submitted to the OAU Assembly.

“ The ACHPR considers States' reports on their measures for implementation, receives and acts upon inter-State and individual complaints of violations of the African Charter, and creates various Special Mechanisms. ”

Other types of Communications

Any person or organization can submit communications to the ACHPR bringing to its consideration alleged violations to their human rights, within a reasonable period of time (the Charter does not set concrete time limits) after having exhausted local remedies or after demonstrating undue delay of processes to exhaust local remedies.

Victims or individuals affected by human rights violations may, following certain requirements,⁶²² file communications on their own behalf, directly, without requiring legal representation. No specific documents, formal complaints or formats are required.

Communications can address acts or omissions by any State party to the African Charter. It is not necessary to demonstrate massive or consistent patterns of violations.

In cases in which the victim's life, personal integrity or health is in imminent danger, the ACHPR has the authority 'to adopt provisional measures, urging the State concerned not to take any action that will cause irreparable damage to the victim until the case has been heard by the Commission. The Commission can also adopt other urgent measures as it sees fit.'⁶²³

The final decisions adopted by the ACHPR are called recommendations. These recommendations seek to prevent or halt human rights violations and secure the investigation of the relevant facts and access to remedies and redress by the complainants. Final recommendations are confidential and 'are included in the Commissioner's Annual Activity Reports which are submitted to the OAU [Organization of African Unity] Assembly of Heads of State and Government in conformity with article 54 of the Charter. If they are adopted, they become [public and] binding on the State parties and are published.'⁶²⁴

Examples of these resulting recommendations including the final decisions adopted in *SERAC and CESR v. Nigeria* (See Case 27) and Centre for Minority Rights Development and Minority Rights Group International on behalf of *Endorois Welfare Council v. Kenya*.

The ACHPR has not established a procedure to supervise the implementation of its recommendations, and there is no enforcement mechanism that can compel States to do so. However, the Secretariat regularly sends reminder letters calling upon concerned States to observe their obligations under the Charter.

Independent from the capacity to supervise implementation, the final decisions of the ACHPR have contributed to clarify African States' human rights obligations under the African Charter and the scope of the Charter itself. A remarkable example is that, in *SERAC and CESR v. Nigeria*, for example, the ACHPR explain that African States have the obligation to realize the right to adequate housing, even if this right is not expressly enshrined in this instrument, as it derives from the rights to property, health and family.

“ The ACHPR has not established a procedure to supervise the implementation of its recommendations, and there is no enforcement mechanism that can compel States to do so. ”

⁶²² African Commission on Human and Peoples' Rights (2021). *Guidelines for submitting complaints*. <https://achpr.au.int/en/guidelines-submitting-complaints>

⁶²³ Ibid.

⁶²⁴ African Commission on Human and Peoples' Rights (2021). *Communications Procedure*. <https://achpr.au.int/en/communications-procedure>

CASE 26. SOCIAL AND ECONOMIC RIGHTS ACTION CENTER (SERAC) & THE CENTER FOR ECONOMIC AND SOCIAL RIGHTS (CESR) V. NIGERIA

In 2001, the Social and Economic Rights Action Center (SERAC) & the Center for Economic and Social Rights (CESR) filed a communication before the ACHPR on Human Rights, alleging that Nigeria had violated, *inter alia*, the rights to life and to a healthy environment of the Ogoni people.

SERAC and CESR argued that the oil consortium composed by the Nigerian National Petroleum Company - NNPC, in which the Military was majority shareholder, and the private company Shell, 'exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, disposing toxic wastes into the environment and local waterways in violation of applicable international environmental standards.'⁶²⁵ SERAC and CESR further alleged that the Ogoni people were being subject of harassment and attacks, including to their life, integrity and property.

The ACHPR explained that under the right to a healthy environment, the State has 'to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources.'⁶²⁶ The right to a healthy environment also requires States to conduct or permit independent scientific monitoring of threatened environments, and realizing the rights to access to information and participation of the affected communities, including through EAs.⁶²⁷

The ACHPR explained that 'undoubtedly and admittedly, the government of Nigeria through NNPC has the right to produce oil, the income from which will be used to fulfill the economic and social rights of Nigerians.'⁶²⁸ However, it also has the obligation to fulfill the human rights of the affected communities, 'not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties.'⁶²⁹ This includes, securing that oil-related activities comply with applicable environmental and human rights norms and standards.

Importantly, the ACHPR explained that 'although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected.'⁶³⁰ Hence, the government has the duty not to destroy housing, and to abstain from tolerating practices, policies or measures that infringe upon people's right to use their resources, including housing.



⁶²⁵ African Commission on Human & Peoples' Rights (2002). *Case of the Social and Economic Action Rights Centre and Centre for Economic and Social Rights v. Federal Republic of Nigeria*. Document No. ACHPR/COMM/A044/1. <https://www.escri-net.org/sites/default/files/serac.pdf>

⁶²⁶ Ibid.

⁶²⁷ Ibid.

⁶²⁸ Ibid. para 54.

⁶²⁹ Ibid. para 57.

⁶³⁰ Ibid. para 60.

The ACHPR made several rulings regarding the rights of the Ogoni people. It determined that the government's failure to prevent pollution and ecological degradation resulted in violations of the Ogoni's right to health (Article 16) and their right to a general satisfactory environment favorable to development (Article 24). Additionally, the ACHPR concluded that the State's negligence in monitoring oil activities and involving local communities in decision-making processes infringed upon the Ogoni people's right to freely dispose of their wealth and natural resources (Article 21). Although the ACHPR did not provide a clear definition of a 'people,' it suggested that the failure to provide material benefits for the Ogoni people also constituted a violation.

Furthermore, the ACHPR found that the destruction of housing and the harassment of residents who returned to rebuild their homes violated the implied right to housing, which is derived from the explicit rights to property, health, and family. Lastly, the destruction and contamination of crops, caused by both government and non-State actors, constituted a violation of the duty to respect and protect the implied right to food.

The ACHPR, therefore, appealed to State of Nigeria to stop attacks against the Ogoni communities and permit their access to their territory, protect the environment through EAs and the safe operation of future oil activities through effective and independent oversight bodies for the petroleum industry. The ACHPR also urged the State to address environmental concerns and enact laws to address environmental and social problems in the Niger Delta and other oil producing areas in Nigeria, and to investigate human rights violations.



Photo Yasuyoshi Chiba - via AFP Getty Images - Niger Delta Waiting for Big Oil to Clean Up Devastating Pollution

Special Mechanisms

The ACHPR has established Special Mechanisms to present measures for increased recommendation of the African Charter. The Special Mechanisms present regular reports on their work at each ordinary session of the ACHPR and may also undertake country visits. At the moment, there are 12 active thematic Special Mechanisms:⁶³¹

1. Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa
2. Special Rapporteur on Rights of Women in Africa
3. Working Group on Indigenous Populations/Communities and Minorities in Africa
4. Special Rapporteur on Freedom of Expression and Access to Information
5. Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa
6. Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrant in Africa
7. Committee For the Prevention of Torture in Africa
8. Working Group on Economic, Social and Cultural Rights
9. Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa
10. Working Group on Rights of Older Persons and People with Disabilities
11. Working Group on Extractive Industries, Environment and Human Rights Violations In Africa
12. Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable To and Affected by HIV

“ The ACHPR explained that under the right to a healthy environment, the State has ‘to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure ecologically sustainable development and use of natural resources. ”

⁶³¹ African Commission on Human and Peoples' Rights (2023). *Special Mechanisms*. <https://achpr.au.int/en/special-mechanisms>

BOX 34. WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS IN AFRICA

One of the Special Mechanisms created by the ACHPR is mandated to study, report, and present recommendations on the impact of extractive industries on human rights in Africa, with a view to ensuring that economic cooperation with transnational extractive companies contributes — rather than hinders — sustainable development in the region.

The mandate includes conducting research on human rights violations in this context, to develop a 'comprehensive and systematic continental framework for monitoring, reporting on and availing redress for human rights abuses in the extractive industries.'⁶³²

Based on the work of the Working Group, the ACHPR adopted a 'Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector.'

In the resolution, the ACHPR expresses concern with 'the increasing destruction with impunity of the environment and ecosystems resulting from poorly regulated activities of the extractive industries in Africa;' reiterates 'the primary responsibility of State parties to prevent and provide redress in accordance with the African Charter for all forms of violations of human and peoples' rights, including violations involving non-state actors,' and affirms 'that extractive industries have the legal obligation to respect the rights guaranteed in the African Charter.' It, therefore, requests State parties of the African Charter to adopt relevant and enforceable legislation to secure that the operations of all extractive industries are aligned with the provisions set in this human rights instrument, as well as with relevant international rules and standards, and requires the full observance by the States and extractive industries of communities and individuals' environmental procedural rights.⁶³³

The resolution further '[u]rges State parties to adopt laws and regulations aimed at easing the transition of affected communities from economic dependence on extractive industries to reliance on other livelihoods when activities of extractive industries are closed down, in line with regional and international human rights laws and principles.'⁶³⁴

⁶³² African Commission on Human and Peoples' Rights (2022). *Working Group on Extractive Industries, Environment and Human Rights Violations in Africa*. <https://achpr.au.int/en/intersession-activity-reports/working-group-extractive-industries-environment-and-human-rights-3>

⁶³³ African Commission on Human and Peoples' Rights (2017). *Resolution on the Niamey Declaration on Ensuring the Upholding of the African Charter in the Extractive Industries Sector*. <https://www.acdhrs.org/wp-content/uploads/2017/07/Resolution-on-the-Niamey-Declaration-on-Ensuring-the-Upholding-of-the-African-Charter-in-the-Extractive-Industries-Sector-.pdf>

⁶³⁴ Ibid.

Coal fired power station with pollution emissions - Envato Elements



II. African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (African Court) is a judicial body established in 2004 following the entry into force of the Protocol on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol).

Contentious cases

The African Court has jurisdiction to decide on cases and disputes submitted to it concerning the interpretation and application of the African Charter, the African Court Protocol, and any other relevant human rights instrument ratified by the States concerned. The Court's decisions are final and binding on all State parties to the Protocol.⁶³⁵

Claims can be presented by individuals; NGOs with Observer Status before the ACHPR; State parties to the Protocol who have lodged a complaint at the ACHPR or against whom a complaint has been lodged; States whose citizen is a victim of a human rights violation; the ACHPR or other African intergovernmental organizations (Article 5 of the African Court Protocol).

Allegations must 'relate to violations of human rights contained in the African Charter on Human and Peoples' Rights or any other human rights instrument ratified by the State concerned.' Such violations must 'have occurred after the State concerned ratified the Protocol' and 'have taken place in the State concerned.'⁶³⁶

The African Court has published an application form for these allegations.⁶³⁷

'The Court must render its judgement within ninety (90) days of having completed its deliberations' (Article 28). In its final decision, the Court can order States to cease acts or omissions leading to human rights violations and order States to provide effective remedies and redress. The Court is also entitled to order interim or provisional measures in cases of emergency, to prevent irreparable harm to people's rights.

States undertake to comply with the African Court's judgements, and the Court must report to the ACHPR whether or not States have observed its decisions.

Advisory opinions

Article 4 of the African Charter gives the African Court jurisdiction to issue advisory opinions on 'any legal matter relating to the Charter or other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the ACHPR.' The advisory opinion of the African Court may be requested by the OAU, member States of the OAU, OAU organs and any African organization recognized by the OAU.

⁶³⁵ African Commission on Human and Peoples' Rights (1998). *Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights*. <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-establishment-african-court-human-and>

⁶³⁶ African Court on Human and Peoples' Rights (n.d.). *How to File a Case*. <https://www.african-court.org/wpafc/how-to-file-a-case/>

⁶³⁷ See, e.g. Ibid and African Court on Human and Peoples' Rights (2020). *Fact Sheet on Filing Reparation Claims*. <https://www.african-court.org/wp-content/uploads/2020/10/FACT-SHEET-ON-FILING-REPARATION-CLAIMS-Revised-October-2020.pdf>



B. The Inter-American System

In the Americas, the Inter-American system for the protection of human rights was established within the region's intergovernmental organization, namely, the Organization of American States (OAS). The OAS first adopted a declaration of principles in 1948, the soft-law American Declaration on the Rights and Duties of Man, which then informed a legally binding treaty, the American Convention on Human Rights (hereinafter 'the American Convention'), which entered into force in 1978. The Inter-American System has two implementation mechanisms: IACHR and the IACtHR.

I. The Inter-American Commission on Human Rights (IACHR)

The IACHR is a quasi-judicial, quasi-political body established under the OAS Charter and the American Convention 'to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter.'⁶³⁸ It receives individual petitions, monitors the human rights situation in member States and addresses priority thematic issues.

“ The IACHR may seek a friendly settlement to all disputes, and may issue interim measures in cases of emergency, to prevent irreparable harm to people. ”

Complaints system

'Any person or group of persons, or any non-governmental entity legally recognized in one or more member States of the Organization [OAS], may lodge petitions with the (Inter-American) Commission containing denunciations or complaints of violation of this Convention by a State Party.' (Article 44, American Convention).

Petitions should be sent using the IACHR's template, preferably in the States' official language and must include the information required by the Commission.

The IACHR may seek a friendly settlement to all disputes, and may issue interim measures in cases of emergency, to prevent irreparable harm to people (Article 25 of the American Convention). The objective of these measures is to preserve a legal situation or the subject of a petition by preventing the execution of judicial, administrative, or other measures that could negatively affect an individual petition or an IACHR's eventual decision; as well as to preserve the exercise of human rights — i.e., by preventing irreparable harm to the life and personal integrity of the beneficiary(ies). The measures can be adopted by the IACHR at its own initiative or by request of the affected person. Once granted, the IACHR can lift the granted precautionary measures based on periodical evaluations of their pertinence. When requesting precautionary measures, the petitioners must provide, at least, the following:

- Information of the beneficiaries or information that allows them to be determined;
- Detailed and chronological description of the facts that motivate the request; and
- Description of the measures of protection requested.

⁶³⁸ Inter-American Commission on Human Rights (1979). *Statute of the Inter-American Commission on Human Rights*. <http://www.cidh.org/basicos/english/Basic17.Statute%20of%20the%20Commission.htm>

The IACHR examines petitions individually and determines whether the accused State has committed a human rights violation, how to repair the victims and how to prevent violations from occurring again. The IACHR produces a report with non-binding recommendations.

However, in the case of State Parties to the American Convention that have accepted the contentious jurisdiction of the Inter-American Court, whenever the Commission finds that the State has not complied with the recommendations of the report, it shall refer the case to the Inter-American Court.⁶³⁹ One of the cases referred by the IACHR to the IACtHR is the *Lhaka Honhat (Our Land) Association of Aboriginal Communities and other v. Argentina* (see Case 27).

The IACHR faces monetary restraints that create operational difficulties. The Commission is dependent on member States' financial contributions. However, these contributions have been insufficient to meet the demands placed on the Commission. The most acute crisis faced by the IACHR occurred in 2016 when it faced a severe financial deficit that significantly impacted its ability to fulfill its mandate and carry out its essential functions.⁶⁴⁰ Although the crisis was resolved, the IACHR has continued to struggle to find the necessary resources to effectively address the vast amounts of cases it receives and provide timely responses to victims of human rights violations. Though efforts have been made to address these challenges⁶⁴¹ and improve the situation, the backlog of cases at the IACHR has serious implications for the victims of human rights abuses. Lengthy delays in the processing of cases undermines accountability and access to justice and redress.



639 Ibid. Article 44.

640 Organization of American States (2016). *Severe Financial Crisis of the IACHR Leads to Suspension of Hearings and Imminent Layoff of Nearly Half its Staff*. https://www.oas.org/en/iachr/media_center/preleases/2016/069.asp

641 United Nations Treaty Bodies and Special Procedures (2016). *Inter-American Commission on Human Rights financial crisis: We cannot let it go bankrupt*. <https://www.ohchr.org/en/statements/2016/06/inter-american-commission-human-rights-financial-crisis>

CASE 27. LHAKA HONHAT (OUR LAND) ASSOCIATION OF ABORIGINAL COMMUNITIES, CENTER FOR JUSTICE AND INTERNATIONAL LAW (CEJIL) AND CENTRO DE ESTUDIOS LEGALES Y SOCIALES (CELS) V. ARGENTINA⁶⁴²

In 1998, the Lhaka Honhat (Our Land) Association of Aboriginal Communities collaborated with the Center for Justice and International Law (CEJIL) and the Centro de Estudios Legales y Sociales (CELS) to submit a petition to the Inter-American Commission on Human Rights (IACHR) on behalf of Indigenous Communities of the Lhaka Honhat.

The Indigenous communities in the province of Salta claimed that the Argentinian State was not taking adequate measures to halt illegal logging and other harmful activities in their territory. Over the course of many centuries, they have inhabited the Salta region but since the early 1900s, non-Indigenous individuals settled in the area, altering their livelihoods, culture and access to essential resources like food and water. Without engaging in a prior and informed consultation with the Indigenous communities, Argentina constructed an international bridge that traversed their land. These activities harmed their way of life and cultural identity.

After a thorough assessment, the IACHR deemed the petition admissible in 2006. However, Argentina's failure to adhere to the recommendations outlined in the IACHR's merits report of January 2012⁶⁴³ led to the IACHR referring the case to the Court on February 1, 2018.

The Court analyzed various human rights aspects, including the right to communal property, freedom of movement and residence, cultural identity, and access to justice. It offered highly valuable insights into States' obligations under these rights.


Nevertheless, the ruling is groundbreaking in that it is the first contentious case in which the IACtHR analyzes the responsibility of a State under the human right to a healthy environment and the rights to water, food and cultural life as human rights related to the environment. The Court relied on its above referenced highly influential advisory opinion 23/17 in which it clarified States' obligations in relation to the environment and the rights to life and personal integrity.

Regarding Indigenous communal property, the Court explained that the right to property not only safeguards the connection between indigenous communities and their territories but also encompasses the natural resources within those territories that are integral to their culture, along with the intangible aspects derived from them. Furthermore, it emphasized that guaranteeing communal property goes beyond mere acknowledgment and requires the observance and respect for the autonomy and self-determination of indigenous communities over their territory.



⁶⁴² Inter-American Court of Human Rights (2020). *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*. op. cit.

⁶⁴³ Ibid.




In relation to the right to a healthy environment, the Court noted that States have an obligation not only to respect this right but also to ensure it. This includes taking preventive measures to avoid violations. The obligation extends to prevent third parties from violating protected rights. It encompasses legal, political, administrative, and cultural measures that promote the protection of human rights and address violations as wrongful acts. States may need to establish adequate mechanisms to monitor and supervise certain activities to ensure the protection of human rights, both by public entities and private individuals. It is essential to emphasize that the obligation to prevent is based on means or conduct, and non-compliance is not solely determined by the occurrence of a rights violation.

Specifically concerning the environment, the principle of prevention of environmental harm is part of customary international law. It imposes an obligation on States to implement necessary measures proactively to prevent damage to the environment. Once damage occurs, restoring the previous situation may often be impossible due to the unique nature of environmental harm. The Court has emphasized that States must use all available means to prevent activities within their jurisdiction from causing significant harm to the environment. This obligation is subject to the standard of due diligence, which requires appropriate and proportionate measures based on the level of risk of environmental harm. While it is not feasible to provide an exhaustive list of measures for compliance, some actions include regulation, supervision, monitoring, requiring and approving environmental impact assessments, establishing contingency plans, and mitigating environmental damage when it occurs.

The Court further acknowledged that environmental issues can have an impact on various rights, mainly food, water and culture; certain groups, particularly Indigenous Peoples and communities heavily reliant on environmental resources, may be disproportionately affected. In line with human rights law, States have an obligation to address these vulnerabilities and ensure equality and non-discrimination. The Court emphasized that the denial of access to territories and corresponding natural resources can expose indigenous communities to various human rights violations, cause them suffering, and jeopardize the preservation of their way of life, customs, and language.

The State, in its defense, denied any environmental harm and argued that there is no evidence of malnutrition or food deficit, attributing any changes in the communities' way of life to their own choices. However, the Court found the State's arguments fail to recognize the interdependence and specificities of the rights at stake, particularly in the case of Indigenous Peoples.



Based on the established standards, the Court acknowledged that there has been a significant impact on the indigenous communities' way of life in relation to their territory. The degradation of the environment caused by livestock and logging activities directly affected the indigenous way of life, with cattle-raising and traditional indigenous activities being incompatible. Environmental erosion had been progressive, leading to increased competition for land and the exclusion of indigenous and non-indigenous people.

The Court explained that cultural patterns may change over time through contact with other groups, but this does not diminish the occurrence of real harm to cultural identity when applicable. In this case, the changes in the communities' way of life can be attributed to interferences, which were imposed without the communities' consent and in violation of their right to the free enjoyment of their ancestral territory and that affected the natural and environmental resources essential for the communities' sustenance and access to water. Consequently, there has been harm to cultural identity directly linked to the degradation of natural and food resources.

In this case, the State's failure lies in its inability to ensure that the indigenous communities have the opportunity to freely decide or be adequately consulted on activities taking place on their territory. The State's actions have been ineffective in safeguarding the rights of the indigenous communities and providing them with the necessary agency and control over their own lands.

Photo EJ Atlas



Rapporteurs

'Starting in 1990, the Inter-American Commission began creating thematic rapporteurships in order to devote attention to certain groups, communities, and peoples that are particularly at risk of human rights violations due to their state of vulnerability and the discrimination they have faced historically. The aim of creating a thematic rapporteurship is to strengthen, promote, and systematize the Inter-American Commission's own work on the issue. The IACHR had the same goal in mind when it created the Unit for Human Rights Defenders in 2001, which in 2011 was transformed into a rapporteurship.'⁶⁴⁴

There are two types of rapporteurs within the IACHR:

Thematic Rapporteurs are members of the IACHR. Their functions include compiling information provided by civil society and State parties on the specific issues they work on, providing opinions and inputs to both the IACHR and the IACtHR with regards to the specific issues within their mandates, and engaging in strategic dialogues with States and other actors in the system to strengthen, promote, and systematize the Commission's own work on the issues.

- Rapporteur on the Rights of Indigenous Peoples
- Rapporteur on the Rights of Women
- Rapporteur on the Rights of Migrants
- Rapporteur on the Rights of the Child
- Rapporteur on Human Rights Defenders
- Rapporteur on the Rights of Persons Deprived of Liberty
- Rapporteur on the Rights of Afro-Descendants and against Racial Discrimination
- Rapporteur on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons

Special Rapporteurs pursue the same objectives, but they are independent professionals – i.e., not members of the IACHR.

- Special Rapporteur on Economic, Social, Cultural, and Environmental Rights
- Special Rapporteur on Freedom of Expression

Individuals may also submit communications to the Special Rapporteurs.

⁶⁴⁴ Inter-American Commission on Human Rights (2023). *Thematic Rapporteurships and Units*. <https://www.oas.org/en/iachr/mandate/rapporteurships.asp>

II. The Inter-American Court of Human Rights (IACtHR)

Contentious cases

The IACtHR (based in San José, Costa Rica) was established by the American Convention and has two main responsibilities.

As a judicial body, the IACtHR decides on communications submitted to it by the IACHR or a State Party to determine 'if a State has incurred an international responsibility for violating a right enshrined in the American Convention or other relevant human rights treaties in the Inter-American System. Similarly, the Court also supervises the compliance of sentences in this manner.'⁶⁴⁵

Individuals or organizations are not entitled to directly submit communications or complaints to the Inter-American Court. To access the Inter-American System, they must first direct their complaints to the IACHR.⁶⁴⁶ The IACtHR can only hear cases against State parties that have voluntarily submitted to the Court's jurisdiction.⁶⁴⁷

The Court may order provisional measures in cases of emergency, to prevent irreparable harm to human rights.

The rulings issued by the IACtHR are binding and cannot be appealed. Although the system does not provide for means of enforcement, the IACtHR has a monitoring mechanism to ensure compliance with its judgments called 'Monitoring Compliance with Judgment.'⁶⁴⁸ States are required to report on their progress in implementing the Court's rulings, and a Trustee oversees the process. The Court may also hold hearings with victims and the IACHR. The Court can take additional measures if a state fails to comply, and the monitoring continues until full compliance is achieved. This mechanism promotes accountability and the protection of human rights in the region. The Court must report all cases of non-compliance to the OAS General Assembly; it fulfills this duty in its annual periodic reports.

⁶⁴⁵ Inter-American Court of Human Rights (2020). *ABC of the Inter-American Court of Human Rights*. p. 14. <https://corteidh.or.cr/tablas/abc-2020/ing/14/>

⁶⁴⁶ Inter-American Court of Human Rights (n.d.). *What is the Court?* https://www.corteidh.or.cr/que_es_la_corte.cfm?lang=en

⁶⁴⁷ Ibid.

⁶⁴⁸ Inter-American Court of Human Rights (n.d.). *Learn about the Monitoring Compliance with Judgment*. https://www.corteidh.or.cr/conozca_la_supervision.cfm?lang=en

In the case of *Kawas-Fernandez v. Honduras*, for example, the Court has been monitoring the State's actions vis-à-vis the nine reparation measures ordered by the Court in its 2009 ruling. The Court issued between 2012 and 2022 four monitoring compliance resolutions,⁶⁴⁹ that allowed it to determine that the State is still pending to fulfill two reparations, namely, establishing a monument of Ms. Kawas-Fernandez and prosecuting and sanctioning the authors of the crime. The State has been asked to inform the Court on the measures taken and victims and the IACHR may comment on the relevant report.

Advisory Opinions

The IACtHR can issue advisory opinions on the compatibility of internal norms with the American Convention, and the interpretation of the American Convention or Inter-American system human rights instruments. All OAS Member States, the Commission, and OAS organs can request an advisory opinion. Member States can also ask for an advisory opinion.

“ The aim of creating a thematic rapporteurship is to strengthen, promote, and systematize the Inter-American Commission's own work on the issue. ”

⁶⁴⁹ Inter-American Court of Human Rights (2022). *Caso Kawas Fernández vs. Honduras*. https://www.corteidh.or.cr/docs/supervisiones/kawas_fernandez_02_09_22.pdf

BOX 35. ADVISORY OPINION 23/17

On November 2007, the IACtHR issued an Advisory Opinion, which marked a significant milestone in addressing the link between human rights and environmental protection under the American Convention. In this Opinion, the Court addresses the interpretation and application of human rights obligations in the context of environmental protection.

The opinion, issued at the request of the State of Colombia, clarifies, and explains, from a legal standpoint, the interconnectedness of human rights and the environment, and the specific human rights obligations related to the environment that States Parties to the American Convention have, including under the right to a healthy environment.

To provide a comprehensive analysis, the Court drew from a range of sources, including documents from the Organization of American States and its own jurisprudence, as well as decisions, statements, and reports from other esteemed human rights bodies such as the ECtHR, the ACHPRs, and the insights of experts like the UN Special Rapporteur on human rights and the environment.

The Court explained that environmental protection is crucial for human well-being and the enjoyment of various human rights, including the rights to life, personal integrity, health, and a healthy environment. States have a duty to act with due diligence to adequately protect the environment. To fulfill their obligations, States must take preventive measures, apply the precautionary principle, engage in cooperation, and fulfill their obligations under the procedural rights to access to information, public participation, and justice. These obligations are derived from the interpretation of relevant provisions, along with the obligations to respect and ensure the rights to life and personal integrity as established in the American Convention.

Importantly, the Court emphasized that States bear an obligation to ensure that their actions, as well as the actions of those under their effective control, do not impede the realization of fundamental rights, including the right to a healthy environment, and affirms that environmental degradation and other environmental challenges may entail State responsibility.

This opinion addresses the interpretation and application of human rights obligations in the context of environmental protection and recognizes the interdependence between human rights and the environment, affirming that the right to a healthy environment is inherent to the full enjoyment of human rights. The violation of the right to a healthy environment can impact several other human rights, including the right to life, personal integrity, health, water, housing, and procedural rights like information, expression, association, and participation.

States' duties extend to protecting the rights of individuals residing beyond their own borders, acknowledging the extraterritorial dimensions of environmental harm and human rights violations. It further emphasizes the duty of States to prevent and remedy environmental harm and encourages them to adopt measures that protect both present and future generations.

C. The European System

a. Council of Europe mechanisms

I. The European Court of Human Rights (ECtHR)⁶⁵⁰

Contentious cases

In 1950, European States adopted the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) under the auspices of the Council of Europe. The European Convention established the European Court of Human Rights (ECtHR). All State Parties to the Convention must accept the jurisdiction of the Court to decide cases involving individual complaints.

Any individual, organization, or State party to the European Convention can submit communications to the ECtHR concerning violations of the European Convention. Individuals and organizations do not require legal counsel representation to file a complaint but must have legal representation once the corresponding claim is declared admissible.

Applicants should use the application form⁶⁵¹ established by the ECtHR. To be declared admissible, individuals must demonstrate that they have exhausted local remedies, that the relevant claim is being filed within a four-month period following the final domestic judicial decision, and that the State against which the complaint is being filed is party to the European Convention. Complainants must also demonstrate the damage or disadvantage suffered.

⁶⁵⁰ The European system depends of an intricate interplay from different entities with different institutions, not all relevant for the purposes of this document. In particular, the Council of Europe, the European Court of Human Rights, and the European Commission on Human Rights are distinct entities separate from the European Union. While they all focus on human rights and are located in Europe, they serve different purposes and have different structures. The Council of Europe is an international organization comprised of 46 member states, including countries both within and outside the European Union. It aims to promote human rights, democracy, and the rule of law through treaties and conventions. The ECtHR is a judicial body established by the Council of Europe to hear individual and state complaints of human rights violations. It ensures compliance with the European Convention on Human Rights. The European Commission on Human Rights, on the other hand, was an ad hoc body that operated until 1998. It served as a precursor to the European Court of Human Rights, acting as a filter for individual applications before they reached the court. In contrast, the European Union is a political and economic union of 27 member states, primarily focused on promoting economic integration and cooperation among its members. While the European Union has its own system of human rights protection, which includes the Charter of Fundamental Rights, it operates separately from the Council of Europe and its related bodies.

⁶⁵¹ European Court of Human Rights (2022). How to lodge an application. <https://www.echr.coe.int/Pages/home.aspx?p=applicants/forms&c=>

Before adopting a final decision, the ECtHR will attempt to reach a **friendly settlement** to the dispute. If the friendly settlement efforts do not succeed, the ECtHR will issue a ruling on the merits.

The ECtHR may grant interim measures to prevent the claimant from suffering irreparable damage.

The final judgements may order the concerned State to grant the complainant remedy or redress, as well as to take any other action deemed necessary to secure the protection, respect or fulfillment of the complainant's human rights. The judgements are binding, and the **Committee of Ministers**⁶⁵² is in charge of enforcing them. 'The Court does not have the authority to overrule a national decision or annul national laws.'⁶⁵³

The European Convention on Human Rights does not explicitly include a right to a healthy environment. However, the ECtHR has been involved in environmental cases because environmental harm and risks can impact the exercise of certain Convention rights.

⁶⁵² The Committee of Ministers plays a crucial role within the European Court of Human Rights. As the decision-making body of the Council of Europe, it is responsible for supervising the execution of judgments delivered by the Court. When the Court finds a violation of the European Convention on Human Rights, it issues judgments and provides recommendations for remedying the situation. The Committee of Ministers takes on the responsibility of monitoring and ensuring the implementation of these judgments by the member states. It engages in dialogue with the states involved, requesting progress reports and taking measures to address any outstanding issues. The Committee of Ministers acts as a forum for member states to discuss and exchange views on the Court's decisions, promoting cooperation and encouraging compliance with human rights standards. Its role is vital in safeguarding the effectiveness and impact of the ECtHR and upholding human rights across Europe.

⁶⁵³ International Justice Resource Center (n.d.). *European Court of Human Rights*. <https://ijrcenter.org/european-court-of-human-rights/>

In 2023, the Court has three climate-change related cases awaiting a decision from the Court's Grand Chamber.

The case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, in which a Swiss association of elderly concerned about the impact of global warming on their living conditions and health argues that Swiss authorities have failed in their positive obligations to protect life (Article 2) and ensure respect for their private and family life, including their homes (Article 8). They also claim that they have not had access to a fair trial (Article 6) and an effective remedy (Article 13) to address their complaints.

The case of Carême v. France, a resident and former mayor of Grande-Synthe who filed a complaint against France for inadequate measures taken to prevent climate change. The applicant argues that this failure violates the right to life (Article 2) and the right to respect for private and family life (Article 8) under the Convention.

Duarte Agostinho and Others v. Portugal and 32 Other States, which concerns a group of Portuguese nationals aged between 10 and 23 who allege that the greenhouse gas emissions of 33 member states contribute to global warming, negatively affecting their living conditions and health. The applicants claim that these states are not fulfilling their positive obligations under Articles 2 and 8 of the Convention, considering their commitments under the 2015 Paris Agreement on climate change (COP 21). They also argue a violation of Article 14 (prohibition of discrimination) in conjunction with Articles 2 and/or 8, emphasizing that global warming disproportionately affects their generation.

Advisory Opinions

The highest domestic courts in the States that are parties to the Protocol may request advisory opinions from the ECtHR on questions of interpretation of the European Convention and its protocols. The advisory opinions may be sought only in the context of cases pending before the domestic court. The ECtHR has not, up to date, delivered an advisory opinion regarding the environment.

BOX 36. ADVISORY OPINIONS TO ADVANCE CLIMATE CHANGE EFFORTS

Three requests for advisory opinions seek to clarify States' obligations regarding climate change.

Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law

On December 12, 2022, the Commission of Small Island States on Climate Change and International Law (COSIS) requested the International Tribunal for the Law of the Sea (ITLOS) to issue an advisory opinion on State Parties' obligations under the United Nations Convention on the Law of the Sea (UNCLOS) to address pollution and protect the marine environment in the context of climate change.⁶⁵⁴

The advisory opinion request seeks clarification from ITLOS on the specific obligations that State Parties have under the United Nations Convention on the Law of the Sea (UNCLOS), '(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere... [and] (b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification.'

The ITLOS's advisory competence is a subject of debate.⁶⁵⁵ While some argue that the ITLOS lacks advisory jurisdiction unless explicitly conferred by an ad hoc treaty, others argue that ITLOS's jurisdiction comprises all disputes and applications submitted in accordance with the UNCLOS and other agreements conferring jurisdiction on the ITLOS. The COSIS Agreement, signed by Antigua and Barbuda and Tuvalu, authorizes COSIS to request an advisory opinion to the ITLOS.

Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the IACtHR by the Republic of Colombia and the Republic of Chile

On January 9, 2023 Colombia and Chile presented a joint request for an advisory opinion to the IACtHR seeking clarification on State obligations in addressing the climate emergency within the framework of international human rights law.

The request emphasizes the need for an urgent and equitable response guided by principles of justice, cooperation, and sustainability. It calls for integrating human rights principles into climate-related actions to protect vulnerable populations and ensure a sustainable approach. To effectively address the climate emergency, it is crucial to determine the specific human rights impacted and the corresponding obligations of states and other entities. This includes understanding the differentiated impacts on different regions and population groups, as well as the responsibilities of nation states, sub-national entities, and non-state actors.



⁶⁵⁴ Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal). <https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/>

⁶⁵⁵ Carrillo, C. (2021). *ITLOS Advisory Opinion on Climate Change and Oceans: Possibilities and Benefits*. *Opinio Juris*. <http://opiniojuris.org/2021/07/21/itlos-advisory-opinion-on-climate-change-and-oceans-possibilities-and-benefits/>

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The Inter-American Court's interpretation of international instruments, the requesting States explain, will provide valuable standards to guide States in implementing measures consistent with their human rights obligations of prevention, guarantee and protection, including under the right to a healthy environment and the right to life, within the context of the climate emergency.

The requesting States asked the Court questions under the following topics:

- A. State obligations derived from the duties of prevention and guarantee of human rights in relation to the climate emergency.
- B. State obligations to preserve the right to life and survival in relation to the climate emergency in light of science and human rights.
- C. Differentiated obligations of States in relation to the rights of children and the new generations in light of the climate emergency.
- D. State obligations arising from consultation procedures and judicial proceedings owing to the climate emergency.
- E. Convention-based obligations of prevention and protection of territorial and environmental defenders, as well as women, Indigenous Peoples, and Afro-descendant communities in the context of the climate emergency.
- F. Shared and differentiated human rights obligations and responsibilities of States in the context of the climate emergency.

The General Assembly of the United Nations requests an advisory opinion from the Court on the obligations of States in respect of climate change

On 29 March 2023, the General Assembly of the United Nations adopted resolution A/RES/77/276 requesting the International Court of Justice (ICJ) an advisory opinion on "the obligations of States in respect of climate change".

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The ICJ is asked to respond, under the UDHR, ICCPR, ICESCR, UNFCCC, Paris Agreement, UNCLOS, the duty of due diligence, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment: "(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations; (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to: (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change? (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"

Significance of the advisory opinions

The advisory opinions can play a significant role in increasing compliance with international obligations by offering guidance on the principles and specific content of those obligations. Despite being non-binding, these opinions carry legal weight and provide authoritative statements of law. Therefore, the advisory opinions on the legal consequences of climate change are poised to provide essential guidelines to the requesting entities and the international community, guiding them in fulfilling their obligations when addressing the impacts of climate change.

They hold immense significance as they serve as a compass, directing States towards the necessary actions and policies needed to tackle the challenges posed by climate change. By providing authoritative insights and interpretations regarding States' obligations, they have the potential to act as a catalyst for the implementation of environmental and human rights obligations in the context of climate change.



6. THE INTERLINKAGES BETWEEN HUMAN RIGHTS RELATED TO THE ENVIRONMENT AND THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

Human rights create the conditions for sustainable development.⁶⁵⁶ Over 90% of the Sustainable Development Goals (SDGs) correspond to human rights obligations,⁶⁵⁷ which include human rights related to the environment. Conversely, ensuring human rights related to the environment, including a right to a clean, healthy and sustainable environment, will contribute to the achievement of the SDGs. States, national human rights institutions, and civil society must integrate human rights when they implement, monitor, and review the SDGs. This relationship is further strengthened by human rights-based governance for sustainable development.

Unsustainable growth patterns increase environmental degradation, which in turn generates effects that harm the rights to health, access to water and sanitation, food, housing, and land rights, and ultimately endanger the right to life. As a number of human rights are threatened in the context of unsustainable development, strong governance which protects and promotes human rights related to the environment translates into progress towards the achievement of the SDGs. This two-way relationship further highlights the interdependence of human rights and the environment.

⁶⁵⁶ Office of the United Nations High Commissioner for Human Rights (2020). *Advancing sustainable development through human rights*. <https://bangkok.ohchr.org/development/>

⁶⁵⁷ Rattray, S. (n.d.). *Human rights and the SDGs - two sides of the same coin*. <https://www.undp.org/blog/human-rights-and-sdgs-two-sides-same-coin>

Table 2.
Human rights related to the environment and the Sustainable Development Goals

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|---|--|---------------------------|---|---|--|
| <p>Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal</p> | <p>Universal. See ratifications</p> | <p>Hazardous wastes</p> | <p>To protect human health and the environment against the adverse effects which may result from the generation and management of hazardous and other wastes.</p> | <p>Acknowledging the impact of hazardous wastes on human health and the environment, the Basel Convention regulates and establishes minimum obligations for States to prevent and mitigate the consequences of pollution caused by hazardous wastes. Despite not mentioning human rights explicitly, the obligations set in the Convention can help counter the human rights and environmental impacts that may arise from unregulated toxic wastes trade, and vice versa efforts to advance human rights can help achieve the objectives of the convention. This recognition lead the Conference of the Parties to take action to strengthen links between implementation efforts of the Basel Convention and other key international agendas, including human rights, climate change, water and health. The Basel Secretariat, thus, frequently engages with UN human rights Special Rapporteurs, including the Special Rapporteur on hazardous wastes as well as with the Office of the High Commissioner for Human Rights. The Convention, moreover, recognizes the interlinks between access to information and sound management of hazardous wastes (see for example articles 4.2, 10.2), reinforcing the importance of the realization of this access right.</p> | <p>No.</p> |

| International treaty (non-exhaustive overview of binding instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|---|---|---------------------------|---|---|--|
| Convention on Biological Diversity (CBD) | Universal. See ratifications | Biological diversity | To enhance and complement existing international arrangements for the conservation of biological diversity and sustainable use of its components, and to conserve and sustainably use biological diversity for the benefit of present and future generations. | <p>The CBD acknowledges the salience of biodiversity conservation and sustainability for humankind, particularly, human health and food sustainability. As such, as it regulates State action to conserve and secure the sustainability of biological diversity, it indirectly references the rights to health and food of current and future generations. In fact, the convention states that 'conservation and sustainable use of biological diversity is of critical importance for... food [and] health.' In addition, it recognizes that traditional lifestyles depend on the biological resources which the Convention addresses, hence also addressing - albeit indirectly - the right to participate in cultural life. It also establishes obligations that may, indirectly, contribute to advancing indigenous peoples' rights by expressly linking traditional knowledge, innovations, and practices with the conservation, protection, and sustainability of biological diversity (i.e., Article 8j 'commits to respect, preserve and maintain the contributions of indigenous peoples and local communities and their knowledge, innovations, and practices to the conservation and sustainable use of biodiversity' and article 10(c) sets States' obligation to 'Protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements'). The CBD further affirms the need to secure women's participation at policy making and implementation levels to achieve conservation and protection of biological diversity.</p> <p>In addition, the CBD explicitly acknowledges the importance of access to information and public participation to achieve its objectives. It consequently imposes States the obligation to 'introduce appropriate procedures requiring environmental impact assessment of its proposed projects that are likely to have significant adverse effects on biological diversity with a view to avoiding or minimizing such effects and, where appropriate, allow for public participation in such procedures.' To fulfill this obligation, in 2012, States parties to the CBD created the Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services to produce high-quality, peer-reviewed reports in response to requests by Governments. The CBD also imposes on States the duty to increase the public's awareness and education on measures required for the conservation of biological diversity.</p> | No. |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|---|--|--|--|--|
| Cartagena Protocol on Biosafety to the Convention on Biological Diversity | Universal. See ratifications | Biological diversity; land and agriculture | To protect biological diversity by managing the movements of Live Modified Organisms resulting from the application of modern technology (LMOs) between countries, and establish a procedure for prior informed agreement to ensure countries have the necessary information to make decisions about the importing of LMOs into their territory. | <p>The Cartagena Protocol indirectly protects the rights to health and the environment. It acknowledges that transboundary movement, transit, handling and use of living modified organisms may pose risks to human health and, accordingly, imposes States the obligation to regulate the safe management and transport of LMOs to avert risks to health. It also obliges States parties to undertake risks assessments 'to identify and evaluate the possible adverse effects of living modified organisms on the conservation and sustainable use of biological diversity, taking also into account risks to human health.'</p> <p>In addition to the right to health, the Cartagena Protocol helps to embed protection of the rights of indigenous peoples in 'socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity' by calling States to explicitly consider the value that biological diversity has for these groups.</p> <p>Turning to access rights, the Protocol indirectly references access rights to information and participation. Article 23 of the Protocol establishes States' obligation '(a) Promote and facilitate public awareness, education and participation to inform its public about the means of public access to the Biosafety Clearing-House... ensure that public awareness and education encompass access to information on living modified organisms identified in accordance with this Protocol that may be imported...consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public.' State parties must also, under Article 9, conduct risks assessments of the activities that may result in risks to human health.</p> | No. |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|---|--|---|---|--|
| Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization | Universal. See ratifications | Biological diversity | To create legal certainty and transparency for both providers and users of genetic resources by: - Establishing more predictable conditions for access to genetic resources. - Helping to ensure benefit-sharing when genetic resources leave the country providing the genetic resources | Consistent with the CBD, the Nagoya protocol (Article 6) protects the free, prior and informed consent of local communities, thereby upholding their access rights to information and participation and right to self-determination, where applicable. The Protocol also, indirectly, contributes to advancing the right to participate in cultural life, as it establishes provisions to protect traditional knowledge and practices, and pursues 'the conservation and sustainable use of biological diversity, poverty eradication and environmental sustainability,' factors that can contribute to the enjoyment of the right to development. | No. |
| International Plant Protection Convention - IPPC | Universal. See ratifications | Biological diversity; land and agriculture | To protect the world's plant resources from the spread and introduction of pests, and promoting safe trade, notably through the International Standards for Phytosanitary Measures (ISPMs). | The IPPC establishes provisions that protect the access rights to information and participation, despite not making express reference to human rights. For example, article IV(3) requires States to make provisions to distribute information about regulated pests, their prevention and control. The Protocol also includes provisions that protect women's right to participation as it recognizes the vital role played by women in access and benefit-sharing and affirms 'the need for the full participation of women at all levels of policy making and implementation for biodiversity conservation.' In addition, in Article VI(2), the IPPC establishes the obligation to observe the prior and informed consent or approval and involvement of indigenous and local communities for access to genetic resources. | No. |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|---|--|---|---|--|
| International Treaty on Plant Genetic Resources for Food and Agriculture | Universal. See ratifications | Biological diversity; land and agriculture | To recognize the enormous contribution of farmers to the diversity of crops that feed the world; establish a global system to provide farmers, plant breeders and scientists with access to plant genetic materials; and ensure that recipients share benefits they derive from the use of these genetic materials. | The Plant Genetic Resources Treaty addresses plant genetic resources in connection, <i>inter alia</i> , with food and agriculture. It seeks to secure that both food and agriculture are safe and sustainable to for humans, hence indirectly protecting the right to food. Moreover, the Treaty recognizes Farmers' Rights and establishes concrete obligations for States to realize these rights (article 9). Farmers' rights refer to other human rights obligations acquired by States under human rights law, namely, protecting traditional knowledge (right to participate in cultural life); the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture (rights to development and food); and the right to participate in decision-making processes on matters related to the conservation and sustainable use of plant genetic resources (right to participation). The Treaty further makes reference to the relationship between plant genetic resources and food as it seeks to promote and secure the protection of wild crops and wild plants for food production, including by supporting indigenous peoples and communities. In this way, it also indirectly references the right to participate in cultural life. | Yes. Resolution 3/2006: (VI) 2. The Committee may seek or receive and consider relevant information, including from: a) [Non-governmental organizations, the private sector and other civil society organizations and relevant inter-governmental organizations, [including the International Agricultural Research Centers]]; |



| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|---|---------------------------|---|--|--|
| Minamata Convention on Mercury | Universal. See ratifications | Chemicals and waste | To protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds. | <p>To achieve its objective, the Minamata Convention expressly refers to human health in various of its provisions, and establishes concrete obligations for States to secure its protection. For example, it provides that States parties must take measures to prevent populations at risk, expressly referring to women and children, and explicitly recognizes mercury's negative effects on indigenous peoples and populations in situation of vulnerability. It, therefore, encourages States to take measures to address these health aspects (Article 16) including addressing the situation of vulnerable populations and promoting appropriate health-care services to prevent and respond to mercury-related impacts. It also provides that States should strengthen their capacities to prevent, diagnose, treat and monitor health concerns related with exposure to mercury and its compounds. The Convention explicitly addresses 'traditional foods' of indigenous communities and Arctic ecosystems, hence indirectly referencing the rights to participate in cultural life and adequate food.</p> <p>In addition, Article 18 of the Minamata Convention establishes obligations for all States that relate to the right to information. Specifically, this provision establishes the duty of all States to raise the public's awareness and provide the public information on health and the environmental effects of mercury and mercury compounds, as well as other relevant matters under the Convention, including steps to implement the convention. Articles 18 and 19, moreover, provide that States must undertake risk assessments of contaminated sites and of the impact of mercury and mercury compounds on human health and the environment, with due regard of social, cultural and economic impacts.</p> | No. |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|---|---------------------------|--|--|--|
| Stockholm Convention on Persistent Organic Pollutants | Universal. See ratifications | Chemicals and waste | To protect human health and the environment from persistent organic pollutants (POPs). | <p>One of the objectives of the Stockholm Convention is to protect human health from persistent organic pollutants. It establishes concrete obligations for States to reduce or eliminate releases and the use of such pollutants. Thus, although the convention does not mention human rights explicitly, it addresses health concerns arising in connection to persistent organic pollutants, particularly on women, indigenous peoples, and future generations, as well as the environment, and seeks to address health and environmental effects. Regarding indigenous and local communities it, therefore, recalls the pertinent provisions on the Prior Informed Consent of other conventions and explicitly acknowledges the interlinks between Arctic ecosystems and indigenous communities, therefore addressing their rights to food and participation in cultural life.</p> <p>The Stockholm Convention further establishes States' obligations to promote and facilitate access to updated information - including dissemination of information through reports, mass media, and others, and educational and public awareness programs, tailored to <i>inter alia</i> women and children- and public participation 'in addressing persistent organic pollutants and their health and environmental effects and in developing adequate responses, including opportunities for providing input at the national level regarding implementation of this Convention.' It also establishes States' duty to cooperate and consult with stakeholders, including civil society and rightsholders, to facilitate the implementation of the Convention.</p> | No. |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|---|---------------------------|---|--|--|
| Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade | Universal. See ratifications | Chemicals and waste | To protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, providing for a national decision-making process on their import and export and disseminating these decisions to Parties. | The Rotterdam Convention is aware of the harmful impact of hazardous chemicals and pesticides on, and seeks to protect, health and the environment. It, indirectly seeks to protect these rights, by adopting a number of measures including, inter alia, 'facilitating information exchange... providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.' The Rotterdam Convention, moreover, seeks to ensure access by the public to information on chemical handling, accident management, and safer alternatives for their health and environment. In this way, it also seeks to allow individuals to take informed decisions that may affect their health and environment, and to encourage their involvement or at least interest in decisions related with hazardous chemicals and pesticides. | No. |



| International treaty (non-exhaustive overview of binding instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|---|---|--|---|---|--|
| United Nations Convention to Combat Desertification (UNCCD) | Universal. See ratifications | Biological diversity; Land and agriculture; Drylands | To combat desertification and mitigate the effects of drought in countries experiencing serious drought and/or desertification, particularly in Africa with a view to contributing to the achievement of sustainable development in affected areas. | <p>The UNCCD does not mention explicitly any substantive human rights but it acknowledges that desertification and drought- the two matters it addresses - 'affect sustainable development through their interrelationships with important social problems such as poverty, poor health and nutrition, lack of food security, and those arising from migration, displacement of persons and demographic dynamics.' Articles 2 and 4 of the Convention also regard sustainable development. It, therefore, establishes a number of obligations that indirectly touch upon human rights.</p> <p>For example, regarding groups in situation of vulnerability, the UNCCD acknowledges the important role of women and seeks to secure their participation in all decisions relevant under the convention. It also requires States to establish or strengthen early warning systems and mechanisms to assist environmentally displaced persons. The UNCCD moreover, expressly recognizes the need to protect traditional knowledge, technology, know-how and practices of local populations (art. 16), hence indirectly referencing the right to participate in cultural life.</p> <p>The UNCCD also protects local communities' access to information, by requiring States to collect, analyze, and exchange information addressing their needs. It also reaffirms the duty of States' to widely disseminate environmental information, by requiring States parties to fully and promptly making public relevant information to combat desertification and the effects of droughts.</p> <p>The UNCCD moreover protects effective participation of 'non- governmental organizations and local populations, both women and men, particularly resource users, including farmers and pastoralists and their representative organizations, in policy planning, decision-making, and implementation and review of national action programs... the participation of local populations, particularly women and youth, with the support of non-governmental organizations, in efforts to combat desertification and mitigate the effects of drought" and establishes that national action programs shall specify the respective roles of government, local communities and land users and the resources available and needed.' (article 10). Article 3 establishes that 'the Parties should ensure that decisions on the design and implementation of programs to combat desertification and/or mitigate the effects of drought are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action at national and local levels.' Art 5. d. promote awareness and facilitate the participation of local populations, particularly women and youth, with the support of nongovernmental organizations, in efforts to combat desertification and mitigate the effects of drought.</p> | The Committee for the Review of the Implementation of the Convention (CRIC) does not receive communications or complaints from the public, but can inform its review process 'reports submitted by the Parties, information and advice from the Global Mechanism and the Committee on Science and Technology, as well as reports by relevant organs, funds and programs of the United Nations system and other intergovernmental and non-governmental organizations' https://www.unccd.int/sites/default/files/sessions/documents/2019-08/1COP5_0.pdf |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|---|---|---|--|--|---|
| Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental - Aarhus Convention | Universal. See ratifications | Environmental governance | To guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters 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. | Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself,' the Aarhus Convention is the first instrument to recognize the three fundamental environmental access rights - access to information, public participation, and justice in environmental matters - and to establish concrete obligations, including minimum standards, that States need to fulfil in order to secure the full enjoyment of these rights. It is also pioneer in 'Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.' The Aarhus Convention, moreover, includes provisions to protect those exercising their rights under the Convention to prevent that they are 'penalized, persecuted or harassed in any way for their involvement.' As such, it includes specific safeguards for environmental defenders. | Yes. Communications may be brought before the Committee by one or more members of the public concerning that Party's compliance with the Convention. The Compliance Committee does not solve disputes between States and stakeholders, it provides advice and assistance to Aarhus stakeholders, but it does not have the authority of a Court or Tribunal. |
| Aarhus Convention's Kyiv Protocol on Pollutant Release and Transfer Registers (PRTRs) | Universal. See ratifications | Chemicals and waste; Environmental governance | To enhance public access to information through the establishment of coherent, nationwide pollutant release and transfer registers (PRTRs). | As the Aarhus Convention, the Kyiv Protocol establishes concrete obligations to secure the full enjoyment of the three fundamental access rights - access to information, public participation, and justice, but with concrete reference to PRTRs. It also includes provisions that provide that States must minimize 'pollution and the amount of waste resulting from the operation of industrial installations and other sources are to achieve a high level of protection for the environment as a whole, to move towards sustainable and environmentally sound development and to protect the health of present and future generations.' The Protocol also touches upon the right to health, as it defines pollutants as 'a substance or a group of substances that may be harmful to the environment or to human health on account of its properties and of its introduction into the environment.' | Yes. As the Aarhus Convention, communications may be brought before the Committee by one or more members of the public concerning any Party's compliance with the Protocol. |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|--|---------------------------|---|---|--|
| Aarhus Convention's Protocol on Strategic Environmental Assessment (PSEA) | | Environmental governance | To provide for a high level of protection of the environment, including health by ensuring or contributing to the inclusion of environmental and health concerns in development plans and programs, policies and laws, as well as sustainable development measures and instruments; and establishing procedures for strategic environmental assessment. | Like the Aarhus Convention, the PSEA includes binding provisions to secure State's observance of their obligations to respect, promote and fulfil the three environmental access rights. It also contains provisions that, indirectly, contribute to advancing the right to health (although it does not mention directly this human right). For instance, it requires all reports, assessments and measures taken under the Protocol to explicitly address health effects. The Protocol also seeks to contribute to creating a safe and enabling civic space for environmental and health rights defenders -broadly understood- by establishing that 'Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental, including health, protection in the context of this Protocol.' | No. |



| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|--|---------------------------|--|---|--|
| United Nations Framework Convention on Climate Change (UNFCCC) | Universal. See ratifications. | Climate and atmosphere. | To achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner. | <p>The UNFCCC indirectly recognizes the right to development by 'Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty.' The UNFCCC moreover, recognizes that climate change and changes in the environment or biota resulting from climate change have significant deleterious effects on human health and welfare. It hence imposes States' duty to undertake environmental impact assessments of mitigation and adaptation measures, with a view to minimizing adverse effects of these in human health and the environment. It further states as one of its objective to secure the sustainability of food production (core element of the right to adequate food).</p> <p>The UNFCCC includes provisions that protect the rights to information and participation, although it does not reference these as 'human rights.' Article 4 of the UNFCCC establishes States' obligation to 'Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations,' and 'public participation in addressing climate change and its effects and developing adequate responses.' Article 6 includes the duty to secure access to information by the public on the matters relevant to the convention, including climate change and its effects, through appropriate means such as education and awareness raising programs, training, and other measures.</p> | No. |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|--|---------------------------|--|--|--|
| UNFCCC's Paris Agreement | Universal. See ratifications. | Climate and atmosphere | To strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty. | <p>The Paris Agreement's preamble explicitly recognizes 'that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity' Moreover, in Article 12 it establishes the obligation of all States parties to secure full observance of the three fundamental environmental access rights, as it establishes that 'Parties shall cooperate in taking measures, as appropriate, to enhance climate change education, training, public awareness, public participation and public access to information, recognizing the importance of these steps with respect to enhancing actions under this Agreement.'</p> <p>Regarding substantive human rights, the Paris Agreement acknowledges that 'Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.' Although the Paris Agreement does not explicitly mention these rights in the obligations it sets forth, such recognition indicates that the different duties and steps that States parties must take under this agreement, are intended to advance human rights. Therefore, national Courts (http://climatecasechart.com/non-us-case/psb-et-al-v-federal-union/) and civil society actors (https://academic.oup.com/book/36650/chapter-abstract/321664547?redirectedFrom=fulltext&login=false) have explained that the Paris Agreement is the first environmental convention that can be considered a human rights agreement.</p> | No. |

| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
|--|--|---------------------------|---|---|--|
| UN Convention on the Law of the Sea (UNCLOS) | Global. See ratifications | Marine and freshwater | To develop the principles embodied in resolution 2749 (XXV) of 17 December 1970 in which the General Assembly of the United Nations solemnly declared <i>inter alia</i> that the area of the seabed and ocean floor and the subsoil thereof, beyond the limits of national jurisdiction, as well as its resources, are the common heritage of mankind, the exploration and exploitation of which shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States. | UNCLOS establishes a series of obligations to States parties to monitor, address and mitigate pollution to the marine environment. Some of these obligations, make indirect reference to the rights to health and food, as the Convention defines 'pollution of the marine environment' as activities that are likely to negatively affect human health and legitimate uses of the sea, such as fishing. In addition, UNCLOS makes indirect reference to the environmental access rights as it provides the obligation of States to conduct environmental impact assessments when activities under their jurisdiction or control are likely to cause substantial pollution or negative effects on the marine environment, and that States must grant prompt and adequate compensation to individuals and entities affected by pollution to the marine environment, hence acknowledging the right to access to justice. | |

| Regional instruments | | | | | |
|---|---|--|---|--|--|
| International treaty (non-exhaustive overview of binding instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
| Bamako Convention | Regional: Africa. See ratifications | Chemicals and waste | To protect, by strict control, the human health of the African population and the environment against the adverse effects which may result from the generation of hazardous wastes. | The Bamako Convention is framed, inter alia, on the Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972) which acknowledges the importance of the environment for upholding human dignity and on the African Charter of Human Rights. Although the obligations set in the Bamako Convention does not explicitly mention any human rights, by referencing these instruments its preambles indicates that the Convention, even if indirectly, also seeks to contribute to the enjoyment of human rights in the region. | No. But the Secretariat 'make(s) every effort to ensure the involvement of relevant NGOs where appropriate in particular in research, policy development, advocacy and awareness raising' (Decision C1/18) |
| Carpathian Convention | Regional: Carpathian States. See ratifications | Biological diversity; Land and agriculture | The protection and sustainable development of the Carpathians with a view to inter alia improving quality of life, strengthening local economies and communities, and conservation of natural values and cultural heritage. | Article 13 of the Carpathian Convention sets obligations for States to secure access to information and public participation by establishing States' obligation to pursue policies aiming at increasing environmental awareness, improving access to information, promoting environmental education, and guaranteeing public participation in decision-making matters related to sustainable development, protection of the Carpathians and the implementation of the Convention. In addition, Article 10 of the Convention contributes to protecting workers rights, human health and the environment through the prevention of and response to industrial accidents and their consequences. The Convention also includes provisions that indirectly contribute to the enjoyment of the right to participate in cultural life and the rights of indigenous peoples. Article 11, for example, seeks to preserve and promote cultural heritable and traditional knowledge of local communities, and to secure the sustainable use of wild plants. At the same time, article 5 contributes to protecting the rights to environment and development by establishing that policies aimed at the protection and sustainable development of the Carpathians 'shall take into account the specific ecological and socio-economic conditions in the Carpathians and their mountain ecosystems, and provide benefits to the local people.' | The Implementation Committee collects, assesses and analyzes information submitted by observers, namely, States not parties to the convention or national, inter-governmental or non-governmental organizations that develop activities related to the Convention. |

| Regional instruments | | | | | |
|---|--|---------------------------|--|---|---|
| International treaty (non-exhaustive overview of binding instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
| Ezcazú Agreement | Regional: Latin America and the Caribbean. See ratifications | Environmental governance | To guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters, and the creation and strengthening of capacities and cooperation, contributing to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development. | <p>The Ezcazú Agreement is the first regional MEA to explicitly address and develop concrete obligations to secure the full enjoyment of the fundamental access rights to access to information, public participation and access to justice in environmental matters. It also recognizes the right to a clean, healthy and sustainable environment and the right to defend human rights.</p> <p>This MEA acknowledges that environmental access rights contribute to the strengthening of, inter alia, democracy, sustainable development and human rights. The Agreement reaffirms the importance of international human rights instruments, including the UDHR, and recalls the responsibility of States to 'respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind.' All obligations set in the agreement are grounded, therefore, in human rights.</p> <p>The Ezcazú Agreement establishes concrete obligations for States to advance human rights by observing concrete enforceable rules to secure the respect, protection and enjoyment of the three fundamental access rights. It moreover, along the Aarhus Convention, is the only MEA that explicitly includes provisions to protect those who exercise their rights under the convention, and the only one to explicitly mention environmental human rights defenders. Article 9 establishes the obligations of all States to, inter alia, 'guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity... take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights.' It also establishes States' obligation to 'guarantee that its domestic legislation and international obligations in relation to the rights of indigenous peoples and local communities are observed.'</p> | The rules of procedure of the Compliance Committee are yet to be adopted. |

| Regional instruments | | | | | |
|--|--|--|--|--|--|
| International treaty (non-exhaustive overview of <i>binding</i> instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
| Convention on Long-range Transboundary Air Pollution - LRTAP | Regional: Europe. See ratifications | Chemicals and waste; Climate and atmosphere | To protect man and his environment against air pollution and shall endeavor to limit and, as far as possible, gradually reduce and prevent air pollution including long-range transboundary air pollution. | <p>The LRTAP does not explicitly mention human rights, but as indicated in Article 2 of the Convention, its objective is to protect humanity from the negative effects of air pollution. Accordingly, it defines air pollution as 'the introduction by man, directly or indirectly, of substances or energy into the air resulting in deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property and impair or interfere with amenities and other legitimate uses of the environment.'</p> <p>Accordingly, establishes concrete obligations for States to reduce and control air pollution including through the creation and implementation of policies, monitoring systems and awareness raising strategies. The Convention explicitly addresses, in Articles 7 and 10, the need to monitor and address the impact of air pollutants on human health and the environment. LRTAP also includes provisions to protect material property from harms caused by air pollution. Turning to access rights, LRTAP contributes to increase the public's access to environmental information by requiring States to conduct education and training on air pollution-related matters.</p> | No. |

| Regional instruments | | | | | |
|---|--|---------------------------|--|--|--|
| International treaty (non-exhaustive overview of binding instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
| Convention on Environmental Impact Assessment in a Transboundary Context - Espoo Convention | Regional: Europe. See ratifications | Environmental governance | To enhance international cooperation in assessing environmental impact in particular in a transboundary context. | <p>The Espoo Convention establishes concrete obligations for States to prevent, reduce and control significant impact from activities regulated therein. Impact is defined by the Convention as 'any effect caused by a proposed activity on the environment including human health and safety, flora, fauna, soil, air, water, climate, landscape and historical monuments or other physical structures or the interaction among these factors; it also includes effects on cultural heritage or socio-economic conditions resulting from alterations to those factors.'</p> <p>The Espoo Convention further includes provisions that protect the rights to information and participation. It requires States parties to conduct environmental impact assessments to policies, plans and programs. This includes allowing public participation in these assessments. Moreover, the convention establishes that when an activity 'is likely to cause a significant adverse transboundary impact, the Party of origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity.' (See Articles 2 and 3).</p> <p>https://unece.org/public-participation-1</p> | The compliance mechanism of the Protocol enables the public to lodge individual or group complaints to the Compliance Committee if a State fails to fulfill its obligations under the Protocol. Any member of the public, including individuals and organizations, can submit complaints (communications) according to their national laws or practices. It is not necessary for the complainant to be a citizen of or located within the State in question, nor do they have to prove harm or personal impact to file a complaint. While legal assistance is not required, it may be helpful for the complainant. |

| Regional instruments | | | | | |
|---|--|---------------------------|--|---|--|
| International treaty (non-exhaustive overview of binding instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
| Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Kyiv, 2003) | Regional: Europe. See ratifications | Environmental governance | To provide for a high level of protection of the environment, including health, by: (a) Ensuring that environmental, including health, considerations are thoroughly taken into account in the development of plans and programmes; (b) Contributing to the consideration of environmental, including health, concerns in the preparation of policies and legislation; (c) Establishing clear, transparent and effective procedures for strategic environmental assessment; (d) Providing for public participation in strategic environmental assessment; and (e) Integrating by these means environmental, including health, concerns into measures and instruments designed to further sustainable development. | The SEA protocol establishes concrete provisions to realize the right to participation in public affairs at domestic level. | |

| Regional instruments | | | | | |
|---|--|---------------------------|--|---|--|
| International treaty (non-exhaustive overview of binding instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
| Protocol on Water and Health | Regional: Europe. See ratifications | Marine and freshwater | To promote at all appropriate levels, nationally as well as in transboundary and international contexts, the protection of human health and well-being, both individual and collective, within a framework of sustainable development, through improving water management, including the protection of water ecosystems, and through preventing, controlling and reducing water-related disease. | <p>The Protocol on Water and Health is the first MEA to link the protection and sustainability of water ecosystems with the protection of human health and wellbeing. To achieve its objective of protecting human health through improved water management and protection, the Protocol establishes a series of obligations for States that, despite not mentioning explicitly the rights to health and safe drinking water and sanitation, contribute to advancing the obligations acquired by States under these rights. For example, regarding the right to health, it establishes States' obligations to 'prevent, control and reduce water-related disease' (Article 4), Concerning the right to safe drinking water, it provides that States parties must ensure, <i>inter alia</i>, 'Adequate supplies of wholesome drinking water which is free from any micro-organisms, parasites and substances which, owing to their numbers or concentration, constitute a potential danger to human health (Article 4);' 'Adequate sanitation of a standard which sufficiently protects human health and the environment(Article 4);' and the obligation to secure water sustainability (Article 5).</p> <p>The Protocol on Water and Health adopts as guiding principles access to information and public participation (Article 5). Thus, regarding access rights, the Protocol states the need of EIAs, and the fulfilment of the Espoo Convention. It, moreover, establishes the express legal duties of States parties to secure access to environmentla information. Article 10 establishes the concrete steps that States parties must undertake to 'make available to the public such information as is held by public authorities and is reasonably needed to inform public discussion of' the matters regulated under the Convention. In addition, it requires, <i>inter alia</i>, to generate information including through early-warning systems, to disseminate to members of the public any imminent threat to public health from water-related disease to prevent or mitigate harm (Article 8), and to promote understanding of the public-health aspects of their work by those responsible for water management, water supply and sanitation (Article 9).</p> | |

| Regional instruments | | | | | |
|---|--|---------------------------|---|--|--|
| International treaty (non-exhaustive overview of binding instruments) | Geographical focus (link to ratifications) | Main environmental themes | Objective (as established in the treaty) | Environmental human rights | Accepts communications or complaints from the public |
| North American Agreement on Environmental Cooperation (NAAEC) | Regional. North America: Canada, Mexico and the United States. | Environmental governance | Foster the protection and improvement of the environment in the territories of the Parties for the well being of present and future generations; promote sustainable development based on co-operation and mutually supportive environmental and economic policies; increase co-operation between the Parties to better conserve, protect, and enhance the environment, including wild flora and fauna; support the environmental goals and objectives of the NAFTA; avoid creating trade distortions or new trade barriers; strengthen co-operation on the development and improvement of environmental laws, regulations, procedures, policies and practices; enhance compliance with, and enforcement of, environmental laws and regulations; promote transparency and public participation in the development of environmental laws, regulations and policies; promote economically efficient and effective environmental measures; and promote pollution prevention policies and practices | The Treaty does not expressly reference the rights to access to information and public participation, but establishes States' obligations to promote transparency and public participation in the development of environmental laws, regulations and policies (Article 2) including by promptly and in advance publishing or otherwise making available to interested persons 'laws, regulations, procedures and administrative rulings of general application respecting any matter covered by the Agreement' and providing opportunity to comment (Article 4). | Yes. 'The Secretariat may consider a submission from any nongovernmental organization or person asserting that a Party is failing to effectively enforce its environmental law,' subject to the admissibility criteria set forth in Article 14 of the Treaty. After studying admissibility, the Secretariat determines whether the submission merits requesting a response from the concerned State due to, for example, alleged harm to persons or organizations. The State party then as subject to the timeframes established in Article 14, provide information on the exhaustion of local remedies and any other relevant information. The Secretariat may then prepare a factual record if the Council (composed of cabinet-level or equivalent representatives of the Parties, article 8) so instructs. |

Desert and climate change - Envato Elements

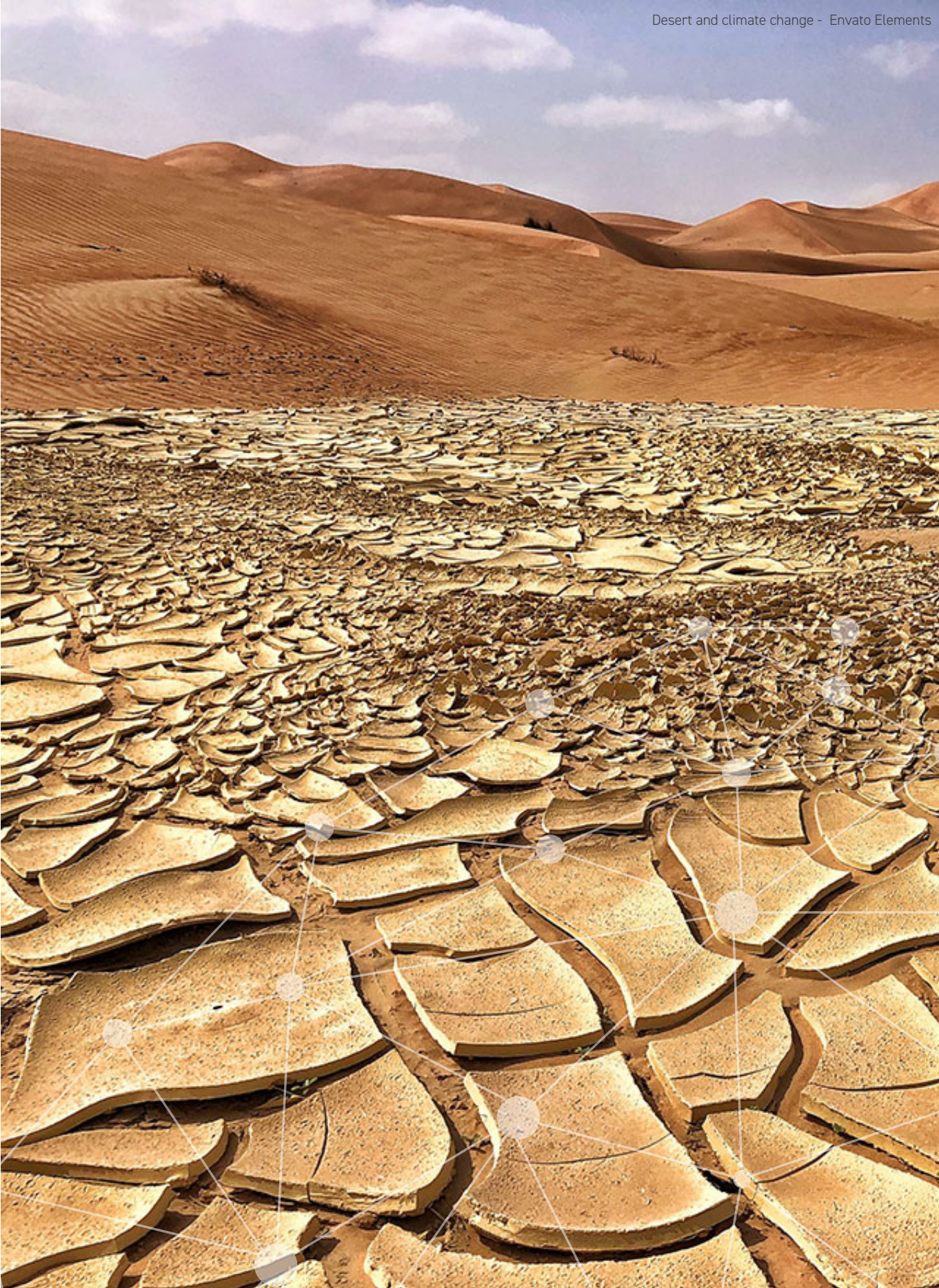


Table 3.
Multilateral Environmental Agreements and human rights related to the environment

| The links between the SDGs and Environmental Human Rights | | | | | |
|---|---|---|---|--|--|
| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
| SDG 1: No Poverty | End poverty in all of its forms everywhere. | 1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources appropriate new technology and financial services, including microfinance. | 1.4.2 Proportion of total adult population with secure tenure rights to land, (a) with legally recognized documentation, and (b) who perceive their rights to land as secure, by sex and by type of tenure | <p>Poverty and environmental protection are intertwined. Elevated poverty can lead to increased pressure on the environment. At the same time, people living in poverty or vulnerable situations may depend directly or indirectly on natural resources for income generation, food, and shelter; thus, their livelihoods are severely affected by environmental degradation (footnote 1). The interlinks between poverty and environmental protection have been highlighted, <i>inter alia</i>, by the World Bank, which, for example, warned that 'Ending poverty will not be possible if climate change and its effects on poor people are not accounted for and managed in development and poverty-reduction policies. But neither can the climate be stabilized without acknowledging that ending poverty is an utmost priority.' (footnote 2)</p> <p>The interrelatedness between poverty and environmental protection is, nonetheless, a complex situation that requires context-specific examination and, in most cases, difficult tradeoffs. Effective income-generating activities may help reduce poverty, but also create additional pressure on the environment by polluting or degrading ecosystems. 'Activities can, of course, be designed to have minimal environmental damage. The projects could even result in net benefit to the environment. Sometimes, however, development activities do harm the environment. That is why we need environmental safeguards.' (footnote 3) Environmental human rights can be the pillars of such environmental safeguards. As discussed in Section 2.1, they can help identify and address, in an early manner, potential environmental and social impacts of a wide array of projects, including poverty alleviation strategies.</p> <p>Additionally, the fulfillment by States of their environmental human rights obligations can be a form of delivering on their SDG commitments. For instance, the States' duty to recognize the rights to land tenure of all, which is a key component of the rights to adequate housing and, for certain communities, also to participation in cultural life, is also a target (1.4) under SDG 1. Furthermore, target 1.5 is connected with States' obligations to realize the right to life of everyone, which requires States to take effective steps to prevent foreseeable deaths including those caused by natural disasters.</p> | <ul style="list-style-type: none"> → rights to access information and participation → right to clean, healthy and sustainable environment → right to life → right to the highest attainable standard of physical and mental health |
| | | 1.5 By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters. | <p>1.5.1 Number of deaths, missing persons and directly affected persons attributed to disasters per 100,000 population</p> <p>1.5.3 Number of countries that adopt and implement national disaster risk reduction strategies in line with the Sendai Framework for Disaster Risk Reduction 2015-2030</p> <p>1.5.4 Proportion of local governments that adopt and implement local disaster risk reduction strategies in line with national disaster risk reduction strategies</p> | | <ul style="list-style-type: none"> → right to adequate standard of living → right to development |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|-----------------------|---|--|--|--|--|
| SDG 2: Zero Hunger | End hunger, achieve food security and improved nutrition and promote sustainable agriculture. | 2.1 By 2030, end hunger and ensure access by all people, in particular the poor and people in vulnerable situations, including infants, to safe, nutritious and sufficient food all year round. | 2.1.1 Prevalence of undernourishment 2.1.2 Prevalence of moderate or severe food insecurity in the population, based on the Food Insecurity Experience Scale (FIES) | <p>As noted in Section 2.2.1 on the right to food, securing that food is safe, accessible, available, and adequate largely depends on a clean, healthy, and sustainable environment; at the same time, measures to realize the right to food, such as procuring its safety through the banning of toxic chemicals in agriculture, can result in increased environmental protection.</p> <p>Natural disasters cause millions of people to suffer from famine. Pollution, climate change, droughts, and floods may hinder efforts to eradicate hunger as they result in losses in the quality and quantity of food due to, <i>inter alia</i>, crop destruction, and food poison, among others (footnote 4). They may also affect the physical and economic accessibility of food, with people living in poverty and rural communities suffering a disproportionate impact.</p> <p>The realization of environmental rights can contribute to eradicating hunger and increasing food security. A rights-based approach to Zero Hunger programs would allow States to timely and effectively identify and address environmental challenges and factors that can affect the accessibility, quality, and quantity of food, encouraging the adoption of preventative and resilience-building measures.</p> <p>At the same time, States' fulfillment of their duty to secure healthy and diverse ecosystems, clean water, and clean air would lead to fertile soil, efficient crops, diverse natural food resources, and other factors that help guarantee food security (indicators 2.1.1 and 2.1.2). Similarly, prioritizing the sustainable use of natural resources and lands as a way to conserve the environment, over, for example, large-scale projects (see Section 2.2.G.i on the right to food), can increase individuals' access to food sources, especially in rural populations by fostering productive and sustainable agriculture (indicator 2.4.1). Relatedly, under the rights to an adequate standard of living and participation in cultural life, States have the human rights obligations to recognize land tenure and protect rural and indigenous communities' access to natural resources, this can result in the protection and conservation of certain elements of the environment, including biodiversity (Targets 2.3-2.5)</p> | <ul style="list-style-type: none"> → rights to access information and participation → right to clean, healthy and sustainable environment → right to life → right to the highest attainable standard of physical and mental health → right to adequate standard of living → right to adequate food |
| | | 2.3 By 2030, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment. | 2.3.1 Volume of production per labor unit by classes of farming/pastoral/forestry enterprise size 2.3.2 Average income of small-scale food producers, by sex and indigenous status | | |
| | | 2.4 By 2030, ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters and that progressively improve land and soil quality. | 2.4.1 Proportion of agricultural area under productive and sustainable agriculture | | |
| | | 2.5 By 2020, maintain the genetic diversity of seeds, cultivated plants and farmed and domesticated animals and their related wild species, including through soundly managed and diversified seed and plant banks at the national, regional and international levels, and promote access to and fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge, as internationally agreed. | 2.5.1 Number of (a) plant and (b) animal genetic resources for food and agriculture secured in either medium- or long-term conservation facilities 2.5.2 Proportion of local breeds classified as being at risk of extinction | | |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|----------------------------------|--|---|---|--|--|
| SDG 3: Good Health and Wellbeing | Ensure healthy lives and promote well-being for all at all ages. | 3.2 By 2030, end preventable deaths of newborns and children under 5 years of age, with all countries aiming to reduce neonatal mortality to at least as low as 12 per 1,000 live births and under-5 mortality to at least as low as 25 per 1,000 live births | 3.2.1 Under-five mortality rate 3.2.2 Neonatal mortality rate | As highlighted in Sections 2.2.B and 2.2.C, environmental challenges affect the right of everyone to enjoy the highest attainable standard of health. Pollution and exposure to toxic substances and wastes can cause cardiovascular diseases, cancer, diabetes, and other respiratory diseases (targets 3.4 and 3.9). Specifically, regarding indicators 3.3.2, 3.3.3, and 3.3.5, the United Nations and health agencies across the world have highlighted that the prevalence of malaria, tuberculosis, and neglected tropical diseases is affected by environmental conditions, including water pollution, ecosystem degradation, and climate change (footnote 5). Natural disasters are associated, as explained in Section 2.2.C, with mental health conditions including suicide. The obligations acquired by States under environmental human rights require the adoption of effective strategies to address this intertwined relationship between human health and the environment, including by taking effective steps to prevent and mitigate environmental factors that have a negative impact on human health; hence contributing to advance in the realization of SDG 3. | <ul style="list-style-type: none"> → right to clean, healthy and sustainable environment → right to life → right to the highest attainable standard of physical and mental health → right to adequate standard of living |
| | | 3.3 By 2030, end the epidemics of AIDS, tuberculosis, malaria and neglected tropical diseases and combat hepatitis, water-borne diseases and other communicable diseases | 3.3.2 Tuberculosis incidence per 100,000 population 3.3.3 Malaria incidence per 1,000 population 3.3.5 Number of people requiring interventions against neglected tropical diseases | | |
| | | 3.4 By 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being | 3.4.1 Mortality rate attributed to cardiovascular disease, cancer, diabetes or chronic respiratory disease 3.4.2 Suicide mortality rate | | |
| | | 3.9 By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination | 3.9.1 Mortality rate attributed to household and ambient air pollution 3.9.2 Mortality rate attributed to unsafe water, unsafe sanitation and lack of hygiene (exposure to unsafe Water, Sanitation and Hygiene for All (WASH) services) 3.9.3 Mortality rate attributed to unintentional poisoning | | |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|--------------------------|---|---|--|--|--|
| SDG 4: Quality Education | Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all. | 4.7 By 2030, ensure that all learners acquire the knowledge and skills needed to promote sustainable development, including, among others, through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development. | 4.7.1 Extent to which (i) global citizenship education and (ii) education for sustainable development are mainstreamed in (a) national education policies; (b) curricula; (c) teacher education and (d) student assessment | Environmental education, including as part of sustainable development education, is a key component not only of the right to education but also of the access right to information. It is an obligation acquired by States under multiple MEAs (See Table 1), and a human rights obligation under the ESCR and CRC (see Section 2.2). | <ul style="list-style-type: none"> → right to access to information → rights to access information and participation → right to freedom of expression → rights of indigenous peoples |
| SDG 5: Gender Equality | Achieve gender equality and empower all women and girls. | 5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws. | <p>5.a.1 (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure</p> <p>5.a.2 Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control</p> | <p>Women feel harder climate change's impacts (footnote 6) and 'are disproportionately vulnerable to the harmful impact of pollution from chemicals and waste' (footnote 7). States have the human rights obligation to secure that women and girls have the same rights and freedoms as men and boys, and this requires taking positive steps to prevent their lives, health and livelihoods are more severely affected by environmental challenges, than those of men. Under the human rights non-discrimination principle and environmental human rights obligations, States must undertake comprehensive reforms to grant special protections to women and girls in a situation of vulnerability, including taking steps to redress historical inequalities and patterns of violence and discrimination that exacerbate their vulnerabilities to climate change, pollution, and other environmental challenges. Specific steps, as mentioned in Section 3.2, include securing women's access to land and natural resources. Fulfilling this duty would contribute to advancing on target 5.a.</p> <p>Moreover, environmental degradation and climate change increase the risks of gender-based violence and can intensify the risk of violence against children, including girls (footnote 8). Addressing these environmental challenges, as States must under the right to a clean, healthy, and sustainable environment (See Section 2.2.A) and the specific environmental rights obligations owed to women, is, therefore, an important strategy to prevent and contribute to eliminating violence against women and girls.</p> | <ul style="list-style-type: none"> → right to freedom of expression → right to peaceful assembly and association → right to life → right to the highest attainable standard of physical and mental health → rights to access information and participation in cultural life → rights of indigenous peoples |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|--------------------------------------|---|---|---|--|---|
| SDG 6: Clean Water and Sanitation | Ensure availability and sustainable management of water and sanitation for all. | 6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all. | 6.1.1 Proportion of population using safely managed drinking water services | As explained in Section 2.2, under the rights to a clean, healthy, and sustainable environment and the right to safe drinking water and sanitation, States have the obligations to prevent water pollution and contamination; protect, restore and conserve (indicators 6.3.2 and 6.4.2) watersheds and water sources (indicator 6.3.2); provide safe drinking water for all (indicator 6.1.1), and guarantee the long-term sustainability of this element of the environment. These obligations include the duty to regulate industrial wastewater flows (indicator 6.3.1) and secure its efficient use by the private and public sectors (see indicator 6.4.1). The fulfillment of States' obligations under the referenced human rights would, therefore, contribute to advance on SDG 6. Moreover, as explained in Section 2.1 of this report, States must realize everyone's rights to access information, participate in decision-making, and access justice. The realization of these rights would contribute to improved management of natural resources, including water management (Targets 6.5 and 6.b). | <ul style="list-style-type: none"> → right to access to information → rights to access information and participation → right to a clean, healthy and sustainable environment → right to life → right to the highest attainable standard of physical and mental health → right to safe drinking water and sanitation → rights of indigenous peoples |
| | | 6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally. | 6.3.1 Proportion of domestic and industrial wastewater flows safely treated 6.3.2 Proportion of bodies of water with good ambient water quality | | |
| | | 6.4 By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity | 6.4.1 Change in water-use efficiency over time 6.4.2 Level of water stress: freshwater withdrawal as a proportion of available freshwater resources | | |
| | | 6.5 By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate | 6.5.1 Degree of integrated water resources management 6.5.2 Proportion of transboundary basin area with an operational arrangement for water cooperation | | |
| | | 6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes. | 6.6.1 Change in the extent of water-related ecosystems over time | | |
| | | 6.b Support and strengthen the participation of local communities in improving water and sanitation management. | 6.b.1 Proportion of local administrative units with established and operational policies and procedures for participation of local communities in water and sanitation management | | |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|---------------------------------------|---|---|--|---|--|
| SDG 7: Affordable and Clean Energy | Ensure access to affordable, reliable, sustainable and modern energy for all. | 7.1 By 2030, ensure universal access to affordable, reliable and modern energy services | 7.1.2 Proportion of population with primary reliance on clean fuels and technology | Non-renewable sources of energy are a major driver of climate change and other environmental challenges, including pollution and erosion, and can have negative effects on human health (footnote 9). Yet, 'fossil fuels still account for more than 80 percent of global energy production' (footnote 10) (indicator 7.1.2). Protecting the right to a clean, healthy, and sustainable environment, as well as other substantive environmental rights (i.e., food and water, see Section 2.2), requires the adoption of concrete steps to secure the sustainability and protection of the environment and its elements. As explained in Section 2.2, these rights require States to take concrete steps to prevent pollution and to balance between economic and development needs and objectives, and other necessities, prioritizing, where needed, those related to the rights of people. A key component of these steps is addressing energy production as a driver of environmental challenges, and this requires transitioning away from non-renewable energy sources (footnote 11). | <ul style="list-style-type: none"> → right to a clean, healthy and sustainable environment → right to the highest attainable standard of physical and mental health → right to life → right to adequate standard of living → right to development |
| | | 7.2 By 2030, increase substantially the share of renewable energy in the global energy mix. | 7.2.1 Renewable energy share in the total final energy consumption | | |



| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|---|---|--|---|--|--|
| SDG 8: Decent Work and Economic Growth | Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. | 8.4 Improve progressively, through 2030, global resource efficiency in consumption and production and endeavor to decouple economic growth from environmental degradation, in accordance with the 10-Year Framework of Programmes in Sustainable Consumption and Production, with developed countries taking the lead. | 8.4.1 Material footprint, material footprint per capita, and material footprint per GDP 8.4.2 Domestic material consumption, domestic material consumption per capita, and domestic material consumption per GDP | <p>'The remarkable economic and population growth of the 20th century was closely coupled to substantial increases in the extraction and consumption of natural resources, leading to increasingly-damaging negative environmental impact. However, economic growth globally was faster than the growth of the rate of consumption of natural resources, and some negative environmental impacts have been reduced... Accelerating this process of decoupling economic activity from consumption and environmental impacts is fundamental to future human well-being.' (footnote 12)</p> <p>Environmental human rights can inform efforts to decouple economic growth from environmental degradation. Increased access to information and participation by citizens is essential to inform and develop the sustainability-oriented innovations (footnote 13) required to have a growing economy, capable of responding to the needs of everyone without discrimination while securing environmental protection. Additionally, mainstreaming environmental human rights into economic growth decision-making processes can help decision-makers to identify and prevent the negative social and environmental impacts that these strategies can have. This is particularly evident in the case of the three fundamental access rights (See section 2.1), but substantive rights, as discussed throughout this document, also offer guidance in this regard.</p> <p>As recognized under SDG 8, sustainable economic growth and decent work are interlinked. Environmental human rights imply concrete obligations for States to secure a safe and healthy work environment (see section 3.4), which is a core element of the right to work, and labor rights as recognized by the ILO (indicator 8.8.2).</p> | <p>→ right to clean, healthy and sustainable environment</p> <p>→ right to adequate standard of living</p> <p>→ right to development</p> |
| | | 8.8 Protect labor rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment | 8.8.2 Level of national compliance with labor rights (freedom of association and collective bargaining) based on International Labor Organization (ILO) textual sources and national legislation, by sex and migrant status | | |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|--|--|--|--|--|--|
| SDG 9: Industry, Innovation and Infrastructure | Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation. | 9.4 By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities. | 9.4.1 CO2 emission per unit of value added | <p>As explained before in this table and Section 2.2.A and 2.2.B, reducing CO2 emissions is an essential step to secure a safe climate and a sustainable environment. 'Business plays a central role in climate change. Much of the CO2 emissions causing climate change come from business-driven economic activity... The UN Guiding Principles on Business and Human Rights (UNGPs) provide the authoritative global framework to prevent and address negative human rights impacts related to business, which include business-related human rights impacts from climate change. The UNGPs reflect core elements of international human rights law' (footnote 14), including, as explained in section 4 of this report, business enterprises' concrete responsibilities derived from environmental human rights. These responsibilities include taking concrete steps to reduce their carbon footprint. For example, in the <i>Milieudéfense et al. v. Royal Dutch Shell plc.</i> climate change litigation change, a national court of the Netherlands explained that, under their human rights responsibilities in connection with the environment, companies must take responsibility for the emissions caused by their operations and hence ordered the company to reduce emissions to protect the rights to life, private life, family life, home, and correspondence of affected individuals (footnote 15).</p> <p>Environmental human rights point to the need of implementing alternatives to highly producing CO2 activities (indicator 9.4.1); they also offer a pathway to such changes. Environmental access rights, for example, as has been discussed throughout this document, open windows in the decision-making processes to inform and shape decisions that have an environmental impact, helping to identify less polluting alternatives. Additionally, where they have been able to assert their human rights, environmental human rights defenders have encouraged companies to move away from CO2-producing activities (footnote 16).</p> | <ul style="list-style-type: none"> → right to clean, healthy and sustainable environment → right to adequate standard of living → right to development → right to life → right to the highest attainable standard of physical and mental health |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
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| SDG 10: Reduced Inequalities | Reduce inequality within and among countries. | 10.2 By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status. | 10.3.1 Proportion of population reporting having personally felt discriminated against or harassed within the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law | <p>Human rights law requires States to observe the non-discrimination principle. Accordingly, environmental human rights require States to take positive actions to protect the rights of individuals in situations of vulnerability and to prevent direct and indirect discrimination at all levels of environmental decision-making and implementation processes (See section 3 of this document). By observing their obligations under access and substantive environmental rights, States can reduce the proportion of the population having felt discriminated against (indicator 10.3.1).</p> <p>Additionally, as mentioned in Section 2.2.G.iii on the right to adequate housing, environmental challenges are creating a new category of refugees, namely environmental or climate refugees. Preventing forced displacement and evictions in connection with environmental challenges by, <i>inter alia</i>, adopting preventative measures to timely avert the impacts of natural disasters, can contribute to advancing on indicator 10.7.4.</p> | <ul style="list-style-type: none"> → right to a clean, healthy and sustainable environment → right to access to information → rights to access information and participation → right to freedom of expression → right to peaceful assembly and association |
| | | | 10.7.4 Proportion of the population who are refugees, by country of origin | | |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|--|---|--|---|--|--|
| SDG 11: Sustainable Cities and Communities | Make cities and human settlements inclusive, safe, resilient and sustainable. | 11.1 By 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums. | 11.1.1 Proportion of urban population living in slums, informal settlements or inadequate housing | <p>Cities are both a major challenge and an opportunity for sustainable development and the realization of the rights to, <i>inter alia</i>, development and an adequate standard of living. There is a strong link between the quality of life in cities and how cities manage the natural resources available to them (footnote 17).</p> <p>Sustainable cities and communities require that, in addition to the basic protections of the rights to life, health, and integrity (indicator 11.5.1), States take effective steps to realize, <i>inter alia</i>, the rights to adequate housing (Indicator 11.1.1) and participation in cultural life (11.4.1). Regarding the environment, among other things, this requires, as explained in Sections 2.2.A and 2.2.1, disaster risk reduction strategies and efforts to protect and conserve the natural resources upon which human rights and cultures depend, of which adequate and sound management of wastes and pollutants (indicators 11.6.1 and 11.6.2) materials is an essential component.</p> | <ul style="list-style-type: none"> → right to a clean, healthy and sustainable environment → right to adequate standard of living → right to housing → indigenous rights |
| | | 11.4 Strengthen efforts to protect and safeguard the world's cultural and natural heritage. | 11.4.1 Total per capita expenditure on the preservation, protection and conservation of all cultural and natural heritage, by source of funding (public, private), type of heritage (cultural, natural) and level of government (national, regional, and local/municipal) | | |
| | | 11.5 By 2030, significantly reduce the number of deaths and the number of people affected and substantially decrease the direct economic losses relative to global gross domestic product caused by disasters, including water-related disasters, with a focus on protecting the poor and people in vulnerable situations. | <p>11.5.1 Number of deaths, missing persons and directly affected persons attributed to disasters per 100,000 population</p> <p>11.5.2 Direct economic loss attributed to disasters in relation to global domestic product (GDP)</p> <p>11.5.3 (a) Damage to critical infrastructure and (b) number of disruptions to basic services, attributed to disasters</p> | | |
| | | 11.6 By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management. | <p>11.6.1 Proportion of municipal solid waste collected and managed in controlled facilities out of total municipal waste generated, by cities</p> <p>11.6.2 Annual mean levels of fine particulate matter (e.g. PM2.5 and PM10) in cities (population weighted)</p> | | |
| | | 11.b By 2020, substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change, resilience to disasters, and develop and implement, in line with the Sendai Framework for Disaster Risk Reduction 2015-2030, holistic disaster risk management at all levels. | <p>11.b.1 Number of countries that adopt and implement national disaster risk reduction strategies in line with the Sendai Framework for Disaster Risk Reduction 2015-2030</p> <p>11.b.2 Proportion of local governments that adopt and implement local disaster risk reduction strategies in line with national disaster risk reduction strategies</p> | | |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|--|---|---|--|---|--|
| SDG 12: Responsible Production and Consumption | Ensure sustainable consumption and production patterns. | 12.2 By 2030, achieve the sustainable management and efficient use of natural resources. | 12.2.1 Material footprint, material footprint per capita, and material footprint per GDP 12.2.2 Domestic material consumption, domestic material consumption per capita, and domestic material consumption per GDP | <p>Economic and social progress over the last century has been accompanied by environmental degradation that is endangering the very systems on which our future development – indeed, our very survival – depends... Should the global population reach 9.6 billion by 2050, the equivalent of almost three planets could be required to provide the natural resources needed to sustain current lifestyles' (footnote 18).</p> <p>Encouraging sustainable production patterns is essential to guarantee the sustainability of natural resources, and a clean, healthy, and sustainable environment. The obligations that States have acquired under environmental human rights require effective steps to secure the sustainability of food, water, and natural resources. These obligations, therefore, correlate with the steps that States have committed to take under SDG 12.</p> <p>For example, resource decoupling and impact decoupling are essential steps under SDG 12 but are also an integral part of States' duty to realize the right to a clean, healthy, and sustainable environment, specifically, respecting the biophysical boundaries of the planet and minimizing the use of hazardous and pollutants materials and wastes generated throughout the production and consumption processes.</p> | <ul style="list-style-type: none"> → right to access to information → right to a clean, healthy and sustainable environment → right to adequate standard of living → right to the highest attainable standard of physical and mental health → right to safe drinking water and sanitation |
| | | 12.4 By 2020, achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, in accordance with agreed international frameworks, and significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment. | 12.4.1 Number of parties to international multilateral environmental agreements on hazardous waste, and other chemicals that meet their commitments and obligations in transmitting information as required by each relevant agreement 12.4.2 (a) Hazardous waste generated per capita; and (b) proportion of hazardous waste treated, by type of treatment | | |
| | | 12.5 By 2030, substantially reduce waste generation through prevention, reduction, recycling and reuse | 12.5.1 National recycling rate, tons of material recycled | | |
| | | 12.7 Promote public procurement practices that are sustainable, in accordance with national policies and priorities | 12.7.1 Number of countries implementing sustainable public procurement policies and action plans | | |

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| | | <p>12.8 By 2030, ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature.</p> | <p>12.8.1 Extent to which (i) global citizenship education and (ii) education for sustainable development are mainstreamed in (a) national education policies; (b) curricula; (c) teacher education; and (d) student assessment</p> | | |
| | | <p>12.a Support developing countries to strengthen their scientific and technological capacity to move towards more sustainable patterns of consumption and production</p> | <p>12.a.1 Installed renewable energy-generating capacity in developing countries (in watts per capita)</p> | | |
| | | <p>12.b Develop and implement tools to monitor sustainable development impacts for sustainable tourism that creates jobs and promotes local culture and products</p> | <p>12.b.1 Implementation of standard accounting tools to monitor the economic and environmental aspects of tourism sustainability</p> | | |
| | | <p>12.c Rationalize inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts, taking fully into account the specific needs and conditions of developing countries and minimizing the possible adverse impacts on their development in a manner that protects the poor and the affected communities</p> | <p>12.c Rationalize inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts, taking fully into account the specific needs and conditions of developing countries and minimizing the possible adverse impacts on their development in a manner that protects the poor and the affected communities</p> | | |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|------------------------|--|---|--|--|--|
| SDG 13: Climate Action | Take urgent action to combat climate change and its impacts. | 13.1 Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries. | <p>13.1.1 Number of deaths, missing persons and directly affected persons attributed to disasters per 100,000 population</p> <p>13.1.2 Number of countries that adopt and implement national disaster risk reduction strategies in line with the Sendai Framework for Disaster Risk Reduction 2015–2030</p> <p>13.1.3 Proportion of local governments that adopt and implement local disaster risk reduction strategies in line with national disaster risk reduction strategies</p> | <p>The climate crisis is one of the major challenges of our time. Climate change is increasing the frequency and intensity of extreme weather events, which aggravates water management issues, reduces agricultural production and food security, increases health risks, and affects the enjoyment of several human rights, including safe drinking water and sanitation, and education. Climate change, moreover, may pose a risk to the right to life (indicator 13.1.1), particularly, for individuals in situations of vulnerability. As explained in Section 2.2, States' human rights obligations imply that they must take action to address climate change to prevent these negative effects, this include disaster risk reduction strategies (indicators 13.1.1, 13.1.2, 13.1.3).</p> <p>Climate action should be inclusive and human rights-based for it to be effective and decisive (footnote 19). States' fulfillment of their obligations under the three fundamental environmental human rights constitute the building blocks of inclusive processes (indicators 13.2.1, 13.3.1). In fact, the Sendai Framework for Disaster Risk Reduction (indicator 13.1.2) 'makes specific references to the impact of disasters on displacement, as well as the importance of leveraging migrants' knowledge, skills, and capacities in the design and implementation of disaster risk reduction.' (footnote 20).</p> | <ul style="list-style-type: none"> → rights to access information and participation → right to a clean, healthy and sustainable environment → right to life → right to the highest attainable standard of physical and mental health → right to development |
| | | 13.2 Integrate climate change measures into national policies, strategies and planning. | <p>13.2.1 Number of countries with nationally determined contributions, long-term strategies, national adaptation plans and adaptation communications, as reported to the secretariat of the United Nations Framework Convention on Climate Change</p> <p>13.2.2 Total greenhouse gas emissions per year</p> | <p>As mentioned in Section 2.2, under international human rights law, States have the duty to cooperate amongst themselves to secure the full observance and fulfilment of environmental human rights (indicator 13.a.1).</p> | |

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| | <p>13.3 Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning.</p> | <p>13.3.1 Extent to which (i) global citizenship education and (ii) education for sustainable development are mainstreamed in (a) national education policies; (b) curricula; (c) teacher education; and (d) student assessment</p> | | |
| | <p>13.a Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly \$100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible</p> | <p>13.a.1 Amounts provided and mobilized in United States dollars per year in relation to the continued existing collective mobilization goal of the \$100 billion commitment through to 2025</p> | | |
| | <p>13.b Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities.</p> | <p>13.b.1. Number of least developed countries and small island developing States with nationally determined contributions, long-term strategies, national adaptation plans and adaptation communications, as reported to the secretariat of the United Nations Framework Convention on Climate Change</p> | | |

| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
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| SDG 14: Life Below Water | Conserve and sustainably use the oceans, seas and marine resources for sustainable development. | 14.1 By 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution. | 14.1.1 (a) Index of coastal eutrophication; and (b) plastic debris density | Oceans play a key role supporting life on Earth. They contribute to global and regional regulation of the climate, and are sources of food and energy. The protection and conservation of marine areas is an integral part of States' obligations to realize the human rights of local communities, particularly those whose livelihoods and cultures depend on marine resources (footnote 14) and everyone's right to a clean, healthy, and sustainable environment. Water ecosystems are threatened, <i>inter alia</i> , by ocean acidification, which results from the uptake of CO ₂ from the atmosphere (footnote 15); plastic pollution, and the unsustainable exploitation of marine resources, including overfishing (footnote 16). A human rights-based approach to the protection of the ocean can inform efforts to halt these hazards faced by marine ecosystems. For example, monitoring the safety (indicator 11.3) and accessibility (indicator 11.4.1) of marine food, as steps to fulfil the obligations owed to coastal communities under the rights to food and a healthy environment, can early warn about the levels of ocean acidification (indicator 14.3.1). | <ul style="list-style-type: none"> → rights to access information and participation → right to a clean, healthy and sustainable environment → right to life → right to the highest attainable standard of physical and mental health → right to safe drinking water and sanitation → right to development → rights of indigenous peoples |
| | | 14.2 By 2020, sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans. | 14.2.1 Number of countries using ecosystem-based approaches to managing marine areas | | |
| | | 14.3 Minimize and address the impacts of ocean acidification, including through enhanced scientific cooperation at all levels | 14.3.1 Average marine acidity (pH) measured at agreed suite of representative sampling stations | | |
| | | 14.4 By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time feasible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics. | 14.4.1 Proportion of fish stocks within biologically sustainable levels | | |



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| | | 14.5 By 2020, conserve at least 10 per cent of coastal and marine areas consistent with national and international law and based on the best available scientific information. | 14.5.1 Coverage of protected areas in relation to marine areas | | |
| | | 14.6 By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation | 14.6.1 Degree of implementation of international instruments aiming to combat illegal, unreported and unregulated fishing | | |
| | | 14.a Increase scientific knowledge, develop research capacity and transfer marine technology, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular small island developing States and least developed countries | 14.a.1 Proportion of total research budget allocated to research in the field of marine technology | | |

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| | | 14.b Provide access for small-scale artisanal fishers to marine resources and markets. | 14.b.1 Degree of application of a legal/regulatory/policy/institutional framework which recognizes and protects access rights for small-scale fisheries | | |
| | | 14.c Enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in United Nations Convention on the Law of the Sea, which provides the legal framework for the conservation and sustainable use of oceans and their resources, as recalled in paragraph 158 of "The future we want" | 14.c.1 Number of countries making progress in ratifying, accepting and implementing through legal, policy and institutional frameworks, ocean-related instruments that implement international law, as reflected in the United Nations Convention on the Law of the Sea, for the conservation and sustainable use of the oceans and their resources | | |



| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
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| SDG 15: Life on Land | Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss. | 15.1 By 2020, ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests, wetlands, mountains and drylands, in line with obligations under international agreements. | 15.1.1 Forest area as a proportion of total land area 15.1.2 Proportion of important sites for terrestrial and freshwater biodiversity that are covered by protected areas, by ecosystem type | Strategies to secure the stability of terrestrial ecosystems help to address and mitigate climate change, reduce the risks of natural disasters, and maintain the productivity of agricultural systems (footnote 24), therefore, contributing to the realization of environmental human rights. At the same time, protected areas can act as reserves of water and biodiversity resources for current and future food production (footnote 25). The protection and conservation of terrestrial ecosystems (targets 15.1-15.5) are thus indispensable to secure a clean, healthy, and sustainable environment as well as the sustainability, availability, and accessibility of natural resources, including water and food biodiversity (footnote 26, see Section 2.2.G). Safe and stable terrestrial ecosystems also precondition for adequate housing, especially for individuals and groups living in rural areas and disaster-prone zones. Securing the integrity and sustainability of terrestrial ecosystems is, therefore, an essential duty that States must comply with under their environmental human rights obligations. Moreover, a human rights approach to the protection and conservation of terrestrial ecosystems is essential to guarantee that these efforts have a positive social impact, rather than a negative outcome on the rights and livelihoods of affected communities (footnote 27). The Durban Accord and Durban Action Plan, for instance, recognize that conservation must be centered on respect for human rights. Specifically, they acknowledge that 'protected areas have been established without adequate attention to and respect for the rights of indigenous, mobile peoples and local communities, especially their rights to lands, territories and resources and their right to freely consent to activities that affect them. Oftentimes, indigenous peoples have been expelled from protected areas created in their territories thereby severing their relationship with their territories and undermining their cultural integrity. Indeed, indigenous peoples and local communities often have borne the costs of and received few benefits from protected areas.' (footnote 28) | → rights to access information and participation → right to a clean, healthy and sustainable environment → right to life → right to the highest attainable standard of physical and mental health → right to safe drinking water and sanitation → right to development → rights of indigenous peoples |
| | | 15.2 By 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally. | 15.2.1 Progress towards sustainable forest management | | |
| | | 15.3 By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world. | 15.3 By 2030, combat desertification, restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land degradation-neutral world | | |

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| | | <p>15.4 By 2030, ensure the conservation of mountain ecosystems, including their biodiversity, in order to enhance their capacity to provide benefits that are essential for sustainable development.</p> | <p>15.4.1 Coverage by protected areas of important sites for mountain biodiversity 15.4.2 Mountain Green Cover Index</p> | <p>The Durban instruments, as well as additional recent efforts to guide conservation (footnote 29) acknowledge that environmental human rights provide safeguards to secure that strategies to deliver on SDG 15 indeed have the intended result of contributing to sustainable development by taking into account the needs of those who have been left behind. They, for example, recognize that the rights to participation and self-determination, which entitle communities to manage the natural resources, including forests (indicators 15.1.1, 15.2.1), upon which their livelihoods and cultures depend, must be observed at all times.</p> <p>Related grassroots and civil society initiatives, such as community-based management of natural resources, have also been identified as a good practice to harmonize and secure environmental protection, including the conservation of biodiversity, and the rights of local communities, including to food, culture, and self-determination. These practices also help avert risks associated with the defense of the environment, including violent attacks against environmental defenders (footnote 30).</p> | |
| | | <p>15.5 Take urgent and significant action to reduce the degradation of natural habitats, halt the loss of biodiversity and, by 2020, protect and prevent the extinction of threatened species.</p> | <p>15.5.1 Red List Index</p> | | |
| | | <p>15.6 Promote fair and equitable sharing of the benefits arising from the utilization of genetic resources and promote appropriate access to such resources, as internationally agreed</p> | <p>15.6.1 Number of countries that have adopted legislative, administrative and policy frameworks to ensure fair and equitable sharing of benefits</p> | | |
| | | <p>15.7 Take urgent action to end poaching and trafficking of protected species of flora and fauna and address both demand and supply of illegal wildlife products</p> | <p>15.7.1 Proportion of traded wildlife that was poached or illicitly trafficked</p> | | |
| | | <p>15.8 By 2020, introduce measures to prevent the introduction and significantly reduce the impact of invasive alien species on land and water ecosystems and control or eradicate the priority species</p> | <p>15.8.1 Proportion of countries adopting relevant national legislation and adequately resourcing the prevention or control of invasive alien species</p> | | |

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| | | <p>15.9 By 2020, integrate ecosystem and biodiversity values into national and local planning, development processes, poverty reduction strategies and accounts.</p> | <p>15.9.1 (a) Number of countries that have established national targets in accordance with or similar to Aichi Biodiversity Target 2 of the Strategic Plan for Biodiversity 2011–2020 in their national biodiversity strategy and action plans and the progress reported towards these targets; and (b) integration of biodiversity into national accounting and reporting systems, defined as implementation of the System of Environmental-Economic Accounting</p> | | |
| | | <p>15.a Mobilize and significantly increase financial resources from all sources to conserve and sustainably use biodiversity and ecosystems</p> | <p>15.a.1 (a) Official development assistance on conservation and sustainable use of biodiversity; and (b) revenue generated and finance mobilized from biodiversity-relevant economic instruments</p> | | |

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| | | <p>15.b</p> <p>Mobilize significant resources from all sources and at all levels to finance sustainable forest management and provide adequate incentives to developing countries to advance such management, including for conservation and reforestation</p> | <p>15.b.1 (a)</p> <p>Official development assistance on conservation and sustainable use of biodiversity; and (b) revenue generated and finance mobilized from biodiversity-relevant economic instruments</p> | | |
| | | <p>15.c</p> <p>Enhance global support for efforts to combat poaching and trafficking of protected species, including by increasing the capacity of local communities to pursue sustainable livelihood opportunities.</p> | <p>15.c.1</p> <p>Proportion of traded wildlife that was poached or illicitly trafficked</p> | | |



| SDG | Description | Targets | Relevant indicators | Environmental rights and SDGs | Environmental rights that can inform efforts to achieve each SDG |
|--|--|--|---|---|--|
| SDG 16: Peace, Justice and Strong Institutions | Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. | 16.1 Significantly reduce all forms of violence and related death rates everywhere. | 16.1.1 Number of victims of intentional homicide per 100,000 population, by sex and age 16.1.3 Proportion of population subjected to (a) physical violence, (b) psychological violence and (c) sexual violence in the previous 12 months | Across the world, environmental defenders are facing threats in retaliation for their work. In most countries, these threats are violent: killings, kidnappings, enforced disappearances, arbitrary detention, and torture (indicators 16.1.1; 16.1.3; 16.3.1). Stigmatization and smear campaigns that exacerbate existing patterns of discrimination also add to the list of threats faced by these brave individuals (indicators 16.b.1) (footnote 31). Environmental human rights require States to take immediate and effective measures to protect environmental defenders from these threats (See Sections 2.2.A and 2.2.F). Preventing and responding to these attacks, including by increasing protection for these defenders, are essential steps not only to secure the realization of their human rights, but also to advance on SDG16, particularly indicators 16.1.1, 16.1.3, and 16.3.1. Effectively monitoring and reporting on attacks against environmental defenders, as required under indicator 16.10.1 will further help States devise and inform concrete strategies to fulfill these obligations (footnote 32). Many attacks against environmental human rights defenders are linked with entrenched patterns of corruption, including corrupt management of land and natural resources; and many of these cases have the involvement of the private sector (footnote 33). In addition to being a driver of violence against defenders, corruption significantly hinders States' capacities to fulfill their human rights obligations. 'Human rights principles and institutions are essential components of successful and sustainable anti-corruption strategies. Anti-corruption efforts are more likely to be successful if they approach corruption as a systemic problem.' (indicator 16.5.2). Strengthening environmental rule of law is essential to create a safe and enabling environment for human rights defenders, including environmental defenders. Environmental rule of law, as a pillar of rule of law systems, implies the consolidation of strong institutions, specifically, strong legal frameworks; effective political, administrative, and judicial institutions, and access to information and justice. These three pillars are directly linked with States' access and substantial environmental human rights obligations (footnote 34). | → right to access to information → rights to access information and participation → right to access justice → right to freedom of expression → right to peaceful assembly and association → right to life |
| | | 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all. | 16.3.1 Proportion of victims of violence in the previous 12 months who reported their victimization to competent authorities or other officially recognized conflict resolution mechanisms | | |
| | | 16.5 Substantially reduce corruption and bribery in all their forms. | 16.5.2 Proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months | | |
| | | 16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels. | 16.7.2 Proportion of population who believe decision-making is inclusive and responsive, by sex, age, disability and population group | | |

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| | | <p>16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.</p> | <p>16.10.1 Number of verified cases of killing, kidnaping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months</p> <p>16.10.2 Number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information</p> | | |
| | | <p>16.b Promote and enforce non-discriminatory laws and policies for sustainable development.</p> | <p>16.b.1 Proportion of population reporting having personally felt discriminated against or harassed in the previous 12 months on the basis of a ground of discrimination prohibited under international human rights law</p> | | |



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UNDERSTANDING HUMAN RIGHTS RELATED TO THE ENVIRONMENT:

EXPLORING THEIR SCOPE AND IMPLICATIONS

