



# General Assembly

Distr.: General  
24 December 2012

Original: English

---

## Human Rights Council

Twenty-second session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **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**

#### **Preliminary report**

##### *Summary*

This report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment is submitted to the Human Rights Council in accordance with Council resolution 19/10.

The first report of the Independent Expert is intended to place the mandate in a historical context, present some of the outstanding issues relevant to the relationship between human rights and the environment and describe the current and planned programme of activities. The Independent Expert notes that the relationship between human rights and the environment has been the subject of serious, sustained attention in many different forums. Although some fundamental aspects of the relationship are now firmly established, the Independent Expert explains that many issues related to the obligations that human rights law imposes regarding environmental protection need greater study and clarification. Therefore, the first priority of his mandate is to provide greater conceptual clarity to the application of human rights obligations related to the environment. He intends to take an evidence-based approach to determining the nature, scope and content of these obligations. To inform his work, the Independent Expert will actively consult and seek input from a wide spectrum of relevant stakeholders.

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction .....	1–6	3
II. The evolution of environmental rights.....	7–33	4
A. A right to a healthy environment .....	12–17	5
B. Human rights vulnerable to environmental harm .....	18–24	7
C. Human rights vital to environmental policymaking.....	25–33	9
III. Framing the issues.....	34–53	12
A. Human rights obligations and best practices.....	37–39	12
B. Substantive and procedural rights and duties.....	40–43	13
C. Vulnerable groups and non-discrimination.....	44–46	15
D. Human rights obligations relating to transboundary and global environmental harm .....	47–48	16
E. Human rights obligations and private actors.....	49–50	16
F. The relationship between existing human rights and a right to a healthy environment.....	51–52	17
G. Other issues.....	53	17
IV. Planning the programme of activities.....	54–57	17
V. Conclusions and recommendations.....	58–62	18

## I. Introduction

1. In its resolution 19/10, adopted on 22 March 2012, the Human Rights Council decided to appoint an Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, with a mandate to:

(a) Study the human rights obligations, including non-discrimination obligations, relating to the enjoyment of a safe, clean, healthy and sustainable environment;

(b) Identify, promote and exchange views on best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking, especially in the area of environmental protection, and, in that regard, to prepare a compendium of best practices;

(c) Make recommendations that could help with the realization of the Millennium Development Goals, especially Goal 7 (ensuring environmental sustainability);

(d) Take into account the results of the 2012 United Nations Conference on Sustainable Development and contribute a human rights perspective to follow-up processes; and

(e) Take into account a gender perspective by, *inter alia*, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities.

2. Resolution 19/10 requests the Independent Expert to submit a report, including conclusions and recommendations, to the Council at its twenty-second session and to report annually thereafter. It also requests the Independent Expert to consult with and take account of the views of a wide range of stakeholders, including Governments, international bodies, national human rights institutions, civil society organizations, the private sector and academic institutions. Moreover, the resolution provides that the Independent Expert shall work in close coordination, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Human Rights Council, as well as other relevant United Nations bodies and human rights treaty bodies.

3. On 6 July 2012, the Council appointed Professor John H. Knox as the Independent Expert.<sup>1</sup> His mandate formally began on 1 August 2012.

4. In accordance with the mandate, the Independent Expert has begun his work by conducting extensive consultations with States, international organizations, human rights bodies, environmental and human rights civil society organizations, legal experts, and other special procedures on the substance of the mandate and how best to carry it out. Consultations have been arranged in Geneva, Washington and Nairobi. Subject to the availability of voluntary contributions, the Independent Expert plans to convene additional multi-stakeholder consultations in the near future, including in Latin America and Asia. He also plans to employ other means of receiving views from stakeholders, including through surveys.

5. For assistance in the legal research required by the mandate, the Independent Expert intends to draw on pro bono research and advice from legal practitioners and scholars. He has received very helpful offers of such assistance and would welcome additional help from legal experts, in particular from developing countries.

---

<sup>1</sup> Henry C. Lauerman Professor of International Law, Wake Forest University.

6. In his future reports, the Independent Expert will respond to each of the elements of the mandate in greater detail. This first report is intended only to place the mandate in a historical context, present some of the outstanding issues and describe the current and planned programme of activities.

## II. The evolution of environmental rights

7. Environmental rights – that is, rights understood to be related to environmental protection – are late arrivals to the body of human rights law. The drafters of the seminal human rights instrument, the 1948 Universal Declaration of Human Rights, did not include environmental rights. Nor, at the time, did the national constitutions to which the drafters looked for inspiration. The silence was understandable. Although humans have always known of our dependence on the environment, we were only beginning to realize how much damage our activities could cause to the environment and, as a result, to ourselves. Efforts to mitigate environmental degradation were then still in their infancy.

8. As scientific knowledge of the environment has grown over the succeeding decades, so has our awareness of the importance of safeguarding it. From the 1960s to the present, the modern environmental movement has transformed our relationship with the environment. Virtually every State in the world has enacted domestic laws aimed at reducing air and water pollution, regulating toxic substances and conserving natural resources, among other goals. At the international level, States have negotiated a vast number of agreements to address environmental challenges, including trade in endangered species, conservation of biological diversity, transportation and disposal of hazardous substances, marine pollution, depletion of the ozone layer and climate change.

9. In short, environmental concerns have moved from the periphery to the centre of human efforts to pursue economic and social development. Since the early 1990s, the international community has repeatedly emphasized that development must be sustainable and, in particular, must protect the environment on which present and future generations depend. In the words of the Rio Declaration on Environment and Development, adopted at the 1992 United Nations Conference on Environment and Development in Rio de Janeiro, “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it” (principle 4). Goal 7 of the Millennium Development Goals is to ensure environmental sustainability, including by integrating principles of sustainable development into country policies and programmes, and reversing the loss of environmental resources.<sup>2</sup> In June 2012, at the United Nations Conference on Sustainable Development, States again renewed their commitment “to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations”.<sup>3</sup>

10. With the rise of a stronger environmental consciousness came calls for formal recognition of the importance of environmental protection to human well-being. These calls often sought expression in the language of human rights. This is unsurprising, even inevitable. Human rights are grounded in respect for fundamental human attributes such as dignity, equality and liberty. The realization of these attributes depends on an environment that allows them to flourish. At the same time, effective environmental protection often depends on the exercise of human rights that are vital to informed, transparent and

---

<sup>2</sup> Other targets include reducing biodiversity loss, halving the proportion of people without access to safe drinking water and basic sanitation, and improving the lives of at least 100 million slum dwellers.

<sup>3</sup> United Nations Conference on Sustainable Development resolution I “The future we want”, contained in its report, A/CONF.216/16, para. 1, endorsed by the General Assembly in its resolution 66/288.

responsive policymaking. Human rights and environmental protection are inherently interdependent.

11. The recognition of the close relationship between human rights and the environment has principally taken two forms: (a) adoption of an explicit new right to an environment characterized in terms such as healthy, safe, satisfactory or sustainable; and (b) heightened attention to the relationship to the environment of already recognized rights, such as rights to life and health.<sup>4</sup>

## A. A right to a healthy environment

12. As the importance of environmental protection has become clearer, many countries have added explicit environmental rights to their constitutions. In 1976, Portugal became the first country to adopt a constitutional “right to a healthy and ecologically balanced human environment”. Since then, more than 90 States have adopted similar rights in their national constitutions.<sup>5</sup> About two thirds of the constitutional rights refer to health; alternative formulations include rights to a clean, safe, favourable or wholesome environment.<sup>6</sup> Some States have included more detailed rights, such as rights to receive information and to participate in decision-making about environmental matters.

13. At the regional level, human rights agreements drafted after the 1970s have also included such rights. The 1981 African Charter on Human and Peoples’ Rights provides that “all peoples shall have the right to a general satisfactory environment favorable to their development” (art. 24) and the 1988 Additional Protocol to the American Convention on Human Rights states that “everyone shall have the right to live in a healthy environment” (art. 11, para. 1). In 2003, the African Union adopted the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, which states that women “shall have the right to live in a healthy and sustainable environment” (art. 18) and “the right to fully enjoy their right to sustainable development” (art. 19). The 2004 Arab Charter on Human Rights includes a right to a healthy environment as part of the right to an adequate standard of living that ensures well-being and a decent life (art. 38). Similarly, the Human Rights Declaration adopted by the Association of Southeast Asian Nations in November 2012 incorporates a “right to a safe, clean and sustainable environment” as an element of the right to an adequate standard of living (para. 28 (f)). Although the European human rights system does not include an explicit right to a healthy environment, the 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), drafted under the auspices of the United Nations Economic Commission for Europe, refers to “the right of every person of

<sup>4</sup> A great deal of scholarship has addressed human rights and the environment. Good overviews are provided by the analytical study prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR), A/HRC/19/34 and Corr.1, which the Council noted with appreciation in Resolution 19/10, and a joint report prepared by OHCHR and the United Nations Environment Programme (UNEP) for the 2012 United Nations Conference on Sustainable Development, entitled “Human Rights and the Environment: Rio+20”. A detailed survey of the entire field is *Environmental Protection and Human Rights*, by Donald K. Anton and Dinah L. Shelton (Cambridge University Press, 2011).

<sup>5</sup> See David Richard Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, Toronto, UBC Press, 2012).

<sup>6</sup> For the remainder of this report, the phrase “right to a healthy environment” includes the various alternative formulations of such a right.

present and future generations to live in an environment adequate to his or her health and well-being” (art. 1).<sup>7</sup>

14. In contrast to these developments at the national and regional levels, no global agreement sets out an explicit right to a healthy (or satisfactory, safe or sustainable) environment.<sup>8</sup> Were the Universal Declaration to be drafted today, it is easy to imagine that it would include a right recognized in so many national constitutions and regional agreements. At the same time, it must be acknowledged that the United Nations has not taken advantage of subsequent opportunities to recognize a human right to a healthy environment. The instrument that comes the closest may be the 1972 Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), whose principle 1 states that: “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”. The 1987 report of the World Commission on Environment and Development (A/42/427), which brought forward the concept of sustainable development, included legal principles drafted by an experts group, the first of which declared, “all human beings have the fundamental right to an environment adequate for their health and well-being”.<sup>9</sup> Rather than adopt this language, however, the 1992 Rio Declaration states: “Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature” (principle 1). Nor have the later conferences on sustainable development in Johannesburg in 2002 and Rio de Janeiro in 2012 proclaimed a right to a healthy environment.

15. In the United Nations human rights bodies, the most sustained attention to the possible adoption of such a right came in the early 1990s. In 1990, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed Fatma Zohra Ksentini as its Special Rapporteur on human rights and the environment. Her final report (E/CN.4/Sub.2/1994/9), in 1994, included draft principles on human rights and the environment drawn up by a group of experts, stating that everyone has “the right to a secure, healthy and ecologically sound environment” and listing a number of related rights, including rights to freedom from pollution, to protection and preservation of the air, soil, water, sea-ice, flora and fauna, to safe and healthy food and water, and to information concerning the environment (ibid., annex I).

16. Although the Human Rights Commission considered the report, it did not adopt or endorse the draft principles or appoint a Special Rapporteur itself. The Commission and Council, as well as other United Nations human rights bodies and mechanisms, have continued to study the interaction of human rights and the environment, but their attention has been directed primarily at the relationship of the environment with already recognized

<sup>7</sup> It may also be noted that the European Committee of Social Rights has interpreted the right to protection of health in article 11 of the European Social Charter to include the right to a healthy environment. See complaint No. 30/2005, *Marangopoulos Foundation for Human Rights v. Greece*, decision on the merits (2006), para. 195.

<sup>8</sup> Articles 1 of the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, on the right of self-determination, provide that “all peoples may, for their own ends, freely dispose of their natural wealth and resources” and “in no case may a people be deprived of its own means of subsistence”. But this language speaks more to the relationship of a people with its natural resources than to a human right to a healthy environment. The International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child do refer to the environment in the context of specific rights, as the next section explains.

<sup>9</sup> In 1990, in its resolution 45/94, the General Assembly adopted a softened version of this language: “all individuals are entitled to live in an environment adequate for their health and well-being.”

human rights. In other words, they have concentrated not on proclaiming a new right to a healthy environment, but rather on what might be called “greening” human rights – that is, examining and highlighting the relationship of existing human rights to the environment.

17. This effort, as well as similar efforts in other forums, has identified two sets of rights closely related to the environment: (a) rights whose enjoyment is particularly vulnerable to environmental degradation; and (b) rights whose exercise supports better environmental policymaking. At the risk of oversimplification, many of the rights in the first category – that is, those at risk from environmental harm – are often characterized as *substantive* rights, while many of the rights in the second category – those whose implementation supports stronger environmental policies – are often considered *procedural* rights. Examples of the former are rights to life, health and property; examples of the latter are rights to freedom of expression and association, to information, to participation in decision-making and to effective remedies. The next two sections of the present report describe the developing awareness of the environmental aspects of each of these sets of rights.

## **B. Human rights vulnerable to environmental harm**

18. The recognition that environmental harm can interfere with the full enjoyment of human rights is not new; it dates from the very beginning of the modern environmental movement. In the 1968 resolution deciding to convene the Stockholm Conference, the General Assembly, in the preamble of its resolution 2398 (XXIII), noted its concern about the effects of “the continuing and accelerating impairment of the quality of the human environment ... on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as developed countries”. And the first paragraph of the proclamation of the 1972 Stockholm Declaration states that “both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself” (para. 1).

19. In a real sense, all human rights are vulnerable to environmental degradation, in that the full enjoyment of all human rights depends on a supportive environment. However, some human rights are more susceptible than others to certain types of environmental harm. In recent years, in addition to reaffirming the general point that “environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights” (res. 16/11, preamble), the Human Rights Council has identified environmental threats to particular rights. To give three examples, it has: affirmed that illicit traffic in, and improper management and disposal of, hazardous substances and wastes constitute a serious threat to a range of rights, including the rights to life and health;<sup>10</sup> underlined that climate change has a wide range of implications for the effective enjoyment of human rights, including the rights to life, health, food, water, housing and self-determination;<sup>11</sup> and recognized that “environmental degradation, desertification and global climate change are exacerbating destitution and desperation, causing a negative impact on the realization of the right to food, in particular in developing countries”.<sup>12</sup>

20. The Human Rights Council has also led other human rights bodies and mechanisms within the United Nations system to examine in more detail the effects of environmental

<sup>10</sup> Commission on Human Rights res. 2005/15; Council res. 9/1, 12/18, 18/11. See also Vienna Declaration and Programme of Action, para. 11.

<sup>11</sup> Council res. 7/23, 10/4, 18/22. It has also held two panel discussions, in 2009 and 2012, that have elaborated on those implications.

<sup>12</sup> Council res. 7/14, 10/12, 13/4.

degradation on human rights. For example, at the request of the Council, the Office of the High Commissioner for Human Rights (OHCHR) conducted a study in 2008–2009 on the effects of climate change on the enjoyment of human rights (A/HRC/10/61). The study concluded that climate change will pose direct and indirect threats to many rights, including: the rights to life and food, as a result of malnutrition and extreme weather events; the right to water, as a result of melting glaciers and reductions in snow cover; and the right to the highest attainable standard of health, as a result of malnutrition, extreme weather, and an increasing incidence of malaria and other diseases that thrive in warmer weather. The study noted that rising sea levels caused by global warming threaten the very existence of small island States, which has “implications for the right to self-determination, as well as for the full range of rights for which individuals depend on the State for their protection” (para. 41). In December 2009, before the Copenhagen meeting of the parties to the United Nations Framework Convention on Climate Change, the special procedure mandate holders issued a joint statement drawing attention to the dangers that climate change presents to the enjoyment of human rights.<sup>13</sup>

21. Special procedures have further analysed the effects of environmental degradation on human rights. One mandate, in particular, was created to examine the human rights effects of a specific environmental problem: the illicit disposal of hazardous substances and waste in developing countries. Since 1995, the special rapporteurs appointed to carry out this mandate have identified many human rights that may be infringed by such toxic dumping, including not only the rights to life and health, but also “such fundamental rights as the right of peoples to self-determination and permanent sovereignty over natural resources, the right to development, the rights to ... adequate food and safe and healthy working conditions, freedom of expression, the right to form and join trade unions, the rights to strike and to bargain collectively, the right to social security and the right to enjoy the benefits of scientific progress and its applications”.<sup>14</sup>

22. Other special procedures have drawn the connections between environmental harm and impairment of the rights within their mandates. The following are a few of many possible examples. The former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context informed the 2002 World Summit on Sustainable Development that “the realization of the right to adequate housing loses its meaning unless processes are put into place to ensure that people and communities can live in an environment that is free from pollution of air, water and the food chain”<sup>15</sup> and the current Special Rapporteur has issued a detailed report on the effects of climate change on the right (A/64/255). The Special Rapporteur on the human right to safe drinking water and sanitation has carefully examined the effects of climate change on those rights.<sup>16</sup> The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has underscored that the right extends to the underlying determinants of health, such as safe water, adequate sanitation, and healthy environmental conditions generally (A/62/214, para. 104).<sup>17</sup> The

---

<sup>13</sup> Joint statement of the special procedure mandate holders of the Human Rights Council on the United Nations Climate Change Conference (Copenhagen, 7–18 December 2009).

<sup>14</sup> Report submitted by the Special Rapporteur on toxic waste on adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, E/CN.4/2001/55, para. 58.

<sup>15</sup> Statement by Mr. Miloon Kothari, Special Rapporteur on adequate housing at the World Summit on Sustainable Development, Johannesburg, South Africa, 30 August 2002.

<sup>16</sup> Climate Change and the Human Rights to Water and Sanitation: Position Paper. Available from [www.ohchr.org/Documents/Issues/Water/Climate\\_Change\\_Right\\_Water\\_Sanitation.pdf](http://www.ohchr.org/Documents/Issues/Water/Climate_Change_Right_Water_Sanitation.pdf).

<sup>17</sup> This is also the position of the Committee on Economic, Social and Cultural Rights (see general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4).

Special Rapporteur on the right to food has emphasized that agricultural productivity depends on the services rendered by ecosystems (A/HRC/13/33/Add.2, para. 21) and his most recent report focuses on the impact of the destruction of the world's fisheries on the right to food (A/67/268).

23. Some global human rights treaties explicitly refer to environmental threats to human rights, particularly the right to health. The Convention on the Rights of the Child states that environmental pollution poses “dangers and risks” to nutritious foods and clean drinking-water, which Parties are required to take appropriate measures to provide in the course of pursuing full implementation of the right of the child to the highest attainable standard of health (art. 24, para. 2 (c)).<sup>18</sup> Similarly, article 12, paragraph 2 (b) of the International Covenant on Economic, Social and Cultural Rights provides that the steps Parties must take to achieve the full realization of the right to health “shall include those necessary for ... the improvement of all aspects of environmental and industrial hygiene”. The Committee on Economic, Social and Cultural Rights has interpreted this phrase to comprise, *inter alia*, “the requirement to ensure an adequate supply of safe and potable water and basic sanitation; [and] 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”.<sup>19</sup>

24. Finally, the regional human rights tribunals have contributed a great deal of jurisprudence to the relationship of human rights and the environment. In a series of carefully reasoned decisions, the African Commission on Human and Peoples’ Rights, the European Court of Human Rights, and the Inter-American Commission and Court of Human Rights have found that environmental harm can give rise to violations of rights to life,<sup>20</sup> health,<sup>21</sup> property<sup>22</sup> and privacy,<sup>23</sup> among others.

### C. Human rights vital to environmental policymaking

25. The human rights whose enjoyment can be affected by environmental harm are not the only rights directly relevant to the environment. Another approach to clarifying the

<sup>18</sup> To the same end, the Convention requires Parties to take appropriate measures to ensure that all segments of society are supported in the use of basic knowledge of environmental sanitation (art. 24, para. 2 (e)).

<sup>19</sup> Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 15. Interestingly, the Committee entitled its paragraph on article 12, paragraph 2 (b), “The right to healthy natural and workplace environments”.

<sup>20</sup> E.g., African Commission on Human and Peoples’ Rights, communication No. 155/96, *Social and Economic Rights Action Center v. Nigeria (Ogoniland Case)*, decision, para. 67; European Court of Human Rights, *Öneryildiz v. Turkey* (application No. 48939/99), Judgement, 30 November 2004, para. 118; Inter-American Commission on Human Rights, report on the situation of human rights in Ecuador, document OEA/Ser.L/V/II.96 doc. 10 rev. 1.

<sup>21</sup> E.g., European Committee of Social Rights, complaint No. 30/2005, *Marangopoulos Foundation for Human Rights v. Greece*, para. 221.

<sup>22</sup> E.g., Inter-American Court of Human Rights, *Saramaka People v. Suriname*, Series C No. 172, judgement of 28 November 2007, paras. 95, 158; *Indigenous Community of Yakye Axa v. Paraguay*, Series C No. 125, judgement of 17 June 2005, para. 143, 156; Inter-American Commission on Human Rights, *Maya Indigenous Community of the Toledo District v. Belize*, case 12.053, report No. 40/04, document OEA/Ser.L/V/II.122, doc. 5 rev. 1, para. 153.

<sup>23</sup> E.g., European Court of Human Rights, *Fadeyeva v. Russia* (application No. 55723/00), judgement of 9 June 2005, para. 134; *Taşkin and others v. Turkey* (application No. 46117/99), judgement of 10 November 2004, para. 126; *López Ostra v. Spain* (application No. 16798/90), judgement of 9 December 1994, para. 58.

relationship of already recognized rights with the environment is to identify rights whose implementation is vital to environmental policymaking. In general, these are rights whose free exercise makes policies more transparent, better informed and more responsive.<sup>24</sup> They include rights to freedom of expression and association, rights to receive information and participate in decision-making processes, and rights to legal remedies. When directed at environmental issues, the exercise of such rights results in policies that better reflect the concerns of those most concerned and, as a result, that better safeguard their rights to life and health, among others, from infringement through environmental harm.<sup>25</sup>

26. Procedural rights are protected by many human rights instruments. For example, rights of freedom of expression, freedom of peaceful assembly and association, participation in government and effective remedies for violations of rights are recognized in the Universal Declaration (arts. 7, 8, 19, 20 and 21) and elaborated on in the International Covenant on Civil and Political Rights (arts. 2, 19, 21, 22 and 25), both of which also make clear that the rights are not subject to discrimination.<sup>26</sup> Even though these instruments do not explicitly address environmental issues, they undoubtedly encompass the exercise of the rights for environmental ends.

27. Another important instrument in this regard is 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, which sets out, *inter alia*: rights to meet peacefully to promote and protect human rights; to seek and obtain information about human rights, to disseminate information about human rights and to draw attention to whether they are observed in practice; to have effective access to participation in government; and to benefit from remedies for human rights violations, including by having complaints of such violations promptly reviewed by independent and competent legal authorities and receiving redress. Again, these rights apply no less to human rights defenders seeking to exercise them for the protection of the environment than they do for other purposes protective of the full enjoyment of human rights.

28. In practice, environmental human rights defenders have proved to be especially at risk when trying to exercise these rights. The Special Rapporteur on the situation of human rights defenders has reported (A/HRC/19/55) that she receives many communications concerning environmental activists, “including those working on issues related to extractive industries, and construction and development projects; those working for the rights of indigenous and minority communities; women human rights defenders; and journalists” (*ibid.*, para. 64). Environmental rights defenders face a high risk of killings, attacks, assault, threats and intimidation from both State and non-State actors (*ibid.*, paras. 64–92). Needless

<sup>24</sup> To be clear, these are not the only types of rights whose fulfilment may benefit environment policymaking. As noted below, environmental rights may also give rise to *substantive* standards to inform and guide environmental policies. And the implementation of some rights, such as the right to sanitation, may have direct environmental benefits. See report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, A/HRC/12/24, para. 35.

<sup>25</sup> See Council resolution 16/11, preamble (“human rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection and promoting policy coherence, legitimacy and sustainable outcomes”); A/HRC/19/34, para. 8 (“rights such as access to information, participation in public affairs and access to justice are central to securing governance structures that enable society to adopt fair decision-making processes with respect to environmental issues”).

<sup>26</sup> See also Human Rights Committee, general comment No. 34 (2011) on article 19 (freedom of opinion and expression) of the International Covenant on Civil and Political Rights (stating in paragraph 18 that article 19, paragraph 2, of the Covenant “embraces a right of access to information held by public bodies”).

to say, the primary effect of these human rights violations is felt by the individuals and communities who suffer from them. But the violations also have secondary effects on the environment that the individuals were trying to protect and on all of those whose full enjoyment of human rights depends upon that environment.

29. The procedural rights that support environmental protection may be found in sources other than human rights instruments. One of the most often-cited sources is principle 10 of the 1992 Rio Declaration, which states:

Environmental issues are best handled with 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.

30. Principle 10 has been influential in the development of international and domestic environmental law and policy. The clearest example may be the Aarhus Convention, which sets out detailed obligations with respect to access to information, public participation and access to justice in environmental matters.

31. Although principle 10 does not characterize access to information, opportunity to participate in decision-making and access to legal remedies as human rights, there are obvious parallels between those norms and those of human rights law. More explicitly, the Aarhus Convention does describe access to information, participation and remedies as rights, and provides that each Party shall guarantee them, in accordance with the terms of the Convention, “in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being” (art. 1).

32. Similarly, although the Rio Declaration does not refer to principles of non-discrimination in the exercise of procedural rights, it does emphasize the role of certain vulnerable groups, including women, youth, indigenous people and people under oppression, in environmental policymaking (principles 20–23). The Aarhus Convention includes a clear requirement of non-discrimination, stating that within the scope of the Convention, “the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile” (art. 3, para. 9). Again, there are strong similarities to requirements of non-discrimination in human rights law. The final outcome of the 2012 United Nations Conference on Sustainable Development (A/CONF.216/16, para. 1, resolution I “The future we want”) connects non-discrimination more explicitly to human rights norms in its treatment of gender equality, citing the Convention on the Elimination of All Forms of Discrimination against Women and stating the resolve of the State participants to “unlock the potential of women as drivers of sustainable development”, including by repealing discriminatory laws and ensuring equal access to justice and legal support (*ibid.*, paras. 236 and 238).

33. The procedural rights of indigenous peoples have received detailed recognition in international instruments. International Labour Organization (ILO) Convention No. 169 (1989) concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries includes a general requirement that governments consult with the peoples concerned whenever giving consideration to measures that may affect them directly (art. 6). More specifically, it provides for the assessment of environmental impacts of proposed development activities and makes clear that the rights

of indigenous peoples to the natural resources pertaining to their lands include the right to participate in “the use, management and conservation of these resources” (art. 15; also arts. 7 and 14). Similarly, the United Nations Declaration on the Rights of Indigenous Peoples recognizes the right of indigenous peoples to participate in decision-making on matters that would affect their rights and provides that States shall consult with the indigenous peoples concerned to obtain their free, prior and informed consent before adopting and implementing measures that may affect them, particularly with respect to projects involving the development, use or exploitation of natural resources (arts. 18, 19, 29 and 32).

### **III. Framing the issues**

34. As this brief description of the evolution of environmental rights makes clear, some aspects of the relationship between human rights and the environment are now firmly established. To highlight two: first, as many human rights bodies at the global, regional and national levels have recognized, environmental degradation can and does adversely affect the enjoyment of a broad range of human rights, including rights to life, health, food and water. Second, the exercise of certain rights can and does benefit environmental policymaking, resulting in better environmental protection and, as a consequence, greater protection of the human rights that may be threatened by environmental degradation. These protective rights include rights of free expression and association, rights of information and participation, and rights to remedy. They have been affirmed in a wide range of international instruments, including environmental as well as human rights agreements.

35. The *obligations* that human rights law imposes regarding environmental protection are less clearly understood. In the words of resolution 19/10, “certain aspects of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment require further study and clarification”. To provide that study and clarification is a principal focus of this mandate. To that end, the Independent Expert will rely not only on research, but also, in accordance with the terms of the mandate itself, on the views of interested stakeholders, including Governments, international bodies, national human rights institutions, civil society organizations, the private sector and academic institutions. Until that work is completed, it would be premature to draw general conclusions about the human rights obligations relating to the environment.

36. Nevertheless, it may be helpful to frame some of the issues that are likely to arise in the course of this study, including those concerning: the relationship between human rights obligations and best practices; the connections between substantive and procedural rights and duties; vulnerable groups and non-discrimination; human rights obligations relating to transboundary and global environmental harm; the application of human rights norms to non-State actors; and the relationship between a right to a healthy environment and other human rights. It is important to emphasize that this list is far from exhaustive. Nor is the study of these issues by the mandate certain to address all of these aspects in detail; its content will depend on the results of the consultations and research to come.

#### **A. Human rights obligations and best practices**

37. As the previous chapter of the present report illustrates, the relationship between human rights and the environment has become the subject of serious, sustained attention in many different forums, including United Nations human rights treaty bodies, special procedures, regional human rights bodies, international conferences on sustainable development, multilateral environmental agreements, domestic legislatures and courts, and academic studies. This diversity of perspectives demonstrates the importance that international organizations, States, civil society organizations and scholars place on these

issues and their relevance to a wide range of actors in the fields of human rights and environmental policymaking.

38. At the same time, the multitude of relevant forums makes the study of human rights obligations pertaining to the environment conceptually challenging. The development of this field has been rapid and widely dispersed, but it has also been highly fragmented. Although the various bodies engaged in the process of developing and implementing a rights-based approach to environmental policy occasionally look to one another for guidance, they often have different sources of authority, different audiences and different mandates. For example, the increasing attention devoted by treaty bodies and special procedures to environmental issues, while highly valuable, is necessarily focused on particular rights or problems. While the opinions of a regional human rights tribunal are of great importance for States within the region, the relevance for countries outside it may be less clear. The use of environmental rights in domestic law varies from State to State and may not always shed light on the scope of the rights at the international level. Moreover, the application of human rights law to environmental issues has often developed on a case-by-case basis. In sum, while there is no shortage of statements on human rights obligations relating to the environment, the statements do not come together on their own to constitute a coherent set of norms.

39. Nevertheless, as the previous chapter also indicates, the human rights and environmental bodies that have examined these issues do seem to have reached some areas of convergence in their approaches. Wherever possible, the independent expert will seek to find such areas with respect to human rights obligations. In that respect, he will be guided by the language of resolution 19/10. By requesting study of the human rights obligations relating to the environment and a compilation of best practices in the use of human rights obligations to improve environmental policymaking, in consultation with interested actors in all areas, the resolution encourages the Independent Expert to examine the use of rights-based approaches to environmental protection through a wide lens. Human rights obligations relating to the environment may fall along a spectrum, from duties that are generally binding on all States, to those that bind a smaller number of States that have accepted them through regional agreements or that have adopted them in their own constitutions or other laws. Obligations that bind only some States may nevertheless be worthy of consideration by other States as possible best, or good, practices.<sup>27</sup>

## **B. Substantive and procedural rights and duties**

40. In examining the obligations pertaining to the human rights vulnerable to environmental degradation, perhaps the most basic set of issues concerns the substantive and procedural content of those obligations. One interesting development in this respect concerns possible links between substantive rights and procedural duties. Some human rights bodies have, in effect, closed the circle between the (largely substantive) rights that are most likely to suffer environmental harm, and the (largely procedural) rights whose implementation helps to ensure environmental protection. In order to safeguard the environment from the types of harm that violate the first set of rights, they have concluded that States have obligations to respect and ensure the second set of rights.

---

<sup>27</sup> The Independent Expert agrees with the statement of the then Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation that “rarely can a practice be qualified as best and that the concept of good practices is preferable” (A/HRC/10/6, para. 34, footnote 37).

41. Much of this analysis has come from the regional human rights tribunals. For example, the African Commission on Human and Peoples' Rights has said that Government compliance with the spirit of the rights to health and to a satisfactory environment in the African Charter must include "ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities".<sup>28</sup> In a series of cases construing the right to privacy, the European Court of Human Rights has similarly held that States must follow a decision-making process that includes "appropriate investigations and studies", gives the public access to information, and provides those concerned effective legal remedies.<sup>29</sup> In construing indigenous and tribal property rights, the Inter-American Court of Human Rights has stated that the State must consult with the community regarding any proposed concessions or other activities that may affect their lands and natural resources, ensure that no concession is issued without a prior assessment of its environmental and social impacts and guarantee that the community receives a reasonable benefit from any such plan if approved. With respect to "large-scale development or investment projects that would have a major impact", the State must do more than consult; it must obtain the community's "free, prior, and informed consent, according to their customs and traditions".<sup>30</sup>

42. Making this connection can create a kind of virtuous circle: strong compliance with procedural duties produces a healthier environment, which in turn contributes to a higher degree of compliance with substantive rights such as rights to life, health, property and privacy. The converse is also true. Failure to meet procedural obligations can result in a degraded environment, which interferes with the full enjoyment of other human rights.

43. To be clear, a relationship of this type between substantive rights and procedural duties does not preclude the possibility of other human rights obligations relevant to environmental protection. Obligations to respect procedural rights obviously have legal bases separate from any such obligations arising from environmental threats to substantive rights. And environmental rights may also give rise to certain minimum *substantive* environmental standards that apply regardless of whether procedural requirements are followed. For example, the Committee on Economic, Social and Cultural Rights, in its general comment No. 15 (2002) on the right to water, has construed the right to health as encompassing "taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions ... States parties should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes" (para. 8). The scope and content of the substantive components of environmental rights like these also require further study.

---

<sup>28</sup> African Commission on Human and Peoples' Rights, *Ogoniland Case*, para. 53.

<sup>29</sup> *Taşkin v. Turkey*, para. 119.

<sup>30</sup> Inter-American Court of Human Rights, *Saramaka People v. Suriname*, paras. 129 and 134. The Special Rapporteur on the rights of indigenous peoples has also explained in a report to the Council, in the context of extraction of natural resources from indigenous land, that requirements of consultation and consent help to safeguard indigenous peoples' substantive rights, including rights to property, health and culture (A/HRC/21/47, paras. 49 and 50).

### C. Vulnerable groups and non-discrimination

44. As the Council has recognized in its resolution 16/11, “environmental damage is felt most acutely by those segments of the population already in vulnerable situations”. Resolution 19/10 instructs the Independent Expert to apply a gender perspective by, *inter alia*, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities,<sup>31</sup> and it is clear that women and children are among the groups vulnerable to environmental harm. The special procedures and OHCHR have identified other groups as well. For example, the then Independent Expert on the question of human rights and extreme poverty pointed out in a report to the General Assembly (A/65/259) that “environmental degradation disproportionately affects those living in extreme poverty” (para. 37). The then representative of the Secretary-General on the human rights of internally displaced persons highlighted in a report (A/HRC/10/13) “normative gaps in the current legal framework for protection of those displaced by the effects of global warming” (para. 22). And the OHCHR report on climate change (A/HRC/10/61) emphasized that, in addition to creating large numbers of migrants, climate change will particularly affect other vulnerable groups, including women, children and indigenous peoples (paras. 42–54).

45. Indigenous peoples are at particular risk from many kinds of environmental damage because of their cultural and economic dependence on environmental resources. As the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has explained in a report (A/HRC/15/37, para. 71), “in recognition of the special ties that indigenous peoples maintain with the natural habitats of the territories in which they live, international standards widely acknowledge indigenous peoples’ ‘right to the conservation and protection of the environment’ and of the ‘productive capacity of their lands or territories and resources’ ([United Nations] Declaration [on the Rights of Indigenous Peoples], art. 29.1) and at the same time call for the adoption of ‘special measures ... for safeguarding’ their environment (ILO Convention No. 169, art. 4.1)”.<sup>32</sup> In 2011, the Special Rapporteur<sup>33</sup> concluded that “the implementation of natural resource extraction and other development projects on or near indigenous territories has become one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights” (A/HRC/18/35, para. 57).

46. Although the environmental threats to vulnerable groups are coming into sharper focus, the applicable human rights obligations are still not always as clear as they should be. Issues include the scope and application of duties of non-discrimination, as well as duties relating to special procedural and substantive rights reflective of the groups’ vulnerable situation.

<sup>31</sup> As the father of three daughters, the Independent Expert understands the importance of such a perspective.

<sup>32</sup> More generally, article 7, paragraph 4, of the Convention requires Governments to “take measures, in co-operation with the peoples concerned, to protect and preserve the environment of the territories they inhabit”.

<sup>33</sup> Mandate had by then changed to Special Rapporteur on the rights of indigenous peoples.

#### **D. Human rights obligations relating to transboundary and global environmental harm**

47. Many environmental problems involve transboundary harm. In the words of the 2011 OHCHR report on human rights and the environment, “One country’s pollution can become another country’s environmental and human rights problem, particularly where the polluting media, like air and water, are capable of easily crossing boundaries” (A/HRC/19/34, para. 65). Such problems have given rise to much of international environmental law, from bilateral and regional agreements on cross-border air and water pollution to multilateral environmental agreements on global challenges such as marine pollution, ozone depletion and climate change.

48. The application of human rights law to transboundary and global environmental harm requires consideration of questions regarding the extraterritorial reach of human rights norms. Those questions are often complex, not least because human rights treaties employ varying language to define the scope of their application. Recent years have seen heightened attention to the extraterritoriality of human rights obligations,<sup>34</sup> but there is still a need for more detailed clarification (see A/HRC/19/34, para. 64). These issues are of particular importance in the environmental context, in the light of the number and intensity of transboundary and global environmental threats to the full enjoyment of human rights.

#### **E. Human rights obligations and private actors**

49. Another set of issues concerns the application of human rights obligations to environmental harm caused by non-State actors, including businesses. In a review of the scope and pattern of more than 300 alleged corporate-related human rights abuses, the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises found in a report (A/HRC/8/5/Add.2, para. 27) that “nearly a third of cases alleged environmental harms that had corresponding impacts on human rights ... In these cases, various forms of pollution, contamination, and degradation translated into alleged impacts on a number of rights, including on the right to health, the right to life, rights to adequate food and housing, minority rights to culture, and the right to benefit from scientific progress”. The report noted that the environmental concerns were raised with respect to all business sectors, including heavy manufacturing, pharmaceutical and chemical companies, and retail and consumer products.

50. In principle, the obligations of States to protect human rights from infringement from private actors extends to infringement from environmental harm, as many human rights bodies have explained.<sup>35</sup> However, the specific application of such obligations in the environmental context needs closer examination. In that respect, the “Protect, Respect and

---

<sup>34</sup> E.g., Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (28 September 2011).

<sup>35</sup> E.g., Committee on Economic, Social and Cultural Rights, general comment No. 15, para. 23; African Commission on Human and Peoples’ Rights, *Ogoniland Case*, para. 57; European Court of Human Rights, *Hatton v. United Kingdom* (application No. 36022/97), judgement of 8 July 2003, para. 98; *López Ostra v. Spain*, para. 51; OEA/Ser.L/V/II.96 doc. 10 rev. 1.

Remedy” Framework and the Guiding Principles on Business and Human Rights will be particularly helpful.<sup>36</sup>

## **F. The relationship between existing human rights and a right to a healthy environment**

51. Some cross-cutting issues that arise in almost all of the above contexts concern the relationship between the two approaches to environmental rights described in the second chapter of this report – that is, the relationship between efforts to recognize a single, overarching right to a healthy environment and efforts to “green” existing human rights by identifying their environmental implications. That the two approaches are not inconsistent with one another seems apparent from their simultaneous use in many national and regional legal systems. But many aspects of their relationship remain unclear.

52. Possible relationships include: that the two approaches are separate from one another; that the definition and content of the right to a healthy environment are informed by experience with greening existing human rights; and that the right to a healthy environment may be derived from one or more existing rights, as it is in the Arab Charter and the Human Rights Declaration of the Association of Southeast Asian Nations. Here, too, further study may produce greater clarity.

## **G. Other issues**

53. The issues briefly described above are not the only ones raised by this mandate. Other issues that deserve closer examination include those concerning: the potential rights of future generations; the application of human rights obligations to especially pressing environmental challenges, including climate change, armed conflict and the environmentally displaced; and, last, but not least, the relevance of human rights to protection of non-human aspects of the environment. One of the longest-standing criticisms of a human rights-based approach to environmental protection is that it is likely to ignore important aspects of the environment that are not readily reducible to human needs and interests. As the mandate proceeds, it will be necessary to bear in mind not only the potential, but also the possible limits, of looking to human rights for environmental standards.

## **IV. Planning the programme of activities**

54. The first priority of the mandate is to provide greater conceptual clarity to the application of human rights obligations related to the environment. The Independent Expert intends to take an evidence-based approach to determining the nature, scope and content of the obligations. He plans to spend much of his time in the next year compiling such evidence, with a view to mapping the obligations in as much detail as possible. He will seek to highlight areas of coherence in the development of the obligations. Where coherence may not exist, he will be alert to the possibility of describing gaps and suggesting ways that the law may be developing to fill them.

---

<sup>36</sup> See report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, A/HRC/17/31.

55. To inform his work, he will hold a series of consultations, to the extent that funding sources permit, devoted to particular sets of thematic issues. To facilitate widespread participation, he will seek to hold the consultations in different regions of the world. The Nairobi consultation in February 2012 begins this process with a focus on procedural rights and duties. Later consultations should address the rights of vulnerable groups, substantive rights and obligations, and duties relating to transboundary and global harm, as well as other issues. He will also seek the views of interested stakeholders through alternative methods, such as surveys.

56. As part of the consultations' examination of human rights obligations relating to the environment, they will also seek to identify, promote and exchange views on best (or good) practices relating to the use of such obligations to inform, support and strengthen environmental policymaking, in accordance with the mandate, with the eventual aim of leading to a compilation of such practices. The Independent Expert also intends to undertake country missions, including at least one in 2013, to further inform his study of human rights obligations and good practices. As time and funding allow, he will also attend conferences and expert meetings related to human rights and the environment.

57. As the human rights obligations and good practices become more clearly identified, the Independent Expert will draw on them in carrying out two other elements of the mandate: making recommendations that could help the realization of the Millennium Development Goals, especially Goal 7 on ensuring environmental sustainability; and contributing a human rights perspective to follow-up processes to the 2012 United Nations Conference on Sustainable Development.

## V. Conclusions and recommendations

58. **In the last two decades, the relationship of human rights and the environment has received much attention. Some fundamental aspects of that relationship are now firmly established, but many issues are still not well understood. Clarification of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment is necessary in order for States and others to better understand what those obligations require and ensure that they are fully met, at every level from the local to the global.**

59. **At this preliminary stage in the work of the mandate, it may be too early for recommendations. The Independent Expert does have two requests, however, of all States and other interested stakeholders. First, he asks for continuing support and feedback as he goes forward. In particular, he welcomes comments and reactions to this report.**

60. **Second, he urges States and other stakeholders to remember that the lack of a complete understanding as to the content of all environmentally related human rights obligations should not be taken as meaning that no such obligations exist. Indeed, some aspects of the duties are already clear. Perhaps most obviously, otherwise applicable human rights obligations are not lessened merely because the environment is concerned.**

61. **For example, States' fundamental obligations to refrain from arbitrary deprivation of life and to undertake due diligence to protect against the deprivation of life by non-State actors do not become inapplicable merely because the deprivation involves the environment. Similarly, States' obligations regarding freedom of expression and association apply fully to those seeking to exercise those freedoms for the purpose of improving environmental protection. Environmental defenders have human rights just as others do but, as the Special Rapporteur on human rights**

defenders explained in her report last year, they may be more at risk than most for exercising them. To echo her words, States should recognize the important work carried out by human rights defenders working on land and environmental issues in trying to find a balance between economic development and environmental protection, should not tolerate their stigmatization and should ensure prompt and impartial investigations into alleged violations of their rights.<sup>37</sup>

62. More generally, States should continue to take account of all of the decisions and recommendations from the many other forums, from international conferences to special procedures to regional human rights tribunals, which are actively developing and implementing the human rights norms relevant to environmental protection. The present mandate is intended to increase understanding of those norms, but it is important to remember that they are not frozen in place while this mandate proceeds. On the contrary, their development will, and should, continue to flourish in the years to come.

---

---

<sup>37</sup> Report of the Special Rapporteur on the situation of human rights defenders, paras. 123–126, A/HRC/19/55.

**Human Rights Council****Twenty-fifth session**

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****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***Summary*

This report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment is submitted to the Human Rights Council in accordance with Council resolution 19/10.

The report maps human rights obligations relating to the environment, on the basis of an extensive review of global and regional sources. The Independent Expert describes procedural obligations of States to assess environmental impacts on human rights and to make environmental information public, to facilitate participation in environmental decision-making, and to provide access to remedies for environmental harm. He describes States' substantive obligations to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors. Finally, he outlines obligations relating to the protection of members of groups in vulnerable situations, including women, children and indigenous peoples.



## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–6	3
II. Mapping human rights obligations relating to the environment.....	7–16	4
III. Human rights threatened by environmental harm.....	17–25	6
IV. Human rights obligations relating to the environment.....	26–78	8
A. Procedural obligations .....	29–43	8
B. Substantive obligations.....	44–68	12
C. Obligations relating to members of groups in vulnerable situations .....	69–78	19
V. Conclusions and recommendations.....	79–84	21

## I. Introduction

1. In its resolution 19/10, the Human Rights Council decided to appoint an Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. In March 2013, the Independent Expert submitted a scoping report to the Council that described the evolution of the relationship between human rights and the environment (A/HRC/22/43). The report explained that the principal goal of the Independent Expert in the second year of his mandate would be to map human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

2. To that end, the Independent Expert carried out extensive research and held four regional consultations, in Nairobi, Geneva, Panama City and Copenhagen. (The Copenhagen consultation was with individuals from countries in Asia and Europe.) The consultations enabled the Independent Expert to hear the views of interested stakeholders, including Governments, international bodies, national human rights institutions, civil society organizations, the private sector and academic institutions. Each of the consultations addressed a particular theme: procedural rights and duties, substantive rights and duties, members of groups in vulnerable situations, and the integration of human rights and the environment into international institutions.

3. Section II of the present document describes the mapping process in more detail, section III identifies human rights threatened by environmental harm, and section IV describes human rights obligations relating to the environment.

4. The Independent Expert also addressed the other aspects of the mandate in 2013. He worked with the United Nations Environment Programme and the Office of the United Nations High Commissioner for Human Rights (OHCHR) as they developed an inter-agency programme to identify and disseminate information about good practices in the use of human rights obligations relating to environmental protection.<sup>1</sup> The four regional consultations all discussed good practices as well as obligations. A country visit to Costa Rica in September 2013 also identified good practices, which are described in the separate report on that visit. Further consultations on good practices are planned for 2014 in South Africa, Thailand and the United States of America.<sup>2</sup> Good practices will also be identified through other methods, such as sending a questionnaire to interested stakeholders. The goal is to prepare a compendium of good practices by March 2015.

5. The Independent Expert has contributed a human rights perspective to follow-up processes to the 2012 United Nations Conference on Sustainable Development and has made recommendations towards realization of the Millennium Development Goals, by participating in the post-2015 global thematic consultation on environmental sustainability, and in a side-event on human rights and the environment held on 12 December 2013 at the sixth session of the Open Working Group on Sustainable Development Goals. He has recommended that the Sustainable Development Goals incorporate a human rights-based approach to environmental protection.

---

<sup>1</sup> The inter-agency programme prefers the term “good practice” to “best practice”, recognizing that in many situations it will not be possible to identify a single “best” approach. In order for a practice to be considered “good”, it must integrate human rights and environmental standards in an exemplary manner.

<sup>2</sup> The consultation in the United States will be held at Yale University, in conjunction the United Nations Institute for Training and Research.

6. The Independent Expert has also supported the efforts of others working to integrate human rights and environmental considerations. He participated in the Asia-Europe Meeting seminar on human rights and the environment, addressed the International Bar Association and met with its working group on human rights and climate change, and spoke to a meeting of the countries in Latin America and the Caribbean considering a regional agreement on implementation of principle 10 of the Rio Declaration on Environment and Development. He has worked with the Harvard Human Rights Center as it develops a “knowledge platform” to describe cases in which human rights were brought to bear on environmental issues, and with the Universal Rights Group to develop a programme of meetings and reports highlighting the issues facing environmental human rights defenders.

## **II. Mapping human rights obligations relating to the environment**

7. In order to fulfil the request made by the Human Rights Council in its resolution 19/10 that the Independent Expert “study the human rights obligations, including non-discrimination obligations, relating to the enjoyment of a safe, clean, healthy and sustainable environment,” he reviewed a wide range of sources of human rights law. Scholars had previously examined some, but not all, of these sources. While recognizing the importance of the previous scholarly work, the Independent Expert undertook a fresh examination of the primary materials. To ensure that the study was as thorough as possible, he sought and received substantial pro bono assistance from academics and international law firms. With their help, thousands of pages of materials were reviewed, including texts of agreements, declarations and resolutions; statements by international organizations and States; and interpretations by tribunals and treaty bodies.

8. The relevant statements are described in 14 reports, each devoted to a particular source or set of sources. Before being finalized, the reports were edited in light of the regional consultations and were reviewed by outside experts. The reports are available both at the OHCHR website<sup>3</sup> and the Independent Expert’s personal website.<sup>4</sup>

9. The reports fall into four major categories: (a) United Nations human rights bodies and mechanisms; (b) global human rights treaties; (c) regional human rights systems; and (d) international environmental instruments.

10. Under the category of United Nations human rights bodies and mechanisms, three reports were prepared. The first report examines statements made by States through General Assembly and Human Rights Council resolutions and through the universal periodic review process.<sup>5</sup> A second report reviews statements and reports by 11 special procedures of the Human Rights Council whose mandates are particularly relevant to the nexus of human rights and the environment.<sup>6</sup> They are:

- The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context
- The Special Rapporteur on the right to education

---

<sup>3</sup> <http://www.ohchr.org/EN/Issues/Environment/IEEnvironment/Pages/IEEnvironmentIndex.aspx>

<sup>4</sup> <http://ieenvironment.org>

<sup>5</sup> Individual report on the General Assembly and the Human Rights Council, including the universal periodic review process.

<sup>6</sup> Individual report on the special procedures of the Human Rights Council (Report on special procedures).

- The Special Rapporteur on extreme poverty and human rights
- 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 situation of human rights defenders
- The Special Rapporteur on the human rights of internally displaced persons
- The Independent Expert on minority issues
- The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes
- The Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, and the Working Group on this issue, and
- The Special Rapporteur on the human right to safe drinking water and sanitation.

11. The third report in this category examines the work of the Special Rapporteur on the rights of indigenous peoples, including his application of the two most important international instruments on the rights of indigenous peoples — the United Nations Declaration on the Rights of Indigenous Peoples, and the International Labour Organization’s convention No. 169 (Indigenous and Tribal Peoples Convention, 1989).<sup>7</sup>

12. The second category of sources comprises global human rights treaties. The five reports in this category examine the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.<sup>8</sup> In addition to the text of the agreements, the reports examine relevant interpretations of the treaty bodies via the general comments, country reports and views on communications.

13. The third category — regional human rights systems — includes three reports. One report examines the jurisprudence of the European Court of Human Rights applying the European Convention for the Protection of Human Rights and Fundamental Freedoms to environmental issues.<sup>9</sup> Another describes the relevant decisions of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights in interpreting the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.<sup>10</sup> The third report includes the other major regional human rights systems, based on the African Charter on Human and Peoples’ Rights, the Arab

<sup>7</sup> Individual report on the rights of indigenous peoples (Report on indigenous peoples).

<sup>8</sup> These reports are abbreviated according to the name of the treaty reviewed, for example the “ICESCR report” (pertaining to the International Covenant on Economic, Social and Cultural Rights). The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention on the Rights of Persons with Disabilities were also reviewed, but the review did not produce enough relevant information to justify separate reports.

<sup>9</sup> Report on European perspectives on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (European report), prepared by researchers at the Global Studies Institute, University of Geneva. Another important source of information is the *Manual on Human Rights and the Environment*, second edition (2012), published by the Council of Europe.

<sup>10</sup> Individual report on the inter-American human rights agreements (Inter-American report).

Charter on Human Rights, the ASEAN Human Rights Declaration, and the European Social Charter.<sup>11</sup>

14. The fourth category covers international environmental instruments. It includes a report on global and regional environmental agreements, a report on non-binding environmental declarations, and a report on the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention). These instruments include duties owed to individuals that sometimes correspond to, and reveal practice consistent with, human rights obligations.

15. Each of the 14 individual reports follows the same template. After an introduction that describes its scope, the report sets out the human rights threatened by environmental harm, and the human rights obligations identified by the source relating to environmental protection. The obligations are organized into three sections: procedural obligations, substantive obligations, and obligations relating to members of groups in vulnerable situations. Finally, the report examines cross-cutting issues, such as transboundary environmental harm and the role of non-State actors.

16. The following sections summarize the findings of the subsidiary reports. Section III describes human rights threatened by environmental harm and section IV sets out human rights obligations relating to environmental protection, as identified by the sources reviewed.

### **III. Human rights threatened by environmental harm**

17. In his first report, the Independent Expert stated that one “firmly established” aspect of the relationship between human rights and the environment is that “environmental degradation can and does adversely affect the enjoyment of a broad range of human rights” (A/HRC/22/43, para. 34). As the Human Rights Council itself has stated, “environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of human rights” (resolution 16/11). The mapping project provides overwhelming support for this statement. Virtually every source reviewed identifies rights whose enjoyment is infringed or threatened by environmental harm.

18. For example, in the universal periodic review process, 45 States discussed the right to a healthy environment as recognized in their constitutions, and several identified threats to the enjoyment of this right, including climate change, desertification, and particular mining operations.<sup>12</sup> In addition, African tribunals have held that large-scale oil development infringed the right to a satisfactory environment as protected by the African Charter.<sup>13</sup>

19. The Human Rights Committee has asked States to describe measures they have taken to protect the right to life from the risk of nuclear disaster and other environmental pollution.<sup>14</sup> This right, like others, can be affected by natural causes as well as by human actions: the European Court of Human Rights has decided cases involving infringement of

---

<sup>11</sup> Individual report on the African Charter, the Arab Charter, the ASEAN Human Rights Declaration and the European Social Charter (Regional agreements report).

<sup>12</sup> Individual report on the General Assembly and the Human Rights Council, including the universal periodic review process, sect. III.A.

<sup>13</sup> Communication No. 155/96, *Social and Economic Rights Action Centre v. Nigeria* (Ogoniland case); *SERAP v. Nigeria*, Court of Justice of the Economic Community of West African States, Judgement No. ECW/CCJ/JUD/18/12 (14 December 2012).

<sup>14</sup> International Covenant on Civil and Political Rights (ICCPR) report, sect. II.

the right to life that occurred as a result of natural disasters and also as a result of improper maintenance of a municipal rubbish tip that caused a massive explosion.<sup>15</sup>

20. Many sources, including the Human Rights Council, the Committee on Economic, Social and Cultural Rights, the special rapporteurs, the African Commission and the European Committee of Social Rights have identified environmental threats to the right to the enjoyment of the highest attainable standard of physical and mental health. Examples include the improper disposal of toxic wastes (Human Rights Council resolution 9/1; E/CN.4/2004/46, para. 79), exposure to radiation and harmful chemicals (Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000), para. 15), oil pollution (African Commission, *Ogoniland* case, para. 54), and large-scale water pollution.<sup>16</sup>

21. In addition, many sources have identified environmental threats to the right to an adequate standard of living and its components. For example, the Committee on Economic, Social and Cultural Rights has identified the improper use of pesticides as a threat to the right to food,<sup>17</sup> while the Special Rapporteur on the right to food has found that right to be threatened by pollution and habitat loss (A/67/268, paras. 17–19). The Special Rapporteur on hazardous substances and wastes has indicated that waste from extractive industries can infringe the right to water (A/HRC/21/48, para. 39), and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context has described how that right is threatened by climate change (A/64/255).

22. Indeed, special rapporteurs have explained how climate change threatens a wide range of rights, including the rights to health, water and food.<sup>18</sup> An OHCHR report describes the implications of climate change for those rights and others, including the right of self-determination for peoples living in small island States (A/HRC/10/61). The Human Rights Council took note of the report and expressed its concern that “climate change poses an immediate and far-reaching threat to people and communities around the world and has adverse implications for the full enjoyment of human rights” (resolution 18/22).

23. The Human Rights Council has recognized that “environmental damage is felt most acutely by those segments of the population already in vulnerable situations” (resolution 16/11). The sources reviewed provide examples of environmental harm that particularly affects such groups. For example, the Committee on the Elimination of Discrimination against Women has identified many types of environmental harm, including natural disasters, climate change, nuclear contamination and water pollution, that can adversely affect rights protected under the Convention on the Elimination of All Forms of Discrimination against Women.<sup>19</sup> The Special Rapporteur on hazardous substances and wastes has highlighted the particular dangers that exposure to mercury through artisanal mining poses to women in respect of their right to health (A/HRC/21/48, paras. 32, 33).

24. The rights of children, too, may be particularly affected by environmental degradation. The Convention on the Rights of the Child states that environmental pollution

<sup>15</sup> European report, pp. 4–5; and Council of Europe, *Manual*, pp. 35–37.

<sup>16</sup> European Committee of Social Rights, complaint No. 72/2011, *International Federation for Human Rights (FIDH) v. Greece* (2013).

<sup>17</sup> ICESCR report, sect. II.

<sup>18</sup> Report on special procedures, sect. II. See also the joint statement by the special procedures mandate holders regarding the United Nations Climate Change Conference, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9667&LangID=E>.

<sup>19</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) report, sect. II.

poses “dangers and risks” to nutritious foods and clean drinking water (art. 24, para. 2(c)). In its concluding observations on country reports, the Committee on the Rights of the Child regularly addresses environmental hazards as barriers to the realization of the right to health and other rights.<sup>20</sup> The Special Rapporteur on hazardous substances and wastes has emphasized the harm to children’s rights to health caused by exposure to mercury and other hazardous substances in extractive industries (A/HRC/21/48, paras. 28–30).

25. Because of the close relationship that indigenous peoples have with nature, they can be uniquely vulnerable to environmental degradation. The Special Rapporteur on the rights of indigenous peoples has emphasized that “extractive industry activities generate effects that often infringe upon indigenous peoples’ rights” (A/HRC/18/35, para. 26), and has detailed many examples of such infringement, including on their rights to life, health and property.<sup>21</sup>

#### **IV. Human rights obligations relating to the environment**

26. This section sets out human rights obligations relating to the environment as they have been described by international agreements and the bodies charged with interpreting them. Although only some of these agreements explicitly refer to the environment, human rights bodies have increasingly applied them to environmental issues in recent years as our knowledge of the dangers of environmental degradation has increased. The result is a large and growing number of legal statements that together create a body of human rights norms relating to the environment.

27. The Independent Expert understands that not all States have formally accepted all of these norms. While some of the statements cited are from treaties, or from tribunals that have the authority to issue decisions that bind the States subject to their jurisdiction, other statements are interpretations by experts that do not in themselves have binding effect. Despite the diversity of the sources from which they arise, however, the statements are remarkably coherent. Taken together, they provide strong evidence of converging trends towards greater uniformity and certainty in the human rights obligations relating to the environment. These trends are further supported by State practice reflected in the universal periodic review process and international environmental instruments.

28. In this light, the Independent Expert encourages States to accept these statements as evidence of actual or emerging international law. At a minimum, they should be seen as best practices that States should move to adopt as expeditiously as possible.

##### **A. Procedural obligations**

29. One of the most striking results of the mapping exercise is the agreement among the sources reviewed that human rights law imposes certain procedural obligations on States in relation to environmental protection. They include duties (a) to assess environmental impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to remedies for harm. These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights at risk from environmental harm.

---

<sup>20</sup> Convention on the Rights of the Child (CRC) report, sect. II.

<sup>21</sup> Report on indigenous peoples, sect. II. See also the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) report, sect. II; and Inter-American report, sect. III.C.

## 1. Duties to assess environmental impacts and make information public

30. The Universal Declaration of Human Rights (art. 19) and the International Covenant on Civil and Political Rights (art. 19) state that the right to freedom of expression includes the freedom “to seek, receive and impart information”. The right to information is also critical to the exercise of other rights, including rights of participation. In the words of the then Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, the rights to information and participation are “both rights in themselves and essential tools for the exercise of other rights, such as the right to life, the right to the highest attainable standard of health, the right to adequate housing and others” (A/HRC/7/21, p. 2).

31. Human rights bodies have repeatedly stated that in order to protect human rights from infringement through environmental harm, States should provide access to environmental information and provide for the assessment of environmental impacts that may interfere with the enjoyment of human rights.

32. For example, in its general comment No. 15 (2002) on the right to water, the Committee on Economic, Social and Cultural Rights stated that individuals should be given full and equal access to information concerning water and the environment (para. 48), and in its responses to country reports, it has urged States to assess the impacts of actions that may have adverse environmental effects on the right to health and other rights within its purview.<sup>22</sup> Similarly, the Special Rapporteur on the situation of human rights defenders has stated that information relating to large-scale development projects should be publicly available and accessible (A/68/262, para. 62), and the Special Rapporteur on the human right to safe drinking water and sanitation has stated that States need to conduct impact assessments “in line with human rights standards” when they plan projects that may have an impact on water quality (A/68/264, para. 73).<sup>23</sup>

33. Regional bodies have also concluded that States must provide environmental information and provide for assessments of environmental impacts on human rights. For example, on the basis of the right to respect for private and family life as set out in the European Convention on Human Rights (art. 8), the European Court has stated:

Where a State must determine complex issues of environmental and economic policy, the decision-making process must firstly involve appropriate investigations and studies in order to allow them to predict and evaluate in advance the effects of those activities which might damage the environment and infringe individuals’ rights and to enable them to strike a fair balance between the various conflicting interests at stake. The importance of public access to the conclusions of such studies and to information which would enable members of the public to assess the danger to which they are exposed is beyond question.<sup>24</sup>

34. International instruments illustrate the importance of providing environmental information to the public. Principle 10 of the Rio Declaration states: “At the national level, each individual shall have appropriate access to information concerning the environment

<sup>22</sup> ICESCR report, sect. III.A.1.

<sup>23</sup> For other statements by special rapporteurs on access to information and assessment of environmental impacts, see Report on special procedures, sect. III.A.1.

<sup>24</sup> *Taşkin v. Turkey*, 2004-X European Court of Human Rights 179, para. 119. See also *Öneryıldız v. Turkey*, 2004-XII European Court of Human Rights 1, para. 90 (applying the right to information in connection with the right to life); *Ogoniland* case, para. 53 (deriving obligations from the right to health and the right to a healthy environment); Inter-American Court, *Claude-Reyes et al. v. Chile*, Judgement of 19 September 2006 (ordering State to adopt necessary measures to ensure right of access to State-held information).

that is held by public authorities, including information on hazardous materials and activities in their communities... States shall facilitate and encourage public awareness and participation by making information widely available.”<sup>25</sup> Many environmental treaties, including the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (art. 15), the Stockholm Convention on Persistent Organic Pollutants (art. 10), and the United Nations Framework Convention on Climate Change (art. 6(a)), require environmental information to be provided to the public. The Aarhus Convention includes particularly detailed obligations.<sup>26</sup> Illustrating the link between its obligations and those of human rights law, many Aarhus parties have discussed their compliance with that agreement in their reports under the universal periodic review process.<sup>27</sup>

35. Most States have adopted environmental impact assessment laws, in accordance with principle 17 of the Rio Declaration, which states that “environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.” The World Bank requires environmental assessment of all Bank-financed projects to “ensure that they are environmentally sound and sustainable”.<sup>28</sup>

## 2. Duties to facilitate public participation in environmental decision-making

36. The baseline rights of everyone to take part in the government of their country and in the conduct of public affairs are recognized in the Universal Declaration of Human Rights (art. 21) and the International Covenant on Civil and Political Rights (art. 25), respectively. Again, human rights bodies have built on this baseline in the environmental context, elaborating a duty to facilitate public participation in environmental decision-making in order to safeguard a wide spectrum of rights from environmental harm.

37. The Special Rapporteur on hazardous substances and wastes and the Special Rapporteur on the situation of human rights defenders have stated that governments must facilitate the right to participation in environmental decision-making (see A/HRC/7/21 and A/68/262).<sup>29</sup> The Committee on Economic, Social and Cultural Rights has encouraged States to consult with stakeholders in the course of environmental impact assessments, and has underlined that before any action is taken that interferes with the right to water, the relevant authorities must provide an opportunity for “genuine consultation with those affected” (general comment No. 15 (2002), para. 56). Regional human rights tribunals agree that individuals should have meaningful opportunities to participate in decisions concerning their environment.<sup>30</sup>

38. The need for public participation is reflected in many international environmental instruments. Principle 10 of the Rio Declaration states: “Environmental issues are best

<sup>25</sup> See also: “Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters” adopted at the eleventh special session of the United Nations Environment Programme Governing Council/Global Ministerial Environmental Forum.

<sup>26</sup> For other examples, see the Multilateral environment agreements (MEA) report, sect. III.A.1.

<sup>27</sup> Individual report on the General Assembly and the Human Rights Council, including the universal periodic review process, sect. III.

<sup>28</sup> World Bank Operational Policy 4.01, para. 1. See also: World Bank Inspection Panel, Report No. 40746-ZR, 31 August 2007, para. 346 (finding that the failure to prepare an environmental assessment violated the Operational Policy).

<sup>29</sup> For statements by other special rapporteurs, see Report on special procedures, sect. III.A.2.

<sup>30</sup> Regional agreements report, sect. II.B.1; Inter-American report, sect. III.A.2.

handled with participation of all concerned citizens, at the relevant level... Each individual shall have... the opportunity to participate in decision-making processes.” In 2012, in *The Future We Want*, the outcome document of the United Nations Conference on Sustainable Development (Rio+20 Conference), States recognized that “opportunities for people to influence their lives and future, participate in decision-making and voice their concerns are fundamental for sustainable development” (A/CONF.216/16, para. 13). Environmental treaties that provide for public participation include the Stockholm Convention on Persistent Organic Pollutants (art. 10), the Convention on Biological Diversity (art. 14(1)), the United Nations Convention to Combat Desertification (arts. 3 and 5), and the United Nations Framework Convention on Climate Change (art. 6(a)). The Aarhus Convention has particularly detailed requirements (arts. 6–8).<sup>31</sup>

39. The rights of freedom of expression and association are of special importance in relation to public participation in environmental decision-making. The Special Rapporteur on the situation of human rights defenders has said that those working on land rights and natural resources are the second-largest group of defenders at risk of being killed (A/HRC/4/37), and that their situation appears to have worsened since 2007 (A/68/262, para. 18). Her last report described the extraordinary risks, including threats, harassment, and physical violence, faced by those defending the rights of local communities when they oppose projects that have a direct impact on natural resources, the land or the environment (A/68/262, para. 15).

40. States have obligations not only to refrain from violating the rights of free expression and association directly, but also to protect the life, liberty and security of individuals exercising those rights.<sup>32</sup> There can be no doubt that these obligations apply to those exercising their rights in connection with environmental concerns. The Special Rapporteur on the situation of human rights defenders has underlined these obligations in that context (A/68/262, paras. 16 and 30), as has the Special Rapporteur on the rights of indigenous peoples (A/HRC/24/41, para. 21), the Committee on Economic, Social and Cultural Rights,<sup>33</sup> the Inter-American Court of Human Rights,<sup>34</sup> and the Commission on Human Rights, which called upon States “to take all necessary measures to protect the legitimate exercise of everyone’s human rights when promoting environmental protection and sustainable development” (resolution 2003/71).

### 3. Duty to provide access to legal remedies

41. From the Universal Declaration of Human Rights onward, human rights agreements have established the principle that States should provide for an “effective remedy” for violations of their protected rights. Human rights bodies have applied that principle to human rights infringed by environmental harm. For example, the Committee on Economic, Social and Cultural Rights has urged States to provide for “adequate compensation and/or alternative accommodation and land for cultivation” to indigenous communities and local farmers whose land is flooded by large infrastructure projects, and “just compensation [to] and resettlement” of indigenous peoples displaced by forestation.<sup>35</sup> The Special Rapporteur on the situation of human rights defenders has stated that States must implement

<sup>31</sup> MEA report, sect. III.A.2.

<sup>32</sup> International Covenant on Civil and Political Rights, art. 2; Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, arts. 2, 9 and 12.

<sup>33</sup> ICESCR report, sect. III.A.4.

<sup>34</sup> For example, *Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Judgement dated 3 April 2009 (Ser. C No. 196). For other cases, see Inter-American report, sect. III.A.4.

<sup>35</sup> ICESCR report, sect. III.A.3.

mechanisms that allow defenders to communicate their grievances, claim responsibilities, and obtain effective redress for violations, without fear of intimidation (A/68/262, paras. 70–73). Other special rapporteurs, including those for housing, education, and hazardous substances and wastes, have also emphasized the importance of access to remedies within the scope of their mandates.<sup>36</sup>

42. At the regional level, the European Court has stated that individuals must “be able to appeal to the courts against any decision, act or omission where they consider that their interests or their comments have not been given sufficient weight in the decision-making process.”<sup>37</sup> More generally, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have stated that the American Convention on Human Rights requires States to provide access to judicial recourse for claims alleging the violation of their rights as a result of environmental harm.<sup>38</sup> The Court of Justice of the Economic Community of West African States has stressed the need for the State to hold accountable actors who infringe human rights through oil pollution, and to ensure adequate reparation for victims.<sup>39</sup>

43. International environmental instruments support an obligation to provide for effective remedies. Principle 10 of the Rio Declaration states: “Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” Many environmental treaties establish obligations for States to provide for remedies in specific areas. For instance, the United Nations Convention on the Law of the Sea requires States to ensure that recourse is available within their legal systems to natural or juridical persons for prompt and adequate compensation or other relief for damage caused by pollution of the marine environment (art. 235). Some agreements establish detailed liability regimes; a leading example is the International Convention on Civil Liability for Oil Pollution Damage.<sup>40</sup>

## **B. Substantive obligations**

44. States have obligations to protect against environmental harm that interferes with the enjoyment of human rights. As section II explains, environmental harm may threaten a very broad spectrum of human rights, including the rights to life and health. The content of States’ specific obligations to protect against environmental harm therefore depends on the content of their duties with respect to the particular rights threatened by the harm.

45. Those duties may vary from right to right. For example, States have general obligations to respect and ensure rights under the International Covenant on Civil and Political Rights (art. 2, para. 1), the Convention on the Rights of the Child (art. 2, para. 1) and the American Convention on Human Rights (art. 1), to take steps towards the full realization of the rights recognized in the International Covenant on Economic, Social and Cultural Rights, to secure the rights in the European Convention on Human Rights (art. 1), and to recognize and give effect to the rights in the African Charter (art. 1). When environmental harm threatens or infringes the enjoyment of a right protected by one or more of these agreements, States’ general obligations relating to the right (e.g. to respect and ensure it, or to take steps towards its full realization) apply with respect to the environmental threat or infringement.

---

<sup>36</sup> Report on special procedures, sect. III.A.3.

<sup>37</sup> *Taşkin v. Turkey*, para. 119.

<sup>38</sup> Inter-American report, sect. III.A.3.

<sup>39</sup> *SERAP v. Nigeria*, para. 97.

<sup>40</sup> See generally MEA report, sect. III.A.3.

46. Despite differences in the language setting out the general obligations, however, they have given rise to remarkably similar interpretations when applied to environmental issues. Although the contours of the specific environmental obligations are still evolving, some of their principal characteristics have become clear. In particular, States have obligations (a) to adopt and implement legal frameworks to protect against environmental harm that may infringe on enjoyment of human rights; and (b) to regulate private actors to protect against such environmental harm.

### 1. Obligation to adopt and implement legal framework

47. States have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights. These obligations have been derived from a number of human rights, including the rights to life and health.

48. The Human Rights Committee has long held the view that the right to life protected by the International Covenant on Civil and Political Rights “cannot properly be understood in a restrictive manner, and the protection of this right requires that States adopt positive measures” (general comment No. 6 (1982) on the right to life, para. 5). Although the Committee has not described in detail the steps required to protect the right to life from environmental harm, other human rights bodies have. In particular, the European Court has held that States have a primary duty to put in place a legislative and administrative framework that protects against and responds to infringements of the right to life as a result of natural disasters and of dangerous activities, including the operation of chemical factories and waste-collection sites.<sup>41</sup> The Inter-American Commission on Human Rights has also urged States to adopt environmental protection measures in order to comply with their obligations to protect rights, including the rights to life and health.<sup>42</sup>

49. With respect to the right to health, the International Covenant on Economic, Social and Cultural Rights (art. 12, para. 2(b)) provides that the steps to be taken by States to achieve the full realization of that right “shall include those necessary for... the improvement of all aspects of environmental and industrial hygiene”. Interpreting this language in its general comment No. 14 (2000), the Committee on Economic, Social and Cultural Rights has stated that “the right to health embraces a wide range of socioeconomic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as... a healthy environment” (para. 4). The Committee has interpreted the phrase “the improvement of all aspects of environmental and industrial hygiene” in article 12.2(b) to include “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” (para. 15). To that end, States are required to adopt measures against environmental health hazards, including by formulating and implementing policies “aimed at reducing and eliminating pollution of air, water and soil” (para. 36). Where environmental harm to human rights occurs, including from natural disasters, States are obliged to respond by assisting the victims.<sup>43</sup>

<sup>41</sup> Council of Europe, *Manual*, pp. 18, 36–40. See, for example, *Öneryıldız v. Turkey*, No. 48939/99, 30 November 2004; and *Budayeva and others v. Russia*, No. 15339/02, 20 March 2008. The European Court has also derived such an obligation from the right to private and family life; see *Tatar v. Romania*, No. 67021/01, 6 July 2009, para. 88.

<sup>42</sup> See Inter-American report, sect. III.B.

<sup>43</sup> See generally ICESCR report, sect. III.B.

50. Similarly, special rapporteurs have addressed the obligations of States in relation to environmental harm to human rights.<sup>44</sup> The Special Rapporteur on the human right to safe drinking water and sanitation, for example, has stated (A/68/264, para. 48):

To curb water pollution effectively, regulation must target all sectors and cover the whole country, giving priority to the elimination of the most urgent and serious challenges, which vary from country to country and within countries. They might stem from the use of pesticides and fertilizers in agriculture in rural areas, the non-confinement and non-treatment of sludge and septage in densely populated urban areas, or from industrial wastewater in areas that experience sudden economic growth. States have to assess the situation at the micro level and prioritize addressing the most urgent challenges.

51. The Special Rapporteur on hazardous substances and wastes has issued a series of reports identifying obligations of States in relation to such substances. To take one example, a 2006 report on the human rights impact of the widespread exposure of individuals and communities to toxic chemicals in food and household goods (E/CN.4/2006/42, para. 45) states:

The duties of States in this regard translate into obligations to take steps to regulate carefully the production, storage and use of hazardous chemicals in a way that prevents a level of exposure to hazardous chemicals which may result in human rights violations. States must also provide effective remedies and restitution to victims of those violations occurring as a result of exposure to hazardous chemicals. In other words, States must regulate the production and use of chemicals in a way which is consistent with the full spectrum of their obligations under international human rights law.

52. States have recognized the importance of incorporating human rights considerations into environmental laws. The Human Rights Council has affirmed that “human rights obligations and commitments have the potential to inform and strengthen international, regional and national policymaking in the area of environmental protection” and urged States “to take human rights into consideration when developing their environmental policies” (resolution 16/11). The Council, as well as the parties to the United Nations Framework Convention on Climate Change, has stated that States should, in all climate change-related actions, fully respect human rights (resolution 18/22; and FCCC/CP/2010/7/Add.1, decision 1/CP.16). In the universal periodic review process, many States have described the steps they have taken to create institutions and adopt policies and laws to address environmental protection.<sup>45</sup>

53. The obligation to protect human rights from environmental harm does not require the cessation of all activities that may cause any environmental degradation. The African Commission, for example, has made it clear that the African Charter does not require States to forego all oil development.<sup>46</sup> The European Court has held that States have discretion to strike a balance between environmental protection and other issues of societal importance, such as economic development and the rights of others.<sup>47</sup> But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights. In the *Ogoniland* case, the African Commission cited the enormous environmental harm to the

---

<sup>44</sup> See generally Report on special procedures, sect. III.B.

<sup>45</sup> Individual report on the General Assembly and the Human Rights Council, including the universal periodic review process, sect. IV.B.1.

<sup>46</sup> *Ogoniland* case, para. 54.

<sup>47</sup> Council of Europe, *Manual*, p. 20. See, for example, *Hatton and others v. United Kingdom*, No. 360022/97, 8 July 2003, para. 98.

rights of those in the Niger delta region in finding that “the care that should have been taken”, including by taking reasonable measures to prevent pollution and ecological degradation from oil production, “was not taken.”<sup>48</sup> Similarly, the European Court has decided cases in which it held that States failed to strike a fair balance between protecting rights from environmental harm and protecting other interests.<sup>49</sup>

54. In this respect, national and international health standards may be particularly relevant. For example, in deciding whether a State had failed to comply with its obligations under the European Social Charter with respect to the right to health, the European Committee of Social Rights evaluated the danger posed by water pollution in light of water safety standards set by the World Health Organization (WHO) and other public bodies.<sup>50</sup> The European Court has also considered national and WHO health and safety standards in deciding whether States have reached a fair balance between environmental protection and other interests.<sup>51</sup>

55. Another relevant factor in deciding whether an environmental law meets human rights obligations is whether it is retrogressive. The Committee on Economic, Social and Cultural Rights has strongly discouraged retrogressive actions with respect to fulfilment of the rights protected by the International Covenant, in light of the obligation in the Covenant to move as expeditiously as possible towards full realization of the rights. The Committee stated in its general comment on the right to the highest attainable standard of health that “as with all other rights in the Covenant, there is a strong presumption that retrogressive measures taken in relation to the right to health are not permissible.” If States do take deliberately retrogressive measures, then they have the burden of proving that they first carefully considered all alternatives, and that the measures “are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party’s maximum available resources” (para. 32).<sup>52</sup>

56. Finally, after a State has adopted environmental standards into its law, it must implement and comply with those standards. As the European Court has stated: “Regulations to protect guaranteed rights serve little purpose if they are not duly enforced.”<sup>53</sup> Interpreting the African Charter, the Court of Justice of the Economic Community of West African States has held that it is not enough to adopt measures “if these measures just remain on paper and are not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or ensuring accountability, with the effective reparation of the environmental damage suffered.”<sup>54</sup> In addition, the Committee on Economic, Social and Cultural Rights has made clear that the Covenant obliges States to refrain from “unlawfully polluting air, water and soil, e.g. through industrial waste from State-owned facilities” (general comment No. 14, para. 34) and to refrain from “unlawfully diminishing or polluting water” (general comment No. 15, para. 21).

<sup>48</sup> *Ogoniland* case, para. 54.

<sup>49</sup> See, for example, *López Ostra v. Spain*, No. 16798/90, 9 December 1994; *Tatar v. Romania*, No. 67021/01, 27 January 2009.

<sup>50</sup> *International Federation for Human Rights (FIDH) v. Greece*, No. 72/2011, 23 January 2013, paras. 42–44, 148.

<sup>51</sup> See, for example, *Dubetska and others v. Ukraine*, No. 30499/03, 10 May 2011, para. 107 (national standards); *Fägerskiöld v. Sweden*, No. 37664/04, 26 February 2008 (WHO standards).

<sup>52</sup> See also the Committee’s general comment No. 15, para. 19.

<sup>53</sup> *Moreno Gómez v. Spain*, No. 4143/02, 16 February 2005, para. 61. See also *Giacomelli v. Italy*, No. 59909/00, 26 March 2007, para. 93.

<sup>54</sup> *SERAP v. Nigeria*, para. 105.

57. Again, special rapporteurs have taken equivalent positions with respect to rights within the scope of their mandates.<sup>55</sup> For example, the Special Rapporteur on the human right to safe drinking water and sanitation has emphasized that “successful regulation depends not only on standard-setting, but also on strong independent regulators... Regulators need to have the capacity, in terms of human resources, skills, funding and independence from interference, to monitor whether regulations are being complied with, carry out on-site inspections, and impose fines and penalties in the case of breaches” (A/68/264, para. 52).

## **2. Obligations to protect against environmental harm from private actors**

58. As the then Special Representative of the Secretary-General on business and human rights explained, “the State duty to protect against non-State abuses is part of the very foundation of the international human rights regime. The duty requires States to play a key role in regulating and adjudicating abuse by business enterprises, or risk breaching their international obligations” (A/HRC/4/35, para. 18). Such abuses can include environmental harm that infringes human rights. The Special Representative reviewed 320 cases of alleged corporate-related human rights abuses and found that nearly one third of the cases alleged environmental harm that affected human rights, including the rights to life, health, food and housing. Most of the cases of direct harm to communities involved environmental impacts (A/HRC/8/5/Add.2, para. 67).

59. The Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in 2011 state that States are required, *inter alia*, to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises,” including by “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (A/HRC/17/31, principle 1). The Guiding Principles also make it clear that States have an obligation to provide for remedies for human rights abuses caused by corporations, and that corporations themselves have a responsibility to respect human rights. These three pillars of the normative framework all apply to environmental human rights abuses such as those described in the earlier report of the Special Representative.

60. Many other human rights bodies have explicitly connected States’ duty to protect against human rights abuses by non-State actors to such abuses caused by pollution or other environmental harm. The Committee on Economic, Social and Cultural Rights has stated that “corporate activities can adversely affect the enjoyment of Covenant rights”, including through harmful impacts on the natural environment, and reiterated the “obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities” (E/C.12/2011/1, para. 1). In the context of the right to water, the Committee has made it clear that the duty to protect extends to adopting and enforcing effective measures to restrain third parties from infringing the right through pollution of water sources (general comment No. 15 (2002), paras. 23 and 44(b)).<sup>56</sup>

61. The African Commission has stated that “Governments have a duty to protect their citizens, not only through appropriate legislation and effective enforcement but also by protecting them from damaging acts that may be perpetrated by private parties”, and has held that by allowing oil companies “to devastatingly affect the well-being of the Ogonis”,

---

<sup>55</sup> Report on special procedures, sect. III.B (citing statements relating to rights to health, water, food and housing).

<sup>56</sup> For other statements by the Committee, see ICESCR report, sect. IV.B. For statements by the special procedures, see Report on special procedures, sect. IV.

the State had “fallen short of the minimum conduct expected of governments.”<sup>57</sup> The Inter-American Commission on Human Rights has stated that “effective enforcement of the environmental protection measures in relation to private parties, particularly extractive companies and industries... is essential to avoid the State’s international responsibility for violating the human rights of the communities affected by activities detrimental to the environment.”<sup>58</sup> And the European Court has held that States are obligated to take positive steps to protect against environmental harm to the right to private and family life, whether the pollution was caused by governmental or private action. In either case, “the applicable principles are broadly similar.”<sup>59</sup>

### 3. Obligations relating to transboundary environmental harm

62. Many grave threats to the enjoyment of human rights are due to transboundary environmental harm, including problems of global scope such as ozone depletion and climate change. This raises the question of whether States have obligations to protect human rights against the extraterritorial environmental effects of actions taken within their territory.

63. There is no obvious reason why a State should not bear responsibility for actions that otherwise would violate its human rights obligations, merely because the harm was felt beyond its borders. Nevertheless, the application of human rights obligations to transboundary environmental harm is not always clear. One difficulty is that human rights instruments address jurisdiction in different ways. Some, such as the Universal Declaration of Human Rights and the African Charter, contain no explicit jurisdictional limitations, and the International Covenant on Economic, Social and Cultural Rights may even provide an explicit basis for extraterritorial obligations (art. 2, para. 1). But other treaties, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the European Convention on Human Rights and the American Convention on Human Rights, limit at least some of their protections to individuals subject to or within the jurisdiction of the State, leaving it unclear how far their protections extend beyond the State’s territory. Another problem is that many human rights bodies have not addressed extraterritoriality in the context of environmental harm.<sup>60</sup>

64. Nevertheless, most of the sources reviewed that have addressed the issue do indicate that States have obligations to protect human rights, particularly economic, social and cultural rights, from the extraterritorial environmental effects of actions taken within their territory. The Committee on Economic, Social and Cultural Rights has interpreted the International Covenant on Economic, Social and Cultural Rights as requiring its parties “to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries” (general comment No. 15, para. 31), and has stated that parties should also take steps to prevent third parties within their jurisdiction, such as their own citizens and companies, from violating the rights to water and health in other countries (general comment No. 15, para. 33; and general comment No. 14, para. 39). Several special rapporteurs have adopted similar interpretations. In 2011, the Special Rapporteur on the right to food and the Special Rapporteur on extreme poverty and human rights joined with

<sup>57</sup> *Ogoniland* case, paras. 57, 58.

<sup>58</sup> Inter-American Commission on Human Rights. Second report on the situation of human rights defenders in the Americas, 2011, para. 315. Available at <https://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>. See generally IACHR report, sect. IV.A.

<sup>59</sup> *Lopez Ostra v. Spain*, No. 16798/90, 9 December 1994, para. 51; *Hatton v. United Kingdom*, No. 36022/97, 8 July 2003, para. 98.

<sup>60</sup> See, for example, Council of Europe, *Manual*, p. 25.

scholars and activists to adopt the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights.<sup>61</sup> The Special Rapporteur on the human right to safe drinking water and sanitation recently cited those Principles as underscoring “the obligation of States to avoid causing harm extraterritorially” and affirming “the obligation of States to protect human rights extraterritorially, i.e., to take necessary measures to ensure that non-State actors do not nullify or impair the enjoyment of economic, social and cultural rights. This translates into an obligation to avoid contamination of watercourses in other jurisdictions and to regulate non-State actors accordingly” (A/68/264, para. 46).

65. Such interpretations are in accord with the fundamental obligation of States to carry out their treaty commitments in good faith,<sup>62</sup> which requires them to avoid taking actions calculated to frustrate the object and purpose of the treaty.<sup>63</sup> The International Court of Justice has read this principle of *pacta sunt servanda* as requiring the parties to a treaty to apply it “in a reasonable way and in such a manner that its purpose can be realized”.<sup>64</sup> This suggests that parties to a human rights treaty should not engage in conduct that makes it harder for other parties to fulfil their own obligations under the treaty.<sup>65</sup>

66. Other sources, such as the Special Representative of the Secretary-General on business and human rights, have taken a more restrictive view of the scope of extraterritorial human rights obligations. The Special Representative also stated, however, that “there is increasing encouragement at the international level... for home States to take regulatory action to prevent abuse by their companies overseas” (A/HRC/8/5, para. 19), and urged States to do more to prevent corporations from abusing human rights abroad (A/HRC/14/27).

67. Although work remains to be done to clarify the content of extraterritorial human rights obligations pertaining to the environment, the lack of complete clarity should not obscure a basic point: States have an obligation of international cooperation with respect to human rights, which is contained not only in treaties such as the International Covenant on Economic, Social and Cultural Rights (art. 2, para. 1), but also in the Charter of the United Nations itself (arts. 55 and 56). This obligation is of particular relevance to global environmental threats to human rights, such as climate change (A/HRC/10/61, para. 99). As the Human Rights Council noted in its resolution 16/11, principle 7 of the Rio Declaration states that “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem.”

68. Indeed, much of international environmental law reflects efforts by States to cooperate in the face of transboundary and global challenges. Further work to clarify extraterritorial obligations in respect of environmental harm to human rights can receive guidance from international environmental instruments, many of which include specific provisions designed to identify and protect the rights of those affected by such harm.<sup>66</sup>

---

<sup>61</sup> [http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUid%5D=23](http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23)

<sup>62</sup> Vienna Convention on the Law of Treaties, art. 26.

<sup>63</sup> Mark E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (2009), p. 367.

<sup>64</sup> Case concerning the Gabcikovo-Nagymaros project (Hungary/Slovakia), 1997 International Court of Justice 7, para. 142.

<sup>65</sup> See Maastricht Principles, principle 20.

<sup>66</sup> See MEA report, sect. IV.A; and Aarhus report.

## C. Obligations relating to members of groups in vulnerable situations

69. The human rights obligations relating to the environment include a general obligation of non-discrimination in their application. In particular, the right to equal protection under the law, which is protected by the Universal Declaration of Human Rights (art. 7) and many human rights agreements, includes equal protection under environmental law.<sup>67</sup> States have additional obligations with respect to groups particularly vulnerable to environmental harm. The following sections describe obligations specific to three groups in particular: women, children and indigenous peoples.<sup>68</sup>

### 1. Women

70. In construing the Convention on the Elimination of All Forms of Discrimination against Women, the Committee on the Elimination of Discrimination against Women has emphasized that States should ensure that public participation in environmental decision-making, including with respect to climate policy, includes the concerns and participation of women.<sup>69</sup> Similarly, the Special Rapporteur on the right to health has stated that “even though women bear a disproportionate burden in the collection of water and disposal of family wastewater, they are often excluded from relevant decision-making processes. States should therefore take measures to ensure that women are not excluded from decision-making processes concerning water and sanitation management” (A/62/214, para. 84).

71. With respect to substantive obligations to develop and implement policies to protect human rights from environmental harm, the Committee has called on States to ensure that the policies are aimed at protecting the rights of women to health, to property and to development. Moreover, it has urged States to conduct research on the adverse effects of environmental contamination of women, and to provide sex-disaggregated data on the effects.<sup>70</sup> Where environmental harm has disproportionate effects on women, States are obliged to adopt and implement programmes accordingly. The Special Rapporteur on hazardous substances and wastes, for example, has stated that “due to the harmful effects of mercury on the female reproduction function, international human rights law requires States parties to put in place preventive measures and programmes to protect women of childbearing age from mercury exposure” (A/HRC/21/48, para. 33, citing the Convention, art. 11, para. 1 (f)).

72. Some groups of women are particularly vulnerable for various reasons, including because they are poor, older, disabled and/or of minority status, which may give rise to the need for additional protection. For example, in its general recommendation No. 27 (2010) on older women and protection of their human rights, the Committee found that they are particularly vulnerable to natural disasters and climate change (para. 25), and stated that therefore “States parties should ensure that climate change and disaster risk-reduction measures are gender-responsive and sensitive to the needs and vulnerabilities of older women. States parties should also facilitate the participation of older women in decision-making for climate change mitigation and adaptation” (para. 35).

<sup>67</sup> See Inter-American Commission on Human Rights, *Mossville Action Now v. United States*, No. 43/10, 17 March 2010 (construing article II of the American Declaration).

<sup>68</sup> This should not be taken as an exhaustive list of groups in vulnerable situations; on the contrary, other such groups could include minorities, those in extreme poverty and displaced persons. However, these groups have been the subject of the most detailed attention from the sources reviewed.

<sup>69</sup> CEDAW report, sect. III.A.1.

<sup>70</sup> CEDAW report, sect. III.A.2 and III.B.

## 2. Children

73. The Convention on the Rights of the Child provides that in all actions concerning children, including those taken by administrative authorities and legislative bodies, “the best interests of the child shall be a primary consideration” (art. 3, para. 1). In its general comment No. 14 (2013), the Committee on the Rights of the Child has made it clear that this provision applies to actions, such as environmental regulation, that affect children as well as other population groups, and it has stated that where decisions “will have a major impact” on children, “a greater level of protection and detailed procedures to consider their best interests is appropriate” (paras. 19, 20).

74. More specifically, article 24.2(c) of the Convention provides that States Parties shall pursue full implementation of the right of the child to the enjoyment of the highest attainable standard of health and, in particular, shall take appropriate measures “to combat disease and malnutrition... through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.” In its general comment No. 15 (2013), the Committee stated that under article 24.2(c), “States should take measures to address the dangers and risks that local environmental pollution poses to children’s health,” should “regulate and monitor the environmental impact of business activities that may compromise children’s right to health, food security and access to safe drinking water and to sanitation,” and should “put children’s health concerns at the centre of their climate change adaptation and mitigation strategies” (paras. 49, 50). The Committee has emphasized elsewhere as well the importance of regulation of business in order to protect children’s rights, including from the effects of environmental harm (e.g. general comment No. 16 (2013), para. 31).

75. In its general comment No. 9 (2006) on the rights of children with disabilities, the Committee stated that “countries should establish and implement policies to prevent dumping of hazardous materials and other means of polluting the environment. Furthermore, strict guidelines and safeguards should also be established to prevent radiation accidents” (para. 54). The Committee has also urged States to collect and submit information on the possible effects of environmental pollution on children’s health, and to address particular environmental problems, in its concluding observations on country reports.<sup>71</sup> Finally, the Convention states that the States Parties agree that the education of the child shall be directed, *inter alia*, to “the development of respect for the natural environment” (art. 29, para. 1(e)).

## 3. Indigenous peoples

76. Because of their close relationship with the environment, indigenous peoples are particularly vulnerable to impairment of their rights through environmental harm. As the Special Rapporteur on the rights of indigenous peoples has stated, “the implementation of natural resource extraction and other development projects on or near indigenous territories has become one of the foremost concerns of indigenous peoples worldwide, and possibly also the most pervasive source of the challenges to the full exercise of their rights” (A/HRC/18/35, para. 57).

77. International Labour Organization convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples are designed to protect the rights of indigenous peoples, but human rights bodies have also interpreted other human rights agreements to protect those rights. The interpretations have reached generally congruent

---

<sup>71</sup> The Committee has also based such recommendations on other rights under the Convention on the Rights of the Child, including the rights to an adequate standard of living (art. 27) and to rest, leisure and play (art. 31). See CRC report, sect. III.

conclusions about the obligations of States to protect against environmental harm to the rights of indigenous peoples. In his reports, the Special Rapporteur on the rights of indigenous peoples has described in detail the duties of States to protect those rights.<sup>72</sup> This section therefore only outlines certain main points.<sup>73</sup>

78. Firstly, States have a duty to recognize the rights of indigenous peoples with respect to the territory that they have traditionally occupied, including the natural resources on which they rely. Secondly, States are obliged to facilitate the participation of indigenous peoples in decisions that concern them. The Special Rapporteur has stated that the general rule is that “extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent,” subject only to narrowly defined exceptions (A/HRC/24/41, para. 27). Thirdly, before development activities on indigenous lands are allowed to proceed, States must provide for an assessment of the activities’ environmental impacts. Fourthly, States must guarantee that the indigenous community affected receives a reasonable benefit from any such development. Finally, States must provide access to remedies, including compensation, for harm caused by the activities.

## V. Conclusions and recommendations

79. **Human rights law includes obligations relating to the environment. Those obligations include procedural obligations of States to assess environmental impacts on human rights and to make environmental information public, to facilitate participation in environmental decision-making, and to provide access to remedies. The obligation to facilitate public participation includes obligations to safeguard the rights of freedom of expression and association against threats, harassment and violence.**

80. **The human rights obligations relating to the environment also include substantive obligations to adopt legal and institutional frameworks that protect against environmental harm that interferes with the enjoyment of human rights, including harm caused by private actors. The obligation to protect human rights from environmental harm does not require States to prohibit all activities that may cause any environmental degradation; States have discretion to strike a balance between environmental protection and other legitimate societal interests. But the balance cannot be unreasonable, or result in unjustified, foreseeable infringements of human rights. In assessing whether a balance is reasonable, national and international health standards may be particularly relevant. In addition, there is a strong presumption against retrogressive measures.**

81. **In addition to a general requirement of non-discrimination in the application of environmental laws, States may have additional obligations to members of groups particularly vulnerable to environmental harm. Such obligations have been developed in some detail with respect to women, children and indigenous peoples, but work remains to be done to clarify the obligations pertaining to other groups.**

82. **Other issues deserve greater attention as well. Although it is clear that States have an obligation of international cooperation, which is of obvious relevance to global environmental problems such as climate change, clarification of the content of extraterritorial human rights obligations pertaining to the environment is still needed.**

<sup>72</sup> See Report on indigenous peoples.

<sup>73</sup> In addition to the reports of the Special Rapporteur, this summary draws on the ICESCR report, sect. III.C; ICCPR report, sect. III.A; ICERD report, sect. III.B; and Inter-American report, sect. III.C.

83. In other areas, the obligations are clear but there are failures to meet them. In particular, the Independent Expert is troubled by the many reports of failures to protect environmental human rights defenders. He intends to examine good practices in this area in the hope of identifying exemplary models of effective protection.

84. Human rights obligations relating to the environment are continuing to be developed in many forums, and the Independent Expert urges States to support their further development and clarification. But the obligations are already clear enough to provide guidance to States and all those interested in promoting and protecting human rights and environmental protection. His main recommendation, therefore, is that States and others take these human rights obligations into account in the development and implementation of their environmental policies.

---



# General Assembly

Distr.: General  
28 December 2015

Original: English

---

## Human Rights Council

Thirty-first session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

#### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the 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, prepared pursuant to Council resolution 28/11. Drawing on an expert seminar, a public consultation and more than 40 written submissions, the report describes possible methods of implementing human rights obligations relating to the enjoyment of a healthy environment. The proposals are addressed to: (a) the Council, the United Nations Environment Programme, the United Nations Development Programme and other intergovernmental organizations; (b) regional human rights bodies and other regional organizations; (c) Governments and national human rights institutions; (d) civil society organizations; and (e) the Special Rapporteur himself.



## **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### **I. Introduction**

1. In its resolution 19/10, the Human Rights Council decided to appoint an independent expert with a mandate to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and to identify and promote best practices on the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking.
2. In March 2014, the Independent Expert presented a mapping report that reviews the statements of human rights bodies, as well as views gathered in regional consultations with Governments, civil society organizations, international organizations and academics, on the obligations of States under international human rights law relating to the environment (A/HRC/25/53).
3. The diverse sources reviewed indicate a growing level of consensus about how human rights norms apply to environmental issues. There is agreement that environmental degradation can and does interfere with the enjoyment of a wide range of human rights. To protect against such interference, human rights bodies have stated that Governments have: (a) procedural obligations, including to make environmental information publicly available, to facilitate public participation in environmental decision-making and to provide access to legal remedies; (b) substantive obligations to adopt institutional frameworks to protect against environmental harm that may infringe on enjoyment of human rights; and (c) heightened obligations to protect those who are most vulnerable to such harm.
4. Many Governments, international organizations, corporations and civil society organizations are already employing human rights perspectives to address environmental problems. In March 2015, the Independent Expert presented a report to the Human Rights Council in which he identified more than 100 good practices with respect to each of the above obligations, in every region of the world (A/HRC/28/61). In addition to being available on the website of the United Nations, descriptions of the practices are now accessible through a stand-alone dedicated website, [www.environmentalrightsdatabase.org](http://www.environmentalrightsdatabase.org), which allows the practices to be easily searched.
5. In its resolution 28/11, the Human Rights Council renewed the mandate and changed the title of the mandate holder to Special Rapporteur. In that same resolution, the Council requested the Special Rapporteur to continue to study human rights obligations relating to the environment and to identify good practices in the use of such obligations, but also to promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, to disseminate his findings by continuing to give particular emphasis to practical solutions with regard to their implementation and to work on identifying challenges and obstacles to the full realization of such obligations. The human rights norms relating to the environment continue to develop and evolve and, with a view to further clarifying the applicable obligations, the Special Rapporteur continues to examine thematic issues, including climate change and ecosystem protection. As recognized in resolution 28/11, however, many of the human rights norms relating to environmental protection are clear enough that it is appropriate to examine how they can be better promoted and implemented.
6. To that end, the Human Rights Council requested the Special Rapporteur and the Office of the United Nations High Commissioner for Human Rights (OHCHR) to convene

an expert seminar on the effective implementation of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, challenges thereto and the way forward, on the basis of the findings of the mandate holder.

7. In accordance with that request, the Special Rapporteur, with the support of OHCHR and the United Nations Environment Programme (UNEP), organized a meeting of more than 20 experts on 26 and 27 October 2015. He also held a public consultation on 28 October. In addition, the Special Rapporteur received more than 40 written submissions. At the meetings and through the submissions, he received valuable input from representatives of Governments, civil society organizations, international organizations and academics.

8. Drawing on all of those sources, the present report describes possible methods of implementing human rights obligations relating to the enjoyment of a healthy environment. Although the methods listed are not exhaustive, they give a wide range of approaches that would further the following goals, among others: (a) disseminating information about the human rights norms relating to the environment; (b) building capacity; (c) protecting the rights of those who are most vulnerable; and (d) strengthening cooperation between different actors.

9. The report is addressed to all those in a position to implement human rights norms in relation to the environment. Proposals are organized in categories corresponding to the actors that could carry them out, including: (a) the Human Rights Council and other intergovernmental organizations; (b) regional human rights bodies and other regional organizations; (c) Governments and national human rights institutions; (d) civil society organizations; and (e) the Special Rapporteur himself.

10. At the outset, the Special Rapporteur highlights three general points that were emphasized by many of the interlocutors in this process. First, the methods of implementation are not “either/or” alternatives. They complement one another. To promote the full enjoyment of human rights relating to the environment, actors should pursue multiple methods of implementation.

11. Second, the Special Rapporteur draws attention to the relevance of the new Sustainable Development Goals, which provide an overall framework for development policy over the next 15 years. Virtually all of the suggested methods of implementing human rights norms relating to the environment would also support achievement of the Sustainable Development Goals.

12. Third, many interlocutors stressed that a human rights perspective on environmental protection not only promotes human dignity, equality and freedom — the benefits of implementing all human rights — but also improves the effectiveness of policymaking generally. Ensuring that those most affected by development and environmental policies are able to obtain information, freely express their views and participate in the decision-making process makes the policies more robust and sustainable. Assessing development and environmental policies in the light of human rights, including the rights to life, health and an adequate standard of living, helps to ensure that the policies directly improve the lives of human beings who depend on a healthy environment — which is to say, all human beings.

## **II. Implementing human rights obligations relating to the environment**

13. The following sections describe the proposals for implementation of human rights obligations relating to the environment that could be carried out by: (a) intergovernmental organizations, including the Human Rights Council; (b) regional bodies; (c) Governments and national human rights institutions; and (d) civil society organizations.

## **A. International actors**

### **1. Human Rights Council**

14. A common theme in the proposed methods of implementation is the importance of raising awareness of the human rights norms relating to the environment. A number of participants suggested that one way to achieve this goal would be through the adoption of a new international instrument, which could take the form of a treaty or a declaration prepared by the Human Rights Council. Most participants who raised this idea were more interested in a declaration; few expressed the view that the time was right to draft a legally binding treaty. Those who supported a new instrument argued that it would highlight the connection between human rights and environmental protection, help to shape national laws and enhance implementation at multiple levels. In combination with this proposal, some also expressed the view that recognition by the United Nations of a human right to a healthy environment would be an important way to promote the nexus between human rights and environmental protection. Others, however, noted that the norms in this area are still developing and stated that trying to codify the norms prematurely could interfere with their further development.

15. The Special Rapporteur recognizes that the negotiation and adoption of a treaty or a declaration is a political decision entrusted to the discretion of Governments. His own opinion is in accord with those who believe that the time is not right for the United Nations to undertake a new treaty on this issue. Although the question is closer with respect to a declaration, the Special Rapporteur believes that at this moment such an effort would probably also be premature. Some of the human rights norms relating to the environment are now well established, but others require further clarification, and still others are evolving. While a declaration could certainly have the benefits its proponents describe, it would also become a central point of attention for the period of its negotiation, which might distract from the continuing development of the norms at the national, regional and international levels. The Special Rapporteur believes that, at this point in their evolution, some issues might better be resolved organically through their continued consideration by a variety of human rights bodies, rather than be addressed in an intergovernmental negotiation. This assessment could change as the field continues its rapid development.

16. Another common theme in the discussion was the importance of continuing to provide forums in which the human rights community and the environmental community could come together to share views and experiences. The Special Rapporteur has endeavoured to provide such forums through his consultations. He received a number of proposals for the Human Rights Council to provide such forums more directly. In particular, it was suggested that the Council establish an international forum, such as the annual Forum on Business and Human Rights, which would focus on human rights and the environment. Furthermore, such a forum could emphasize South-South dialogue and cooperation in this area. The forum could either be established separately from the Forum on Business and Human Rights, or perhaps as an adjunct to it.

17. Another proposal to this end was the organization of a panel discussion at a Human Rights Council session on methods of strengthening implementation of the human rights relating to the environment. A model could be the panel discussions that the Council has held on climate change and human rights. A new panel on implementation could bring together a diverse range of stakeholders, which could help build bridges between the development and the environment communities.

18. A third set of proposals had to do with greater use of the universal periodic review mechanism as an effective tool to examine the compliance of States with human rights obligations related to the environment and to promote better environmental policies at the national level. States have already used the review process to raise awareness of

environmental threats to the enjoyment of human rights (see A/HRC/25/53, para. 18), but more could be done in that process to examine the application of human rights to environmental issues.

19. Finally, a recurring theme in almost all of the Special Rapporteur's consultations since 2012 has been the threats to environmental human rights defenders. Those who are working on the front lines of environmental protection are most at risk of threats, violence and murder. The Special Rapporteur has repeatedly said that States need to do more to protect environmental human rights defenders. One important step in that regard would be for the Human Rights Council to adopt a resolution in which it recognized the important contributions of environmental human rights defenders and addressed the criminalization, harassment and even death that they often face. The resolution could build on General Assembly resolution 70/161, which was adopted on 17 December 2015.

## 2. Other intergovernmental organizations

20. As important a role as the Human Rights Council plays in this area, a human rights perspective on environmental issues can only be implemented effectively if and when it is mainstreamed into the work of development, financial and environmental agencies. In particular, mainstreaming a human rights perspective across the work of different United Nations agencies and reducing fragmentation of human rights activities across different parts of the United Nations system is a prerequisite to achieve effective implementation.<sup>1</sup>

21. As the examples below illustrate, many positive steps have already been taken in this respect. However, more could be done by United Nations bodies and specialized agencies, multilateral environmental agreements, international financial institutions and regional development agencies. The following discussion is far from exhaustive, but it describes some important ongoing activities and additional proposals.

### *United Nations Environment Programme*

22. Over the past decade, UNEP has carried out a number of important initiatives towards the implementation of human rights obligations relating to the environment. Some of its work has helped to clarify the relationship between the two fields. For example, in 2012, UNEP and OHCHR submitted a joint report on human rights and the environment to the United Nations Conference on Sustainable Development.<sup>2</sup> In 2014, UNEP published a compendium of sources on human rights and the environment, including decisions by regional human rights tribunals and human rights treaty bodies.<sup>3</sup> Most recently, UNEP published a study of climate change and human rights for the climate negotiations in Paris in December 2015.<sup>4</sup>

23. UNEP has also shared information and experience with other United Nations agencies. For example, it has participated in side events at the Human Rights Council and

<sup>1</sup> See Universal Rights Group, "The Human Rights Council at 10: improving relevance, strengthening impact", available from [www.universal-rights.org/urg-policy-reports/glion-human-rights-dialogue-human-rights-council-10-improving-relevance-strengthening-impact/](http://www.universal-rights.org/urg-policy-reports/glion-human-rights-dialogue-human-rights-council-10-improving-relevance-strengthening-impact/).

<sup>2</sup> *Human Rights and the Environment, Rio+20: Joint Report OHCHR and UNEP*. Available from [www.unep.org/environmentalgovernance/Portals/8/publications/JointReport\\_OHCHR\\_HRE.pdf](http://www.unep.org/environmentalgovernance/Portals/8/publications/JointReport_OHCHR_HRE.pdf).

<sup>3</sup> *UNEP Compendium on Human Rights and the Environment: Selected International Legal Materials and Cases*. Available from [www.unep.org/environmentalgovernance/Portals/8/publications/UNEP\\_Compndium\\_HRE.pdf](http://www.unep.org/environmentalgovernance/Portals/8/publications/UNEP_Compndium_HRE.pdf).

<sup>4</sup> UNEP, *Climate Change and Human Rights*, 2015. Available from [www.unep.org/newscentre/default.aspx?DocumentID=26856&ArticleID=35630](http://www.unep.org/newscentre/default.aspx?DocumentID=26856&ArticleID=35630).

has introduced human rights concerns into side events at UNEP meetings. The second meeting of the United Nations Environment Assembly, in May 2016, will provide another opportunity to increase awareness among Governments and other stakeholders and promote the implementation of human rights obligations relating to the environment.

24. Throughout the mandate of the Special Rapporteur, UNEP has been a key partner in his work to identify and disseminate information about good practices in the use of human rights obligations relating to environmental protection. UNEP supported the regional consultations and expert meetings that provided much of the basis for the report on good practices presented to the Human Rights Council in March 2015. Participants in the expert meeting encouraged UNEP to continue to identify and disseminate such good practices, including in particular the good practices of corporations.

25. UNEP has also contributed in many ways to mainstreaming a human rights perspective in environmental governance. For example, in 2010, the UNEP Governing Council adopted the Bali Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, comprising 26 voluntary guidelines for States on promoting the effective implementation of Principle 10 of the 1992 Rio Declaration on Environment and Development within their national legislative frameworks. Although Principle 10 does not explicitly refer to human rights, its implementation furthers the realization of human rights to information, participation and effective remedy. In 2015, UNEP published a guide to the Bali Guidelines that includes case examples and jurisprudence from a wide range of national and international practice.<sup>5</sup>

26. Going forward, UNEP has identified several areas in which it can continue to contribute to the mainstreaming of a human rights perspective in environmental policymaking. For example, it intends to work with the Special Rapporteur and OHCHR, as well as other partners, to mainstream environmental and human rights norms in the implementation and monitoring of the Sustainable Development Goals. In addition, participants at the expert meeting suggested that UNEP could examine how human rights could be mainstreamed into environmental impact assessments, including under multilateral environmental agreements. Other areas of potential cooperation with other partners are described below.

#### *United Nations Development Programme*

27. The work of the United Nations Development Programme (UNDP) is highly relevant to the implementation of rights related to the environment. UNDP has extensive experience building capacities for implementing global norms and frameworks, including through providing technical assistance to implement multilateral environmental agreements. Furthermore, its strategic plan for 2014-2017, which is geared towards the post-2015 development agenda, incorporates human rights and environmental concerns, particularly in relation to marginalized persons and communities living in vulnerable situations.<sup>6</sup>

28. UNDP incorporates a human rights perspective into its environmental capacity-building in many respects. For example, UNDP provides capacity development on the role of parliaments on scaling up financing for the green agenda and providing oversight of

---

<sup>5</sup> *Putting Rio Principle 10 into Action: An Implementation Guide for the UNEP Bali Guidelines* (October 2015). Available from [www.unep.org/civil-society/Implementation/Principle10/tabid/105013/Default.aspx](http://www.unep.org/civil-society/Implementation/Principle10/tabid/105013/Default.aspx).

<sup>6</sup> See UNDP, *Environmental Justice: Comparative Experiences in Legal Empowerment*. Available from [www.undp.org/content/undp/en/home/librarypage/democratic-governance/access\\_to\\_justiceandruleoflaw/environmental-justice---comparative-experiences/](http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/environmental-justice---comparative-experiences/).

national goals, regulations and implementation by national development agencies. UNDP also has an important capacity-building programme for civil society organizations on environmental governance that supports their gaining access to information, participation and remedy. Other examples of national projects that incorporate a rights-based approach include its support of a constitutional commission on the rights of future generations in Tunisia, which may be the first of its kind in any country, and the development in China of an environmental justice programme with the Centre for Legal Assistance to Pollution Victims.

29. The work of UNDP on governance provides a particularly useful platform for cooperation with partners at the local and national levels on issues of human rights and the environment. UNDP recently launched a programme on strengthening environmental governance in the extractive sector that includes country-level programmes in Colombia, Kenya, Mongolia and Tunisia.

30. UNDP will continue to play a key role in supporting capacity-building for civil society organizations and State institutions, including the judiciary, on environmental protection; working with local civil society organizations to develop national assessments on governance implementation; and setting up round-table discussions to explore links between local projects and international norms on human rights and environmental protection. Proposals by other interlocutors included conducting a “lessons learned” study of the work of UNDP in these related areas, so that its experiences can be more widely disseminated.

#### *United Nations Children's Fund*

31. The approach of the United Nations Children's Fund (UNICEF) to environmental sustainability emphasizes the explicit recognition of children's rights in the environmental context, given their vulnerabilities to climate and environmental impacts and their specific needs. UNICEF has developed many tools, including reports, technical briefings, and handbooks, to provide technical assistance to partners that are relevant to implementing children's rights in relation to the environment. These tools cover a wide range of issues from water and sanitation to climate change education, sustainable energy and disaster risk reduction.

32. At the country level, UNICEF has worked with Governments to incorporate a child rights approach within national legislation. For example, the UNICEF office in Viet Nam worked closely with the Government on its 2014 environmental law, which includes a chapter on green growth and climate change, as well as principles related to the role of civil society, gender equality and respect for the best interest of children. With UNICEF support, the Ministry of Education also approved a curriculum for formal education that includes competencies on environmental education and climate change, promoting children as critical agents of change. In Zimbabwe, UNICEF supported the development of the Government's National Climate Change Response Strategy, which provides a framework for climate change adaptation and mitigation.

#### *Office of the United Nations High Commissioner of Human Rights*

33. In accordance with requests from the Human Rights Council (Council resolutions 6/20, 12/15, 18/14 and 24/19), OHCHR has convened five biennial meetings of the United Nations and regional human rights mechanisms to share information and enhance cooperation. The meetings can focus on specific themes. For example, in 2016, the theme will be civil society organizations and human rights defenders. For the meeting in 2018, OHCHR could suggest that the mechanisms consider examining the relationship of human rights and the environment. A similar opportunity might be provided by the annual meeting of the International Coordinating Committee of National Institutions for the Promotion and

Protection of Human Rights, which is usually held with OHCHR support in conjunction with the March session of the Human Rights Council. Each annual meeting provides a venue to share information on thematic issues, and a future meeting could provide an opportunity to discuss ways that national human rights institutions could support the implementation of human rights relating to the environment.

#### *Human rights treaty bodies*

34. Human rights treaty monitoring bodies have contributed significantly to clarifying State obligations in connection to human rights relating to the environment. The Special Rapporteur has developed five reports on the work of the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. Each of the reports looks at the relevant interpretations of their respective treaties by the committees in their country reports, views on communications and general comments.<sup>7</sup>

35. In addition to continuing to receive communications on environmental issues, treaty bodies could further the implementation of human rights obligations relating to the environment by holding days of general discussion and issuing general comments on the relationship of human rights and the environment. Days of general discussion present an opportunity to develop a deeper understanding of the application of a convention to specific issues. These meetings are open to public participation, including representatives from Governments, United Nations mechanisms, United Nations bodies and specialized agencies, civil society organizations and national human rights institutions. Interested individuals and organizations can submit written contributions and participate in the discussions. Potential outcomes include recommendations, calls for further studies and the drafting of general comments.

36. The Special Rapporteur will participate in a day of general discussion that the Committee on the Rights of the Child plans to hold in September 2016, with a specific focus on the human rights of the child to enjoy a healthy environment. The Committee on Economic, Social and Cultural Rights is also considering the preparation of a general comment that would address environmental issues.

#### *International Organization for Migration*

37. Since the early 1990s, the International Organization for Migration (IOM) has had a wide-ranging policy, research and operational programme on migration, environment and climate change. IOM has developed projects in over 40 countries, including in Africa, Asia, Latin America and the Pacific.<sup>8</sup>

38. Together with a group of six partners, IOM is currently implementing a three-year research project funded by the European Union that aims at building knowledge on the linkages between migration and environmental change, including climate change. The programme has three main components: (a) strengthening knowledge and information sharing; (b) providing capacity-building for Governments; and (c) facilitating policy

---

<sup>7</sup> The reports are available from <http://srenvironment.org/mapping-report-2014-2/> and [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx).

<sup>8</sup> See *Migration, Environment and Climate Change: Assessing the Evidence*, p. 5. Available from [http://publications.iom.int/system/files/pdf/migration\\_and\\_environment.pdf](http://publications.iom.int/system/files/pdf/migration_and_environment.pdf).

coherence and cooperation at the national and regional levels. It covers six countries: the Dominican Republic, Haiti, Kenya, Mauritius, Papua New Guinea and Viet Nam.<sup>9</sup>

#### *Multilateral environmental agreements*

39. A number of participants stressed the importance of mainstreaming a human rights perspective in multilateral environmental agreements. One way to do this is to include, where appropriate, a reference to human rights in the text of an agreement itself. Even without such references, however, the implementation of environmental agreements can do a great deal to protect human rights by improving the environment on which they depend. To that end, a useful step (which could also be taken by Governments and other international bodies) is the collection of disaggregated data on the effects on vulnerable groups of the environmental harm addressed by the agreements. Another proposal refers specifically to the requirements in most multilateral environmental agreements that the parties report on their performance. It was suggested that the secretariats of such agreements could develop a harmonized methodology to assist States in meeting their reporting obligations, which would ensure that the reporting is done in a participatory manner.

#### *Cooperation among intergovernmental agencies*

40. The Special Rapporteur draws attention to the advantages of strengthening collaboration among the different agencies working in this area. Interagency cooperation has proved to be an effective way to implement human rights obligations related to the environment.

41. For example, over the past decade, the joint Poverty-Environment Initiative of UNDP and UNEP has provided financial and technical support to assist government decision makers and other stakeholders to manage the environment in ways that improve livelihoods and lead to sustainable growth. It has developed a flexible programmatic model for poverty-environment mainstreaming that incorporates gender and a rights-based approach. In the Philippines, the Initiative has provided technical assistance to promote responsible mining practices and to help stop and reverse the destruction of biodiversity and ecosystems. In the Lao People's Democratic Republic, the Initiative has worked with the Ministry of Natural Resources and Environment to establish procedures to carry out an environmental and social impact assessment, monitor processes for investment projects and increase community participation in economic development.<sup>10</sup>

42. Another example of collaboration in this area is the recent initiative of the United Nations Institute for Training and Research to work with UNDP and UNEP, as well as the Special Rapporteur, to develop training materials and programmes on human rights and the environment, to inform a variety of actors, including State agencies, the judiciary and civil society organizations.

43. A number of additional proposals could also be implemented by agencies working together. Many of the suggestions received by the Special Rapporteur concerned cooperation in the provision of technical assistance. For example, it was suggested that UNDP and other agencies, including UNEP, could jointly strengthen the use of United Nations country offices to promote implementation of the rights relating to environment. More generally, methods of implementing human rights relating to the environment that could benefit from agency cooperation include:

---

<sup>9</sup> More information is available from [www.iom.int/meclep](http://www.iom.int/meclep).

<sup>10</sup> More information is available from [www.unpei.org](http://www.unpei.org).

- Developing model constitutional provisions, including with respect to the right to a healthy environment
- Drafting model legislation, including in areas such as climate change and migration and human rights defenders
- Producing handbooks clarifying the application of human rights norms to specific environmental issues, such as the regulation of toxic substances
- Organizing training sessions for national human rights institutions and the judiciary on the application of human rights to the environment
- Developing a database of jurisprudence related to human rights and the environment
- Publishing information on how different countries are implementing human rights related to the environment

44. In addition to inter-agency cooperation, some interlocutors proposed the creation of new international mechanisms. Three examples are:

- The establishment of a special fund for the protection of environmental human rights defenders at risk, which could enable organizations to support human rights defenders under pressure or threat by providing emergency assistance for temporary relocation and legal fees
- A mechanism that could provide technical assistance to States on implementing obligations relating to human rights and the environment, and that could emphasize South-South dialogue and cooperation
- A new judicial body to hear international claims for violations of human rights relating to the environment that could supplement existing national and regional tribunals

## **B. Regional bodies**

### **1. Regional human rights bodies**

45. Regional human rights bodies continue to provide crucial methods of implementing human rights relating to the environment. Regional bodies in Africa, the Americas and Europe have done a great deal to clarify the application of human rights norms to environmental issues, including through their decisions on complaints and their publication of resolutions and reports. Those contributions have been described in earlier reports of the Special Rapporteur, which were summarized in the mapping report (A/HRC/25/53).<sup>11</sup>

46. The regional commissions also establish special mechanisms, some of which can address environmental issues. For example, in 2009 the African Commission on Human and Peoples' Rights established a Working Group on Extractive Industries, Environment and Human Rights Violations, whose mandate includes examining the impact of extractive industries in Africa and researching violations of article 24 of the African Charter, which recognizes the right of peoples to a satisfactory environment. The Working Group has conducted a number of research projects, including through a mission to Zambia in 2014. It was suggested that the Commission could consider creating another mandate with a focus on environmental issues generally, or requesting the Working Group to broaden its focus beyond extractive industries to address a wider variety of environmental issues.

---

<sup>11</sup> The reports are available from <http://srenvironment.org/mapping-report-2014-2/> and [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx).

47. The Inter-American Commission on Human Rights established the Office of the Special Rapporteur on Economic, Social, and Cultural Rights in November 2012. Pursuant to his mandate, he has expressed interest in examining the implementation of the right to a healthy environment, in line with the Protocol of San Salvador to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

48. The Inter-American Commission has held a number of thematic hearings in relation to the situation of human rights defenders working on environmental related issues. For example, in 2015, it held a hearing on the situation of environmental human rights defenders in relation to extractive industries and another hearing on the situation of defenders of women's rights and the environment. In the past few years, the Commission has also held many hearings in relation to defenders working on environmental issues in specific countries. The Commission has also held hearings on the effects that extractive industries have on the enjoyment of human rights, such as access to water.

49. In addition, the Inter-American Commission often issues precautionary measures to protect the lives of environmental human rights defenders. A recent example is the 2015 case of *Kevin Donaldo Ramírez and family v. Honduras*, in which the Commission requested the State to adopt measures to protect an environmental human rights defender and his family, who had been harassed and subjected to acts of violence for his activities.

## 2. Other regional bodies

50. Human rights obligations relating to the environment have also been implemented through regional agreements on the rights to information, participation and remedy. The leading example is the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted by States members of the Economic Commission for Europe. In addition to setting out clear standards, the Convention establishes a Compliance Committee that can receive communications by members of the public and deliver non-binding recommendations. The credibility that the Committee enjoys among the contracting parties, other international courts and civil society has been a significant factor promoting implementation of the Committee's findings. The parties to the Aarhus Convention have also established the Task Force on Access to Justice in Environmental Matters, which provides a platform for sharing information, experiences and good practices in relation to access to justice in environmental matters.

51. A more recent initiative is the negotiation by 20 States members of the Economic Commission for Latin America and the Caribbean of a regional agreement on the rights to information, participation and remedy. The negotiators hope to conclude the agreement by December 2016. When adopted, the agreement will provide invaluable support to secure the effective enjoyment of those rights. It will also help to enhance domestic laws implementing multilateral environmental agreements and domestic policies in other areas, including climate change, chemicals and waste management, and biological diversity.

52. Other regional bodies, such as the Association of Southeast Asian Nations (ASEAN), could consider the adoption of similar regional conventions and agreements. For example, an ASEAN agreement could not only strengthen the implementation of procedural rights, including rights related to participation and access to information, but also build on its 2007 Declaration on Environmental Sustainability. Similarly, ASEAN could consider the development of a framework agreement on principles and procedures for environmental impact assessments. The framework could set out guidelines to identify projects that would require such assessments and provide minimum standards for public participation. Such an agreement could also strengthen and clarify ASEAN environmental quality standards and guidelines to assist project proponents, as well as set out specific procedures for environmental impact assessments addressing projects with direct

transboundary impacts. Such a regional agreement would complement ongoing efforts by the ASEAN Intergovernmental Commission on Human Rights to integrate a human rights perspective on environmental and climate change policymaking.

53. In addition, regional bodies could further the implementation of human rights norms relating to the environment by, among other things: (a) building capacity for the judicial sector to understand the relationship between human rights and the environment; and (b) supporting national efforts to implement human rights and environmental principles into national laws, including by increasing dialogue and cooperation between different ministries.

## **C. National actors**

54. States are already undertaking a wide array of measures to implement human rights obligations relating to the environment, as explained in the report of the Special Rapporteur on good practices (A/HRC/28/61). But much remains to be done to adopt those good practices more widely and to ensure their effective implementation.

### **1. State institutions**

55. A number of interlocutors urged States that have not yet done so to consider adopting a right to a healthy environment into their national constitution. Experts have identified many potential benefits of adopting a constitutional environmental right, including that the recognition of such rights can lead to the enactment of stronger environmental laws; provide a safety net to protect against gaps in statutory environmental laws; raise the profile and importance of environmental protection as compared with competing interests, such as economic development; and create opportunities for better access to justice and accountability. Whether or not States adopt a constitutional right to a healthy environment, States should adopt strong environmental laws ensuring, among other things, rights to information, participation and remedy. In the report on good practices, the Special Rapporteur provides several examples of such laws.

56. States should also consider establishing dedicated environmental courts and/or modifying standing requirements to facilitate the resolution of environmental cases. Examples of such courts include the Land and Environment Court of New South Wales, Australia, created in 1980; the Environmental Administrative Tribunal of Costa Rica, established in 1995, and the National Green Tribunals of India, established in 2011. At the administrative level, a human rights perspective should be mainstreamed not only in environmental agencies, but also in development agencies of all kinds.

57. To strengthen implementation, States also need to create an enabling environment with appropriate safeguards for environmental human rights defenders. An important step is to ensure that the principles of 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 are enshrined in national law, and to establish and strengthen protection programmes and mechanisms for human rights defenders, including environmental defenders.

58. Furthermore, States should continue to cooperate with the national and regional country offices of UNDP, UNEP and OHCHR to mainstream a human rights perspective into their environmental programmes and activities. A potential area of collaboration is building the capacity of law students, advocates, judges, national human rights institutions, policymakers and other relevant actors to apply human rights norms in their decision-making.

59. Finally, implementation of the Sustainable Development Goals is highly important to the promotion of human rights and environmental protection. Accordingly, integrating the Goals into national priorities provides an opportunity for States to advance human rights related to the environment.

## 2. National human rights institutions and ombudspersons

60. In his report on good practices, the Special Rapporteur underlined the importance of using national human rights institutions to address environmental issues. Many of these bodies have jurisdiction to examine alleged violations of rights related to the environment and are increasingly focusing on environmental concerns. To highlight one of many possible examples, Hungary established an ombudsperson for future generations in 2007, which has the authority to initiate or participate in investigations upon receiving complaints, to submit petitions to the constitutional court and to initiate intervention in public administrative court cases regarding environmental protection. National human rights commissions that have not already done so should strongly consider addressing environmental concerns within their mandates, and their efforts in this respect should be supported by national governments.

## D. Civil society organizations

61. Civil society organizations have engaged in many exemplary practices to facilitate the implementation of human rights related to the environment, including facilitating public participation, providing technical assistance to government institutions, training relevant actors and adopting measures to protect human rights defenders. In addition, civil society organizations have been very active participants in international meetings and have contributed to the development of instruments such as the Extractive Industries Transparency Initiative, the United Nations Global Compact and the Guiding Principles on Business and Human Rights. Examples of their good practices are listed in the report of the Special Rapporteur on good practices and at [www.environmentalrightsdatabase.org](http://www.environmentalrightsdatabase.org). The report and database also include examples of good practices by other non-State actors, including corporations, which have responsibilities under the Guiding Principles to respect human rights, including those relating to environmental protection.

62. Although there are too many examples to list them all here, this section highlights three methods of implementation that are particularly useful models.

63. First, civil society organizations have taken the lead in pioneering efforts to protect environmental human rights defenders from harassment and violence. Groups such as the Fédération internationale des ligues des droits de l'homme, the Organisation mondiale contre la torture, FORUM-ASIA, Protection International, the Environmental Law Alliance Worldwide, Front Line Defenders and the Women Human Rights Defenders International Coalition provide a wide range of services to environmental defenders, including relocation support, legal assistance, training, and publicity (see A/HRC/28/61, para. 54). Particularly noteworthy as an effort to raise awareness of the problem are the efforts of the organization Global Witness, which has called attention to the situation of environmental human rights defenders in a series of well-researched reports and campaigns.<sup>12</sup>

<sup>12</sup> See *Deadly Environment: The Dramatic Rise in Killings of Environmental and Land Defenders 1.1.2002-31.12.2013* (April 2014), available from [www.globalwitness.org/en-gb/campaigns/environmental-activists/deadly-environment/](http://www.globalwitness.org/en-gb/campaigns/environmental-activists/deadly-environment/); and *How Many More? 2014's Deadly Environment: the Killing and Intimidation of Environmental and Land Activists, with a Spotlight on Honduras* (April

64. Second, in 2015 the World Resources Institute and The Access Initiative published the Environmental Democracy Index,<sup>13</sup> which measures country-specific realization of the procedural rights of access to information, access to justice and public participation relating to environmental protection, according to an analysis of national laws and regulations. The index provides a useful tool for identifying gaps and charting progress.

65. Third, conservation organizations are increasingly relying on a human rights perspective in their work. For example, the Conservation Initiative on Human Rights brings together eight organizations working in this area<sup>14</sup> that have agreed to uphold international proclaimed human rights to guide their policies and to advance the idea that human rights are essential to conservation work. The diverse partnerships of the Initiative across different regions and sectors offer an effective model for sharing information and experiences among various actors and exercising influence at many different levels. Since the creation of the Initiative, all the organizations involved have strengthened human rights integration in their policies and frameworks.

66. For example, Conservation International trains staff at its headquarters and field offices on how to integrate a rights-based approach into all aspects of their work. The mission and policies of the International Union for the Conservation of Nature explicitly recognize the importance of respecting rights in the practice of conservation and call for the organization to work towards ensuring that rights are respected for the sustainable and equitable use, management, governance and conservation of natural resources. The organization has adopted an environmental and social standard system that uses rights-based safeguards to ensure that all of its projects fully respect the human rights of all communities and individuals linked to its conservation interventions, and that contribute as much as possible to the realization of their rights. Similarly, the World Wide Fund for Nature has taken a number of steps to build institutional knowledge, internal policy, and external engagement to proactively build human rights and social development into its conservation work. The Special Rapporteur intends to work with these and other conservation organizations to support and promote their efforts to incorporate rights-based perspectives.

### **III. Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

67. From the beginning of the mandate, the Special Rapporteur has believed that clarifying human rights obligations relating to the environment, as well as identifying good practices in the use of such obligations, are necessary (although not sufficient) factors in promoting implementation of those norms. In accordance with Human Rights Council resolution 28/11, he intends to continue to clarify human rights norms and identify good practices. In the other report he is presenting to the Council at its thirty-first session, he addresses the application of human rights principles to climate change, and in 2016 he intends to examine the relationship of human rights with the protection of ecosystems and biological diversity. Where the norms already appear to be clear and well understood, the

---

2015), available from [www.globalwitness.org/en/campaigns/environmental-activists/how-many-more/](http://www.globalwitness.org/en/campaigns/environmental-activists/how-many-more/).

<sup>13</sup> Available from [www.environmentaldemocracyindex.org](http://www.environmentaldemocracyindex.org).

<sup>14</sup> Birdlife International, Conservation International, Fauna & Flora International, International Union for Conservation of Nature, The Nature Conservancy, Wetlands International, Wildlife Conservation Society and World Wide Fund for Nature.

Special Rapporteur has strongly encouraged their full implementation. For example, he has repeatedly expressed his concerns about the failures of States to meet their obligations to protect environmental human rights defenders, and he has identified good practices to improve their protection.

68. In response to the request in Human Rights Council resolution 28/11 for an increased emphasis on implementation, the Special Rapporteur has taken a more active role in initiating communications to Governments about complaints of human rights violations relating to the environment. He has requested countries to offer invitations to conduct country missions, and he also intends to visit international institutions where appropriate. In that respect, he has already had discussions with the secretariat of the United Nations Framework Convention on Climate Change, which he hopes to visit in the second quarter of 2016.

69. A number of other useful suggestions for the Special Rapporteur emerged from the expert meeting, the public consultation and the written submissions. For example, many participants urged him to develop and disseminate guidelines to facilitate better understanding of the human rights obligations relating to the environment. There was a consensus that such guidance should succinctly summarize the relevant norms, be clear and easy to understand, explain the benefits of a human rights perspective on environmental issues and include a section on environmental human rights defenders in particular.

70. Another suggestion is to develop handbooks or other accessible tools, such as short briefing papers and case studies. The goal would be to explain in clear terms the human rights principles relevant to environmental issues, perhaps aimed at specific audiences. These publications could be complemented with a series of short videos to help advance knowledge on specific environmental related issues.

71. Participants also noted the need to share knowledge concerning national and international jurisprudence in relation to environmental matters. It was suggested that a useful resource would be a database of rulings by national judiciaries, regional and international courts, as well as other human rights bodies, similar to the one developed by the Special Rapporteur concerning good practices. Such a database, which could be developed in conjunction with other partners, would not only be relevant for judges and lawyers, but also for parliamentarians, national human rights institutions and advocates working in this area. An additional proposal was to include in the existing database on good practices more information on the practices of indigenous peoples regarding the implementation of national and international obligations in the promotion of a safe and sustainable environment.

72. The dissemination of model constitutional provisions and legislation was also suggested, as a means of supporting Governments in their implementation of norms relating to the environment. A cautionary point is that implementation is often more successful when legislation is developed through a process that includes the participation of local and national communities. Therefore, any model provisions should be used as a draft, or checklist, which could inform the development of laws within a country through a participatory process.

73. The Special Rapporteur was urged to continue to promote the protection of environmental human rights defenders, in coordination with other special procedure mandate holders, including the Special Rapporteur on the situation of human rights defenders, with the goal of encouraging States to fulfil their obligation to create an enabling environment for human rights defenders working in this area. In this respect, some specific suggestions were made, including the creation of a comprehensive global study that monitors and investigates the criminalization and intimidation of environmental defenders. The study could identify the State and non-State actors that are involved as perpetrators,

institutional deficits that lead to a lack of protection, violations of international law and domestic laws that allow for targeting of environmental defenders. In addition, it was suggested that a database could be established to make environmental defenders more visible, to centralize the efforts of organizations that are tracking threats and other incidents and to publicize their situation so that international attention can help to promote their safety.

74. Another proposal was to strengthen collaboration with other human rights mechanisms, including the Working Group on the issue of human rights and transnational corporations and other business enterprises. A number of issues relating to corporations and environmental protection directly concern human rights and deserve further attention. It was suggested that the Special Rapporteur could develop guiding questions for the Working Group and other mechanisms to help them to continue to integrate human rights related to the environment into their work.

75. The Special Rapporteur received many other suggestions concerning areas that need further clarification and analysis, including with respect to the protection of ecosystems, transboundary environmental harm, chemical and waste management, air pollution control, the human rights dimensions of hydraulic fracturing (fracking), the right to a remedy in cases involving environmental destruction, children's rights in relation to the environment and the situation of environmental migrants.

76. The Special Rapporteur also received a number of proposals for the implementation of human rights obligations relating to the protection of indigenous peoples from environmental harm, which reflect the close relationship those peoples often have with the environment. While these proposals would certainly promote the implementation of human rights obligations relating to the environment, they may fall more squarely within the mandate of the Special Rapporteur on the rights of indigenous peoples. They include: (a) collaborating with the United Nations Educational, Scientific and Cultural Organization to establish regulations based on indigenous knowledge of environmental protection of world heritage sites, to identify new sites of world natural heritage and to protect endangered world heritage sites; (b) promoting the explicit and active participation of indigenous peoples in international forums; and (c) developing a compendium of best practices concerning free, prior and informed consent in the context of extractive activities and other projects affecting land and human rights.

77. Finally, a number of participants urged the Special Rapporteur to examine the environmental safeguards adopted by international financial institutions. The view was expressed that the proliferation of such safeguards has become confusing and that it is important to promote their consistent and effective implementation.

#### **IV. Conclusions and recommendations**

**78. The Special Rapporteur expresses his gratitude to everyone who contributed to the present report, including the participants in the expert meeting and the public consultation and those who provided written submissions. As more institutions and people around the world apply a human rights perspective on environmental issues, their experiences provide valuable models for others.**

**79. The many suggestions for methods of implementation of human rights obligations relating to the environment should be considered and promoted by all those in a position to do so, including the Human Rights Council, other international and regional organizations, national Governments, and civil society organizations, within their own spheres.**

80. The Special Rapporteur will draw on these proposals as a guide to his own work on implementation and in continuing to work with other partners, including United Nations agencies, treaty bodies, regional organizations and secretariats of multilateral environmental agreements, as well as national Governments and civil society organizations. Among other initiatives, he will prioritize the development and dissemination of clear guidance about human rights norms relating to the environment, and good practices in the use of those norms, that is easy to understand and apply.

---



# General Assembly

Distr.: General  
1 February 2016

Original: English

---

## Human Rights Council

Thirty-first session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

#### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the 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, on the human rights obligations relating to climate change. In this report, he describes the increasing attention paid to the relationship between climate change and human rights in recent years, reviews the effects of climate change on the full enjoyment of human rights and outlines the application of human rights obligations to climate-related actions. He explains that States have procedural and substantive obligations relating to climate change, as well as duties to protect the rights of the most vulnerable.

GE.16-01323(E)



Please recycle 



**Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

Contents

	<i>Page</i>
I. Introduction .....	3
II. Increasing attention to the relationship between climate change and human rights .....	3
III. Effects of climate change on the enjoyment of human rights .....	7
IV. Human rights obligations relating to climate change .....	9
A. General considerations.....	9
B. Procedural obligations .....	13
C. Substantive obligations .....	16
D. Obligations in relation to vulnerable groups.....	19
V. Conclusions and recommendations .....	20

## I. Introduction

1. In its resolution 19/10, the Human Rights Council recognized that the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment required clarification. The Council requested the then-Independent Expert, in consultation with Governments and other stakeholders, to study the obligations and to identify best practices in their use.

2. In response, the Independent Expert prepared two reports for the Human Rights Council, one mapping the statements of human rights bodies on the human rights obligations relating to the environment (A/HRC/25/53) and one describing more than 100 good practices in the use of the obligations (A/HRC/28/61). In the mapping report, the Independent Expert concluded that the human rights obligations relating to the environment were coherent and clear enough that States should take them into account. However, he noted that these obligations continued to be developed in many forums, and he identified areas where further clarification was necessary.

3. In its resolution 28/11, the Human Rights Council renewed the mandate and changed the title of the mandate holder to Special Rapporteur. The Council requested that he increase his attention to implementation of the human rights obligations relating to the environment. Specifically, the Council asked him to promote and report on the realization of the obligations, with particular emphasis on practical solutions. The initial response of the Special Rapporteur to this request is in another report (A/HRC/31/53).

4. At the same time that it expanded the mandate, the Council recognized the ongoing need to clarify some aspects of the human rights obligations relating to the environment. In its resolution 28/11, it asked the Special Rapporteur to continue to study those obligations, in consultation with Governments, human rights mechanisms, civil society organizations and others.

5. The present report examines the human rights obligations relating to climate change. Future reports will address the obligations relating to other thematic areas, including the protection of ecosystems and biological diversity. This report draws on the previous work of the then-Independent Expert in studying human rights obligations relating to the environment, including an expert meeting on climate change and human rights on 15 and 16 July 2014 and a public meeting on the same topic in Geneva on the following day. For the report, he also examined statements and reports by international organizations, human rights mechanisms, scholars and other sources, and attended meetings of the parties to the United Nations Framework Convention on Climate Change

6. Section II of the report reviews the actions taken in recent years by the Human Rights Council, the special procedure mandate holders and the parties to the United Nations Framework Convention on Climate Change concerning the relationship between climate change and human rights. Section III describes the effects of climate change on the enjoyment of human rights. Section IV examines the application of human rights obligations to climate change.

## II. Increasing attention to the relationship between climate change and human rights

7. In the past eight years, the relationship between climate change and human rights has received increasing attention from the Human Rights Council, mandate holders, Governments and international bodies, including the Conference of the Parties to the United Nations Framework Convention on Climate Change. An important milestone was the Male'

Declaration on the Human Dimension of Global Climate Change, adopted by representatives of small island developing States in November 2007. The Male' Declaration was the first intergovernmental statement explicitly recognizing that climate change has "clear and immediate implications for the full enjoyment of human rights", including the rights to life, to an adequate standard of living and to the highest attainable standard of health. The Declaration requested the Human Rights Council to convene a debate on human rights and climate change, the Office of the United Nations High Commissioner for Human Rights (OHCHR) to study the effects of climate change on the full enjoyment of human rights, and the Conference of the Parties to seek the cooperation of OHCHR and the Council in assessing the human rights implications of climate change.

8. In March 2008, the Human Rights Council adopted its first resolution on climate change and human rights. In its resolution 7/23, the Council expressed its concern 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. The resolution requested OHCHR to conduct a detailed analytical study of the relationship.

9. After receiving input from Governments, civil society organizations and others, OHCHR published a report describing how climate change threatens the enjoyment of a wide range of human rights, including the rights to life, health, food, water, adequate housing and self-determination (A/HRC/10/61). The report did not conclude that climate change necessarily violates human rights law, but it stressed that States nevertheless have obligations to take steps to protect human rights from the harmful effects of climate change.

10. In March 2009, in its resolution 10/4, the Council again noted that climate change-related impacts have a range of implications for the effective enjoyment of human rights, and stated that the effects will be felt most acutely by those who are already in vulnerable situations. The Council also affirmed that "human rights obligations and commitments have the potential to inform and strengthen international and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes".

11. In December 2009, at the beginning of the fifteenth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Copenhagen, 20 mandate holders issued a joint statement emphasizing that climate change poses serious threats to the full enjoyment of a broad range of human rights, warning that a weak outcome of the negotiations would threaten to infringe upon those rights and stating that mitigation and adaptation measures should be developed in accordance with human rights norms, including with the participation of affected communities.<sup>1</sup>

12. At its sixteenth session, in Cancun in December 2010, the Conference of the Parties adopted a decision quoting the statements in Human Rights Council resolution 10/4 that the adverse effects of climate change have a range of implications for the effective enjoyment of human rights and that the effects will be felt most acutely by those segments of the population that are already vulnerable. The decision stated that "Parties should, in all climate change related actions, fully respect human rights" (decision 1/CP.16, para. 8, FCCC/CP/2010/7/Add.1).

13. Since then, the Human Rights Council has adopted three more resolutions on climate change.<sup>2</sup> In addition to reiterating concerns about the effects of climate change on human rights, particularly those of the most vulnerable, the resolutions have stated that climate change has contributed to the increase of sudden-onset natural disasters and slow-

---

<sup>1</sup> Available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9667&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=9667&LangID=E).

<sup>2</sup> Resolutions 18/22, 26/27 and 29/15.

onset events, both of which have adverse effects on the full enjoyment of all human rights. The Council has also held a seminar and several panel discussions on climate change. In the panel discussion at its twenty-eighth session, the President of Kiribati, Anote Tong, and the Prime Minister of Tuvalu, Enele Sosene Sopoaga, among others, described how climate change threatens their countries and called on States to respond effectively and swiftly. The Council has also discussed the effects of climate change on particular countries during its universal periodic review.<sup>3</sup>

14. The Human Rights Council has encouraged mandate holders to consider the issue of climate change and human rights within their respective mandates.<sup>4</sup> They have published a number of reports on different aspects of the relationship, including by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (A/64/255), the Special Rapporteur on the rights of internally displaced persons (A/66/285), the Special Rapporteur on the human rights of migrants (A/67/299) and, most recently, the Special Rapporteur on the right to food (A/70/287). In June 2014, the then-Independent Expert on human rights and the environment issued an informal report summarizing the statements of the mandate holders, the human rights treaty bodies and others on climate change.<sup>5</sup>

15. In 2014 and 2015, mandate holders took several joint actions to emphasize the importance of a human rights perspective on climate action.<sup>6</sup> In an open letter in October 2014, 27 mandate holders called on the parties to the United Nations Framework Convention on Climate Change to recognize the adverse effects of climate change on the enjoyment of human rights and to adopt urgent and ambitious mitigation and adaptation measures to prevent further harm. They proposed that the climate agreement then under negotiation include language stating that the parties “shall, in all climate change related actions, respect, protect, promote, and fulfil human rights for all”. On 10 December 2014, Human Rights Day, which fell during the twentieth session of the Conference of the Parties, held in Lima, all 73 of the mandate holders issued a statement urging States to adopt the proposed language and underscoring that “human rights must be pivotal in the ongoing negotiations and the new agreement must be firmly anchored in the human rights framework”. The then-Independent Expert and several other mandate holders delivered this message in person at the session.

16. In April 2015, at the request of the Climate Vulnerable Forum (a group of the States most vulnerable to climate change), the Special Rapporteur on the rights of persons with disabilities, the Special Rapporteur on human rights and the environment, the Special Rapporteur on extreme poverty and human rights, the Special Rapporteur on the human right to safe drinking water and sanitation, and the Independent Expert on human rights and international solidarity issued a report on the adverse effects on the enjoyment of human rights of even a 2°C increase in the average global temperature. On World Environment Day, 5 June 2015, 27 mandate holders described these effects and again urged States to ensure that human rights are at the core of climate change governance.

---

<sup>3</sup> See, for example, A/HRC/29/2, paras. 392-400 (discussing Kiribati).

<sup>4</sup> See resolutions 10/4, para. 3; 26/27, para. 8; and 29/15, para. 7.

<sup>5</sup> “Mapping human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: focus report on human rights and climate change” (June 2014). Available from [www.ohchr.org/Documents/Issues/Environment/MappingReport/ClimateChangemapping15-August.docx](http://www.ohchr.org/Documents/Issues/Environment/MappingReport/ClimateChangemapping15-August.docx).

<sup>6</sup> The statements and reports are available from [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/ClimateChange.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/ClimateChange.aspx).

17. The attention to climate change and human rights reached a crescendo at the twenty-first session of the Conference of the Parties, which met in Paris in December 2015. The United Nations High Commissioner for Human Rights made a powerful statement that urgent, effective and ambitious action to combat climate change is not only a moral imperative, but also necessary in order to satisfy the duties of States under human rights law.<sup>7</sup> The Special Rapporteur on human rights and the environment also reminded States that their human rights obligations encompass climate change and urged them to adopt a rights perspective in negotiating the new agreement.<sup>8</sup> He and other mandate holders, including the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on the right to food and the Independent Expert on human rights and international solidarity, presented these messages in Paris in person, as did a delegation from OHCHR.

18. In connection with the Paris conference, other international organizations published reports on climate change and human rights. For example, the United Nations Environment Programme (UNEP) published a thorough examination of the application of human rights norms to climate change, and the United Nations Children's Fund (UNICEF) issued a detailed study of the effects of climate change on children.<sup>9</sup>

19. Throughout 2015, Governments also increased their attention to the relationship between climate change and human rights. In February 2015, OHCHR and the Mary Robinson Foundation on Climate Justice co-hosted a Climate Justice Dialogue in Geneva, which brought together delegates to the climate negotiations and the Human Rights Council. One outcome of the meeting was the Geneva Pledge for Human Rights in Climate Action, a voluntary undertaking initiated by Costa Rica through which States promise to facilitate the sharing of knowledge and best practices between climate and human rights experts at the national level. Before the Paris conference, 30 countries took the pledge. Governments also examined particular issues relevant to human rights, such as climate-induced migration. In October 2015, the Nansen Initiative, spearheaded by Norway and Switzerland, held a global consultation with delegates from more than 100 countries to complete a multi-year process of building consensus on the protection of persons displaced across borders in the context of disasters and climate change.

20. The most important sign of the increasing attention to the relationship between climate change and human rights is the new agreement adopted by the Conference of the Parties in Paris on 12 December 2015.<sup>10</sup> The Paris Agreement is the first climate agreement, and one of the first environmental agreements of any kind, to explicitly recognize the relevance of human rights. After acknowledging that climate change is a common concern of humankind, the preamble to the Agreement states:

---

<sup>7</sup> Available from [www.ohchr.org/EN/NewsEvents/Pages/BurningDowntheHouse.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/BurningDowntheHouse.aspx). OHCHR also issued an information paper entitled "Understanding human rights and climate change", available from [www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf](http://www.ohchr.org/Documents/Issues/ClimateChange/COP21.pdf).

<sup>8</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16836&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16836&LangID=E).

<sup>9</sup> UNEP, *Climate Change and Human Rights* (December 2015). Available from [www.unep.org/NewsCentre/default.aspx?DocumentID=26856&ArticleID=35630](http://www.unep.org/NewsCentre/default.aspx?DocumentID=26856&ArticleID=35630). UNICEF, *Unless We Act Now: the Impact of Climate Change on Children* (November 2015). Available from [www.unicef.org/publications/index\\_86337.html](http://www.unicef.org/publications/index_86337.html).

<sup>10</sup> Pursuant to its article 21, the Paris Agreement will enter into force on the thirtieth day after the date on which at least 55 parties to the United Nations Framework Convention on Climate Change, accounting for at least 55 per cent of global greenhouse gas emissions, deposit their instruments of ratification.

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.

21. The influence of a human rights perspective can also be seen elsewhere in the Agreement. Most important, the growing recognition of the disastrous effects of climate change on human rights helped to support the decision of the parties to state, in article 2, that the Agreement “aims to strengthen the global response to the threat of climate change ... including by holding the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change”.

22. In an important sense, the Paris Agreement signifies the recognition by the international community that climate change poses unacceptable threats to the full enjoyment of human rights and that actions to address climate change must comply with human rights obligations. This is a real achievement and, in this respect as in many others, the Paris Agreement is worth celebrating. In another sense, however, Paris is only the beginning. Now comes the difficult work of implementing and strengthening the commitments made there. In that effort, human rights norms will continue to be of fundamental importance.

### III. Effects of climate change on the enjoyment of human rights

23. Mary Robinson, who previously served as the President of Ireland and the United Nations High Commissioner for Human Rights and who is now the Special Envoy of the Secretary-General on Climate Change, has called climate change the greatest threat to human rights in the twenty-first century. The effects of climate change on human rights have been described in detail many times.<sup>11</sup> In short, climate change threatens the full enjoyment of a wide range of rights, including the rights to life, health, water, food, housing, development and self-determination. The following brief description is by no means exhaustive.

24. As average global temperatures rise, deaths, injuries and displacement of persons from climate-related disasters such as tropical cyclones increase, as do mortality and illness from heat waves, drought, disease and malnutrition. In general, the greater the increase in average temperature, the greater the effects on the rights to life and health as well as other human rights. The foreseeable consequences of even a 2°C rise in average global temperature are dramatic. According to the Intergovernmental Panel on Climate Change, they include an increasing probability of “declining work productivity, morbidity (e.g., dehydration, heat stroke, and heat exhaustion), and mortality from exposure to heat waves.

<sup>11</sup> This summary draws in particular on the report of the Intergovernmental Panel on Climate Change Working Group II entitled *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (available from <https://www.ipcc-wg2.gov/AR5/>), as well as several of the statements and reports cited above: the OHCHR reports published in 2009 and 2015; the 2014 report of the then-Independent Expert summarizing statements of mandate holders and others; the report prepared for the Climate Vulnerable Forum in April 2015; the statement by 27 mandate holders on World Environment Day 2015; and the UNEP report published in 2015.

Particularly at risk are agricultural and construction workers as well as children, homeless people, the elderly, and women who have to walk long hours to collect water”.<sup>12</sup>

25. Climate change will compound the problem of access to safe drinking water, currently denied to about 1.1 billion people. It has been estimated that about 8 per cent of the global population will see a severe reduction in water resources with a 1°C rise in the global mean temperature, rising to 14 per cent at 2°C.<sup>13</sup> More generally, as a result of reduced rainfall and snowpack, increased evaporation, and contaminated freshwater resources due to rising sea levels, climate change is projected to reduce the availability of water in most dry subtropical regions and to increase the frequency of droughts in many already-dry areas.<sup>14</sup>

26. With respect to the right to food, climate change is already impairing the ability of some communities to feed themselves, and the number affected will grow as temperatures rise. The Intergovernmental Panel on Climate Change states that “all aspects of food security are potentially affected by climate change, including food access, utilization, and price stability”.<sup>15</sup> It is very likely that climate change will adversely impact the production of major crops, such as wheat, rice and maize, in both tropical and temperate regions.<sup>16</sup>

27. As the Human Rights Council has recognized, the worst effects of climate change are felt by those who are already vulnerable because of factors such as geography, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability.<sup>17</sup> In the words of the Intergovernmental Panel on Climate Change, “People who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change and also to some adaptation and mitigation responses”.<sup>18</sup> The Panel states that “future impacts of climate change, extending from the near term to the long term, mostly expecting 2°C scenarios, will slow down economic growth and poverty reduction, further erode food security, and trigger new poverty traps, the latter particularly in urban areas and emerging hotspots of hunger”.<sup>19</sup>

28. Climate change will contribute to forced migration, but the ability to migrate often depends on mobility and resources. As a result, those who are most vulnerable may be unable to migrate, instead remaining in locations that are subject to the harms caused by climate change. Those who do migrate may be particularly vulnerable to human rights abuses, since they may often be doing so in an irregular process (see A/67/299, para. 36).

29. Climate change threatens the very existence of some small island States. Global warming expands ocean waters and melts land-based ice, causing sea levels to rise. Long before islands are inundated, climate change may make them uninhabitable by increasing the frequency and severity of storm surges or by causing sea water to invade their freshwater resources. If the residents of small island States are forced to evacuate and find other homes, the effects on their human rights, including their rights to self-determination and to development, will be devastating.

30. Climate change also threatens to devastate the other forms of life that share this planet with us. As the world warms, increasingly disastrous consequences will ensue. One

---

<sup>12</sup> Intergovernmental Panel on Climate Change report, p. 811.

<sup>13</sup> *Ibid.*, p. 250.

<sup>14</sup> UNEP report, p. 3.

<sup>15</sup> Intergovernmental Panel on Climate Change report, p. 488.

<sup>16</sup> UNEP report, p. 5 (citing the Intergovernmental Panel on Climate Change report, p. 488).

<sup>17</sup> Resolution 29/15.

<sup>18</sup> Intergovernmental Panel on Climate Change report, p. 6.

<sup>19</sup> *Ibid.*, p. 796.

study has found that if global temperatures increase by more than 2 to 3°C, 20 to 30 per cent of the assessed plant and animal species are likely to be at a high risk of extinction.<sup>20</sup> The decimation of other species will harm the human species too. With respect to the right to health, for example, the Intergovernmental Panel on Climate Change states that the loss of biological diversity “can lead to an increase in the transmission of infectious diseases such as Lyme, schistosomiasis, and hantavirus in humans”.<sup>21</sup>

31. The adoption of the Paris Agreement in December 2015 gives reason to believe that the international community has opened a new chapter in its fight against climate change. But other events continue to remind us that we are running out of time to avoid its worst effects. During the same month that the world celebrated the conclusion of the new climate agreement, every region experienced the characteristics of a warming planet, amplified in many cases by the El Niño effect.

32. In what has become a tragic annual event, a deadly typhoon struck the Philippines. Record floods inundated Chennai in India, as well as towns across the United Kingdom of Great Britain and Northern Ireland and along the Mississippi River in the United States of America. Parts of Argentina, Brazil, Paraguay and Uruguay experienced their worst flooding in 50 years, forcing the evacuation of tens of thousands of people. Other areas suffered from too little water. UNICEF warned that 11 million children in eastern and southern Africa were at risk of hunger, disease and lack of water because of drought conditions. Lake Poopó, the second-largest lake in the Plurinational State of Bolivia, was reported to have dried up as a result of changing weather patterns. As 2016 began, scientists reported that 2015 was the hottest year in modern history, about 1°C warmer than the pre-industrial average.

## **IV. Human rights obligations relating to climate change**

### **A. General considerations**

33. As the Special Rapporteur has previously explained, States have obligations to protect the enjoyment of human rights from environmental harm (A/HRC/25/53). These obligations encompass climate change. The foreseeable adverse effects of climate change on the enjoyment of human rights give rise to duties of States to take actions to protect against those effects. Human rights obligations apply not only to decisions about how much climate protection to pursue, but also to the mitigation and adaptation measures through which the protection is achieved.

34. In some respects, the application of these obligations is relatively straightforward. However, the scale of climate change introduces complicating factors. Unlike most environmental harms to human rights that have been considered by human rights bodies, climate change is truly a global challenge. Greenhouse gases emitted anywhere contribute to global warming everywhere. Billions of people contribute to climate change and will experience its effects, and the causal chains linking individual contributions with specific effects may be impossible to discern with certainty.

35. These complications led OHCHR to warn in 2009 that “while climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense”. Specifically, OHCHR stated that it would be “virtually impossible to disentangle the

---

<sup>20</sup> Ibid., p. 1,053.

<sup>21</sup> Ibid., p. 1,054.

complex causal relationships” linking emissions from a particular country to a specific effect, and noted that “global warming is often one of several contributing factors to climate change-related effects such as hurricanes”. In addition, it stated that the “adverse effects of global warming are often projections about future impacts, whereas human rights violations are normally established after the harm has occurred” (see A/HRC/10/61, para. 70).

36. These conclusions can be challenged.<sup>22</sup> As scientific knowledge improves and the effects of climate change become larger and more immediate, tracing causal connections between particular contributions and resulting harms becomes less difficult.<sup>23</sup> But whether or not climate change legally violates human rights norms is not the dispositive question. As OHCHR emphasized, even in the absence of such a finding, “human rights obligations provide important protection to the individuals whose rights are affected by climate change” (see A/HRC/10/61, para. 71).

37. Specifically, States have obligations to protect against the infringement of human rights by climate change. This conclusion follows from the nature of their obligations to protect against environmental harm generally. Human rights bodies have made clear that States should protect against foreseeable environmental impairment of human rights whether or not the environmental harm itself violates human rights law, and even whether or not the States directly cause the harm. An illustrative example is a case of the European Court of Human Rights arising from mudslides in the Caucasus that killed several inhabitants of the town of Tyrnauz.<sup>24</sup> The Government did not cause the mudslide, but the Court held that it still had a responsibility to take appropriate steps to safeguard the lives of those within its jurisdiction.

38. Above all, the Court stated, Governments must adopt legal frameworks designed to effectively deter threats to the right to life from natural disasters as well as dangerous human activities. While each State has discretion to choose particular preventive measures and “an impossible or disproportionate burden must not be imposed on the authorities”, the discretion of the State is not unlimited. In reviewing whether a State has met its obligations, the Court indicated that relevant factors include the foreseeability of the threat, whether the State undertook appropriate investigations and studies, and whether it followed its own law. The authorities must respect the right to information, including by providing for a system of advance warnings. Finally, the Court stated that where lives have been lost in circumstances that may engage the responsibility of the State, the State must provide an adequate response to the disaster, to ensure that the legal framework designed to protect the right to life is properly implemented.<sup>25</sup>

39. The reasoning of the European Court in this respect is typical of the approach taken by other regional tribunals and human rights mechanisms. The duty to protect against harmful interference with the enjoyment of human rights is accepted as a pillar of human rights law, and many human rights bodies have applied that duty to such interference occurring as a result of environmental degradation (see A/HRC/25/53, paras. 47-61).

40. Apart from questions of causation and responsibility, the nature of climate change also requires us to consider how human rights norms apply to a global environmental threat. Most human rights bodies that have examined the application of human rights norms to

---

<sup>22</sup> For an analysis of the OHCHR report, see John H. Knox, “Linking human rights and climate change at the United Nations”, *Harvard Environmental Law Review*, Vol. 33, No. 2 (2009).

<sup>23</sup> UNEP report, p. 13, footnote 70.

<sup>24</sup> European Court of Human Rights, *Budayeva and others v. Russia*, application. No. 15339/02 (2008). Available from [www.echr.coe.int](http://www.echr.coe.int).

<sup>25</sup> *Ibid.*, para. 138.

environmental issues have examined harm whose causes and effects are felt within one country. Climate change obviously does not fit within this pattern.

41. A possible response is to treat climate change as a matter of extraterritoriality — that is, to conclude that it implicates the obligation of each State to protect the human rights of those outside, as well as those within, its own jurisdiction. The Special Rapporteur is aware that the question of extraterritorial human rights obligations has been controversial in other contexts. However, he believes that attempting to describe the extraterritorial human rights obligations of every State in relation to climate change would be of limited usefulness even apart from its potential for controversy. In the human rights context, climate change is probably not best understood as a set of simultaneously occurring transboundary harms that should be addressed by each State trying to take into account its individual contribution to the effects of climate change in every other State in the world. The practical obstacles to such an undertaking are daunting, and it is instructive that the international community has not attempted to address climate change in this way.

42. Instead, from the creation of the Intergovernmental Panel on Climate Change in 1988, through the adoption of the United Nations Framework Convention on Climate Change in 1992, to the negotiation of the Paris Agreement in 2015, States have consistently treated climate change as a global problem that requires a global response. This approach not only makes the most practical sense. It is also in accord with, and can be seen as an application of, the duty of international cooperation.

43. The duty of international cooperation has support in the general practice of States and, more specifically, in the Charter of the United Nations. Article 55 of the Charter requires the United Nations to promote “universal respect for, and observance of, human rights and fundamental freedoms for all,” and in Article 56, “all Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”. Similarly, article 2 (1) of the International Covenant on Economic, Social and Cultural Rights requires each of its parties to take steps not only individually, but also “through international assistance and cooperation”, towards the progressive realization of the rights recognized in the Covenant.

44. With respect to many threats to human rights, international cooperation needs to play only a supporting role. Environmental harms whose causes and effects are within the jurisdiction of one State can and should be addressed primarily by that State. However, some challenges require international cooperation. Outside the environmental context, the International Court of Justice has recognized “the universal character both of the condemnation of genocide and of the co-operation required ‘in order to liberate mankind from such an odious scourge’.”<sup>26</sup> Climate change is a paradigmatic example of a global threat that is impossible to address effectively without coordinated international action. As States have acknowledged in the text of the United Nations Framework Convention on Climate Change itself, as well as in Human Rights Council resolutions 26/27 and 29/15, “the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response”.<sup>27</sup>

<sup>26</sup> International Court of Justice, advisory opinion of 28 May 1951 on the reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, p. 23 (quoting the preamble to the Convention on the Prevention and Punishment of the Crime of Genocide).

<sup>27</sup> The obligation of States to work together to address climate change is also supported by the principle of international law that States must carry out their international obligations in good faith, so as not to undermine the ability of other States to meet their own obligations. See the judgment of the International Court of Justice on the case concerning the Gabčíkovo-Nagymaros project (Hungary/Slovakia), 1997, para. 142; and Mark E. Villiger, *Commentary on the 1969 Vienna*

45. The duty of international cooperation provides a framework for considering the application at the international level of the human rights norms described above. The obligations to protect human rights against environmental harm, which have been clarified by human rights bodies principally in the context of internal environmental harm, can also inform the content of the duty of international cooperation when that duty pertains to a global environmental challenge such as climate change. Therefore, in addition to employing a human rights perspective to examine how individual States should address climate change at the national level, based on the obligation of each State to protect against the effects of climate change within its own jurisdiction, it is also appropriate to examine how States should address climate change in cooperation with one another.

46. To be clear, the duty of international cooperation does not require each State to take exactly the same actions in response to climate change. The language in the United Nations Framework Convention on Climate Change calling for States to cooperate with one another immediately adds: “in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions”.<sup>28</sup> All States have a duty to work together to address climate change, but the particular responsibilities necessary and appropriate for each State will depend in part on its situation.

47. A human rights perspective helps to clarify this point. A foundational principle of human rights law is that all human beings, wherever they happen to live, are entitled to the same rights. But the content of some of the human rights obligations of States varies according to the situation of the State in question. Not all obligations vary in this way: article 2 (1) of the International Covenant on Civil and Political Rights, for example, simply requires each of its parties “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant”. To take an extreme example, no State may use its political or economic situation to justify torture or slavery. As is well understood, however, economic, social and cultural rights cannot always be fulfilled immediately. Article 2 (1) of the International Covenant on Economic, Social and Cultural Rights reflects this understanding.<sup>29</sup>

48. This distinction is relevant to all of the human rights obligations of States in relation to climate change, including the duty of international cooperation. As in human rights law generally, some of these obligations are of immediate effect and require essentially the same conduct of every State. For example, every State must respect the rights of free expression and association in the development and implementation of climate-related actions. At the same time, the implementation of other responsibilities — e.g., efforts to

---

*Convention on the Law of Treaties* (2009), p. 367. The failure of States to effectively address climate change through international cooperation would prevent individual States from meeting their duties under human rights law to protect and fulfil the human rights of those within their own jurisdiction.

<sup>28</sup> This language is also included in resolutions 26/27 and 29/15.

<sup>29</sup> It would be an oversimplification to suggest that all duties relating to economic, social and cultural rights are subject to progressive realization based on the situation of States, and that all duties relating to civil and political rights require exactly the same conduct of States. As the Committee on Economic, Social and Cultural Rights has made clear, some obligations under that Covenant, including the duty of non-discrimination, are of immediate effect (see the Committee’s general comment No. 3 (1990) on the nature of States parties’ obligations, para. 1). And while all parties to the International Covenant on Civil and Political Rights are required to respect civil and political rights by taking (or refraining from taking) essentially the same actions, the Human Rights Committee has stated that, under some circumstances at least, States are also required to exercise due diligence to prevent and redress the impairment of rights by private persons or entities (see the Committee’s general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 8). What diligence is due in a particular instance could be affected by a number of factors that might vary from situation to situation.

reduce emissions of greenhouse gases — can be expected to vary based on differing capabilities and conditions. Even in such cases, however, each State should do what it can. More precisely, consistent with article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, each State should take actions “to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means”.

49. Based on these general considerations, the following sections outline the human rights obligations relating to climate change. These obligations continue to be studied and clarified, and this report should not be taken as the final word on their content. In particular, it does not substitute for the more detailed analysis of particular human rights by mandate holders, treaty bodies, regional human rights bodies or others. Rather, the goal is to describe a framework for further elaboration.

## **B. Procedural obligations**

50. As the mapping report explains, human rights bodies agree that to protect against environmental harm that impairs the enjoyment of human rights, States have several procedural obligations, including duties: (a) to assess environmental impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to remedies for harm. These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights at risk from environmental harm (see A/HRC/25/53, paras. 29-43). They are also supported by provisions in international environmental instruments, including principle 10 of the 1992 Rio Declaration on Environment and Development.

### **1. Assessing and providing information**

51. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide that the right to freedom of expression includes the freedom to seek, receive and impart information. The right to information is also critical to the exercise of other rights, and human rights bodies have stated that to protect human rights from infringement through environmental harm, States should provide access to environmental information and provide for the assessment of environmental impacts that may interfere with the enjoyment of human rights.

52. At the international level, States have adopted an exemplary practice in the assessment and provision of information about climate change. Through the Intergovernmental Panel on Climate Change, States have provided for expert assessments of the scientific aspects of climate change, the vulnerability of socioeconomic and natural systems, and options for mitigation of and adaptation to climate change. By regularly publishing detailed reports summarizing the state of scientific and technical knowledge, the Panel has given Governments and people around the world information about the effects of climate change and the consequences of various approaches to addressing it.

53. States have also recognized the importance of undertaking assessments and providing information about climate change at the national level. Article 6 (a) of the United Nations Framework Convention on Climate Change requires its parties to promote and facilitate educational and public awareness programmes, as well as public access to information, and article 12 of the Paris Agreement calls on its parties to cooperate in taking

measures to enhance such measures. UNEP describes the efforts by many States to assess the impacts of climate change and to make this information publicly available.<sup>30</sup> States that have not yet adopted such policies should do so, with international assistance if necessary.

54. In particular, the Special Rapporteur agrees with the suggestion of UNEP that wherever possible States should assess the climate effects of major activities within their jurisdiction, “such as programmatic decisions about fossil fuel development, large fossil fuel-fired power plants, and fuel economy standards”.<sup>31</sup> Such assessments should include the transboundary effects of the activities. But even with respect to the effects of climate change that are felt within a State, assessments are an important method of clarifying impacts, especially on vulnerable communities, and thereby providing a basis for adaptation planning, as article 7 (9) of the Paris Agreement recognizes.

55. Assessments and public information are also important with respect to actions designed to alleviate the effects of climate change. As noted above, the obligations of States to respect and protect human rights apply with no less force when they are taking mitigation or adaptation measures. Article 4 (1) (f) of the United Nations Framework Convention on Climate Change encourages its parties to employ impact assessments of such measures with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment.

## **2. Facilitating public participation**

56. The obligation to facilitate public participation in environmental decision-making has strong roots in human rights law. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights recognize the baseline rights of everyone to take part in the government of their country and in the conduct of public affairs. Again, human rights bodies have built on this baseline in the environmental context, clarifying the duty to facilitate public participation in environmental decision-making in order to safeguard a wide spectrum of rights from environmental harm.

57. There can be no doubt that this duty encompasses decision-making in relation to climate policy. States have long emphasized the importance of public participation in addressing climate change. Article 6 (a) of the United Nations Framework Convention on Climate Change requires its parties to promote and facilitate public participation, and the General Assembly has recognized “the need to engage a broad range of stakeholders at the global, regional, national and local levels, including national, subnational and local governments, private businesses and civil society, and including youth and persons with disabilities, and that gender equality and the effective participation of women and indigenous peoples are important for effective action on all aspects of climate change”.<sup>32</sup> Similarly, article 12 of the Paris Agreement requires its parties to cooperate in taking appropriate measures to enhance public participation.

58. Many States have adopted laws that provide for public participation in developing environmental policy (see A/HRC/28/61, paras. 42-49). Some, such as Guatemala and Jordan, provide for public participation in the formulation of climate policy in particular. All States should ensure that their laws provide for effective public participation in climate and other environmental decision-making, including by marginalized and vulnerable groups, and that they fully implement their laws in this respect. Such participation not only helps to protect against abuses of other human rights; it also promotes development policies that are more sustainable and robust.

---

<sup>30</sup> UNEP report, p. 34.

<sup>31</sup> *Ibid.*, p. 16.

<sup>32</sup> General Assembly resolution 67/210, para. 12.

59. To be effective, public participation must include the provision of information to the public in a manner that enables interested persons to understand and discuss the situation in question, including the potential effects of a proposed project or policy, and must provide real opportunities for the views of the affected members of the public to be heard and to influence the decision-making process.<sup>33</sup> These principles are of special importance for members of marginalized and vulnerable groups, as other mandate holders have described in more detail (see, e.g., A/64/255, paras. 63-64; A/66/285, paras. 81-82; and A/67/299, para. 37). In some cases, as the Special Rapporteur on the right to housing has stated, it may be necessary to build the capacity of members of such groups in order to facilitate their informed participation (see A/64/255, para. 63). Again, these requirements apply not only to decisions about how much climate protection to pursue, but also to the measures through which the protection is achieved. Decisions on mitigation or adaptation projects must be made with the informed participation of the people who would be affected by the projects.

60. To enable informed public participation, the rights of freedom of expression and association must be safeguarded for all people in relation to all climate-related actions, including for individuals who oppose projects designed to mitigate or adapt to climate change. To try to repress persons trying to express their views on a climate-related policy or project, whether they are acting individually or together with others, is a violation of their human rights. States have clear obligations to refrain from interfering with those seeking to exercise their rights, and States must also protect them from threats, harassment and violence from any source (see A/HRC/25/53, para. 40).

61. At the international level, States should ensure that projects supported by climate finance mechanisms respect and protect all human rights, including the rights of information, participation and freedom of expression and association. As the recent UNEP report describes in detail, these mechanisms vary in their current levels of protection. Some, such as the Adaptation Fund, include safeguards that are generally considered to be satisfactory, while others, such as the Clean Development Mechanism, have been criticized for failing to provide for adequate stakeholder consultation and thereby resulting in human rights violations through displacement and the destruction of livelihoods.<sup>34</sup> The Special Rapporteur strongly agrees with the recommendation in the UNEP report that “the safeguards for the various climate funds and other mechanisms used to finance mitigation and adaptation projects should be made uniform and revised to fully account for human rights considerations”.<sup>35</sup>

### 3. Providing for effective remedies

62. From the Universal Declaration of Human Rights onward, human rights agreements have reflected the principle that States should provide for an effective remedy for violations of their protected rights. Human rights bodies have applied that principle to human rights infringed by environmental harm, and there is no reason to doubt that the requirement to provide for an effective remedy applies to violations of human rights relating to climate change.

63. Every State should ensure that its legal system provides for effective remedies for all human rights violations, including those arising from climate-related actions. For example, States should provide for remedies, which might include monetary compensation and injunctive relief, for violations of the right of free expression in connection with climate-related projects. At the international level, States should work together to support the

---

<sup>33</sup> UNEP report, pp. 17-18.

<sup>34</sup> *Ibid.*, pp. 36-39.

<sup>35</sup> *Ibid.*, p. 41.

establishment and implementation of procedures to provide such remedies, particularly with respect to measures supported by international finance mechanisms.

64. As explained above, the Special Rapporteur recognizes the complications inherent in determining whether contributions to climate change may constitute violations of human rights obligations. At the same time, he emphasizes that finding a human rights violation is not a prerequisite for addressing the damage suffered by those most vulnerable to climate change. He applauds the decision taken at the nineteenth session of the Conference of the Parties to establish the Warsaw International Mechanism for Loss and Damage, and he notes that article 8 of the Paris Agreement provides that the parties should enhance understanding, action and support with respect to loss and damage from climate change. Article 8 identifies areas of potential cooperation and facilitation, including early warning systems, emergency preparedness, risk insurance and resilience of communities, livelihoods and ecosystems. As the parties implement article 8, the Special Rapporteur urges them to incorporate a human rights perspective in identifying the types of loss and damage to be addressed.

### **C. Substantive obligations**

65. States have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights (see A/HRC/25/53, paras. 44-57). In principle, the content of the obligations of States to protect against environmental harm depends on the content of their duties with respect to the particular rights threatened by the harm. Nevertheless, despite the variety of rights that may be implicated, human rights bodies have reached similar conclusions.

66. They have made clear that these obligations apply to environmental harm caused by corporations and other private actors as well as by governmental entities. Specifically, in accordance with the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council in 2011, States are required to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises”, including by “taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (see A/HRC/17/31, annex, principle 1). In accordance with the Guiding Principles, States also have an obligation to provide for remedies for human rights abuses caused by corporations, and corporations themselves have a responsibility to respect human rights. These three pillars of the normative framework for business and human rights apply to all environmental human rights abuses, including impairments of human rights in relation to climate change.

67. In applying their duty to protect against environmental harm that interferes with the enjoyment of human rights, States have discretion to strike a balance between environmental protection and other societal goals, such as economic development and the promotion of other human rights. But the balance struck cannot be unreasonable or result in unjustified, foreseeable infringements of human rights. In examining whether the balance is reasonable, a number of factors may be considered, including whether the level of environmental protection resulted from a decision-making process that satisfies the procedural obligations described above; whether it accords with national and international standards; whether it is not retrogressive; and whether it is non-discriminatory. Finally, States must implement and comply with the standards that they have adopted. The following sections explain how these norms apply to climate change, at the national and at the international levels.

## 1. Obligations at the national level

68. At the national level, each State has an obligation to protect those within its jurisdiction from the harmful effects of climate change. This obligation is relatively straightforward with respect to the establishment and implementation of effective adaptation measures. States must adopt a legal and institutional framework that assists those within their jurisdiction to adapt to the unavoidable effects of climate change. While States have some discretion as to which measures to adopt, taking into account their economic situation and other national priorities, they should ensure that the measures: result from a process that provides for informed public participation; take into account national and international standards; and are neither retrogressive nor discriminatory. Finally, once the standards are adopted, States should ensure that they are implemented.

69. Consistent with the obligation to respect the rights of information and participation, article 7 of the Paris Agreement acknowledges that “adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach”. It calls on each party to engage in adaptation planning processes, including formulating and implementing national adaptation plans and building the resilience of socioeconomic and ecological systems.

70. While appropriate adaptation measures will vary from situation to situation, States should take into account relevant national and international standards, including the Sendai Framework for Disaster Risk Reduction 2015-2030.<sup>36</sup> States may be expected to take measures more quickly with respect to threats that are imminent or life-threatening, such as typhoons and floods, than with respect to longer-term effects. UNEP identifies several measures that may be considered necessary to protect the rights to life and health from imminent threats, such as: establishing early warning systems and risk notification; improving physical infrastructure to reduce the risk of floods or other hazards; adopting emergency response plans; and providing disaster relief and humanitarian assistance in emergencies.<sup>37</sup>

71. With respect to mitigation, the situation is more complicated. Most countries do not emit greenhouse gases in quantities that cause, by themselves, appreciable effects on their own people or on those living in other countries. As a result, none of these States can hope to avoid the effects of climate change merely by reducing its own emissions. Although the emissions of larger countries may well have a discernible impact on the effects of climate change on their own people, no single State can, by itself, do more than delay those effects as long as the emissions of other States continue to increase. This does not mean that States have no obligations under human rights law to mitigate their own emissions,<sup>38</sup> but it does suggest that to understand the nature of those obligations, it is helpful to look at the duty of international cooperation.

## 2. Obligations at the international level

72. As section II explains, climate change threatens the enjoyment of a vast range of human rights. While some of its impacts can be ameliorated through adaptation measures,

<sup>36</sup> General Assembly resolution 69/283.

<sup>37</sup> UNEP report, p. 22. For a discussion of measures to address slow-onset disasters, see the report of the Special Rapporteur on the rights of internally displaced persons (A/66/285, paras. 54-65).

<sup>38</sup> Moreover, States may have obligations to address climate change based on other sources, including domestic law. See, e.g., *Ashgar Leghari v. Federation of Pakistan* (Lahore High Court Green Bench, 2015); *Massachusetts v. Environmental Protection Agency* (U.S. Supreme Court, 2007); and *Urgenda Foundation v. Kingdom of the Netherlands* (District Court of The Hague, 2015).

such measures become less effective as temperatures rise. An increase of even 2°C would have drastic consequences for the full enjoyment of human rights.

73. States agreed in the United Nations Framework Convention on Climate Change that their goal is to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”. In the Paris Agreement, States went further, stating in article 2 (1) that they aim to hold the increase in temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C, “recognizing that this would significantly reduce the risks and impacts of climate change”. This target is consistent with the obligations of States, acting together in accordance with the duty of international cooperation, to protect human rights from the dangerous effects of climate change.

74. Through the United Nations Framework Convention on Climate Change and the Paris Agreement, States have created a legal and institutional framework to try to reach this goal. As noted above, human rights norms contemplate that States have some discretion to decide how best to balance their obligation to protect against environmental harm with their pursuit of other legitimate interests, but they should exercise that discretion reasonably in the light of all relevant factors, including those identified above.

75. Applying those factors to the international climate regime indicates that States have struck a reasonable balance in many respects. They have conducted an international decision-making process based on detailed, publicly disseminated scientific assessments. The agreement that emerged from this process in 2015 takes into account international standards, including human rights standards, and is non-retrogressive. It also appears to be non-discriminatory, and it includes some provisions designed to address the concerns of the most vulnerable countries and communities.

76. In some critical respects, however, the Paris Agreement falls short. The Agreement addresses mitigation principally through requiring each party to prepare its own nationally determined contribution. The problem is not that the Agreement allows each State to decide for itself what contribution it commits to make; the problem is that the proposed contributions do not go far enough. Commendably, almost every State in the world has presented an intended nationally determined contribution, but even if fully implemented, they will not put the world on a path that avoids disastrous consequences for human rights. UNEP has determined that full implementation of the intended contributions would lead to emission levels in 2030 that will likely cause a global average temperature increase of well over 2°C, and quite possibly over 3°C.<sup>39</sup> Therefore, even if they meet their current commitments, States will not satisfy their human rights obligations.

77. From a human rights perspective, then, it is necessary not only to implement the current intended contributions, but also to strengthen those contributions to meet the target set out in article 2 of the Paris Agreement. States are aware of the gap between their current commitments and their collective goal, and they agreed in Paris to review the adequacy of their commitments through stocktaking exercises every five years, beginning in 2018. However, it is already clear that States must begin to move beyond their current commitments even before the first stocktaking, in order to close the gap between what is promised and what is necessary.

78. This challenge should not be underestimated. Keeping the increase in global temperature to well below 2°C requires States to move rapidly and steadily towards a world economy that no longer obtains energy from fossil fuels. Still, some countries are showing

---

<sup>39</sup> UNEP, *The Emissions Gap Report* (2015), p. XVIII. Available from: [http://uneplive.unep.org/media/docs/theme/13/EGR\\_2015\\_301115\\_lores.pdf](http://uneplive.unep.org/media/docs/theme/13/EGR_2015_301115_lores.pdf).

that decarbonization is possible in practice as well as in theory. Uruguay, for example, already produces nearly 95 per cent of its electricity from renewable energy. Iceland produces almost all of its electricity, and more than 80 per cent of its total energy, from geothermal and hydropower sources.

79. Other elements of the international climate regime are also integral to the implementation of the duty of international cooperation. To mention two of these elements in particular: (a) article 7 (7) of the Paris Agreement calls on the parties to strengthen their cooperation on enhancing action on adaptation, including with regard to sharing information, improving the effectiveness of adaptation actions and assisting developing countries; and (b) developed countries reiterated in Paris their commitment to assist developing countries with respect to both mitigation and adaptation. Specifically, the Conference of the Parties adopted a decision stating that developed countries intend to continue their existing collective mobilization goal, which is \$100 billion per year as of 2020, and that, before 2025, the parties to the Paris Agreement will set a new goal from a floor of \$100 billion, taking into account the needs and priorities of developing countries (see FCCC/CP/2015/L.9/Rev.1, para. 54).

80. The human rights norms relating to protection of the environment indicate that once States have adopted measures to protect human rights from environmental harm, they must implement those measures. The commitments made in relation to the Paris Agreement are elements of the collective decision of States on how to address climate change. All of them — the commitments for assistance as much as the commitments for mitigation and adaptation — should be implemented fully, as well as strengthened as necessary, to protect against the effects of climate change on human rights.

#### **D. Obligations in relation to vulnerable groups**

81. States have an overarching obligation not to discriminate in the application of their environmental laws and policies. In addition, States have heightened duties with respect to members of certain groups that may be particularly vulnerable to environmental harm, including women, children and indigenous peoples (see A/HRC/25/53, paras. 69-78). As the Human Rights Council has stated, the effects of climate change are felt most acutely by those who are already in vulnerable situations. Usually, the most vulnerable have also done the least to contribute to the problem. In this regard, climate change is inherently discriminatory.

82. States acting individually and in cooperation should take steps to protect the most vulnerable from climate change.<sup>40</sup> Procedurally, States should continue to assess the effects of climate change, and of actions taken to mitigate and to adapt to it, on vulnerable communities. They should ensure that those who are in vulnerable situations and who are marginalized are fully informed of the effects of climate actions, that they are able to take part in decision-making processes, that their concerns are taken into account and that they have access to remedies for violations of their rights. Substantively, States should seek to protect the most vulnerable in developing and implementing all climate-related actions.<sup>41</sup> Even if mitigation targets are met, vulnerable communities may still suffer harm as a result of climate change. Indeed, many are already experiencing adverse effects.

<sup>40</sup> The Special Rapporteur on the human rights of migrants has examined the importance of not discriminating against climate change-induced migrants, in particular (see A/67/299, paras. 74-76).

<sup>41</sup> See, e.g., the Committee on the Rights of the Child's general comment No. 15 (2013), para. 50 (because climate change "is one of the biggest threats to children's health", States should "put children's health concerns at the centre of their climate change adaptation and mitigation strategies").

83. States have obligations at the national level to take adaptation actions to protect their vulnerable populations from the effects of climate change, and at the international level to cooperate in order to facilitate the protection of vulnerable communities wherever they are located. The rights of the most vulnerable must be respected and protected in all actions, including actions taken to mitigate or adapt to climate change. Renewable energy projects and efforts to protect forests, while they may be highly desirable as methods of reducing or offsetting greenhouse gas emissions, are not exempt from human rights norms. When such projects are proposed for the territory of indigenous peoples, for example, the projects must accord with the obligations owed to those peoples, including, where applicable, the duties to facilitate their participation in the decision-making process and not to proceed without their free, prior and informed consent (see A/HRC/25/53, para. 78).

84. The Paris Agreement recognizes the importance of respecting the rights of the most vulnerable. Its preamble specifically refers to the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, as well as gender equality, in calling on the parties to respect, promote and consider their respective obligations on human rights when taking action to address climate change. Article 7 of the Agreement emphasizes that, in addition to being country-driven, participatory and fully transparent, adaptation action should be gender-responsive and take into consideration vulnerable groups, communities and ecosystems. To ensure that States satisfy their human rights obligations, they must implement the commitments they have made in relation to the protection of the most vulnerable.

## V. Conclusions and recommendations

85. **Bringing human rights to bear on climate change has three principal benefits. First, advocacy grounded in human rights can spur stronger action. From the Male' Declaration to the Paris Agreement, Governments and civil society organizations have successfully argued that strong climate action is necessary to safeguard human rights. These efforts have borne fruit, but they must continue and intensify.**

86. **Second, human rights norms clarify how States should respond to climate change. As the Paris Agreement recognizes, whenever States take action to address climate change, they should respect, protect and consider their respective obligations on human rights. Complying with human rights obligations not only helps to protect the rights of everyone affected by climate change. As the Human Rights Council has affirmed, it also promotes policy coherence, legitimacy and sustainable outcomes.**

87. **States have procedural obligations to assess and provide information about the effects of climate change, to ensure that climate decisions are made with the informed participation of the public and to provide for effective remedies for climate-related violations of human rights. They must protect the rights of freedom of expression and association in relation to all climate actions, even when the rights are being exercised in opposition to projects supported by the authorities.**

88. **Based on the duty of international cooperation, States should fully implement all of the commitments they have made in relation to the Paris Agreement and strengthen their commitments in the future, in order to ensure that global temperatures do not rise to levels that would impair a vast range of human rights. Each State must also adopt a legal and institutional framework that assists those within its jurisdiction to adapt to the unavoidable effects of climate change. In all of these actions, States must take care to protect the rights of the most vulnerable.**

89. **Third, human rights bodies can inform and improve climate policy by providing forums for issues concerning climate change and human rights that might**

**otherwise be overlooked. The Special Rapporteur encourages the Human Rights Council and other international and national human rights institutions to continue to bring a human rights perspective to the global challenge of climate change.**

---



# General Assembly

Distr.: General  
19 January 2017

Original: English

---

## Human Rights Council

### Thirty-fourth session

27 February-24 March 2017

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the 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, on the human rights obligations relating to the conservation and sustainable use of biological diversity. In his report, he describes the importance of ecosystem services and biodiversity for the full enjoyment of human rights and outlines the application of human rights obligations to biodiversity-related actions.

GE.17-00826(E)



\* 1 7 0 0 8 2 6 \*

Please recycle



**Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

Contents

	<i>Page</i>
I. Introduction .....	3
II. The dependence of human rights on biodiversity.....	3
A. Human rights and ecosystem services .....	4
B. Human rights and biodiversity.....	4
III. Human rights obligations relating to the conservation and sustainable use of biodiversity .....	10
A. Procedural obligations .....	10
B. Substantive obligations .....	12
C. Obligations in relation to people in vulnerable situations.....	16
IV. Conclusions and recommendations .....	21

## I. Introduction

1. In its resolution 28/11, the Human Rights Council encouraged the Special Rapporteur to promote the realization of human rights obligations relating to the environment, continuing to give particular emphasis to practical solutions. In 2015, the Special Rapporteur presented a report to the Council (A/HRC/31/53) recommending methods of implementing the obligations, and he followed up on many of the recommendations in 2016.

2. For example, in partnership with the United Nations Environment Programme, he began a series of regional judicial workshops on rights-based approaches to environmental issues, with the first held in South Africa in April 2016 and the second planned to be held in Brazil in 2017. He helped the United Nations Institute for Training and Research to develop an online course entitled “Human rights and environmental protection for sustainable development”. He also worked with the Universal Rights Group and other partners to prepare a web portal, environment-rights.org, with resources for environmental human rights defenders. In 2017, the final full year of his mandate, the Special Rapporteur intends to implement another recommendation by preparing practical guidelines, or guiding principles, on the human rights obligations relating to the environment. To inform the preparation of the guidelines, he will engage in consultations with Governments and other stakeholders.

3. In its resolution 28/11, the Human Rights Council also encouraged the Special Rapporteur to continue to clarify the human rights obligations relating to the environment. In the present report, the Special Rapporteur examines the obligations relating to the conservation and sustainable use of ecosystems and biological diversity (biodiversity). In preparation for the report, he held an expert meeting and a public consultation from 20 to 22 September 2016. He also attended the 2016 World Conservation Congress and the thirteenth meeting of the Conference of the Parties to the Convention on Biological Diversity. He sent a questionnaire to States and other interested stakeholders, which elicited over 60 responses, and he examined statements and reports by international organizations, human rights mechanisms, scholars and other sources.

4. Section II explains that biodiversity is necessary for the enjoyment of a wide range of human rights and that the loss of biodiversity threatens the enjoyment of those rights. Section III outlines the human rights obligations relating to the protection of biodiversity. Section IV concludes with recommendations on the conservation and sustainable use of biodiversity to protect the full enjoyment of human rights.

## II. The dependence of human rights on biodiversity

5. The full enjoyment of human rights, including the rights to life, health, food and water, depends on the services provided by ecosystems. The provision of ecosystem services depends on the health and sustainability of ecosystems, which in turn depend on biodiversity. The full enjoyment of human rights thus depends on biodiversity, and the degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights.<sup>1</sup>

---

<sup>1</sup> The present report focuses on the value of biodiversity to human beings, but the Special Rapporteur notes that the components of biodiversity also have intrinsic value that may not be captured by a human rights perspective.

## A. Human rights and ecosystem services

6. The Millennium Ecosystem Assessment, a comprehensive review of the relationship between ecosystems and human well-being, states: “Everyone in the world depends completely on Earth’s ecosystems and the services they provide, such as food, water, disease management, climate regulation, spiritual fulfilment, and aesthetic enjoyment.”<sup>2</sup> Ecosystem services include provisioning services such as food, water, timber and fiber, which are necessary for basic material needs, including nutrition, shelter and clothing. Regulating services such as purification of water and protection against erosion support clean water and human health. Ecosystems also provide vital cultural services to the many people around the world whose religious and spiritual values are rooted in nature.<sup>3</sup>

7. International law recognizes that everyone has human rights to what the Assessment describes as the components of human well-being. The relationship between ecosystems and human rights is mediated by social institutions, culture and technology in countless ways. But it is obvious that without the services provided by healthy ecosystems, the ability to enjoy many rights, including the rights to life, health, food, water and participation in cultural life, would be severely compromised or impossible. As the Special Rapporteur has described in previous reports (A/HRC/22/43 and A/HRC/25/53), the Human Rights Council and other human rights bodies have recognized that the full enjoyment of human rights depends on a healthy, sustainable environment. Although they have not typically used the phrase “ecosystem services”, such services are what a healthy environment provides.

8. Human rights law does not require that ecosystems remain untouched by human hands. Economic and social development depends on the use of ecosystems, including, in appropriate cases, the conversion of natural ecosystems such as old-growth forests into human-managed ecosystems such as pastures and cropland. To support the continued enjoyment of human rights, however, this development cannot overexploit natural ecosystems and destroy the services on which we depend. Development must be sustainable, and sustainable development requires healthy ecosystems. In Sustainable Development Goal 15, States committed to “protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss” (General Assembly resolution 70/1).<sup>4</sup>

## B. Human rights and biodiversity

9. Although the importance of a healthy environment for the enjoyment of human rights is widely recognized, the relationship between human rights and biodiversity remains less well understood. The Convention on Biological Diversity (art. 2) defines biodiversity as “the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems”. Biodiversity

---

<sup>2</sup> Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis* (Island Press, Washington, D.C., 2005), p. 1. The report defines the term “ecosystem” as “a dynamic complex of plant, animal, and microorganism communities and the nonliving environment interacting as a functional unit”. *Ibid.*, p. v.

<sup>3</sup> A fourth category, supporting services, which includes soil formation, photosynthesis and nutrient cycling, underlies the other three types of ecosystem services. See *Ecosystems and Human Well-being: Synthesis*, p. 40.

<sup>4</sup> Targets under Goals 2, 6 and 14 address the protection of agricultural, water-related, and marine and coastal ecosystems.

thus includes not only the millions of different species on Earth,<sup>5</sup> “it also consists of the specific genetic variations and traits within species (such as different crop varieties), and the assemblage of these species within ecosystems that characterize agricultural and other landscapes such as forests, wetlands, grasslands, deserts, lakes and rivers”.<sup>6</sup>

10. In the words of the Millennium Ecosystem Assessment, “biodiversity is the foundation of ecosystem services to which human well-being is intimately linked”.<sup>7</sup> Biodiversity supports ecosystem services and the human rights that depend upon them in many ways. In general, biodiversity contributes to the productivity and stability of ecosystem processes.<sup>8</sup> More diverse ecosystems are more resilient to disasters and to long-term threats such as climate change.<sup>9</sup> More specifically, biodiversity contributes to particular ecosystem services that directly support the full enjoyment of human rights. The present report highlights some of those contributions with respect to: the rights to life and health; the right to an adequate standard of living; and the right to non-discrimination in the enjoyment of rights.

## 1. Rights to life and health

11. The Universal Declaration of Human Rights (art. 3) and the International Covenant on Civil and Political Rights (art. 6) recognize the right to life. The Human Rights Committee has emphasized that the right to life should not be interpreted narrowly, and that the protection of the right requires States to adopt positive measures such as measures to reduce infant mortality and increase life expectancy.<sup>10</sup> The Constitution of the World Health Organization and article 12 of the International Covenant on Economic, Social and Cultural Rights recognize the right to the highest attainable standard of physical and mental health. The Committee on Economic, Social and Cultural Rights has stated that the right to health “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”.<sup>11</sup>

12. Of the many connections between biodiversity and healthy human life, the present report focuses on four, relating to medicinal drugs, microbial diversity, infectious diseases and mental health.<sup>12</sup>

<sup>5</sup> Although estimates of species vary widely, a recent estimate is that there is about 7.7 million species of animals and about 8.7 million eukaryotic species in all, of which only about 1.2 million have been catalogued. Camilo Mora and others, “How many species are there on Earth and in the ocean?”, *PLOS Biology*, vol. 9, No. 8 (2011), p. 1.

<sup>6</sup> World Health Organization (WHO) and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health — a State of Knowledge Review* (Geneva, 2015), p. 28.

<sup>7</sup> Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Biodiversity Synthesis* (World Resources Institute, Washington, D.C., 2005), p. 18.

<sup>8</sup> *Connecting Global Priorities*, p. 34; Bradley J. Cardinale and others, “Biodiversity loss and its impact on humanity”, *Nature*, vol. 486, (June 2012), p. 59.

<sup>9</sup> *Connecting Global Priorities*, p. 18.

<sup>10</sup> General comment No. 6 (1982) on the right to life, para. 5.

<sup>11</sup> General comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4.

<sup>12</sup> A particularly useful resource is the 2015 report of WHO and the Secretariat of the Convention on Biological Diversity cited above (see footnote 6), which contains a summary of the state of knowledge on biodiversity and human health and which is available at <https://www.cbd.int/health/stateofknowledge>. See also Eric Chivian and Aaron Bernstein, eds., *Sustaining Life: How Human Health Depends on Biodiversity* (Oxford University Press, 2008).

### Medicinal drugs

13. One of the best-known connections between biodiversity and health is the derivation of medicinal drugs from natural products.<sup>13</sup> Humans have relied on biodiversity as a source of medicine throughout our history. The oldest known natural mummy, found in the Italian Alps in 1991 after being frozen for more than 5,000 years, carried *Piptoporus betulinus*, a birch fungus that reduces inflammation.<sup>14</sup> Famous recent examples include: *Cinchona officinalis*, a South American tree whose bark produces quinine, a treatment for malaria; *Catharanthus roseus*, the Madagascar rosy periwinkle, first used as a traditional medicine and then as the basis for successful treatments of childhood leukemia and Hodgkin's lymphoma; *Penicillium citrinum*, a fungus whose derivation reduces cholesterol synthesis; and *Digitalis purpurea*, the purple foxglove, used to treat heart disease. More than half of the 1,355 drugs approved by the United States Food and Drug Administration between 1981 and 2010 had natural origins.<sup>15</sup> Our debt to nature is particularly great with respect to antibiotics, which have saved millions of lives: 10 of the 14 major classes of antibiotics are derived from microorganisms.<sup>16</sup>

14. Biodiversity is an irreplaceable resource for new medicines, but we are rapidly destroying the resource before we have discovered all that it has to offer. Only a fraction of the hundreds of thousands of plant species have been studied for their medicinal potential, and other living resources, including the marine and the microbial, remain almost completely unexamined. Species are disappearing before we understand what we have lost, but scientists know of tantalizing missed opportunities. For example, two species of gastric brooding frogs indigenous to Australia had unique reproductive physiology that might have provided insights into how to relieve peptic ulcers. Their potential was lost forever when the species became extinct in the 1980s. Even plants known to be valuable are often at risk. As many as 40 per cent of the approximately 60,000 plant species thought to be used for medicinal purposes are endangered, including plants long important in traditional medicine such as the African cherry (*Prunus Africana*) and the Himalayan yew (*Taxus wallichianai*).<sup>17</sup>

### Microbial diversity

15. Another way that biodiversity supports human health is even more pervasive but less widely recognized. Studies indicate that the development of normal immune responses, especially to allergens, requires exposure to diverse natural habitats.<sup>18</sup> Each of us carries microorganisms that interact with the biodiversity in the environment in ways that are critical for "the induction and maintenance of immunoregulatory circuits and tolerance".<sup>19</sup> Environmental microorganisms were "previously ubiquitous and abundantly present e.g. in our food, drinking water and milk", but as more people live in urban settings and as global biodiversity decreases, these interactions are decreasing as well.<sup>20</sup> The reduced diversity of

<sup>13</sup> *Connecting Global Priorities*, p. 11. See, generally, Enrique Ravina, *The Evolution of Drug Discovery: From Traditional Medicines to Modern Drugs* (Wiley, 2011), pp. 107-312.

<sup>14</sup> *Connecting Global Priorities*, p. 165.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, p. 11.

<sup>17</sup> *Ibid.*, pp. 11 and 165.

<sup>18</sup> Paul A. Sandifer and others, "Exploring connections among nature, biodiversity, ecosystem services, and human health and well-being: opportunities to enhance health and biodiversity conservation", *Ecosystem Services*, vol. 12 (April 2015), pp. 1 and 7.

<sup>19</sup> Tari Haahtela and others, "The biodiversity hypothesis and allergic disease: World Allergy Organization position statement", *World Allergy Organization Journal*, vol. 6, No. 3 (January 2013), pp. 1 and 12.

<sup>20</sup> *Ibid.*

environmental microorganisms is “a part of the more global problem of disappearing natural environments and general loss of biodiversity. The ‘far out biodiversity’ (plant and animal life) and the ‘close to biodiversity’ (micro-biotas) are interconnected and shrinking”.<sup>21</sup> The loss of this microbial diversity appears to cause problems of immunoregulation, leading human immune systems to attack the wrong targets, which in turn causes autoimmune diseases, allergic disorders and other non-communicable inflammatory diseases to become more prevalent in all parts of the world.<sup>22</sup>

### **Infectious diseases**

16. For some zoonotic diseases,<sup>23</sup> the loss of biodiversity has been linked to increased prevalence in humans. “For instance, hantavirus prevalence is thought to increase when mammal diversity decreases; the rise of West Nile virus is correlated with decreases in non-passerine bird richness; landscape prevalence of *Bartonella* increases when large wildlife are removed; and habitat fragmentation increases risk of Lyme disease.”<sup>24</sup> In such cases, a high diversity of pathogen hosts appears to dilute the transmission paths of pathogens to humans; as diversity decreases, the transmission rates increase.<sup>25</sup>

### **Mental health**

17. It is increasingly clear that exposure to nature has beneficial effects on mental health. A comprehensive review of studies concluded that “experiencing nature can have positive effects on mental/psychological health, healing, heart rate, concentration, levels of stress, blood pressure, behaviour, and other health factors. For example, viewing nature, even through a window, improves recovery from surgery.”<sup>26</sup> Most of the cited studies examine exposure to green space or natural surroundings without controlling for diversity. However, “there is mounting evidence that not just exposure to nature, but contact with diverse natural habitats and many different species, has important positive impacts for human health”.<sup>27</sup>

## **2. Right to an adequate standard of living**

18. The Universal Declaration of Human Rights (art. 25) and the International Covenant on Economic, Social and Cultural Rights (art. 11) recognize the right to an adequate standard of living. The Committee on Economic, Social and Cultural Rights has explained that the right to an adequate standard of living is intentionally expansive and that the Covenant includes “a number of rights emanating from, and indispensable for, the realization of the right”.<sup>28</sup> These rights include the rights to food and housing, to which the Covenant explicitly refers, and the rights to safe and clean water and sanitation, which have been recognized by the General Assembly, in its resolution 64/292, and the Human Rights Council, in its resolution 15/9.

<sup>21</sup> Ibid. See also Ilkka Hanski, “Environmental biodiversity, human microbiota, and allergy are interrelated”, *Proceedings of the National Academy of Sciences*, vol. 109, No. 21 (2012), p. 8334.

<sup>22</sup> *Connecting Global Priorities*, p. 150.

<sup>23</sup> Zoonotic diseases are normally found in animals but can infect humans.

<sup>24</sup> *Connecting Global Priorities*, p. 132.

<sup>25</sup> Aaron Bernstein, “Biological diversity and public health”, *Annual Review of Public Health*, vol. 35 (January 2014), pp. 153 and 159.

<sup>26</sup> Paul A. Sandifer and others, “Exploring connections”, p. 3.

<sup>27</sup> Ibid., p. 6. See also Richard A. Fuller and others, “Psychological benefits of greenspace increase with biodiversity”, *Biology Letters*, vol. 3 (2007) p. 390; *Connecting Global Priorities*, pp. 200-209.

<sup>28</sup> General comment No. 15 (2002) on the right to water, para. 3.

19. The benefits of biodiversity are particularly evident in relation to the right to food. Genetic diversity within species increases the yield of commercial crops,<sup>29</sup> and species richness in freshwater fisheries is associated with greater productivity.<sup>30</sup> (Tree species diversity and richness also increase production of timber, which supports the fulfilment of the right to housing.<sup>31</sup>) Biodiversity is especially crucial to the stability and resilience of food sources. Increasing diversity of fish species is associated with greater stability of fisheries,<sup>32</sup> and “resiliency in agroecosystems to environmental change depends on the innate attributes of crop varieties, which makes preserving crop biodiversity [e.g., through seed banks] a vital part of food security”.<sup>33</sup> 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.<sup>34</sup> Climate change will test the resiliency of agriculture and fisheries more and more, and “the increased use of agricultural biodiversity will play an essential part in the adaptation and mitigation actions needed to cope with climate change and ensuring continued sustainable supplies of healthy food, providing adaptive capacity, diverse options to cope with future change and enhanced resilience in food production systems”.<sup>35</sup>

20. Food security also depends on the biodiversity of the surrounding environment. “Successfully raising any single crop requires more than its seeds; a multitude of species are necessary, from microbes, insects, worms, and small vertebrates in the soil to a host of species above ground that control pests, fertilize soils, and pollinate flowers. Marked population declines have been observed in organisms vital to agriculture in recent years, and these losses bear directly on food security.”<sup>36</sup> For example, biodiversity directly contributes to the effective pollination and seed dispersal of useful plants and increases resistance to agricultural pests and exotic plants.<sup>37</sup> In this respect, the unusually high losses in recent years of colonies of *Apis mellifera* (western honeybees), an important pollinator, have been of particular concern, since pollination is necessary for more than three quarters of the 107 leading global food crops, including many fruits and vegetables that are important sources of micronutrients and vitamins.<sup>38</sup>

21. Biodiversity also helps to support the right of access to clean and safe water. Increased forest areas significantly improve water flow regulation by reducing runoff and providing greater water storage.<sup>39</sup> Diverse animal, plant and algae species help to draw excess nitrogen and phosphorus from aquatic ecosystems.<sup>40</sup> Bivalve molluscs, which filtrate large amounts of water in both marine and freshwater environments, can play a particularly important role in water purification. For example, a freshwater mussel species in South

<sup>29</sup> See Cardinale and others, “Biodiversity loss and its impact on humanity”, p. 62.

<sup>30</sup> P.A. Harrison and others, “Linkages between biodiversity attributes and ecosystem services: a systematic review”, *Ecosystem Services*, vol. 9 (September 2014), pp. 191 and 195.

<sup>31</sup> Cardinale and others, “Biodiversity loss and its impact on humanity”, p. 62. See also Harrison and others, “Linkages between biodiversity attributes and ecosystem services”.

<sup>32</sup> Cardinale and others, “Biodiversity loss and its impact on humanity”, p. 62.

<sup>33</sup> Bernstein, “Biological diversity and public health”, p. 158.

<sup>34</sup> *Ecosystems and Human Well-being: Biodiversity Synthesis*, p. 30; *Connecting Global Priorities*, pp. 111-112.

<sup>35</sup> *Connecting Global Priorities*, p. 6.

<sup>36</sup> Bernstein, “Biological diversity and public health”, p. 158.

<sup>37</sup> *Ecosystems and Human Well-being: Biodiversity Synthesis*, pp. 25 and 29.

<sup>38</sup> Intergovernmental Science-Policy Platform on Biodiversity, “Summary for policymakers of the assessment report on pollinators, pollination and food production” (2016), pp. 8 and 16; *Connecting Global Priorities*, p. 81.

<sup>39</sup> Harrison and others, “Linkages between biodiversity attributes and ecosystem services”, p. 195.

<sup>40</sup> *Connecting Global Priorities*, p. 48.

America, *Diplodon chilensis*, has been shown to decrease eutrophication by reducing total phosphorus and controlling phytoplankton densities.<sup>41</sup> Natural filtration services can also clean water of human-made toxic substances. A famous example is *Epischura baikalensis*, a crustacean native to Lake Baikal in the Russian Federation, the largest freshwater lake by volume in the world. Each no bigger than a poppy seed, these copepods keep the water clear by ingesting pollutants as well as food. In the words of a local environmentalist, they are “the heroes of the lake”.<sup>42</sup> Of course, there are limits to the ability of ecosystems to clean up after us. By removing persistent organic pollutants from the water, *Epischura* and other species introduce them into the food chain, where they bioaccumulate in larger animals such as fish, seals and, eventually, humans.<sup>43</sup>

### 3. Non-discrimination and the rights of those most vulnerable to the loss of biodiversity

22. The degradation and loss of biodiversity often result from and reinforce existing patterns of discrimination. Although everyone depends on ecosystem services, some people depend on them more closely than others. For indigenous peoples, forest-dwellers, fisherfolk and others who rely directly on the products of forests, rivers, lakes and oceans for their food, fuel and medicine, environmental harm can and often does have disastrous consequences. This is true not only because of their close relationship to nature, but also because they typically have little economic and political power within their countries, so they cannot easily obtain substitutes for their lost natural resources.<sup>44</sup> Their marginalization means that they have limited or no access to decision-making processes or legal remedies. Their legal rights to the territory and resources on which they depend may not even be recognized by their Governments.

23. In addition to the material consequences of environmental degradation, there are often grave cultural effects. Many religions call on all human beings to be stewards of the riches of the natural world. However, the loss of particular places is felt predominantly by those who associate their sacred rituals and sites with those locations. Food and shelter may be replaced, but the destruction of a sacred grove may cause irreparable harm. For example, when members of the AmaXhosa people in South Africa were asked what would happen if sites sacred to their community were destroyed, they replied “it means that our culture is dead.”<sup>45</sup>

24. Cutting down forests for timber and to clear land for agricultural production, building dams to harness rivers for hydroelectric power and opening fisheries to industrial exploitation may well have economic benefits. But even if the economic benefits outweigh the real economic and cultural costs at a macro scale (which they often do not, since the real costs of destroying a forest or a river ecosystem are almost never taken into account),<sup>46</sup> the benefits are recovered disproportionately by those who did not depend directly on the resource and the costs are imposed disproportionately on those who did. As a result, “the loss of biodiversity-dependent ecosystem services is likely to accentuate inequality and marginalization of the most vulnerable sectors of society, by decreasing their access to basic materials for a healthy life and by reducing their freedom of choice and action. Economic development that does not consider effects on these ecosystem services may

<sup>41</sup> Ibid., citing sources.

<sup>42</sup> Peter Thomson, “Russia’s Lake Baikal: preserving a natural treasure”, *environment360* (3 June 2008).

<sup>43</sup> Ibid.

<sup>44</sup> *Connecting Global Priorities*, p. 32.

<sup>45</sup> *Ecosystems and Human Well-being: Biodiversity Synthesis*, p. 31.

<sup>46</sup> *Ecosystems and Human Well-being: Synthesis*, pp. 6-11. For studies of the economic value of biodiversity, see the Economics of Ecosystems and Biodiversity initiative, at [www.teebweb.org](http://www.teebweb.org).

decrease the quality of life of these vulnerable populations, even if other segments of society benefit.”<sup>47</sup>

25. The loss of biodiversity-dependent ecosystem services also has disproportionate effects on people who are vulnerable for other reasons, including gender, age, disability, poverty or minority status. Much more research is necessary to understand and respond to the ways that access to and management of biodiversity vary according to gender and other characteristics, and the differentiated effects of the loss and degradation of biodiversity. The lack of disaggregated data on biodiversity access, use and control hampers efforts to design and implement measures that appropriately respond to these types of vulnerabilities.<sup>48</sup>

### **III. Human rights obligations relating to the conservation and sustainable use of biodiversity**

26. States have obligations to protect against environmental harm that interferes with the enjoyment of human rights, and the obligations apply to biodiversity as an integral part of the environment. As the Special Rapporteur emphasized last year in relation to climate change, these obligations continue to be studied and clarified, and the present report should not be taken as the final word on their content. In particular, it does not substitute for the more detailed analysis of particular human rights by mandate holders, treaty bodies, regional human rights tribunals or others. Rather, the goals are to provide an overview of this evolving area of the law and a framework for further elaboration.

#### **A. Procedural obligations**

27. The procedural human rights obligations of States in relation to the environment include duties: (a) to assess impacts and make environmental information public; (b) to facilitate public participation in environmental decision-making, including by protecting the rights of expression and association; and (c) to provide access to remedies for harm. These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights at risk from environmental harm (see A/HRC/25/53, para. 29). They are supported by provisions in international environmental instruments, including principle 10 of the 1992 Rio Declaration on Environment and Development.

28. Each of these obligations applies to measures that affect biodiversity in ways that threaten the full enjoyment of the human rights that depend on its components. For example, before a State grants a concession for exploitation of a forest, authorizes a dam on a river or takes other steps that allow the degradation or loss of biodiversity, it should assess the environmental and social impacts of the proposal, provide information about its possible effects, facilitate informed public participation in the decision-making process, including by protecting the rights of freedom of expression and association, and provide access to effective legal remedies for those who claim that their rights have been violated.

<sup>47</sup> Sandra Diaz and others, “Biodiversity loss threatens human well-being”, *PLOS Biology*, vol. 4, No. 8 (August 2006), pp. 1300 and 1302.

<sup>48</sup> *Connecting Global Priorities*, pp. 32-33.

29. Some conservation agreements require or encourage States to conduct assessments, provide access to information and facilitate public participation.<sup>49</sup> In addition, many States have made important strides to implement access rights through their national legislation, including with respect to measures that would affect ecosystems and biodiversity. Many of the responses to the questionnaire sent by the Special Rapporteur provide examples of procedural safeguards and innovations at the national level.<sup>50</sup>

30. At the international level, States have developed exemplary practices with respect to the right to information, including regular assessments of progress towards the goals of the Convention on Biological Diversity.<sup>51</sup> The most important recent development relating to the right to information may be the creation in 2012 of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. More than 100 States are parties to the Platform, whose purpose is to produce high-quality, peer-reviewed reports in response to requests by Governments. Its first report was an assessment of different scenarios and models of biodiversity and ecosystem services and its second an examination of pollination and pollinators around the world. The Platform's ongoing work programme includes four regional assessments, one each for Africa, the Americas, Asia and the Pacific, and Europe and Central Asia.<sup>52</sup>

31. There are also many failures to meet procedural obligations in relation to biodiversity. For example, many States need to provide more effective remedies to those harmed by the loss and degradation of ecosystems. Perhaps the most egregious problem, however, is the continuing failure to protect environmental human rights defenders, which has been recently described in detail by the Special Rapporteur on the situation of human rights defenders (A/71/281). Often the links between environmental defence and the enjoyment of human rights are clear, as when a community objects to a mine that would pollute its drinking water. But even people who protect components of ecosystems whose benefits to humans may be less obvious, such as endangered species (see, e.g., A/HRC/25/53/Add.1, para. 54), are still defending the biodiversity on which we all depend. They are also environmental human rights defenders, and they deserve our protection.

32. Unfortunately, like other defenders, they often fail to receive it. In 2015 alone, there were 185 confirmed killings of environmental and land defenders around the world.<sup>53</sup> Countless others are harassed and subjected to violence. As pressures to exploit natural resources grow, those who oppose unsustainable exploitation are increasingly under attack. Sometimes, government actors themselves commit or are complicit in the persecution. Even when they are not directly involved, Governments often fail to respond to threats, investigate violations and arrest those responsible, thereby creating a culture of impunity that encourages further attacks. Moreover, States have adopted laws that criminalize peaceful protests and opposition, restrict or prohibit the operations of civil society

<sup>49</sup> See, e.g., the Convention on Biological Diversity, art. 14 (environmental assessment, public participation); the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, art. 3 (public participation) and the Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 27 (public information).

<sup>50</sup> All of the responses to the questionnaire are available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SubmissionsBiodiversity.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SubmissionsBiodiversity.aspx).

<sup>51</sup> The assessments are available at [www.cbd.int/gbo/default.shtml](http://www.cbd.int/gbo/default.shtml).

<sup>52</sup> Information about the Platform and its work programme is available at [www.ipbes.net](http://www.ipbes.net).

<sup>53</sup> Global Witness, *On Dangerous Ground* (2016). Available at [www.globalwitness.org/en/reports/dangerous-ground](http://www.globalwitness.org/en/reports/dangerous-ground).

organizations and enable civil suits that seek to intimidate and silence environmental defenders.<sup>54</sup>

## **B. Substantive obligations**

33. States have obligations to adopt legal and institutional frameworks that effectively protect against environmental harm that interferes with the enjoyment of human rights. As section II describes, the loss of ecosystem services and biodiversity threatens a broad spectrum of rights, including the rights to life, health, food, water, culture and non-discrimination. States therefore have a general obligation to safeguard biodiversity in order to protect those rights from infringement. That obligation includes a duty to protect against environmental harm from private actors, and businesses have a responsibility to respect the rights relating to biodiversity as well (see A/HRC/25/53, paras. 58-61).

34. States have 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 described in the previous section, whether it is non-retrogressive, whether it is non-discriminatory and whether it accords with international and domestic standards (see A/HRC/25/53, paras. 53-56). Finally, States should fully implement their laws protecting human rights related to the environment.

35. The specific contours of substantive obligations may vary by situation. In addition to a general duty to protect biodiversity in order to support the full enjoyment of the range of human rights that depend upon it and the ecosystem services it underpins, States may also have more specific duties to protect places or components of biodiversity that are especially necessary for the enjoyment of rights of the members of particular communities, including the vulnerable communities discussed in the next section.

36. States should also cooperate with one another to protect biodiversity and ecosystem services. As the Special Rapporteur has previously explained (see A/HRC/31/52, paras. 42-48), international cooperation normally plays only a supporting role in the protection of human rights, but some types of environmental harm to human rights may trigger the duty of international cooperation, which has support in the general practice of States and, more specifically, in the Charter of the United Nations (arts. 55-56) and the International Covenant on Economic, Social and Cultural Rights (art. 2). The effective protection of biodiversity, like the effective mitigation of climate change, is possible only with international cooperation, as States have often recognized. Many of the components of biodiversity, the threats to biodiversity and the benefits biodiversity provides have transboundary or global dimensions.

37. For over a century, States have entered into treaties to protect components of biodiversity that straddle or migrate across borders, such as transboundary water bodies and migratory animals.<sup>55</sup> In more recent decades, States have increasingly realized the many

---

<sup>54</sup> See the report by the Special Rapporteur entitled “Environmental human rights defenders: a global crisis”, at [www.universal-rights.org](http://www.universal-rights.org).

<sup>55</sup> The many examples include the Convention on the Conservation of Migratory Species of Wild Animals, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of

threats to biodiversity that have transboundary aspects. The direct drivers of biodiversity loss include the destruction and degradation of natural habitat, the overexploitation of valuable plants and animals, pollution, invasive alien species and climate change. Some of these drivers, including climate change and transboundary pollution, are inherently beyond the control of any one State. Even habitat loss and overexploitation of local resources often have international dimensions. Poaching plants and animals in developing countries, for example, is largely driven by demand in foreign markets. To combat such international trafficking, States adopted the Convention on International Trade in Endangered Species of Wild Fauna and Flora, but a multibillion dollar illegal trade in wildlife continues. Well-known examples include killing elephants for ivory and rhinoceroses for their horns, capturing rare parrots and turtles to become pets and harvesting endangered rosewood trees to make furniture.

38. Many of the benefits of biodiversity also have international dimensions. Food and medicine derived from natural resources in one part of the world can benefit people everywhere. Conversely, diseases that spread more quickly because of reduced biodiversity may affect people far from where they first emerged. Other benefits of biodiversity may be less concrete, but nonetheless widely shared. For example, many people find the species with which we share this planet fascinating and inherently valuable, and they feel a sense of loss when they learn of the extinction of species such as the Bramble Cay melomys (*Melomys rubicola*), the only mammal endemic to the Great Barrier Reef. Its extinction in 2016 was the first attributed to climate change. The small island where the melomys lived was inundated multiple times by rising sea levels, killing the animals and destroying their habitat.<sup>56</sup>

39. The recognition that we all benefit from the interwoven planetary web of biodiversity, and that we are all harmed by its degradation, has led to the adoption of many conservation agreements.<sup>57</sup> The one with the widest scope is the Convention on Biological Diversity, whose preamble affirms that the conservation of biological diversity is a common concern of humankind and whose objectives are “the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources”. Through the Convention and other agreements, States have identified the steps necessary to conserve and sustainably use biodiversity. If implemented, these measures would protect biodiversity and satisfy the joint obligation of States to cooperate to protect the human rights dependent upon biodiversity.

40. The enormous problem is that the agreements have often not been effectively implemented and their goals have not been met. As a result, biodiversity continues to decrease at unsustainable rates. There are many examples of failures to protect biodiversity, but the present report focuses on efforts made pursuant to the Convention on Biological Diversity. To meet its objectives, the Convention requires each party to take specific measures, “as far as possible and as appropriate”, including developing national plans for the conservation and sustainable use of biodiversity (art. 6), identifying and monitoring

---

Straddling and Highly Migratory Fish Stocks and the International Convention for the Regulation of Whaling.

<sup>56</sup> Michael Slezak, “Revealed: first mammal species wiped out by human-induced climate change”, *The Guardian* (14 June 2016).

<sup>57</sup> See, e.g., the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the Convention concerning the Protection of the World Cultural and Natural Heritage, the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa and the International Treaty on Plant Genetic Resources for Food and Agriculture. See, generally, United Nations Environment Programme, *Understanding Synergies and Mainstreaming among the Biodiversity-related Conventions* (2016).

important components of biodiversity and activities that have (or are likely to have) significant adverse effects (art. 7) and pursuing measures for in-situ and ex-situ conservation (arts. 8 and 9). In addition, the Convention recognizes that the authority to determine access to genetic resources rests with each national Government and sets out provisions for agreement to such access (art. 15). The broad scope of the Convention is matched by its near-universal membership: it has 196 parties, including virtually every country in the world except the United States of America, which has signed but not ratified it.

41. In 2002, the Conference of the Parties to the Convention adopted a strategic plan “to effectively halt the loss of biodiversity”.<sup>58</sup> The parties clearly described the stakes, emphasizing that biodiversity “is the foundation upon which human civilization has been built”. They stated that “the rate of biodiversity loss is increasing at an unprecedented rate, threatening the very existence of life as it is currently understood”, undermining sustainable development and constituting “one of the great challenges of the modern era”.<sup>59</sup> To meet this existential threat, the parties adopted a rather modest goal: not to halt, much less reverse, the loss of biodiversity, but only to significantly reduce the rate of loss by 2010. To that end, the strategic plan included 11 goals and 21 subsidiary targets. For example, goal 2 was to “promote the conservation of species diversity” and target 2.1 was to “restore, maintain, or reduce the decline of populations of species of selected taxonomic groups”.<sup>60</sup>

42. In 2005, the Millennium Ecosystem Assessment explained not just how necessary ecosystem services are to human well-being, as described in section II of the present report, but also how rapidly humans were destroying biodiversity. Of the 24 ecosystem services it reviewed, 15 were being degraded or used unsustainably, including fresh water, capture fisheries, protection against erosion and the purification of air and water. The Assessment reported that humans had increased the rate of extinction of species as much as 1,000 times over background rates, that 10-30 per cent of mammal, bird and amphibian species were threatened with extinction and that at least one quarter of important commercial fish stocks were being overharvested. It also warned that the harm to ecosystems was increasing the likelihood of abrupt and potentially irreversible changes, such as the creation of “dead zones” in coastal waters and the collapse of fisheries. It underscored that the harmful effects of ecosystem degradation “are being borne disproportionately by the poor, are contributing to growing inequities and disparities across groups of people, and are sometimes the principal factor causing poverty and social conflict.”<sup>61</sup>

43. In 2010, the secretariat of the Convention on Biological Diversity published *Global Biodiversity Outlook 3*, which showed that States had utterly failed to meet even the modest aim of significantly reducing the rate of biodiversity loss. None of the 21 subtargets had been achieved and the report identified significant progress towards only four.<sup>62</sup> The secretariat found multiple indications of the continued loss of biodiversity: genetic diversity in crops and livestock continued to decrease; assessed species were on average moving closer to extinction; and natural habitats, especially wetlands, salt marshes and coral reefs, continued to decline in extent and integrity. Although there was progress in some regions in slowing the rate of loss of tropical forests and mangroves, on the whole the degradation and fragmentation of ecosystems continued to lead to the loss of ecosystem services.<sup>63</sup>

<sup>58</sup> Decision VI/26, annex, para. 2.

<sup>59</sup> *Ibid.*, paras. 3-4.

<sup>60</sup> Decision VII/30, annex II.

<sup>61</sup> *Ecosystems and Human Well-being: Synthesis*, pp. 1-6.

<sup>62</sup> Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 3* (Montreal, 2010), pp. 18-19.

<sup>63</sup> *Ibid.*, p. 9.

44. The secretariat noted that over 170 States had developed national biodiversity strategies and action plans, and reported that “in many countries, the preparation of strategies has stimulated the development of additional laws and programmes, and spurred action on a broad range of issues, including: the eradication or control of alien invasive species; using biodiversity sustainably; the protection of traditional knowledge and rules to ensure local communities share benefits from bio-prospecting which might result in patents or sales of new drugs, foods or cosmetics; the safe use of biotechnology; and maintaining the diversity of plants and animals used in agriculture”.<sup>64</sup> However, it stated that relatively few parties had fully integrated the 2010 biodiversity targets into their national strategies. Moreover, few countries were using national biodiversity strategies and action plans as effective tools for integrating biodiversity into broader policies and planning processes.<sup>65</sup>

45. In response to the failure to meet the objectives of the 2002 strategic plan, the parties to the Convention adopted another strategic plan for the decade 2011-2020. With admirable frankness, the parties recognized that “there has been insufficient integration of biodiversity into broader policies, strategies, programmes and actions, and therefore the underlying drivers of biodiversity loss have not been significantly reduced”.<sup>66</sup> They highlighted the risk of “drastic consequences to human societies” if current trends continued, stated that, unless urgent action was taken, “a wide range of services derived from ecosystems, underpinned by biodiversity, could rapidly be lost” and concluded that while the poor would feel the effects most severely, no one would be immune.<sup>67</sup>

46. To avoid this outcome, the current strategic plan sets out 20 targets, called the Aichi Biodiversity Targets, each of which includes multiple components. For example, target 5 is to at least halve the rate of loss of all natural habitats, including forests, by 2020 and to significantly reduce degradation and fragmentation. Target 11 calls for at least 17 per cent of terrestrial areas and 10 per cent of coastal and marine areas to be included in systems of protected areas, and target 12 is for the extinction of known threatened species to be prevented and their conservation status improved.

47. In 2014, the secretariat of the Convention reported on progress towards the targets. It stated that the international community was on pace to exceed only one of the 56 components of the targets and to meet only four, including the goal of declaring 17 per cent of terrestrial areas as protected areas. With respect to 33 of the components, some progress had been made but not enough to be on track to meet the target by the deadline. This category includes the goal of halving the rate of loss of forests and protecting at least 10 per cent of coastal and marine areas. For another 15 components, including those in target 12 on threatened species, there was either no significant progress (10) or the situation actually became worse (five).<sup>68</sup> The secretariat drew the obvious conclusion that the status of biodiversity would continue to decline and the Aichi Biodiversity Targets would not be met unless additional actions were taken.<sup>69</sup>

48. States are not meeting the standards they themselves have set for the protection of biodiversity. In many developing countries, much of this failure may be due to lack of the necessary capacity, and in these cases developed countries and international institutions

<sup>64</sup> Ibid., p. 20.

<sup>65</sup> Ibid.

<sup>66</sup> Decision X/2, annex, para. 5.

<sup>67</sup> Ibid., para. 8.

<sup>68</sup> Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 4* (Montreal, 2014), pp. 17-22. See also World Wildlife Fund, *Living Planet Report 2016: Risk and Resilience in a New Era* (Gland, Switzerland, 2016), p. 12 (“On average, monitored [vertebrate] species population abundance declined by 58 per cent between 1970 and 2012.”).

<sup>69</sup> Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 4*, p. 10.

should increase their support for capacity-building. However, in December 2016, the Conference of the Parties to the Convention noted that “only a minority of parties have established targets [in their national biodiversity strategies and action plans] with a level of ambition and scope commensurate with the Aichi Biodiversity Targets”.<sup>70</sup> Unless States effectively address the drivers of biodiversity loss, including by mainstreaming obligations of conservation and sustainable use into broader development policies and measures, the continuing destruction and degradation of biodiversity will undermine the enjoyment of a wide range of human rights.

### **C. Obligations in relation to people in vulnerable situations**

49. Although the global failure to protect biodiversity ultimately affects everyone, it is already having catastrophic consequences for indigenous peoples and others who depend directly on ecosystems for their food, water, fuel and culture. In all parts of the world, from the Gualcarque River in Honduras to the Kaya forests in Kenya, from Koh Kong in Cambodia to Standing Rock in the United States, indigenous peoples and local communities are working to protect the ecosystems on which they rely from unsustainable development. While they achieve some successes, too often overexploitation of natural resources pollutes their rivers and aquifers, cuts down their forests, destroys their sacred places and displaces them from their homes. Peaceful opposition is often met with harassment, violence and even death. States have obligations not only to protect environmental defenders, but also to protect the ecosystems on which the human rights of so many people directly depend.

50. In general, States have heightened duties with respect to those who are particularly vulnerable to environmental harm (see A/HRC/25/53, paras. 69-78). As section II explains, indigenous peoples and others who closely depend on nature for their material and cultural needs are especially vulnerable to actions that adversely affect ecosystems. States should ensure that such actions, whether carried out by Governments or private actors, do not prevent the enjoyment of their human rights, including their rights to life, health, food, water, housing and culture.

51. The rights of indigenous peoples are recognized in international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and they have been elaborated by human rights authorities. There is no need to review the corresponding duties in detail here, beyond reiterating that, among other obligations, States have duties to recognize the rights of indigenous peoples in the territory that they have traditionally occupied and the natural resources on which they rely, to ensure that indigenous peoples receive reasonable benefits from authorized activities affecting such territory or resources, and to provide access to effective remedies, including compensation, for harm caused by these activities. States must facilitate the participation of indigenous peoples in decisions that concern them, and development or extractive activities should not take place within the territories of indigenous peoples without their free, prior and informed consent, subject only to narrow exceptions (see A/HRC/24/41, para. 27).

52. Many people who do not self-identify as indigenous also have close relationships to the territory that they have traditionally occupied and depend directly on nature for their material needs and cultural life.<sup>71</sup> Although there is no instrument equivalent to the United

---

<sup>70</sup> Decision XIII/1, para. 6.

<sup>71</sup> The line between indigenous peoples and non-indigenous communities is not always clear, and the United Nations Declaration on the Rights of Indigenous Peoples does not attempt to define it. A key

Nations Declaration on the Rights of Indigenous Peoples for non-indigenous communities that have similarly close relationships with their ancestral territories, States nevertheless have heightened obligations to protect people in these situations from the adverse effects of exploitation of natural resources. These protections arise from multiple sources, including the general obligation of States to respect and protect the human rights of members of these communities, taking into account that their close relationship with nature makes their ability to enjoy these rights especially vulnerable to environmentally harmful actions. Among other obligations, States therefore have heightened duties to ensure that they are able to enjoy the rights to information, participation, freedom of expression and association, and effective remedies in relation to actions that may adversely affect their relationship with the ecosystems on which they depend, as well as substantive rights to protection of the ecosystems themselves.

53. Non-indigenous as well as indigenous persons may also be owed heightened obligations because of their status as members of minorities. Article 27 of the International Covenant on Civil and Political Rights provides that “persons belonging to [ethnic, religious or linguistic] minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”. The Human Rights Committee has stated that “culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples”, and that the enjoyment of rights to traditional activities, such as hunting and fishing, may require “positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.”<sup>72</sup>

54. The Human Rights Committee has made clear that States may not promote their economic development at the expense of the rights protected by article 27 of the Covenant. Whether measures that substantially interfere with the culturally significant economic activities of a minority community are acceptable depends on whether the members of the community were able to participate in the decision-making process that resulted in the measures and whether they will continue to benefit from their traditional economy. The Committee has stated that “participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members”.<sup>73</sup>

55. Protections for non-indigenous as well as indigenous people may also arise from the principle of non-discrimination, which is recognized in the Universal Declaration of Human Rights (art. 2) and throughout human rights law. States are required to ensure that measures, including measures that may appear non-discriminatory on their face, do not have disproportionate impacts on the enjoyment of human rights on prohibited grounds, including race and ethnicity.<sup>74</sup> Because measures that adversely affect ecosystems may well have disproportionately severe effects on the enjoyment of human rights of members of marginalized ethnic groups who rely directly on the ecosystems, States have heightened

---

consideration is whether the people themselves self-identify as indigenous. See the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 1.

<sup>72</sup> General comment No. 23 (1994) on the rights of minorities, para. 7.

<sup>73</sup> See communication No. 1457/2006, *Poma Poma v. Peru*, Views adopted on 27 March 2009, paras. 7.3-7.6.

<sup>74</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 10.

obligations to ensure that such laws and policies satisfy the requirements of legitimacy, necessity and proportionality.

56. In particular, human rights bodies have emphasized that States should protect the special relationship of people with the territory that they have traditionally occupied when their subsistence and culture is closely linked to that territory. For example, the Inter-American Court of Human Rights has held that States have heightened obligations to protect the right to property, as recognized in the American Convention on Human Rights (art. 21), of Afrodescendant tribal communities. Because such communities have their own customs and a special relationship with their ancestral territories, the Court held that, like indigenous peoples, they “require special measures that guarantee the full exercise of their rights, particularly with regards to their enjoyment of property rights, in order to safeguard their physical and cultural survival”.<sup>75</sup> These special measures include an obligation on the State to recognize and protect their communal property right in the territory and the natural resources they have traditionally used. Restrictions on this right are acceptable only if they are previously established by law, necessary, proportional and have “the aim of achieving a legitimate objective in a democratic society”.<sup>76</sup> In addition, restrictions may not deny a community’s survival as a tribal or indigenous people, which requires the State to conduct assessment, consultation and benefit-sharing and, with respect to projects that would have a major impact, to obtain their free, prior and informed consent.<sup>77</sup> Similarly, the Committee on the Elimination of Racial Discrimination has urged the review of forestry laws “to ensure respect for ethnic groups’ way of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment” (see CERD/C/THA/CO/1-3, para. 16).<sup>78</sup>

57. Human rights bodies continue to clarify the duties owed to non-indigenous as well as indigenous people whose way of life depends directly on ecosystems.<sup>79</sup> While much more work remains to be done to define these obligations and the obligations owed to others in vulnerable situations (who may include women, children, the elderly, the disabled and the extremely poor) in relation to environmental harm in general and the loss of ecosystem services in particular, the obligations are already clear enough that States and others should take them into account.

58. These obligations apply not only to measures aimed at exploitation of resources, but also to those aimed at conservation. The Special Rapporteur on the rights of indigenous peoples has identified many examples of forced displacement from protected areas, whose consequences have included “marginalization, poverty, loss of livelihoods, food insecurity, extrajudicial killings, and disrupted links with spiritual sites and denial of access to justice and remedy” (see A/71/229, para. 51). Non-indigenous communities, including Afrodescendants, have also experienced adverse effects as a result of conservation measures (see, e.g., A/HRC/25/53/Add.1, para. 63). While States should do more to protect

<sup>75</sup> Inter-American Court of Human Rights, judgment of 28 November 2007, *Saramaka People v. Suriname*, para. 85. Among other sources, the Court drew on the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), whose scope includes tribal as well as indigenous peoples.

<sup>76</sup> *Ibid.*, para. 127. See also paras. 96, 115 and 121.

<sup>77</sup> *Ibid.*, paras. 128-140. See, generally, Inter-American Commission on Human Rights, *Indigenous peoples, Afro-descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities* (2015).

<sup>78</sup> See also general recommendation No. 34 (2011) on racial discrimination against people of African descent, para. 4.

<sup>79</sup> The Human Rights Council open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas may provide another opportunity for such clarification.

biodiversity, they must act in accordance with the human rights of those who have long-standing, close relationships with their ancestral territories.<sup>80</sup>

59. Protecting the rights of those who live closest to nature is not just required by human rights law; it is also often the best or only way to ensure the protection of biodiversity. The knowledge and practices of the people who live in biodiversity-rich ecosystems are vital to the conservation and sustainable use of those ecosystems. It has been estimated that territories and areas conserved by indigenous peoples and local communities (called, for historical reasons, ICCAs, for indigenous and community conserved areas) cover at least as much land surface as protected areas administered by Governments.<sup>81</sup> Protecting the human rights of indigenous peoples and local communities has been shown to result in improved protection for ecosystems and biodiversity.<sup>82</sup> Conversely, trying to conserve biodiversity by excluding them from a protected area typically results in failure.<sup>83</sup> In short, respect for human rights should be seen as complementary, rather than contradictory, to environmental protection.<sup>84</sup>

60. International and national institutions have recognized the importance of respecting the rights of indigenous peoples and local communities who closely depend on natural resources and of supporting their efforts to conserve and sustainably use biodiversity.<sup>85</sup> In particular, article 8 (j) of the Convention on Biological Diversity requires each party, “subject to its national legislation”, to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity”, to promote their wider application and to encourage the equitable sharing of benefits. Article 10 (c) urges parties to protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements. The parties to the Convention have built on these provisions, including through the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention, which, among other things, provides for “the prior informed consent or approval and involvement of indigenous and local communities” in relation to access to traditional knowledge associated with genetic resources (art. 7), and requires that the parties take steps to ensure

<sup>80</sup> See African Commission on Human and Peoples’ Rights, *Endorois Welfare Council v. Kenya*, No. 276/2003 (2010); Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, judgment of 25 November 2015.

<sup>81</sup> Ashish Kothari and others, *Recognising and Supporting Territories and Areas Conserved by Indigenous Peoples and Local Communities* (secretariat of the Convention on Biological Diversity, Montreal, 2012), p. 30.

<sup>82</sup> See, e.g., World Resources Institute, *Climate Benefits, Tenure Costs: The Economic Case for Securing Indigenous Land Rights in the Amazon* (2016).

<sup>83</sup> See Marc Galvin and Tobias Haller, eds., *People, Protected Areas and Global Change: Participatory Conservation in Latin America, Africa, Asia and Europe* (2008).

<sup>84</sup> See *Kaliña and Lokono Peoples v. Suriname*, para. 173.

<sup>85</sup> See, e.g., the revised World Bank Environmental and Social Framework, whose safeguards, including the requirement of free, prior and informed consent, cover “sub-Saharan African historically underserved traditional local communities” as well as indigenous peoples; the statement in September 2016 by the Office of the Prosecutor of the International Criminal Court that it will give particular consideration to prosecuting Rome Statute crimes that are committed by, or that result in, “the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land”; the Convention for the Safeguarding of Intangible Cultural Heritage; the Food and Agriculture Organization’s Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security; and the Indian Forest Rights Act of 2006.

that the benefits arising from utilization of genetic resources and traditional knowledge are shared in a fair and equitable way with the communities concerned (art. 5).

61. The Conference of the Parties has taken a number of other decisions that recognize and support the role of indigenous peoples and local communities in the protection of biodiversity,<sup>86</sup> including by encouraging the parties to the Convention to support their management of ICCAs and protected areas.<sup>87</sup> The strategic plan for 2011-2020 (see paras. 45-46 above) includes the goals of restoring and safeguarding ecosystems that provide essential services, taking into account the needs of indigenous and local communities as well as women, the poor and the vulnerable (target 14) and respecting and fully integrating the traditional knowledge and practices of indigenous and local communities in the implementation of the Convention (target 18). Some States have reported significant progress in supporting the traditional and participatory management of natural resources.<sup>88</sup>

62. Conservation organizations have also committed to respect and support the rights of indigenous peoples and local communities. In Durban in 2003, the World Parks Congress of the International Union for Conservation of Nature (IUCN), an umbrella organization with more than 1,000 members, including States, government agencies and civil society organizations, adopted a new paradigm for protected areas. Replacing exclusionary “fortress” models of conservation, the Durban Accord announced, among other things, that protected areas should be established and managed in full compliance with the rights of indigenous peoples and local communities (see A/71/229, paras. 39-41). Subsequent IUCN World Parks and World Conservation Congresses have continued to endorse and develop this approach, including by expressing support for ICCAs.

63. Despite these commitments, however, substantial gaps in implementation remain. In December 2016, the Conference of the Parties to the Convention on Biological Diversity noted “the limited progress made towards Aichi Biodiversity Targets 18 and 14 at the national level and in mainstreaming Article 8 (j) and related provisions into various areas of work under the Convention, including capacity development and the participation of indigenous peoples and local communities in the work of the Convention”, and also noted with concern that only a limited number of national biodiversity strategies and action plans even refer to indigenous peoples and local communities or customary sustainable use.<sup>89</sup> Similarly, the Special Rapporteur on the rights of indigenous peoples has identified shortcomings in implementation of the Durban commitments, including the failure of IUCN and most other conservation organizations to institute effective grievance mechanisms (see A/71/229, para. 49). On a more positive note, in 2016 the World Conservation Congress amended the IUCN statute to make it easier for indigenous peoples’ organizations to join IUCN, which should facilitate closer ties with conservation organizations.

64. Other good practices in support of indigenous peoples and local communities also deserve to be highlighted and replicated. A shining example is the Small Grants Programme of the Global Environment Facility, implemented by the United Nations Development Programme (UNDP), which over the past 25 years has funded 20,000 projects in over 125 countries through grants averaging about \$25,000 each. Nearly half of the grants have supported indigenous and local efforts aimed at the conservation and sustainable use of biodiversity. On his visit to Madagascar, the Special Rapporteur observed how one of these

<sup>86</sup> See, e.g., decision XIII/18, which contains the Mo’otz Kuxtal voluntary guidelines on measures to ensure the free, prior and informed consent, or approval and involvement, of indigenous peoples and local communities; and decision VII/16, which contains the Akwé: Kon voluntary guidelines for the conduct of social and environmental impact assessments.

<sup>87</sup> See, e.g., decision XII/12 and decision VII/28.

<sup>88</sup> Secretariat of the Convention on Biological Diversity, *Global Biodiversity Outlook 4*, pp. 85 and 115.

<sup>89</sup> Decision XIII/1, paras. 8-9.

grants has directly assisted a local community to conserve endangered wildlife. Another excellent practice is the UNDP Equator Initiative, which works to support local solutions for sustainable development by building local capacity, sharing good practices and recognizing successes through its annual Equator Prizes.<sup>90</sup>

#### **IV. Conclusions and recommendations**

**65. Biodiversity is necessary for ecosystem services that support the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and culture. In order to protect human rights, States have a general obligation to protect ecosystems and biodiversity.**

**66. Biodiversity around the world is rapidly being degraded and destroyed, with grave and far-reaching implications for human well-being. A human rights perspective:**

- (a) Helps to clarify that the loss of biodiversity also undermines the full enjoyment of human rights;**
- (b) Heightens the urgent need to protect biodiversity;**
- (c) Helps to promote policy coherence and legitimacy in the conservation and sustainable use of biodiversity.**

**67. Procedurally, States should:**

- (a) Assess the social and environmental impacts of all proposed projects and policies that may affect biodiversity;**
- (b) Provide public information about biodiversity, including environmental and social assessments of proposals, and ensure that the relevant information is provided to those affected in a language that they understand;**
- (c) Provide for and facilitate public participation in biodiversity-related decisions;**
- (d) Provide access to effective remedies for the loss and degradation of biodiversity.**

**68. States should recognize that defenders of biodiversity are also human rights defenders, and implement the recommendations of the Special Rapporteur on the situation of human rights defenders on providing a safe and enabling environment for human rights defenders in general (see, e.g., A/HRC/25/55) and for environmental human rights defenders in particular (see A/71/281).**

**69. Substantively, every State should establish legal and institutional frameworks for the protection of biodiversity that:**

- (a) Regulate harm to biodiversity from private actors as well as government agencies;**
- (b) Adopt and implement standards that accord with international standards, are non-retrogressive and non-discriminatory, and respect and protect the rights of those who are particularly vulnerable to the loss of biodiversity and ecosystem services.**

<sup>90</sup> See <https://sgp.undp.org> and [www.equatorinitiative.org](http://www.equatorinitiative.org).

70. States have adopted agreements and initiatives to protect biodiversity, including a comprehensive strategic plan for 2011-2020 under the auspices of the Convention on Biological Diversity. However, States are not on track to meet the targets in the strategic plan. States should redouble their efforts to achieve the targets, including by ensuring that their national biodiversity strategies and action plans reflect the necessary scope and ambition. Donor States and organizations should increase support to ensure that all States have the capacity to meet the targets, and safeguards should ensure that biodiversity-related projects do not violate human rights.

71. States must do more to respect and protect the rights of those who are most vulnerable to the degradation and loss of biodiversity. States should recognize that members of non-indigenous minority communities that have separate cultural traditions and close material and cultural ties to their ancestral territories have rights that are similar (but not simply identical) to those of indigenous peoples, and States should respect and protect their rights as well as those of indigenous peoples. States should support indigenous and local efforts to protect biodiversity, including through ICCAs, recognizing that the traditional knowledge and commitment of indigenous peoples and local communities often make them uniquely qualified to do so.

72. Businesses should respect human rights in their biodiversity-related actions, including by:

- (a) Complying with the Guiding Principles on Business and Human Rights in all actions that may affect biodiversity and ecosystems;
- (b) Following the Akwé: Kon voluntary guidelines;
- (c) Implementing the recommendations of the Special Rapporteur on the rights of indigenous peoples with respect to extractive activities (A/HRC/24/41);
- (d) Not seeking or exploiting concessions in protected areas or ICCAs.

73. Conservation organizations should increase their efforts to fulfil their commitments to a rights-based approach to conservation, including by implementing the recommendations of the Special Rapporteur on the rights of indigenous peoples (see A/71/229, paras. 77-82), and by:

- (a) Sharing good practices;
  - (b) Building more active partnerships with human rights organizations;
  - (c) Conducting human rights impact assessments;
  - (d) Establishing effective grievance mechanisms.
-



# General Assembly

Distr.: General  
24 January 2018

Original: English

---

## Human Rights Council

Thirty-seventh session

26 February–23 March 2018

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

#### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the 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, in which he presents framework principles on human rights and the environment, addresses the human right to a safe, clean, healthy and sustainable environment and looks ahead to the next steps in the evolving relationship between human rights and the environment.

GE.18-01090(E)



\* 1 8 0 1 0 9 0 \*

Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



## **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### **I. Introduction**

1. The present report is the final report of the Special Rapporteur to the Human Rights Council. It presents framework principles on human rights and the environment, addresses the human right to a healthy environment and looks forward to the next steps in the evolving relationship between human rights and the environment.

2. The mandate was established in March 2012 by the Council in its resolution 19/10, in which it decided to appoint an independent expert with a mandate to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and to identify and promote best practices relating to the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking. John H. Knox was appointed to the position in August 2012. In his first report, presented to the Council in March 2013, he emphasized that human rights and the environment are interdependent (A/HRC/22/43). A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of a vast range of human rights, including the rights to life, health, food, water and development. At the same time, the exercise of human rights, including the rights to information, participation and remedy, is vital to the protection of the environment.

3. Over the first two years of the mandate, the Independent Expert sought to map the human rights obligations relating to the environment in more detail. He held a series of regional consultations around the world and, with the help of attorneys and academics working pro bono, reviewed hundreds of statements of treaty bodies, regional human rights tribunals, special procedure mandate holders and other human rights authorities that had applied human rights norms to environmental issues. He described the statements in 14 reports, each of which addressed one source or set of sources. He found that despite the diversity of the sources, their views on the relationship of human rights law and the environment were remarkably coherent. His second report, presented in March 2014, summarized these views (A/HRC/25/53). Virtually every source reviewed identified human rights whose enjoyment was infringed or threatened by environmental harm, and agreed that States had obligations under human rights law to protect against such harm. The obligations included procedural obligations (such as duties to provide information, facilitate participation and provide access to remedies), substantive obligations (including to regulate private actors) and heightened obligations to those in particularly vulnerable situations.

4. On the basis of his research and regional consultations, the Independent Expert also identified good practices in the use of these obligations, and in his next report to the Council, presented in March 2015, he described more than 100 such good practices (A/HRC/28/61). He published more detailed descriptions of each of the good practices on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR), and made them available in a searchable database at <http://environmentalrightsdatabase.org/>.

5. In March 2015, in its resolution 28/11, the Human Rights Council decided to extend the mandate of John H. Knox as a special rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment for a period of three years. The Council encouraged him to continue to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and to identify and promote good practices relating to those obligations. He has submitted reports on specific aspects of that relationship, including a report on climate change and human rights in 2016 (A/HRC/31/52), a report on biodiversity and human rights in 2017 (A/HRC/34/49), and a report on children's rights and the environment to the current session of the Council (A/HRC/37/58).

6. In resolution 28/11, the Council also encouraged the Special Rapporteur to promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, to disseminate his findings by continuing to give particular emphasis to practical solutions with regard to their implementation and to work on identifying challenges and obstacles to the full realization of such obligations. The Special Rapporteur presented a report in March 2016 with specific recommendations on implementation of the human rights obligations relating to the environment (A/HRC/31/53). In his second term, he has promoted implementation of the obligations in many ways, including by partnering with the United Nations Environment Programme on a series of judicial workshops on constitutional rights to a healthy environment, supporting the United Nations Institute for Training and Research in the development of an online course on human rights and the environment and working with the Universal Rights Group to develop a website for environmental human rights defenders, <https://www.environment-rights.org/>, as well as by undertaking country visits and receiving communications on violations.

## II. Framework principles on human rights and the environment

7. To facilitate implementation of the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur was urged to develop and disseminate guidance that clearly describes the relevant norms and is easy to understand and apply (see A/HRC/31/53, para. 69). In October 2017, the Special Rapporteur published draft guidelines on human rights and the environment and invited written comments. He also held a public consultation and an expert seminar, which included representatives of Governments, international organizations, civil society organizations and academics. He took into account the input received at the consultation and the seminar, as well as more than 50 written comments, in preparing the framework principles on human rights and the environment that are annexed to the present report.

8. The 16 framework principles set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Each framework principle has a commentary that elaborates on it and further clarifies its meaning. The framework principles and commentary do not create new obligations. Rather, they reflect the application of existing human rights obligations in the environmental context. As the Special Rapporteur stated in the mapping report (A/HRC/25/53), he understands that not all States have formally accepted all of these norms. While many of the obligations described in the framework principles and commentary are based directly on treaties or binding decisions from human rights tribunals, others draw on statements of human rights bodies that have the authority to interpret human rights law but not necessarily to issue binding decisions.<sup>1</sup>

9. The coherence of these interpretations, however, is strong evidence of the converging trends towards greater uniformity and certainty in the understanding of human rights obligations relating to the environment. These trends are further supported by State practice, including in international environmental instruments and before human rights bodies. As a result, the Special Rapporteur believes that States should accept the framework principles as a reflection of actual or emerging international human rights law. He is confident that, at a bare minimum, States will see them as best practices that they should move to adopt as expeditiously as possible.

---

<sup>1</sup> To avoid making the document too long and unwieldy, the framework principles and commentary do not cite all of the human rights sources on which they rely. A more complete list of sources is available on the OHCHR website. Although the framework principles and commentary do not attempt to restate obligations in areas other than human rights law, they do take into account relevant international environmental sources, such as the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (the Bali Guidelines), adopted by the Governing Council of the United Nations Environment Programme in 2010.

10. After consideration, the Special Rapporteur chose the name “framework principles” because he thought that it best reflected the nature of the document. The framework principles and commentary provide a sturdy basis for understanding and implementing human rights obligations relating to the environment, but they are in no sense the final word. The relationship between human rights and the environment has countless facets, and our understanding of it will continue to grow for many years to come. These framework principles do not purport to describe all of the human rights obligations that can be brought to bear on environmental issues today, much less attempt to predict those that may evolve in the future. The goal is simply to describe the main human rights obligations that apply in the environmental context, in order to facilitate their practical implementation and further development. To that end, the Special Rapporteur urges States, international organizations and civil society organizations to disseminate and publicize the framework principles, and to take them into account in their own activities.

### **III. The human right to a safe, clean, healthy and sustainable environment**

11. An unusual aspect of the development of human rights norms relating to the environment is that they have not relied primarily on the explicit recognition of a human right to a safe, clean, healthy and sustainable environment — or, more simply, a human right to a healthy environment. Although this right has been recognized, in various forms, in regional agreements and in most national constitutions, it has not been adopted in a human rights agreement of global application, and only one regional agreement, the African Charter on Human and Peoples’ Rights, provides for its interpretation in decisions by a review body.

12. Treaty bodies, regional tribunals, special rapporteurs and other international human rights bodies have instead applied human rights law to environmental issues by “greening” existing human rights, including the rights to life and health. As the mapping report explained and the framework principles demonstrate, this process has been quite successful, creating an extensive jurisprudence on human rights and the environment. In retrospect, this development is not as surprising as it may have seemed when it first began, over two decades ago. Environmental harm interferes with the full enjoyment of a wide spectrum of human rights, and the obligations of States to respect human rights, to protect human rights from interference and to fulfil human rights apply in the environmental context no less than in any other.

13. Explicit recognition of the human right to a healthy environment thus turned out to be unnecessary for the application of human rights norms to environmental issues. At the same time, it is significant that the great majority of the countries in the world have recognized the right at the national or regional level, or both. Based on the experience of the countries that have adopted constitutional rights to a healthy environment, recognition of the right has proved to have real advantages. It has raised the profile and importance of environmental protection and provided a basis for the enactment of stronger environmental laws. When applied by the judiciary, it has helped to provide a safety net to protect against gaps in statutory laws and created opportunities for better access to justice. Courts in many countries are increasingly applying the right, as is illustrated by the interest in the regional judicial workshops held by the United Nations Environment Programme and the Special Rapporteur.

14. On the basis of this experience, the Special Rapporteur recommends that the Human Rights Council consider supporting the recognition of the right in a global instrument. A model could be the rights to water and sanitation, which, like the right to a healthy environment, are not explicitly recognized in United Nations human rights treaties but are clearly necessary to the full enjoyment of human rights. In 2010, in its resolution 64/292, the General Assembly recognized “the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights”. The

General Assembly could adopt a similar resolution that recognizes the right to a safe, clean, healthy and sustainable environment, another right that is essential for the full enjoyment of life and all human rights.<sup>2</sup>

15. States may be understandably reluctant to recognize a “new” human right if its content is uncertain. To be sure that a right will be taken seriously, it is important to be clear about its implications. The Special Rapporteur notes that one of the primary goals of his work on the mandate has been to clarify what human rights law requires with respect to environmental protection, including through the mapping project and these framework principles. As a result, the “human right to a healthy environment” is not an empty vessel waiting to be filled; on the contrary, its content has already been clarified, through recognition by human rights authorities that a safe, clean, healthy and sustainable environment is necessary for the full enjoyment of the human rights to life, health, food, water, housing and so forth. Here, too, the right is similar to the rights to water and sanitation, whose content had been addressed in detail by the Committee on Economic, Social and Cultural Rights and Catarina de Albuquerque, the first Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, before the General Assembly acted in 2010.

16. Even without formal recognition, the term “the human right to a healthy environment” is already being used to refer to the environmental aspects of the entire range of human rights that depend on a safe, clean, healthy and sustainable environment. The use of the term in this way — and, for that matter, the adoption of a resolution recognizing the right — does not change the legal content of obligations that are based on existing human rights law. Nevertheless, it has real advantages. It raises awareness that human rights norms require protection of the environment and highlights that environmental protection is on the same level of importance as other human interests that are fundamental to human dignity, equality and freedom. It also helps to ensure that human rights norms relating to the environment continue to develop in a coherent and integrated manner. Recognition of the right in a General Assembly resolution would further strengthen all of these benefits.

#### IV. Looking forward

17. Although the relationship of human rights and the environment has evolved rapidly over the past two decades, and even more so over the past five years, much remains to be done to clarify and implement the human rights obligations relating to a safe, clean, healthy and sustainable environment. The Special Rapporteur encourages the Human Rights Council to continue to be actively involved in the development of this relationship, including by renewing the mandate.

18. For example, more work is necessary to clarify how human rights norms relating to the environment apply to specific areas, including issues of gender and other types of discrimination, the responsibilities of businesses in relation to human rights and the environment, the effects of armed conflict on human rights and the environment, and obligations of international cooperation in relation to multinational corporations and transboundary harm.

19. More work, too, can be done to institutionalize support for capacity-building, including by instituting an annual forum on human rights and environmental issues; holding conferences for national human rights institutions on environmental matters; continuing to hold judicial workshops on human rights and the environment; instituting similar workshops for officials at environmental, mining and other agencies; strengthening

---

<sup>2</sup> A resolution by the General Assembly is not the only possible instrument through which a right to a healthy environment could be formally recognized. The Special Rapporteur notes that at the seventy-second session of the General Assembly, the Government of France presented for consideration a Global Pact for the Environment, article 1 of which indicates that “Every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment”. However, a resolution may be adopted more quickly and easily than an international agreement.

accountability mechanisms for human rights violations in connection with conservation activities; and mainstreaming human rights into the work of international institutions working on development and environmental issues. In this last respect, the Special Rapporteur applauds the recent announcement by the United Nations Environment Programme of a new “environmental rights initiative”, designed in part to support environmental human rights defenders. He encourages OHCHR and the United Nations Environment Programme to continue to build on their partnership.

20. As Victor Hugo famously said, it is impossible to resist an idea whose time has come. The interdependence of human rights and the environment is an idea whose time is here. Over the past five years, the Special Rapporteur has made over 50 trips, to approximately 25 countries. Everywhere he has gone, he has met people who are bringing human rights to bear on environmental threats, often at great personal risk. From attorneys in Mexico to park rangers in Mongolia, from professors in China to community activists in Madagascar, from a mother who founded an environmental organization in Kenya to conservationists in Sweden to judges in Costa Rica, from indigenous leaders in Brazil to climate negotiators in Paris to international civil servants in Geneva and Nairobi, people in every country are striving for a world in which everyone can enjoy the human rights that depend upon a safe, clean, healthy and sustainable environment. It has been a great honour to support them in their efforts.

## Annex

### Framework principles on human rights and the environment

1. Human beings are part of nature, and our human rights are intertwined with the environment in which we live. Environmental harm interferes with the enjoyment of human rights, and the exercise of human rights helps to protect the environment and to promote sustainable development.
2. The framework principles on human rights and the environment summarize the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. They provide integrated and detailed guidance for practical implementation of these obligations, and a basis for their further development as our understanding of the relationship of human rights and the environment continues to evolve.
3. The framework principles are not exhaustive: many national and international norms are relevant to human rights and environmental protection, and nothing in the framework principles should be interpreted as limiting or undermining standards that provide higher levels of protection under national or international law.

#### Framework principle 1

**States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.**

#### Framework principle 2

**States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.**

#### *Commentary on framework principles 1 and 2*

4. Human rights and environmental protection are interdependent. 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, which is recognized in regional agreements and most national constitutions.<sup>1</sup> At the same time, the exercise of human rights, including rights to freedom of expression and association, to education and information, and to participation and effective remedies, is vital to the protection of the environment.
5. The obligations of States to respect human rights, to protect the enjoyment of human rights from harmful interference,<sup>2</sup> and to fulfil human rights by working towards their full realization<sup>3</sup> all apply in the environmental context. 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,

<sup>1</sup> See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, art. 1; African Charter on Human and Peoples' Rights, art. 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 11; Arab Charter on Human Rights, art. 38; and ASEAN Human Rights Declaration, art. 28. More than 100 States have recognized the right at the national level.

<sup>2</sup> See, for example, Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 5.

<sup>3</sup> See, for example, Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 33.

other private actors and natural causes; and take effective steps to ensure the conservation and sustainable use of the ecosystems and biological diversity on which the full enjoyment of human rights depends. While it may not always be possible to prevent all environmental harm that interferes with the full enjoyment of human rights, States should undertake due diligence to prevent such harm and reduce it to the extent possible, and provide for remedies for any remaining harm.

6. At the same time, States must fully comply with their obligations in respect of human rights, such as freedom of expression, that are exercised in relation to the environment. Such obligations not only have independent bases in human rights law; they are also required in order to respect, protect and fulfil the human rights whose enjoyment depends on a safe, clean, healthy and sustainable environment.

### **Framework 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.**

##### *Commentary*

7. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination<sup>4</sup> apply to the equal enjoyment of human rights relating to a safe, clean, healthy and sustainable environment. States therefore have obligations, among others, 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.

8. Discrimination may be direct, when someone is treated less favourably than another person in a similar situation for a reason related to a prohibited ground, or indirect, when facially neutral laws, policies or practices have a disproportionate impact on the exercise of human rights as distinguished by prohibited grounds of discrimination.<sup>5</sup> In the environmental context, direct discrimination may include, for example, failing to ensure that members of disfavoured groups have the same access as others to information about environmental matters, to participation in environmental decision-making, or to remedies for environmental harm (framework principles 7, 9 and 10). In the case of transboundary environmental harm, States should provide for equal access to information, participation and remedies without discriminating on the basis of nationality or domicile.

9. Indirect discrimination may arise, for example, when measures that adversely affect ecosystems, such as mining and logging concessions, have disproportionately severe effects on communities that rely on the ecosystems. Indirect discrimination can also include measures such as authorizing toxic and hazardous facilities in large numbers in communities that are predominantly composed of racial or other minorities, thereby disproportionately interfering with their rights, including their rights to life, health, food and water. Like directly discriminatory measures, such indirect differential treatment is

---

<sup>4</sup> For example, International Covenant on Civil and Political Rights, arts. 2 (1) and 26; International Covenant on Economic, Social and Cultural Rights, art. 2 (2); International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2 and 5; Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Convention on the Rights of the Child, art. 2; Convention on the Rights of Persons with Disabilities, art. 5. The term “discrimination” here refers to any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms. Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 7.

<sup>5</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 10.

prohibited unless it meets strict requirements of legitimacy, necessity and proportionality.<sup>6</sup> More generally, to address indirect as well as direct discrimination, States must pay attention to historical or persistent prejudice against groups of individuals, recognize that environmental harm can both result from and reinforce existing patterns of discrimination, and take effective measures against the underlying conditions that cause or help to perpetuate discrimination.<sup>7</sup> In addition to complying with their obligations of non-discrimination, States should take additional measures to protect those who are most vulnerable to, or at particular risk from, environmental harm (framework principles 14 and 15).

#### **Framework 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.**

##### *Commentary*

10. Human rights defenders include individuals and groups who strive to protect and promote human rights relating to the environment (see A/71/281, para. 7). Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders. They are among the human rights defenders most at risk, and the risks are particularly acute for indigenous peoples and traditional communities that depend on the natural environment for their subsistence and culture.

11. Like other human rights defenders, environmental human rights defenders are entitled to all of the rights and protections set out in 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 (Declaration on Human Rights Defenders), including the right to be protected in their work and the right to strive for the protection and realization of human rights at the national and international levels. To that end, States must provide a safe and enabling environment for defenders to operate free from threats, harassment, intimidation and violence. The requirements for such an environment include that States: adopt and implement laws that protect human rights defenders in accordance with international human rights standards;<sup>8</sup> publicly recognize the contributions of human rights defenders to society and ensure that their work is not criminalized or stigmatized; develop, in consultation with human rights defenders, effective programmes for protection and early warning; provide appropriate training for security and law enforcement officials; ensure the prompt and impartial investigation of threats and violations and the prosecution of alleged perpetrators; and provide for effective remedies for violations, including appropriate compensation (see A/71/281, A/66/203 and A/HRC/25/55, paras. 54–133).

<sup>6</sup> Ibid., para. 13.

<sup>7</sup> Ibid., para. 8.

<sup>8</sup> See Model Law for the Recognition and Protection of Human Rights Defenders, at [www.ishr.ch/sites/default/files/documents/model\\_law\\_full\\_digital\\_updated\\_15june2016.pdf](http://www.ishr.ch/sites/default/files/documents/model_law_full_digital_updated_15june2016.pdf).

## Framework principle 5

### **States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.**

#### *Commentary*

12. The obligations of States to respect and protect the rights to freedom of expression, association and peaceful assembly<sup>9</sup> encompass the exercise of those rights in relation to environmental matters. States must ensure that these rights are protected whether they are being exercised within structured decision-making procedures or in other forums, such as the news or social media, and whether or not they are being exercised in opposition to policies or projects favoured by the State.

13. Restrictions on the exercise of these rights are permitted only if they are provided by law and necessary in a democratic society to protect the rights of others, or to protect national security, public order, or public health or morals. These restrictions must be narrowly tailored to avoid undermining the rights. For example, blanket prohibitions on protests surrounding the operations of mining, forestry or other resource extraction companies are unjustifiable (see A/HRC/29/25, para. 22). 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. States should never hinder the access of individuals or associations to international bodies, or their right to seek, receive and use resources from foreign as well as domestic sources.<sup>10</sup> When violence occurs in an otherwise peaceful assembly or protest, States have a duty to distinguish between peaceful and non-peaceful demonstrators, take measures to de-escalate tensions and hold the violent individuals — not the organizers — to account for their actions. The potential for violence is not an excuse to interfere with or disperse otherwise peaceful assemblies (see A/HRC/29/25, para. 41).

14. States must also protect the exercise of these rights from interference by businesses and other private actors. States must ensure that civil laws relating to defamation and libel are not misused to repress the exercise of these rights. States should protect against the repression of legitimate advocacy by private security enterprises, and States may not cede their own law enforcement responsibilities to such enterprises or other private actors.

## Framework principle 6

### **States should provide for education and public awareness on environmental matters.**

#### *Commentary*

15. States have agreed that the education of the child shall be directed to, among other things, the development of respect for human rights and the natural environment.<sup>11</sup> Environmental education should begin early and continue throughout the educational process. It should increase students' understanding of the close relationship between humans and nature, help them to appreciate and enjoy the natural world and strengthen their capacity to respond to environmental challenges.

16. Increasing the public awareness of environmental matters should continue into adulthood. To ensure that adults as well as children understand environmental effects on their health and well-being, States should make the public aware of the specific environmental risks that affect them and how they may protect themselves from those risks.

<sup>9</sup> See Universal Declaration of Human Rights, arts. 19–20; International Covenant on Civil and Political Rights, arts. 19 and 21–22.

<sup>10</sup> See Declaration on Human Rights Defenders, arts. 9 (4) and 13.

<sup>11</sup> See Convention on the Rights of the Child, art. 29.

As part of increasing public awareness, States should build the capacity of the public to understand environmental challenges and policies, so that they may fully 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). States should tailor environmental education and public awareness programmes to the culture, language and environmental situation of particular populations.

## Framework 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.**

### *Commentary*

17. The human right of all persons to seek, receive and impart information<sup>12</sup> includes information on environmental matters. Public access to environmental information enables individuals to understand how environmental harm may undermine their rights, including the rights to life and health, and supports their exercise of other rights, including the rights to expression, association, participation and remedy.

18. Access to environmental information has two dimensions. First, States should regularly collect, update and disseminate environmental information, including information about: the quality of the environment, including air and water; pollution, waste, chemicals and other potentially harmful substances introduced into the environment; threatened and actual environmental impacts on human health and well-being; and relevant laws and policies. In particular, in situations involving imminent threat of harm to human health or the environment, States must ensure that all information that would enable the public to take protective measures is disseminated immediately to all affected persons, regardless of whether the threats have natural or human causes.

19. Second, States should provide affordable, effective and timely access to environmental information held by public authorities, upon the request of any person or association, without the need to show a legal or other interest. Grounds for refusal of a request should be set out clearly and construed narrowly, in light of the public interest in favour of disclosure. States should also provide guidance to the public on how to obtain environmental information.

## Framework principle 8

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

### *Commentary*

20. Prior assessment of the possible environmental impacts of proposed projects and policies is generally required by national laws, and the elements of effective environmental assessment are widely understood: the assessment should be undertaken as early as possible in the decision-making process for any proposal that is likely to have significant effects on the environment; the assessment should provide meaningful opportunities for the public to participate, should consider alternatives to the proposal, and should address all potential

<sup>12</sup> See Universal Declaration of Human Rights, art. 19; International Covenant on Civil and Political Rights, art. 19.

environmental impacts, including transboundary effects and cumulative effects that may occur as a result of the interaction of the proposal with other activities; the assessment should result in a written report that clearly describes the impacts; and the assessment and the final decision should be subject to review by an independent body. The procedure should also provide for monitoring of the proposal as implemented, to assess its actual impacts and the effectiveness of protective measures.<sup>13</sup>

21. To protect against interference with the full enjoyment of human rights, the assessment of environmental impacts should also examine the possible effects of the environmental impacts of proposed projects and policies on the enjoyment of all relevant rights, including the rights to life, health, food, water, housing and culture. As part of that assessment, the procedure should examine whether the proposal will comply with obligations of non-discrimination (framework principle 3), applicable domestic laws and international agreements (framework principles 11 and 13) and the obligations owed to those who are particularly vulnerable to environmental harm (framework principles 14 and 15). The assessment procedure itself must comply with human rights obligations, including by providing public information about the assessment and making the assessment and the final decision publicly available (framework principle 7), facilitating public participation by those who may be affected by the proposed action (framework principle 9), and providing for effective legal remedies (framework principle 10).

22. Business enterprises should conduct human rights impact assessments in accordance with the Guiding Principles on Business and Human Rights, which provide that businesses “should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships”, include “meaningful consultation with potentially affected groups and other relevant stakeholders”, “integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action” (see Guiding Principles 18–19).

## Framework 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 the decision-making process.**

#### *Commentary*

23. The right of everyone to take part in the government of their country and in the conduct of public affairs<sup>14</sup> includes participation in decision-making related to the environment. Such decision-making includes the development of policies, laws, regulations, projects and activities. Ensuring that these environmental decisions take into account the views of those who are affected by them increases public support, promotes sustainable development and helps to protect the enjoyment of rights that depend on a safe, clean, healthy and sustainable environment.

24. To be effective, public participation must be open to all members of the public who may be affected and occur early in the decision-making process. States should provide for the prior assessment of the impacts of proposals that may significantly affect the environment, and ensure that all relevant information about the proposal and the decision-making process is made available to the affected public in an objective, understandable, timely and effective manner (see framework principles 7 and 8).

25. With respect to the development of policies, laws and regulations, drafts should be publicly available and the public should be given opportunities to comment directly or

<sup>13</sup> United Nations Environment Programme, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach* (2004), p. 42.

<sup>14</sup> See Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25.

through representative bodies. With respect to proposals for specific projects or activities, States should inform the affected public of their opportunities to participate at an early stage of the decision-making process and provide them with relevant information, including information about: the proposed project or activity and its possible impacts on human rights and the environment; the range of possible decisions; and the decision-making procedure to be followed, including the time schedule for comments and questions and the time and place of any public hearings.

26. States must provide members of the public with an adequate opportunity to express their views, and take additional steps to facilitate the participation of women and of members of marginalized communities (framework principle 14). States must ensure that the relevant authorities take into account the expressed views of the public in making their final decisions, that they explain the justifications for the decisions and that the decisions and explanations are made public.

## **Framework principle 10**

### **States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.**

#### *Commentary*

27. The obligations of States to provide for access to judicial and other procedures for effective remedies for violations of human rights<sup>15</sup> encompass remedies for violations of human rights relating to the environment. States must therefore provide for effective remedies for violations of the obligations set out in these framework principles, including those relating to the rights of freedom of expression, association and peaceful assembly (framework principle 5), access to environmental information (framework principle 7) and public participation in environmental decision-making (framework principle 9).

28. In addition, in connection with the obligations to establish, maintain and enforce substantive environmental standards (framework principles 11 and 12), each State should ensure that individuals have access to effective remedies against private actors, as well as government authorities, for failures to comply with the laws of the State relating to the environment.

29. To provide for effective remedies, States should ensure that individuals have access to judicial and administrative procedures that meet basic requirements, including that the procedures: (a) are impartial, independent, affordable, transparent and fair; (b) review claims in a timely manner; (c) have the necessary expertise and resources; (d) incorporate a right of appeal to a higher body; and (e) issue binding decisions, including for interim measures, compensation, restitution and reparation, as necessary to provide effective remedies for violations. The procedures should be available for claims of imminent and foreseeable as well as past and current violations. States should ensure that decisions are made public and that they are promptly and effectively enforced.

30. States should provide guidance to the public about how to seek access to these procedures, and should help to overcome obstacles to access such as language, illiteracy, expense and distance. Standing should be construed broadly, and States should recognize the standing of indigenous peoples and other communal landowners to bring claims for violations of their collective rights. All those pursuing remedies must be protected against reprisals, including threats and violence. States should protect against baseless lawsuits aimed at intimidating victims and discouraging them from pursuing remedies.

<sup>15</sup> See, for example, Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2 (3).

## Framework principle 11

### **States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.**

#### *Commentary*

31. To protect against environmental harm and to take necessary measures for the full realization of human rights that depend on the environment, 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.

32. Ideally, environmental standards would be set and implemented at levels that would prevent all environmental harm from human sources and ensure a safe, clean, healthy and sustainable environment. However, limited resources may prevent the immediate realization of the rights to health, food, water and other economic, social and cultural rights. The obligation of States to achieve progressively the full realization of these rights by all appropriate means<sup>16</sup> requires States to take deliberate, concrete and targeted measures towards that goal, but States have some discretion in deciding which means are appropriate in light of available resources.<sup>17</sup> Similarly, human rights bodies applying civil and political rights, such as the rights to life and to private and family life, have held that States have some discretion to determine appropriate levels of environmental protection, taking into account the need to balance the goal of preventing all environmental harm with other social goals.<sup>18</sup>

33. This discretion is not unlimited. One constraint is that decisions as to the establishment and implementation of appropriate levels of environmental protection must always comply with obligations of non-discrimination (framework principle 3). Another constraint is the strong presumption against retrogressive measures in relation to the progressive realization of economic, social and cultural rights.<sup>19</sup> Other factors that should be taken into account in assessing whether environmental standards otherwise respect, promote and fulfil human rights include the following:

(a) The standards should result from a procedure that itself complies with human rights obligations, including those relating to the rights of freedom of expression, freedom of association and peaceful assembly, information, participation and remedy (framework principles 4–10);

(b) The standard should take into account and, to the extent possible, be consistent with all relevant international environmental, health and safety standards, such as those promulgated by the World Health Organization;

(c) The standard should take into account the best available science. However, the lack of full scientific certainty should not be used to justify postponing effective and proportionate measures to prevent environmental harm, especially when there are threats of serious or irreversible damage.<sup>20</sup> States should take precautionary measures to protect against such harm;

<sup>16</sup> See International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

<sup>17</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

<sup>18</sup> See, for example, European Court of Human Rights, *Hatton and others v. United Kingdom* (application No. 36022/97), judgment of 8 July 2003, para. 98. See also Rio Declaration on Environment and Development, principle 11.

<sup>19</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 9.

<sup>20</sup> See Rio Declaration on Environment and Development, principle 15.

(d) The standard must comply with all relevant human rights obligations. For example, in all actions concerning children, the best interests of the child must be a primary consideration;<sup>21</sup>

(e) Finally, the standard must not strike an unjustifiable or unreasonable balance between environmental protection and other social goals, in light of its effects on the full enjoyment of human rights.<sup>22</sup>

## Framework principle 12

### **States should ensure the effective enforcement of their environmental standards against public and private actors.**

#### *Commentary*

34. Governmental authorities must comply with the relevant environmental standards in their own operations, and they must also monitor and effectively enforce compliance with the standards by preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities. In particular, States must regulate business enterprises to protect against human rights abuses resulting from environmental harm and to provide for remedies for such abuses. States should implement training programmes for law enforcement and judicial officers to enable them to understand and enforce environmental laws, and they should take effective steps to prevent corruption from undermining the implementation and enforcement of environmental laws.

35. In accordance with the Guiding Principles on Business and Human Rights, the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes (including human rights impact assessments) to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts they cause or to which they contribute.

## Framework 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.**

#### *Commentary*

36. The obligation of States to cooperate to achieve universal respect for, and observance of, human rights<sup>23</sup> requires States to work together to address transboundary and global threats to human rights. Transboundary and global environmental harm can have severe effects on the full enjoyment of human rights, and international cooperation is

<sup>21</sup> See Convention on the Rights of the Child, art. 3 (1).

<sup>22</sup> For example, a decision to allow massive oil pollution in the pursuit of economic development could not be considered reasonable in light of its disastrous effects on the enjoyment of the rights to life, health, food and water. See African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, communication No. 155/96 (2001).

<sup>23</sup> See Charter of the United Nations, arts. 55–56; International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

necessary to address such harm. States have entered into agreements on many international environmental problems, including climate change, ozone depletion, transboundary air pollution, marine pollution, desertification and the conservation of biodiversity.

37. The obligation of international cooperation does not require every State to take exactly the same actions. The responsibilities that are necessary and appropriate for each State will depend in part on its situation, and agreements between States may appropriately tailor their commitments to take account of their respective capabilities and challenges. Multilateral environmental agreements often include different requirements for States in different economic situations, and provide for technical and financial assistance from developed States to other States.

38. Once their obligations have been defined, however, States must comply with them in good faith. No State should ever seek to withdraw from any of its international obligations to protect against transboundary or global environmental harm. States should continually monitor whether their existing international obligations are sufficient. When those obligations and commitments prove to be inadequate, States should quickly take the necessary steps to strengthen them, bearing in mind that the lack of full scientific certainty should not be used to justify postponing effective and proportionate measures to ensure a safe, clean, healthy and sustainable environment.

39. States must also comply with their human rights obligations relating to the environment in the context of other international legal frameworks, such as agreements for economic cooperation and international finance mechanisms. For example, they should ensure that agreements facilitating international trade and investment support, rather than hinder, the ability of States to respect, protect and fulfil human rights and to ensure a safe, clean, healthy and sustainable environment. International financial institutions, as well as State agencies that provide international assistance, should adopt and implement environmental and social safeguards that are consistent with human rights obligations, including by: (a) requiring the environmental and social assessment of every proposed project and programme; (b) providing for effective public participation; (c) providing for effective procedures to enable those who may be harmed to pursue remedies; (d) requiring legal and institutional protections against environmental and social risks; and (e) including specific protections for indigenous peoples and those in vulnerable situations.

## Framework 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 needs, risks and capacities.**

#### *Commentary*

40. As the Human Rights Council has recognized, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in vulnerable situations.<sup>24</sup> Persons may be vulnerable because they are unusually susceptible to certain types of environmental harm, or because they are denied their human rights, or both. Vulnerability to environmental harm reflects the “interface between exposure to the physical threats to human well-being and the capacity of people and communities to cope with those threats”.<sup>25</sup>

41. Those who are at greater risk from environmental harm for either or both reasons often include women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, ethnic, racial or other

<sup>24</sup> See Human Rights Council resolution 34/20.

<sup>25</sup> United Nations Environment Programme, *Global Environment Outlook 3* (2002), p. 302.

minorities and displaced persons.<sup>26</sup> The many examples of potential vulnerability include the following:

(a) In most households, women are primarily responsible for water and hygiene. When sources of water are polluted, they are at greater risk of exposure, and if they travel longer distances to find safer sources, they are at greater risk of assault (see A/HRC/33/49). Nevertheless, they are typically excluded from decision-making procedures on water and sanitation;

(b) Children are vulnerable for many reasons, including that they are developing physically and that they are less resistant to many types of environmental harm. Of the approximately 6 million deaths of children under the age of 5 in 2015, more than 1.5 million could have been prevented through the reduction of environmental risks. Moreover, exposure to pollution and other environmental harms in childhood can have lifelong consequences, including by increasing the likelihood of cancer and other diseases (see A/HRC/37/58);

(c) Persons living in poverty often lack adequate access to safe water and sanitation, and they are more likely to burn wood, coal and other solid fuels for heating and cooking, causing household air pollution;

(d) Indigenous peoples and other traditional communities that rely on their ancestral territories for their material and cultural existence face increasing pressure from Governments and business enterprises seeking to exploit their resources. They are usually marginalized from decision-making processes and their rights are often ignored or violated;

(e) Older persons may be vulnerable to environmental harm because they are more susceptible to heat, pollutants and vector-borne diseases, among other factors;

(f) The vulnerability of persons with disabilities to natural disasters and extreme weather is often exacerbated by barriers to receiving emergency information in an accessible format, and to accessing means of transport, shelter and relief;

(g) Because racial, ethnic and other minorities are often marginalized and lack political power, their communities often become the sites of disproportionate numbers of waste dumps, refineries, power plants and other polluting facilities, exposing them to higher levels of air pollution and other types of environmental harm;

(h) Natural disasters and other types of environmental harm often cause internal displacement and transboundary migration, which can exacerbate vulnerabilities and lead to additional human rights violations and abuses (see A/66/285 and A/67/299).

42. To protect the rights of those who are particularly vulnerable to or at risk from environmental harm, States should ensure that their laws and policies take into account the ways that some parts of the population are more susceptible to environmental harm, and the barriers some face to exercising their human rights related to the environment.

43. For example, States should develop disaggregated data on the specific effects of environmental harm on different segments of the population, conducting additional research as necessary, to provide a basis for ensuring that their laws and policies adequately protect against such harm. States should take effective measures to raise the awareness of environmental threats among those persons who are most at risk. In monitoring and reporting on environmental issues, States should provide detailed information on the threats to, and status of, the most vulnerable. Assessments of the environmental and human rights impacts of proposed projects and policies must include a careful examination of the impacts on the most vulnerable, in particular. In the case of indigenous peoples and local communities, assessments should be in accord with the guidelines adopted by the Conference of Parties to the Convention on Biological Diversity.<sup>27</sup>

<sup>26</sup> Many persons are vulnerable and subject to discrimination along more than one dimension, such as children living in poverty or indigenous women.

<sup>27</sup> The Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessment regarding Developments Proposed to Take Place on, or which are Likely to Impact on,

44. States should develop environmental education, awareness and information programmes to overcome obstacles such as illiteracy, minority languages, distance from government agencies and limited access to information technology, in order to ensure that everyone has effective access to such programmes and to environmental information in forms that are understandable to them. States should also take steps to ensure the equitable and effective participation of all affected segments of the population in relevant decision-making, taking into account the characteristics of the vulnerable or marginalized populations concerned.

45. States should ensure that their legal and institutional frameworks for environmental protection effectively protect those who are in vulnerable situations. They must comply with their obligations of non-discrimination (framework principle 3), as well as any other obligations relevant to specific groups. For example, any environmental policies or measures that may affect children's rights must ensure that the best interests of children are a primary consideration.<sup>28</sup>

46. In developing and implementing international environmental agreements, States should include strategies and programmes to identify and protect those vulnerable to the threats addressed in the agreements.<sup>29</sup> Domestic and international environmental standards should be set at levels that protect against harm to vulnerable segments of the population, and States should use appropriate indicators and benchmarks to assess implementation. When measures to safeguard against or mitigate adverse impacts are impossible or ineffective, States must facilitate access to effective remedies for violations and abuses of the rights of those most vulnerable to environmental harm.

## Framework principle 15

### **States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:**

- (a) **Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;**
- (b) **Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;**
- (c) **Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;**
- (d) **Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.**

#### *Commentary*

47. Indigenous peoples are particularly vulnerable to environmental harm because of their close relationship with the natural ecosystems on their ancestral territories. The United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other human rights and conservation agreements, set out obligations of States in relation to the rights of indigenous peoples. Those obligations include, but are not limited to, the four highlighted here, which have particular relevance to the human rights of indigenous peoples in relation to the environment.

---

Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.

<sup>28</sup> See Convention on the Rights of the Child, art. 3 (1).

<sup>29</sup> See, for example, Minamata Convention on Mercury, art. 16 (1) (a), annex C.

48. Traditional (sometimes called “local”) communities that do not self-identify as indigenous may also have close relationships to their ancestral territories and depend directly on nature for their material needs and cultural life. Examples include the descendants of Africans brought to Latin America as slaves, who escaped and formed tribal communities. To protect the human rights of the members of such traditional communities, States owe them obligations as well. While those obligations are not always identical to those owed to indigenous peoples, they should include the obligations described below (see A/HRC/34/49, paras. 52–58).

49. First, States must recognize and protect the rights of indigenous peoples and traditional communities to the lands, territories and resources that they have traditionally owned, occupied or used, including those to which they have had access for their subsistence and traditional activities.<sup>30</sup> The recognition of the rights must be conducted with due respect for the customs, traditions and land tenure systems of the peoples or communities concerned.<sup>31</sup> Even without formal recognition of property rights and delimitation and demarcation of boundaries, States must protect against actions that might affect the value, use or enjoyment of the lands, territories or resources, including by instituting adequate penalties against those who intrude on or use them without authorization.<sup>32</sup>

50. Second, States must ensure the full and effective participation of indigenous peoples and traditional communities in decision-making on the entire spectrum of matters that affect their lives. States have obligations to consult with them when considering legislative or administrative measures which may affect them directly, before undertaking or permitting any programmes for the exploration or exploitation of resources pertaining to their lands or territories and when considering their capacity to alienate their lands or territories or otherwise transfer their rights outside their own community.<sup>33</sup> States should assess the environmental and social impacts of proposed measures and ensure that all relevant information is provided to them in understandable and accessible forms (framework principles 7–8). Consultations with indigenous peoples and traditional communities should be in accordance with their customs and traditions, and occur early in the decision-making process (framework principle 9).

51. The free, prior and informed consent of indigenous peoples or traditional communities is generally necessary before the adoption or implementation of any laws, policies or measures that may affect them, and in particular before the approval of any project affecting their lands, territories or resources, including the extraction or exploitation of mineral, water or other resources, or the storage or disposal of hazardous materials.<sup>34</sup> Relocation of indigenous peoples or traditional communities may take place only with their free, prior and informed consent and after agreement on just and fair compensation and, where possible, with the option of return.<sup>35</sup>

52. Third, States should respect and protect the knowledge and practices of indigenous peoples and traditional communities in relation to the conservation and sustainable use of their lands, territories and resources.<sup>36</sup> Indigenous peoples and traditional communities have the right to the conservation and protection of the environment and the productive capacity of their lands, territories and resources, and to receive assistance from States for such

<sup>30</sup> See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), arts. 14–15; United Nations Declaration on the Rights of Indigenous Peoples, arts. 26–27.

<sup>31</sup> See United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (3).

<sup>32</sup> See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 18.

<sup>33</sup> *Ibid.*, arts. 6, 15 and 17.

<sup>34</sup> See United Nations Declaration on the Rights of Indigenous Peoples, arts. 19, 29 (2) and 32. See also Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity, arts. 6–7 (consent required for access to genetic resources and traditional knowledge).

<sup>35</sup> See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 16; United Nations Declaration on the Rights of Indigenous Peoples, art. 10.

<sup>36</sup> See Convention on Biological Diversity, arts. 8 (j) and 10 (c).

conservation and protection.<sup>37</sup> States must comply with the obligations of consultation and consent with respect to the establishment of protected areas in the lands and territories of indigenous peoples and traditional communities, and ensure that they can participate fully and effectively in the governance of such protected areas.<sup>38</sup>

53. Fourth, States must ensure that indigenous peoples and traditional communities affected by extraction activities, the use of their traditional knowledge and genetic resources, or other activities in relation to their lands, territories or resources fairly and equitably share the benefits arising from such activities.<sup>39</sup> Consultation procedures should establish the benefits that the affected indigenous peoples and traditional communities are to receive, in a manner consistent with their own priorities. Finally, States must provide for effective remedies for violations of their rights (framework principle 10), and just and fair redress for harm resulting from any activities affecting their lands, territories or resources.<sup>40</sup> They have the right to restitution or, if this is not possible, just, fair and equitable compensation for their lands, territories and resources that have been taken, used or damaged without their free, prior and informed consent.<sup>41</sup>

## Framework principle 16

### **States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development.**

#### *Commentary*

54. The obligations of States to respect, protect and fulfil human rights apply when States are adopting and implementing measures to address environmental challenges and to pursue sustainable development. 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.<sup>42</sup>

55. Pursuing environmental and development goals in accordance with human rights norms not only promotes human dignity, equality and freedom, the benefits of fulfilling all human rights. It also helps to inform and strengthen policymaking. Ensuring that those most affected can obtain information, freely express their views and participate in the decision-making process, for example, makes policies more legitimate, coherent, robust and sustainable. Most important, a human rights perspective helps to ensure that environmental and development policies improve the lives of the human beings who depend on a safe, clean, healthy and sustainable environment — which is to say, all human beings.

<sup>37</sup> See United Nations Declaration on the Rights of Indigenous Peoples, art. 29 (1).

<sup>38</sup> See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 15 (1).

<sup>39</sup> Ibid., art. 15 (2); Convention on Biological Diversity, art. 8 (j); Nagoya Protocol, art. 5; United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, art. 16 (g).

<sup>40</sup> See United Nations Declaration on the Rights of Indigenous Peoples, art. 32 (3).

<sup>41</sup> Ibid., art. 28.

<sup>42</sup> See Paris Agreement, eleventh preambular para.



# General Assembly

Distr.: General  
24 January 2018

Original: English

---

## Human Rights Council

Thirty-seventh session

26 February–23 March 2018

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

#### **Note by the Secretariat**

The Secretariat has the honour to transmit to the Human Rights Council the 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, on the relationship between children's rights and environmental protection.



**Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

Contents

	Page
I. Introduction .....	3
II. International attention to the relationship between children’s rights and the environment .....	3
III. The effects of environmental harm on the rights of children .....	5
A. The effects of environmental harm on children .....	5
B. Environmental harm and the rights of children .....	9
IV. Human rights obligations relating to the protection of children from environmental harm .....	10
A. Educational and procedural obligations .....	11
B. Substantive obligations to protect children from environmental harm .....	14
C. Obligations of non-discrimination .....	16
V. Future generations .....	17
VI. Conclusions and recommendations .....	18

## I. Introduction

1. After reviewing the activities of the Special Rapporteur in 2017, the present report focuses on the rights of children in relation to the environment, addressing the ways that environmental harm prevents children from enjoying their human rights and the obligations that States have to protect children from such harm.

2. The Special Rapporteur held an expert meeting and a public consultation on 17–18 October on “framework principles” on human rights and the environment, which are the subject of a separate report to the thirty-seventh session of the Council (A/HRC/37/59). He carried out two country visits, to Uruguay in April and to Mongolia in September, which are also the subject of separate reports (A/HRC/37/58/Add.1 and Add.2). He sent or joined in 27 communications to States regarding alleged violations of human rights obligations relating to the environment. He worked with the United Nations Environment Programme and other partners, including the Global Judicial Institute for the Environment, to conduct a regional workshop for judges on rights-based approaches to environmental issues, which was held in Brasília on 22–23 May. A regional workshop for Asian judges is expected to take place in Pakistan in February 2018.

3. In accordance with the encouragement of the Council in its resolution 28/11 to continue to contribute to and participate in, where appropriate, intergovernmental conferences and meetings relevant to the mandate, the Special Rapporteur spoke on 31 July to the negotiators of a regional agreement on implementation of principle 10 of the Rio Declaration on Environment and Development, on rights of information, participation and remedy. He presented a statement to the sixth meeting of the parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) on 14 September, and on 4–5 December, he participated in the third session of the United Nations Environment Assembly, in Nairobi. He also spoke at the World Bank on 4 May, and at the Swedish International Development Cooperation Agency on 19 October.

4. The Special Rapporteur continues to draw attention to threats facing environmental defenders around the world. He participated in conferences on environmental defenders at the University of Oxford, in the United Kingdom of Great Britain and Northern Ireland, on 20–21 June and in Mexico City on 6 November. Together with the Universal Rights Group, he organized a meeting of environmental defenders in Bogotá on 8–9 November, at which the Spanish-language version of a web portal for environmental defenders, *environment-rights.org*, was launched. He also supported a new environmental rights initiative at the United Nations Environment Programme, which will, among other things, try to address threats facing individuals and groups working to protect the environment.

5. In preparation for the present report, the Special Rapporteur participated in the day of general discussion of the Committee on the Rights of the Child on children’s rights and the environment, on 23 September 2016. He held an expert meeting and a public consultation on 22–23 June 2017, and sent a questionnaire to States and other interested stakeholders, which elicited over 40 responses. He also examined statements and reports of human rights mechanisms and international organizations, as well as other sources.

6. Section II of the present report reviews the increasing attention being paid to the relationship of the rights of children to environmental harm. Section III describes the severe effects of environmental harm on the rights of children. Section IV outlines the human rights obligations relating to children’s rights in the environmental context. Section V addresses the relationship of future generations and children’s rights. Section VI concludes with recommendations aimed at protecting the rights of children from environmental harm.

## II. International attention to the relationship between children’s rights and the environment

7. The international community has long recognized that environmental harm interferes with the full enjoyment of the rights of children. The Convention on the Rights of the Child, adopted in 1989, requires its parties to pursue full implementation of children’s right to

health by taking measures, among others, to combat disease and malnutrition through “the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution” (art. 24 (2) (c)).

8. In the World Declaration on the Survival, Protection and Development of Children, adopted at the World Summit for Children in 1990, States recognized that millions of children suffer from environmental degradation, and committed to work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future (see A/45/625, annex, paras. 5 and 20 (9)). The World Programme of Action for Youth to the Year 2000 and Beyond, adopted in 1995, includes specific environmental initiatives and states that implementation of the Programme of Action requires the full enjoyment by young people of all human rights and fundamental freedoms (see General Assembly resolution 50/81, annex, para. 20). States reiterated the importance of environmental protection in the document entitled “A world fit for children”, adopted in 2002, one of whose ten principles and objectives is to “protect the Earth for children” (see General Assembly resolution S-27/2, annex, para. 7).

9. At the national level, many States reported to the Special Rapporteur that they have taken innovative steps to recognize and protect children’s rights to live in a healthy environment. For example, the Plurinational State of Bolivia, El Salvador, Mexico and Paraguay have introduced national legislation that recognizes the right of children to a healthy, ecological and sustainable environment. Denmark, Saudi Arabia and Slovenia have adopted measures to protect children’s health from environmental degradation and chemicals. Serbia is using the media to raise children’s awareness about environmental issues, and Germany is promoting their participation in environmental initiatives. Many States, including Australia, Azerbaijan, El Salvador, France, Georgia, the State of Palestine, the Philippines and Switzerland, report that they have introduced measures to improve children’s environmental education. Oman and Qatar have each designated a “national day of the environment” through which they raise awareness about the environment among children and promote children’s participation in environmental activities.<sup>1</sup>

10. The Human Rights Council has often drawn attention to the effects of climate change on the rights of children. In its resolution 32/33, it recognized that children are among the most vulnerable to climate change, which may have a serious impact on their enjoyment of the highest attainable standard of physical and mental health, access to education, adequate food, adequate housing, safe drinking water and sanitation. In its resolution 35/20, it emphasized that climate change affects some children more than others, including children with disabilities, children on the move, children living in poverty, children separated from their families and indigenous children. In resolution 32/33, the Council called on States to continue and enhance international cooperation and assistance for adaptation measures to help developing countries, especially those that are particularly vulnerable to the adverse effects of climate change and persons in vulnerable situations, including children most at risk.

11. In recent years, human rights experts have begun to examine more closely the effect of environmental harm on the enjoyment of children’s rights. In 2015, the United Nations Children’s Fund (UNICEF) published a report on the effects of climate change on children.<sup>2</sup> In August 2016, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Baskut Tuncak, issued a report describing the “silent pandemic” of disability and disease associated with childhood exposure to toxics and pollution, and explaining the obligations of States and the responsibilities of business enterprises to protect against such exposure (A/HRC/33/41). At the request of the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a report in May 2017 on the relationship between climate change and the rights of the child (A/HRC/35/13).

<sup>1</sup> All of the submissions are available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/RepliesEnvironmentAndRightsChild.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/RepliesEnvironmentAndRightsChild.aspx).

<sup>2</sup> UNICEF, *Unless we act now: The impact of climate change on children* (November 2015).

12. The Committee on the Rights of the Child has also given increasing attention to the relationship of environmental protection and children's rights. The Committee often addresses environmental concerns in its review of country reports under the Convention.<sup>3</sup> At its day of general discussion on 23 September 2016, the Committee brought together over 250 participants, including children, representatives of Governments, civil society organizations, United Nations agencies and academics, to examine the effects of environmental harm on the rights of children, both directly and through aggravating underlying causes of serious violations through conflict over limited resources, increasing inequalities, forced migration and even early marriage.<sup>4</sup>

13. The Committee on the Rights of the Child, UNICEF, other special procedures, States and civil society organizations, among others, continue to study and clarify the relationship of children's rights and the environment. The Special Rapporteur hopes that the present report will contribute to that ongoing discussion by providing an overview of the principal effects of environmental harm on the rights of children and outlining the corresponding obligations of States.

### III. The effects of environmental harm on the rights of children

14. This section describes first the effects of environmental harm on children's well-being, and then how those effects interfere with the enjoyment of their human rights, including their rights to life, health and development, to an adequate standard of living and to play and recreation.

#### A. The effects of environmental harm on children

15. Taken as a whole, no group is more vulnerable to environmental harm than children (persons under the age of 18), who make up 30 per cent of the world's population. Environmental harm has especially severe effects on children under the age of 5. Of the 5.9 million deaths of children under the age of 5 in 2015, the World Health Organization (WHO) estimates that more than one quarter — more than 1.5 million deaths — could have been prevented through the reduction of environmental risks.<sup>5</sup> In addition, one quarter of the total disease burden in children under the age of 5 is attributed to environmental exposures.<sup>6</sup> Childhood exposure to pollutants and other toxic substances also contributes to disabilities, diseases and premature mortality in adulthood.

##### 1. Air pollution

16. Air pollution causes approximately 600,000 deaths of children under the age of 5 every year.<sup>7</sup> Countless more children suffer disease and disability, often with lifelong effects. Children are more susceptible to air pollution than adults for many reasons, including that their smaller respiratory airways are more easily blocked by infections, and that they breathe more quickly and take in more air per unit of body weight.<sup>8</sup> Because their

<sup>3</sup> The Special Rapporteur compiled statements of the Committee on the Rights of the Child on environmental issues in "Mapping human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: individual report on the United Nations Convention on the Rights of the Child" (December 2013). Available at <http://srenvironment.org/mapping-report-2014-2/>.

<sup>4</sup> Committee on the Rights of the Child, "Report of the 2016 day of general discussion: children's rights and the environment", p. 5. Available from [www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx](http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx).

<sup>5</sup> WHO, "Don't pollute my future! The impact of the environment on children's health" (Geneva, 2017), p. 1.

<sup>6</sup> *Ibid.*, p. 22.

<sup>7</sup> *Ibid.*, p. 3. Roughly 500,000 of these deaths are attributed to household air pollution and 100,000 to ambient air pollution. See UNICEF, *Clear the air for children: The impact of air pollution on children* (2016), p. 24.

<sup>8</sup> UNICEF, *Clear the air for children*, pp. 8 and 40.

immune systems are still developing, they are at higher risk of respiratory infections and have less ability to combat them.<sup>9</sup>

17. Ambient air pollution mainly results from factories and vehicles, and household air pollution comes primarily from the use of wood, coal and other solid fuels for cooking and heating. The vast majority of children — about 2 billion — live in areas that exceed the WHO ambient standard for particulate matter, and 300 million children live in areas whose ambient air pollution exceeds international standards by six times or more.<sup>10</sup> Over 1 billion children around the world live in homes that use solid fuels for cooking and heating.<sup>11</sup> WHO has estimated that together, ambient and household air pollution cause more than one half of all lower respiratory infections, such as pneumonia and bronchitis, in children under 5 in low- and middle-income countries, and that lower respiratory infections accounted for 15.5 per cent of deaths of all children under the age of 5 in 2015.<sup>12</sup>

18. Children who survive early exposure to air pollution can still suffer from it throughout their lives: it can disrupt their physical and cognitive development and make them more prone to lung cancer, asthma, other respiratory diseases and cardiovascular diseases.<sup>13</sup> The harm from air pollution begins before birth. As the Special Rapporteur on hazardous substances and wastes has said, children are often born “pre-polluted” because of their mothers’ exposure to pollutants during pregnancy, which is associated with preterm delivery, lower birthweight and early fetal loss (see A/HRC/33/41, paras. 5 and 16).<sup>14</sup>

## 2. Water pollution

19. Water pollution resulting primarily from unsafe sanitation practices contributes to diarrhoeal diseases that cause more than 350,000 deaths a year of children under 5 years old, and another 80,000 deaths of children aged 5 to 14.<sup>15</sup> Water pollution also contributes to intestinal and parasitic infections such as schistosomiasis, which gravely affect the physical and cognitive development of children.<sup>16</sup> These infections, as well as diarrhoea, impair the proper functioning of the digestive system and prevent the absorption of nutrients essential for growth and development.<sup>17</sup> Lack of access to safe water also increases the incidence of other diseases, including trachoma, the main preventable cause of blindness.<sup>18</sup> More generally, unsafe water contributes to food insecurity, malnutrition and stunting of children.<sup>19</sup> UNICEF stated in 2013 that approximately 165 million children under 5 suffer from stunting as a result of inadequate nutrition and unhealthy water and sanitation.<sup>20</sup> Stunted children are not only shorter than they should be for their age; they suffer harm throughout their lives, including weaker immune systems and reduced brain development.

20. Children are particularly at risk from water pollution, like air pollution, because their bodies are still developing. In addition, they drink more water than adults in relation to their body weight, and they absorb a greater proportion of some waterborne chemicals.<sup>21</sup>

<sup>9</sup> Ibid., pp. 9 and 40.

<sup>10</sup> Ibid., pp. 8 and 60.

<sup>11</sup> Ibid., p. 9.

<sup>12</sup> WHO, “Don’t pollute my future!”, pp. 2–3.

<sup>13</sup> UNICEF, *Clear the air for children*, pp. 29–32; WHO, “Don’t pollute my future!”, p. 8.

<sup>14</sup> See also UNICEF, *Clear the air for children*, pp. 8 and 43–44; WHO, *Inheriting a sustainable world? Atlas on children’s health and the environment* (Geneva, 2017), p. 49.

<sup>15</sup> WHO, “Don’t pollute my future!”, pp. 3 and 13.

<sup>16</sup> Ibid., p. 5.

<sup>17</sup> WHO, *Inheriting a sustainable world?*, p. 25.

<sup>18</sup> WHO, *Preventing disease through healthy environments: A global assessment of the burden of disease from environmental risks* (Geneva, 2016), p. 22; WHO, *Inheriting a sustainable world?*, p. 26.

<sup>19</sup> WHO, “Don’t pollute my future!”, p. 6; WHO, *Inheriting a sustainable world?*, pp. 10–11.

<sup>20</sup> UNICEF, “Sustainable development starts and ends with safe, healthy and well-educated children” (May 2013), p. 8.

<sup>21</sup> WHO, *Inheriting a sustainable world?*, p. 25.

Children spend more time than adults playing in water bodies that are unclean, and they may be less able than adults to recognize or act upon environmental risks.<sup>22</sup>

21. Between 1990 and 2015, as the number of people without access to an improved source of water fell from over 2 billion to approximately 660 million, the number of diarrhoeal deaths of children under 5 years more than halved.<sup>23</sup> Some waterborne diseases, such as guinea worm, have been nearly eradicated. But much more remains to be done. At least one in every four people around the world still drinks water that is faecally contaminated.<sup>24</sup> Proper management of water sources is also critical to reducing vector-borne diseases such as malaria. Although the number of malarial deaths of children under 5 decreased by more than one half between 2000 and 2015, malaria still caused approximately 300,000 deaths in 2015, accounting for one in every ten child deaths in sub-Saharan Africa.<sup>25</sup>

### 3. Climate change

22. The Executive Director of UNICEF has stated that “there may be no greater, growing threat facing the world’s children — and their children — than climate change”.<sup>26</sup> As explained in the 2017 OHCHR report (A/HRC/35/13), climate change contributes to extreme weather events, water scarcity and food insecurity, air pollution and vector-borne and infectious diseases, all of which already have severe effects on children.

23. For example, climate change increases the frequency and severity of droughts, and approximately 160 million children already live in areas of high or extremely high drought severity.<sup>27</sup> Because children need to consume more food and water per unit of body weight than adults, they are more vulnerable to the deprivation of food and water, which can lead to irreversible stunting.<sup>28</sup> Water scarcity leads to the use of unsafe water, which in turn contributes to communicable diseases.<sup>29</sup>

24. Climate change also contributes to severe storms and flooding. More than 500 million children live in areas, mostly in Asia, that have extremely high likelihoods of flooding, and approximately 115 million live in zones of high or extremely high risk of tropical cyclones.<sup>30</sup> Beyond the immediate dangers of death and injury, severe storms and floods cause a cascade of additional harms, including compromising safe water supplies, damaging sanitation facilities and destroying housing. Like droughts, floods can cause massive displacement. Children are particularly vulnerable during displacements, when the loss of connections to families, communities and protective services can increase their vulnerability to abuses including child labour and trafficking.<sup>31</sup>

25. 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.<sup>32</sup> Children are, again, more vulnerable to all of these effects. For example, UNICEF has indicated that “infants and small children are more likely to die or suffer from heatstroke because they are unable or lack agency to regulate their body temperature and control their surrounding environment”.<sup>33</sup> Over the longer term, rising temperatures and changing rainfall patterns are likely to exacerbate the spread of vector-borne diseases such as malaria, dengue and cholera,<sup>34</sup> and contribute to food scarcity and undernutrition. WHO estimates that by 2030,

<sup>22</sup> Ibid., pp. 25–26.

<sup>23</sup> Ibid., p. 24.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., p. 38.

<sup>26</sup> UNICEF, *Unless we act now*, p. 6.

<sup>27</sup> Ibid., p. 22.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., pp. 30 and 34.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid., pp. 40 and 44.

<sup>33</sup> Ibid., p. 40.

<sup>34</sup> Ibid., pp. 48–52.

the effects of climate change on nutrition will result in an additional 7.5 million children who are moderately or severely stunted, and approximately 100,000 additional deaths.<sup>35</sup>

26. The ramifications of climate change for children go far beyond its effects on their health, as disastrous as those may be. As OHCHR has stated, “climate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children’s well-being” (see A/HRC/35/13, para. 50). To give just one example, climate change-induced food insecurity is already increasing the number of marriages of girl children, who are pressured to marry to reduce burdens on their families of origin.<sup>36</sup>

#### 4. Chemicals, toxic substances and waste

27. The 2016 report of the Special Rapporteur on hazardous substances and wastes describes the harms to children from exposure to chemicals, toxic substances and waste. He states that the number of deaths from air and water pollution is only one part of a silent pandemic of disability and disease, much of which may not manifest for years or decades (see A/HRC/33/41, para. 4). The rapid growth of hazardous chemicals in the environment has occurred together with increasing incidence of cancer, diabetes and asthma, among other diseases. More than 800 chemicals have been identified as known or suspected disruptors of the normal functioning of human and/or animal endocrine systems, and humans are most sensitive to endocrine disruption during periods of development, including early childhood and puberty.<sup>37</sup> Children begin their exposure to toxic substances before birth; hundreds of hazardous chemicals have been found in children as a result of their mother’s exposure, resulting in the children being born “pre-polluted” (see A/HRC/33/41, para. 5). He emphasizes that children in low-income, minority, indigenous and marginalized communities are at more risk, as exposure levels in such communities are often higher and are exacerbated by malnutrition, with the adverse effects inadequately monitored (ibid., para. 6).

28. Although the connection between exposure to a particular toxic substance and the harm to an individual is not always traceable, in large part because information about exposure to and effects of these substances is typically not required or provided, some effects are clear. For example, lead poisoning causes irreversible intellectual disabilities in 600,000 children annually (ibid., para. 9). Artisanal and small-scale mining, in which approximately 1 million children participate, commonly employs mercury, which causes lifelong harm to the developing nervous systems of children, as well as contributing to cardiovascular and other diseases.<sup>38</sup> Discarded mobile telephones and other electronic products are often shipped from high-income to lower-income countries. Children are often employed to extract valuable elements from these products, without protective equipment, exposing themselves to toxic substances such as lead, mercury, cadmium, chromium and arsenic.<sup>39</sup>

29. Another increasing source of harm is the use of pesticides, the subject of a recent joint report by the Special Rapporteur on hazardous substances and wastes and the Special Rapporteur on the right to food. They state that exposure to even low levels of pesticides, for example through wind drift or residues on food, may be very damaging to children’s health, disrupting their mental and physiological growth and possibly leading to a lifetime of diseases and disorders (see A/HRC/34/48, para. 24). The effects of pesticides and of chemicals ingested other ways, including through food, may include asthma, cancer and neurological damage.<sup>40</sup>

<sup>35</sup> WHO, *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (Geneva, 2014), pp. 80 and 89.

<sup>36</sup> Gethin Chamberlain, “Why climate change is creating a new generation of child brides”, *Guardian*, 26 November 2017; Human Rights Watch, “Marry before your house is swept away: child marriage in Bangladesh”, 9 June 2015.

<sup>37</sup> WHO, “Don’t pollute my future!”, p. 6.

<sup>38</sup> WHO, *Inheriting a sustainable world?*, pp. 81–82.

<sup>39</sup> Ibid., p. 88.

<sup>40</sup> Ibid., pp. 67 and 72.

## 5. The loss of biodiversity and access to nature

30. Biological diversity (biodiversity) is necessary for healthy ecosystems, which in turn are necessary for the full enjoyment of human rights (see A/HRC/34/49). Although everyone in the world depends on ecosystems, some depend more directly than others. Indigenous peoples and traditional communities that rely on forests, fisheries and other natural ecosystems for their material subsistence and cultural life suffer disproportionately when those ecosystems are destroyed or degraded. More generally, decreasing biodiversity and the loss of access to the natural environment affect many children around the world. Interaction with microbial diversity is critical to the development of healthy immune systems,<sup>41</sup> and the loss of such microbial diversity is apparently causing autoimmune diseases, allergic disorders and other non-communicable inflammatory diseases to become more prevalent in all parts of the world.<sup>42</sup> Exposure to nature also has beneficial effects on mental health,<sup>43</sup> but many children, especially in urban settings, have little or no contact with the natural environment.

## B. Environmental harm and the rights of children

31. Environmental harm interferes with the full enjoyment of a vast range of the rights of the child. This section focuses on the effects on children's rights to life, health, development, an adequate standard of living, play and recreation.<sup>44</sup>

### 1. Rights to life, health and development

32. The Human Rights Committee has stated that the right to life should not be interpreted narrowly, and that the protection of the right requires States to adopt positive measures, such as measures to reduce infant mortality and increase life expectancy.<sup>45</sup> The Convention on the Rights of the Child recognizes that every child has the inherent right to life and provides that States shall ensure to the maximum extent possible not only the survival, but also the development of the child (art. 6). The Convention also recognizes the right to the highest attainable standard of health (art. 24), as do the Constitution of WHO and the International Covenant on Economic, Social and Cultural Rights (art. 12).

33. A healthy environment is necessary for children's enjoyment of the rights to life, development and health.<sup>46</sup> The Convention on the Rights of the Child requires States parties to pursue full implementation of the right to health by appropriate measures that include the provision of nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution (art. 24 (2) (c)). As explained above, environmental harm causes the death of over 1 million children every year, most under the age of 5 years old. It also contributes to lifelong health problems, including asthma and other respiratory diseases, cardiovascular disease, cancer and neurological disorders. Climate change and the loss of biological diversity are long-term environmental crises that will affect children

<sup>41</sup> Paul Sandifer, Ariana Sutton-Grier and Bethney Ward, "Exploring connections among nature, biodiversity, ecosystem services, and human health and well-being: opportunities to enhance health and biodiversity conservation", *Ecosystem Services*, vol. 12 (April 2015), pp. 1 and 7.

<sup>42</sup> WHO and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health — A State of Knowledge Review* (2015), p. 150.

<sup>43</sup> Sandifer, Sutton-Grier and Ward "Exploring connections", p. 3; see also Committee on the Rights of the Child, general comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, para. 40.

<sup>44</sup> This is not an exhaustive list. The enjoyment of other rights, such as the rights to education and culture, are also implicated by climate change, natural disasters and other types of environmental harm. See, for example, A/HRC/35/13, para. 29. And the disproportionate effects on children already vulnerable for other reasons implicate obligations of non-discrimination, as explained below.

<sup>45</sup> See Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 5.

<sup>46</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 4; Committee on the Rights of the Child, general comment No. 7 (2005) on implementing child rights in early childhood, para. 10; general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 2.

throughout their lives. There can be no doubt that environmental harm interferes with children's rights to life, health and development.

## 2. Right to an adequate standard of living

34. The Committee on Economic, Social and Cultural Rights has explained that the right to an adequate standard of living is intentionally expansive and that the Covenant includes a number of rights emanating from, and indispensable for, the realization of the right,<sup>47</sup> such as the rights to food, housing and safe and clean water and sanitation. The Convention on the Rights of the Child links the right to the development of children, recognizing the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development (art. 27).

35. Environmental degradation obviously interferes with the enjoyment of the rights to food, housing, water and sanitation, and to an adequate standard of living generally. The lack of clean air and water, the exposure to hazardous chemicals and waste, the effects of climate change and the loss of biodiversity not only prevent children from enjoying their rights today; by interfering with their normal development, environmental harm prevents them from enjoying their rights in the future, and often throughout their lives.

## 3. Rights to play and recreation

36. The Convention on the Rights of the Child recognizes the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts (art. 31). As the Committee on the Rights of the Child has explained, play and recreation are essential to the health and well-being of children and promote the development of creativity, imagination, self-confidence and self-efficacy, as well as physical, social, cognitive and emotional strength and skills.<sup>48</sup> In addition to being of intrinsic value to children, play and recreation are critical to development, facilitating children's capacities to negotiate, regain emotional balance, resolve conflicts and make decisions. Through their involvement in play and recreation, children learn by doing; they explore and experience the world around them; experiment with new ideas, roles and experiences and in so doing, learn to understand and construct their social position within the world.<sup>49</sup>

37. Opportunities for play and recreation depend upon access to a healthy and safe environment.<sup>50</sup> Many children, and the vast majority of children living in poverty, face hazardous conditions when they leave their homes, including polluted water, open waste sites, toxic substances and the lack of safe green spaces.<sup>51</sup> While children will seek out opportunities for play and recreation even in dangerous environments, children who cannot play outside without exposing themselves to such environmental harms cannot fully enjoy their right to play and recreation. Even when their immediate surroundings are safe, the millions of children who live in urban settings often lack access to natural environments.

## IV. Human rights obligations relating to the protection of children from environmental harm

38. The human rights obligations of States in relation to the environment<sup>52</sup> apply with particular force to the rights of children, who are especially at risk from environmental harm and often unable to protect their own rights. Although these obligations arise from a wide variety of sources, the present report gives particular attention to the Convention on the Rights of the Child because of its focus on children and its near-universal acceptance by

<sup>47</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 3.

<sup>48</sup> See Committee on the Rights of the Child, general comment No. 17, para. 9.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., para. 26.

<sup>51</sup> Ibid., para. 35.

<sup>52</sup> For a summary of the obligations, see the framework principles on human rights and the environment presented to the thirty-seventh session of the Council (A/HRC/37/59, annex).

States. The present section focuses on key educational and procedural obligations, including with respect to information, participation and remedy; substantive obligations, including the obligation to ensure that the best interests of children are a primary consideration; and obligations of non-discrimination.

## A. Educational and procedural obligations

39. The obligations of States in relation to the environment include duties in relation to education and public awareness, to access to public information and assessment of proposed projects and policies, to expression, association and public participation in environmental decision-making and to remedies for harm (see A/HRC/37/59, annex, framework principles 5–10). These obligations have bases in civil and political rights, but they have been clarified and extended in the environmental context on the basis of the entire range of human rights threatened by environmental harm. Fulfilling these rights helps to ensure that, when possible, children have agency to influence environmental policy and protect themselves from environmental harm.

### 1. Obligations of environmental education

40. In the Convention on the Rights of the Child, States parties agreed that the education of the child shall be directed to, among other things, the development of respect for the natural environment (art. 29).<sup>53</sup> Environmental education should begin early in the child's educational process, reflect the child's culture, language and environmental situation, and increase the child's understanding of the relationship between humans and the environment (see A/HRC/37/59, annex, framework principle 6). It should help children appreciate and enjoy the world and strengthen their capacity to respond to environmental challenges, including by encouraging and facilitating direct experience with the natural environment.<sup>54</sup>

41. The Committee on the Rights of the Child has stated that in order to develop respect for the natural environment, education must link issues of environment and sustainable development with socioeconomic, sociocultural and demographic issues, and that such respect should be learned by children at home, in school and within the community, encompass both national and international problems, and actively involve children in local, regional or global environmental projects.<sup>55</sup> The Committee has also stressed that for educational curricula to reflect this and the other principles reflected in article 29 of the Convention, it is essential to have pre-service and in-service training for teachers and others involved in children's education.

### 2. Obligations of information and assessment

42. The Convention on the Rights of the Child states that the child's right to freedom of expression "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 the child's choice" (art. 13). The right to information is particularly important in relation to environmental issues. Public access to environmental information enables individuals to understand the effect of environmental harm on their rights, including their rights to life and health, and supports the exercise of other rights, such as rights to expression, participation and remedy.<sup>56</sup>

43. Access to environmental information has two dimensions: States should regularly collect, update and disseminate environmental information, and they should provide affordable, effective and timely access to environmental information held by public authorities (see A/HRC/37/59, annex, framework principle 7). In situations involving

<sup>53</sup> In addition, target 4.7 of the Sustainable Development Goals calls on States to ensure, by 2030, that "all learners acquire the knowledge and skills needed to promote sustainable development".

<sup>54</sup> Committee on the Rights of the Child, "Report of the 2016 day of general discussion", pp. 18–19.

<sup>55</sup> See Committee on the Rights of the Child, general comment No. 1 (2001) on the aims of education, para. 13.

<sup>56</sup> See Committee on the Rights of the Child, general comment No. 12 (2009) on the right of the child to be heard, para. 82.

imminent threat of environmental harm, either from natural or human causes, States must ensure that all information that would enable the public to take protective measures is disseminated immediately.

44. The 2016 day of general discussion held by the Committee on the Rights of the Child identified many gaps in information on the effects of environmental harm on children, including: a lack of robust data on actual exposure of children to various types of environmental harm in light of their vulnerabilities and real-life conditions; a lack of longitudinal data on the effects of environmental harm on children's health and development at different ages; a lack of disaggregated data on children most at risk; and a lack of information about the adverse effects of the loss of biodiversity and degradation of ecosystems.<sup>57</sup> In addition to these general gaps, the Special Rapporteur on hazardous substances and wastes has pointed out that information about health risks and possible sources of exposure is neither available nor accessible to parents and guardians for tens of thousands of substances manufactured and used by industries in food and consumer products, which often end up contaminating air and water (see A/HRC/33/41, para. 59). When information about the effects of particular chemicals or other substances is held by corporations, they often argue that it cannot be made public for reasons of confidentiality. Finally, when information about environmental effects is public, it is often available only in technical terms that are difficult or impossible for non-experts to understand.

45. Much more must be done to collect information about sources of environmental harm to children and to make it publicly available and accessible. The Committee on the Rights of the Child has stressed that information relevant to children should be provided in a manner appropriate to their age and capacities.<sup>58</sup> Because children are exposed to many environmental harms at young ages, or even before birth, information must also be made available to parents or other caretakers in forms that are easily accessible, understandable and relevant. For example, information about chemicals and other hazardous substances should focus not just on those that are the most commonly produced, but also on those that are most likely to affect children, and should include clear descriptions not only of the possible effects, but also of how children may be exposed to them.

46. Obligations concerning environmental information are closely related to the need for assessment of environmental impacts. To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of the human rights of children (see A/HRC/37/59, annex, framework principle 8). While environmental impact assessment is now practised throughout the world, most assessment procedures do not address the rights of children, either by taking into account their greater vulnerability to harm or by providing for their participation. To ensure that the best interests of the child are a primary consideration in the development and implementation of policies and projects that may affect children, States should carry out "child-rights impact assessment", which examines the impacts on children of proposed measures and makes recommendations for alternatives and improvements. After implementation, authorities should evaluate the actual impact of the measure on children.<sup>59</sup>

### 3. Obligations to consider the views of children

47. The Convention on the Rights of the Child requires States parties to "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child" (art. 12). The Committee on the Rights of the Child has called the right of children to be heard and be taken seriously, one of the

<sup>57</sup> Committee on the Rights of the Child, "Report of the 2016 day of general discussion", p. 16.

<sup>58</sup> See Committee on the Rights of the Child, general comment No. 12, para. 82.

<sup>59</sup> See Committee on the Rights of the Child, general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, para. 99; general comment No. 5 (2003) on general measures of implementation of the Convention, para. 45.

four general principles of the Convention, which should be considered in the interpretation and implementation of other rights.<sup>60</sup>

48. The Committee's point that the views of children may add relevant perspectives and experience is especially relevant with respect to environmental harm.<sup>61</sup> Children are not experts in air pollution, water management or toxicology, but neither are most adults. Once children have reached a certain level of maturity,<sup>62</sup> they are capable of forming opinions and expressing views on proposals for measures that may affect them. Moreover, like adults, they know better than anyone else the circumstances of their own lives. They can provide invaluable insights, for example, into their use of water sources outside the home; the effectiveness of warnings about environmental hazards; and their access to green spaces and natural ecosystems.<sup>63</sup> In particular, the views of children should be taken into account with respect to long-term environmental challenges, such as climate change and the loss of biodiversity, that will shape the world in which they will spend their lives.

49. The Committee has explained how to implement the participatory rights of children, including through children's hearings, children's parliaments, children-led organizations, children's unions or other representative bodies, discussions at school, social networking websites, and so forth.<sup>64</sup> It has made clear that all processes in which a child or children are heard and participate must be, among other things, voluntary, respectful and transparent, provide children with age-appropriate information, provide appropriate support to children according to their age and evolving capacities, and encourage the participation of marginalized children.<sup>65</sup>

50. States must protect children from risks of violence or other reprisals for participating in these processes or otherwise expressing their views on environmental matters. Adults who speak out on environmental issues are often at risk of harassment, violence and death.<sup>66</sup> Children are not exempt from such dangers. For example, the Special Rapporteur was concerned to learn that a 15-year-old girl was sued by a mining company for criminal defamation after she expressed her concerns that mining activities were causing water contamination that harmed her community.<sup>67</sup> Eventually, the charges against her were dismissed, but only after months of protests and litigation. The Committee on the Rights of the Child has urged States to ensure conditions for an active and vigilant civil society, refrain from interfering with independent organizations and facilitate their involvement.<sup>68</sup> With respect to child activists, in particular, States should make heightened efforts to ensure that they can express their views freely, without fear of retaliation.

#### 4. Obligation to provide for effective remedies

51. The Universal Declaration of Human Rights (art. 8), the International Covenant on Civil and Political Rights (art. 2 (3)) and many other human rights instruments provide that States have obligations to provide for effective remedies for violations of human rights. Children are included in these protections. Although the Convention on the Rights of the

<sup>60</sup> See Committee on the Rights of the Child, general comment No. 12, para. 2. The other three are the right to non-discrimination, the right to life and development, and the primary consideration of the best interests of the child.

<sup>61</sup> *Ibid.*, para. 12.

<sup>62</sup> According to the Committee, maturity refers to the ability to understand and assess the implications of a particular matter, and must therefore be considered when determining the individual capacity of a child. Maturity is difficult to define; in the context of article 12, it is the capacity of a child to express her or his views on issues in a reasonable and independent manner. *Ibid.*, para. 30.

<sup>63</sup> See, for example, Committee on the Rights of the Child, general comment No. 17, para. 19, which underlines the importance of involving children in the development of parks.

<sup>64</sup> See Committee on the Rights of the Child, general comment No. 14, para. 91.

<sup>65</sup> See Committee on the Rights of the Child, general comment No. 12, para. 134.

<sup>66</sup> See the report by the Special Rapporteur entitled "Environmental human rights defenders: a global crisis", at [www.universal-rights.org](http://www.universal-rights.org). See also the report of the Special Rapporteur on the situation of human rights defenders, which focuses on environmental defenders (A/71/281).

<sup>67</sup> Prachatai, "Mine operator sues high school student for criminal defamation", 14 December 2015. Available at <https://prachatai.com/english/node/5693>.

<sup>68</sup> See Committee on the Rights of the Child, general comment No. 16, para. 84.

Child does not have an explicit provision on remedies, the requirement of effective remedies to redress violations is implicit in the Convention. To provide for effective remedies, States should ensure that individuals have access to judicial and administrative procedures that meet basic requirements, including that the procedures are impartial, independent, affordable, transparent and fair (see A/HRC/37/59, annex, framework principle 10). Decisions should be made public and promptly and effectively enforced. States should provide guidance about how to seek access to justice, and should help to overcome obstacles to access such as language, illiteracy, expense and distance.

52. Because children's dependent status creates obstacles to their pursuit of remedies, the Committee on the Rights of the Child has made clear that States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.<sup>69</sup>

53. In the context of environmental harm, children may face additional barriers to access to justice. For example, they and their representatives may lack information about the effects of particular harms or the harms may manifest only years after exposure, which may make it difficult or impossible for those affected to have standing to bring a case, meet applicable limitations periods or carry their burdens of proof and persuasion.<sup>70</sup> States should take steps to overcome these obstacles, including by allowing collective suits (or "class actions") on behalf of children. Moreover, when determining the level or form of reparation, mechanisms should take into account that children can be more vulnerable to the effects of abuse of their rights than adults and that the effects can be irreversible and result in lifelong damage. They should also take into account the evolving nature of children's development and capacities and reparation should be timely to limit ongoing and future damage to the child or children affected; for example, if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done.<sup>71</sup>

54. Because environmental harm can cause irreversible effects, such as early mortality or lifelong disability, for which no remedies are truly adequate, States must do what they can to prevent the harm from occurring in the first place. In some cases, that may be possible through injunctive relief ordered by judicial tribunals or administrative bodies. In addition, States must adopt and enforce effective regulatory measures, as described in the following section.

## **B. Substantive obligations to protect children from environmental harm**

55. Ideally, States would set substantive environmental standards at levels that would prevent all harmful environmental interference with the full enjoyment of human rights. While States have obligations to take deliberate, concrete and targeted measures towards that goal, they have some discretion in deciding which means are appropriate in light of available resources.<sup>72</sup> However, this discretion is not unlimited. For example, environmental standards must comply with obligations of non-discrimination, and they should take into account relevant international health and safety standards (see A/HRC/37/59, annex, framework principle 11). Once States have adopted substantive environmental standards, they should ensure their effective implementation by private as well as public actors (*ibid.*, framework principle 12).

---

<sup>69</sup> See Committee on the Rights of the Child, general comment No. 5, para. 24.

<sup>70</sup> Committee on the Rights of the Child, "Report of the 2016 day of general discussion", pp. 21–22.

<sup>71</sup> See Committee on the Rights of the Child, general comment No. 16, para. 31.

<sup>72</sup> See, for example, Committee on the Rights of the Child, general comment No. 15, para. 72.

56. The discretion of States with respect to the protection of children's rights is further restricted by their obligations under the Convention on the Rights of the Child and other agreements to adopt and implement special measures of protection, assistance and care for children, and to ensure that the best interests of children are a primary consideration in all actions concerning children.<sup>73</sup> These obligations require States not just to protect children from harm, but also to ensure their well-being and development, including by taking into account the possibility of future risk and harm.<sup>74</sup>

57. The discretion accorded States in deciding appropriate levels of environmental protection rests on the assumption that societies will make informed decisions as to how to balance the costs of environmental harm against the benefits of spending resources for other goals, such as faster short-term economic growth. But the cost-benefit calculus is very different for children, especially younger children. The consequences of environmental harm are usually far more severe, and may include death or irreversible, lifelong effects. The cumulative effects of long-term environmental harm, such as climate change and the loss of biodiversity, increase over time, so that decisions taken today will affect children much more than adults. The lack of full information about many types of environmental harm means that their long-term effects are often poorly understood and underestimated. And, finally, the voices of children are only rarely heard in environmental decision-making.

58. Therefore, to satisfy their obligations of special protection and care, and to ensure that the best interests of the child are taken into account, States have heightened obligations to take effective measures to protect children from environmental harm. They should make certain that they are protecting children's rights before they make decisions that may cause environmental harm, including by: collecting and disseminating disaggregated information on the effects of pollution, chemicals and other potentially toxic substances on the health and well-being of children; ensuring that the views of children are taken into account in environmental decision-making; and carrying out children's rights impact assessments. States should adopt and implement environmental standards that are consistent with the best available science and relevant international health and safety standards, and they should never take retrogressive measures.<sup>75</sup> The lack of full scientific certainty should never be used to justify postponing effective and proportionate measures to prevent environmental harm to children, especially when there are threats of serious or irreversible damage. On the contrary, States should take precautionary measures to protect against such harm.<sup>76</sup> Once standards protective of children's rights are adopted, States must ensure that they are effectively implemented and enforced. To that end, they must provide regulatory agencies with sufficient resources to monitor and enforce compliance with domestic laws, including by investigating complaints and bringing appropriate remedial actions.<sup>77</sup>

59. As part of their obligations to protect children from environmental harm, States must adequately regulate private actors, including business enterprises. Businesses can cause environmental harm to children's rights in many ways, including by producing hazardous products, polluting the air and water, creating hazardous waste, contributing to climate change and destroying forests and other natural ecosystems.<sup>78</sup> They can also commit human rights abuses such as violating child labour protections or colluding with governmental or private security forces to use violence against peaceful protesters.

60. As the Committee on the Rights of the Child has stated, States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights.<sup>79</sup> This includes ensuring that businesses comply with all applicable environmental standards. States should require businesses, including State-owned businesses, to carry out "child-rights due diligence" to

<sup>73</sup> See Convention on the Rights of the Child, art. 3; International Covenant on Economic, Social and Cultural Rights, art. 10 (3).

<sup>74</sup> See Committee on the Rights of the Child, general comment No. 14, paras. 24 and 71.

<sup>75</sup> See Committee on the Rights of the Child, general comment No. 15, para. 72.

<sup>76</sup> See Rio Declaration on Environment and Development, principle 15.

<sup>77</sup> See Committee on the Rights of the Child, general comment No. 16, para. 61.

<sup>78</sup> *Ibid.*, para. 19.

<sup>79</sup> *Ibid.*, para. 28.

ensure that they identify, prevent and mitigate their impact on children's rights.<sup>80</sup> This due diligence should include careful consideration of the effects of their actual and proposed actions on the rights of children through environmental harm. States must also ensure that information held by businesses relevant to the health and well-being of children is made publicly available.

61. States should cooperate with one another to address the effects of global and transboundary harm on the rights of children.<sup>81</sup> For example, in the negotiation and implementation of multilateral environmental agreements, they should address children's rights, for example by providing that national action plans should include strategies to protect children as well as other vulnerable segments of the population.<sup>82</sup> States should work together to ensure that businesses operating in more than one country comply with their obligations under all applicable domestic laws. The Committee on the Rights of the Child has set out a framework for such cooperation: host States have the primary responsibility to regulate business enterprises operating within their territory, but home States can also have regulatory obligations when there is a reasonable link between the State and the conduct in question. For example, home States in such situations should assist host States with investigation and enforcement; enable access to effective remedies for children and their families who have suffered human rights abuses; and provide that their international assistance agencies identify and protect against harmful effects of any projects that they support.<sup>83</sup>

62. Businesses have direct responsibilities to respect children's rights. To meet these responsibilities, it is necessary, but not sufficient, that businesses comply with domestic laws. Certainly businesses should never seek to evade applicable laws through corruption or other practices, or abuse those laws by, for example, bringing criminal defamation suits against those who oppose their activities. But that is a low bar. To respect the rights of children to be free from environmental harm, businesses should comply with the Guiding Principles on Business and Human Rights; the Children's Rights and Business Principles;<sup>84</sup> and the recommendations of the Committee on the Rights of the Child in its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights. Among other things, they should undertake environmental and human rights impact assessments that examine the effects of proposed actions on children; develop and make public information about the effects of their actions and products on the health and well-being of children; facilitate children's participation, as appropriate, in consultations; seek to strengthen environmental, health and safety standards, rather than lobby against them; and, in general, avoid causing or contributing to environmental harm to children and remediate any such harm when it does occur.

### C. Obligations of non-discrimination

63. The Convention on the Rights of the Child requires its States parties to respect and ensure the rights in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (art. 2). Children are also encompassed by the non-discrimination obligations of States under many other human rights agreements, including the International Covenant on Civil and Political Rights (arts. 2 (1) and 26)) and the International Covenant on Economic, Social and Cultural Rights (art. 2 (2)).

64. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination undoubtedly apply to the equal enjoyment of human rights relating to a safe, clean, healthy and sustainable environment (see A/HRC/37/59, annex, framework principle 3). These obligations apply not only to direct discrimination, but also

<sup>80</sup> Ibid., para. 62.

<sup>81</sup> Ibid., para. 41.

<sup>82</sup> See, for example, Minamata Convention on Mercury, annex C, art. 1 (i).

<sup>83</sup> See Committee on the Rights of the Child, general comment No. 16, paras. 42–45.

<sup>84</sup> The Children's Rights and Business Principles were developed by UNICEF, the United Nations Global Compact and Save the Children, and released in 2012.

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.<sup>85</sup> The Committee on the Rights of the Child has emphasized that the right to non-discrimination does not just prohibit all forms of discrimination in the enjoyment of rights under the Convention, but also requires appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality.<sup>86</sup>

65. While all children are vulnerable to environmental harm, some are particularly at risk. To highlight just a few examples: girl children are more likely to suffer from the lack of clean and safe sources of water; indigenous children from the destruction of natural ecosystems on which they rely for food, water, housing and culture; children with disabilities from the failure to anticipate and respond safely and effectively to natural disasters; and children from low-income families from a vast range of environmental problems, including household air pollution, lack of clean water, exposure to toxic substances and a lack of access to safe and clean opportunities for play and recreation.

66. States should take effective measures to ensure that children in these and other particularly vulnerable situations are able to exercise their human rights on an equal basis, and that environmental harm does not affect them disproportionately. For example, States and business enterprises should require that their children's rights impact assessment procedures take fully into account the impacts of proposed policies, programmes and projects on the most vulnerable. Environmental educational programmes should reflect the cultural and environmental situation of the children involved. States should collect disaggregated data to identify disparate impacts of environmental harm on different groups of children.<sup>87</sup> Environmental information should be made available to children and their parents or other caretakers in their own language. States should ensure that girls, children with disabilities and children from marginalized communities are able to voice their views and that their views are given due weight.<sup>88</sup> States should take steps to enable children with disabilities, as well as others, to play and engage in recreational activities in safe and healthy environments.<sup>89</sup> Children at particular risk and their caretakers should be provided with assistance in accessing effective remedies.

## V. Future generations

67. International environmental agreements and declarations on sustainable development often express concerns about the effects of environmental harm on future generations.<sup>90</sup> Indeed, the definition of sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".<sup>91</sup> However, human rights law does not attempt to define the rights of future generations or of obligations of States to them. It is understandable that international environmental and development policy and human rights law take different approaches to

<sup>85</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 7.

<sup>86</sup> See Committee on the Rights of the Child, general comment No. 14, para. 41.

<sup>87</sup> See, for example, Committee on the Rights of the Child, general comment No. 5, para. 12; general comment No. 9 (2006) on the rights of children with disabilities, para. 19; general comment No. 11 (2009) on indigenous children and their rights under the Convention, para. 26.

<sup>88</sup> See, for example, Committee on the Rights of the Child, general comment No. 12, paras. 77–78; general comment No. 9, para. 32; general comment No. 11, para. 39.

<sup>89</sup> See Convention on the Rights of Persons with Disabilities, art. 30; Committee on the Rights of the Child, general comment No. 17, para. 50.

<sup>90</sup> The many examples include the Rio Declaration on Environment and Development, principle 3; the United Nations Framework Convention on Climate Change, art. 3 (1); the Convention on Biological Diversity, preamble; Transforming our world: the 2030 Agenda for Sustainable Development.

<sup>91</sup> See the report of the World Commission on Environment and Development entitled "Our Common Future" (A/42/427, annex), ch. 2, para. 1 (p. 54). See also the report of the Secretary-General on intergenerational solidarity and the needs of future generations (A/68/322).

issues concerning future generations. While the former is concerned with the long-term as well as short-term consequences of present decisions, the latter is based primarily on the rights of individual human beings. It is difficult, if not impossible, to define the rights of individuals who are not yet alive.

68. Nevertheless, the division between present and future generations is less sharp than it sometimes appears to be. Concerns about future generations and sustainable development often focus on the state of the environment in particular years in the future, such as the year 2030 or 2100. Many people that will be living in 2100 are not yet born, and in that sense truly belong to future generations. But many people who will be living then are already alive today. To take a personal example, the Special Rapporteur has twin nieces who were born in 2016. The next century will begin before they celebrate their eighty-fourth birthday. Moreover, the line between future generations and today's children shifts every time another baby arrives and inherits their full entitlement of human rights. It is critical, therefore, that discussions of future generations take into account the rights of the children who are constantly arriving, or have already arrived, on this planet. We do not need to look far to see the people whose future lives will be affected by our actions today. They are already here.

## VI. Conclusions and recommendations

69. **No group is more vulnerable to environmental harm than children. Air pollution, water pollution and exposure to toxic substances, together with other types of environmental harm, cause 1.5 million deaths of children under the age of 5 every year, and contribute to disease, disability and early mortality throughout their life. In addition, climate change and the loss of biodiversity threaten to cause long-term effects that will blight children's lives for years to come. Making matters worse, children are often not able to exercise their rights, including their rights to information, participation and access to effective remedies.**

70. **States must do more to respect, protect and fulfil the rights of children in relation to environmental harm. To that end, the present report includes a number of specific recommendations, which build on the work of other special rapporteurs, the Committee on the Rights of the Child, OHCHR, UNICEF, WHO and the many others who submitted oral and written communications during the preparation of the report.**

71. **With respect to children's educational and procedural rights, States should, among other things:**

(a) **Ensure that educational programmes increase children's understanding of environmental issues and strengthen their capacity to respond to environmental challenges;**

(b) **Ensure that the effects of proposed measures on children's rights are assessed before the measures are taken or approved;**

(c) **Collect information about sources of environmental harm to children and make the information publicly available and accessible;**

(d) **Facilitate the participation of children in environmental decision-making processes, and protect them from reprisals for their participation or otherwise expressing their views on environmental matters;**

(e) **Remove barriers that children face to access to justice for environmental harm to the full enjoyment of their human rights.**

72. **States also have heightened obligations to take effective substantive measures to protect children from environmental harm, including by ensuring that their best interests are a primary consideration with respect to all decision-making that may cause them environmental harm. In particular, States should adopt and implement environmental standards that are consistent with the best available science and relevant international health and safety standards, never take retrogressive measures,**

and pursue precautionary measures to protect against environmental harm, especially when there are threats of serious or irreversible damage.

73. In this light, States should consider and, wherever possible, implement recommendations from expert agencies on specific measures to protect children's health and well-being from environmental harm.<sup>92</sup> WHO and UNICEF, in particular, have published detailed recommendations, including many examples of good practices.<sup>93</sup> Some simple changes could have enormous effects. For example, WHO states that widespread handwashing with soap after defecation and before preparing food would greatly reduce the incidence of diarrhoea, trachoma and respiratory infections that kill or harm so many children under the age of 5.<sup>94</sup>

74. States should cooperate to address the effects of environmental harm on the rights of children, including by sharing information on the toxicity and other characteristics of chemicals and other products and ensuring that international trade in chemicals and waste is in full compliance with the relevant environmental treaties.

75. With respect to the activities of business enterprises operating in more than one State, the States concerned should cooperate to ensure that the businesses comply with all applicable environmental laws, including by providing that victims of environmental harm allegedly caused by businesses have access to effective remedies in the courts of the States where the businesses are based as well as the States where the victims experienced the harm.

76. States should ensure that children in particularly vulnerable situations are able to exercise their human rights on an equal basis and that environmental harm does not affect them disproportionately, including by ensuring that impact assessment procedures take fully into account the effects of proposed policies, programmes and projects on the children most at risk.

77. States that have not yet done so should become parties to the Optional Protocol to the Convention on the Rights of the Child, and the State that has not yet ratified the Convention on the Rights of the Child should do so without further delay.

78. International financial mechanisms should ensure that the projects that they support do not cause environmental harm that adversely affects the rights of children, by including appropriate protections in their social and environmental safeguards.

79. Business enterprises should protect children's rights from environmental harm from their activities, including by carrying out environmental and human rights impact assessments that examine the effects of proposed actions on children, and by fully complying with the Guiding Principles on Business and Human Rights, the Children's Rights and Business Principles, and the recommendations of the Committee on the Rights of the Child in its general comment No. 16.

80. The Committee on the Rights of the Child should consider adopting a new general comment on children's rights and the environment.

---

<sup>92</sup> States should also implement the recommendations of the Special Rapporteur on hazardous substances and wastes with respect to the threats to children from toxic chemicals (see A/HRC/33/41, paras. 110–114), and those of OHCHR contained in its report on climate change and human rights (see A/HRC/35/13, paras. 57–66).

<sup>93</sup> See, for example, WHO, *Inheriting a sustainable world?*; WHO, "Don't pollute my future!"; UNICEF, *Clear the air for children*; UNICEF, *Unless we act now*.

<sup>94</sup> WHO, *Inheriting a sustainable world?*, p. 32, indicates that it is estimated that handwashing with soap could reduce diarrhoeal disease by 23 per cent and prevent 297,000 deaths per year from diarrhoea alone.



# General Assembly

Distr.: General

19 July 2018

Original: English

---

## Seventy-third session

Item 74 (b) of the preliminary list\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the 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, submitted in accordance with Human Rights Council resolution 37/8.

---

\* [A/73/50](#).



## **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### *Summary*

Pursuant to Human Rights Council resolution 37/8, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment submits his first report to the General Assembly. In the report, the Special Rapporteur recommends that the Assembly recognize the human right to a safe, clean, healthy and sustainable environment. Drawing on the extensive experience with this right at the national and regional levels, he explains why the time has come for such recognition by the United Nations.

## I. Introduction and background to the mandate

1. The present report is the first report to the General Assembly of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

2. The Human Rights Council established this mandate in March 2012. In its resolution 19/10, it decided to appoint an independent expert with a mandate to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, and to identify and promote best practices on the use of human rights obligations and commitments to inform, support and strengthen environmental policymaking. John H. Knox was appointed to the position in August 2012. In his first report ([A/HRC/22/43](#)), presented to the Council in March 2013, he emphasized that human rights and the environment are interdependent. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of a vast range of human rights, including the rights to life, health, food, water and development. At the same time, the exercise of human rights, including the rights to information, participation and remedy, is vital to the protection of the environment.

3. Over the first two years of the mandate, the Independent Expert mapped the human rights obligations relating to the environment in more detail. He held a series of regional consultations and, with the help of attorneys and academics working pro bono, reviewed hundreds of statements of treaty bodies, regional human rights tribunals, special procedures mandate holders and other human rights authorities that had applied human rights norms to environmental issues. He described the statements in 14 reports, each of which addressed one source or set of sources. He found that, despite the diversity of the sources, their views on the relationship of human rights law and the environment were remarkably coherent. These views were summarized in his second report ([A/HRC/25/53](#)), presented in March 2014. Virtually every source reviewed identified human rights whose enjoyment was infringed or threatened by environmental harm, and the sources agreed that States had obligations under human rights law to protect against such harm. The obligations included procedural obligations (such as duties to provide information, facilitate participation and provide access to remedies), substantive obligations (including the obligation to regulate private actors) and additional obligations towards those in particularly vulnerable situations.

4. On the basis of his research and regional consultations, the Independent Expert also identified good practices in the use of these obligations. In his subsequent report to the Human Rights Council ([A/HRC/28/61](#)), presented in March 2015, he described more than 100 such good practices. He published more detailed descriptions of each of the good practices on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and made them available in a searchable database, <http://environmentalrightsdatabase.org>.

5. In March 2015, in its resolution 28/11, the Human Rights Council decided to extend the mandate for another three years, changed the title of the mandate holder to Special Rapporteur and encouraged him to continue to study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and to identify and promote good practices relating to those obligations. He submitted reports on specific aspects of that relationship, including climate change and human rights, in 2016 ([A/HRC/31/52](#)), biodiversity and human rights, in 2017 ([A/HRC/34/49](#)), and children's rights and the environment, in 2018 ([A/HRC/37/58](#)).

6. In the same resolution, the Council encouraged the Special Rapporteur to promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, to disseminate his findings by continuing to give particular emphasis to practical solutions with regard

to their implementation and to work on identifying challenges and obstacles to the full realization of such obligations. The Special Rapporteur presented a report in March 2016 with specific recommendations on the implementation of the human rights obligations relating to the environment (see [A/HRC/31/53](#)). In his second term, he promoted the implementation of the obligations in many ways, including by partnering with the United Nations Environment Programme (UNEP) on a series of judicial workshops on constitutional rights to a healthy environment, supporting the United Nations Institute for Training and Research in the development of an online course on human rights and the environment, and working with the Universal Rights Group to develop a website for environmental human rights defenders, [www.environment-rights.org](http://www.environment-rights.org), as well as by undertaking country visits and receiving communications on violations.

7. With a view to facilitating the implementation of the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, the Special Rapporteur was also urged to develop and disseminate guidance that clearly describes the relevant norms and is easy to understand and apply (see [A/HRC/31/53](#), para. 69). On the basis of his previous work and following extensive consultation with representatives of Governments, international organizations, civil society organizations and academics, he presented framework principles on human rights and the environment ([A/HRC/37/59](#)) to the Human Rights Council in March 2018 at its thirty-seventh session.

8. The 16 framework principles set out basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Each framework principle has a commentary that elaborates on it and further clarifies its meaning. The framework principles and commentary do not create new obligations. Rather, they reflect the application of existing human rights obligations in the environmental context.

9. As the name “framework principles” indicates, they are intended to provide a sturdy basis for understanding and implementing human rights obligations relating to the environment, but they do not purport to describe all the human rights obligations that can currently be brought to bear on environmental issues, much less attempt to predict those that may evolve in the future. The goal was simply to describe the main human rights obligations that apply in the environmental context in order to facilitate their practical implementation and further development. To that end, the Special Rapporteur urged States, international organizations and civil society organizations to disseminate and publicize the framework principles and to take them into account in their own activities.

10. At its thirty-seventh session, the Human Rights Council adopted resolution 37/8, in which it extended the mandate for another three years. The Council took note with appreciation of the report presenting the framework principles on human rights and the environment, and called upon States to implement fully their obligations to respect and ensure human rights without distinction of any kind, including in the application of environmental laws and policies. The Council requested the Special Rapporteur:

(a) To study the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, in consultation with Governments, relevant international organizations and intergovernmental bodies, including UNEP and the United Nations Development Programme, and relevant multilateral environment agreements, human rights mechanisms, local authorities, national human rights institutions, civil society organizations, including those representing indigenous peoples and other persons in vulnerable situations, the private sector and academic institutions;

(b) To identify, promote and exchange views on good practices relating to human rights obligations and commitments that inform, support and strengthen environmental policymaking;

(c) To promote and report on the realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, with an emphasis on practical solutions with regard to their implementation;

(d) To identify challenges, obstacles and protection gaps that are preventing the full realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;

(e) To contribute to and participate in intergovernmental conferences and meetings relevant to the mandate, including the United Nations Environment Assembly;

(f) To develop a dialogue, liaise and collaborate with all relevant stakeholders with a view to enhancing public awareness of the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment;

(g) To conduct country visits and to respond promptly to invitations from States;

(h) To apply a gender perspective by, inter alia, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities, and addressing good practices where women and girls act as agents of change in safeguarding and managing sustainably the environment;

(i) To work in close coordination, while avoiding unnecessary duplication, with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies, agencies, funds and programmes, including UNEP and the United Nations Development Programme, the treaty bodies and international and regional organizations, and multilateral environmental agreements, taking into account the views of other stakeholders, including relevant regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions;

(j) To submit an annual report, including conclusions and recommendations, to the Human Rights Council and to the General Assembly.

11. At its thirty-eighth session, the Human Rights Council appointed David R. Boyd, a professor at the University of British Columbia, as the Special Rapporteur. He will begin to serve on 1 August 2018. Because the present report was submitted by Mr. Knox before the conclusion of his term, but will be presented to the General Assembly by Mr. Boyd in October 2018, Mr. Knox consulted with Mr. Boyd in the preparation of the report. In effect, the report is a joint report of the current holder of the mandate and his successor.

## II. “Greening” human rights

12. From the beginning of the modern environmental movement in the late 1960s, it has been clear that a healthy environment is necessary for the full enjoyment of human rights, including the rights to life and health. Fifty years ago, the General Assembly, in its resolution 2398 (XXII), decided to convene the first international environmental conference on the environment, noting its concern about the effects of “the continuing and accelerating impairment of the quality of the human environment ... on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as

developed countries”. At the ensuing United Nations Conference on the Human Environment, held in Stockholm in 1972, Governments adopted a declaration in which it is stated, in the first paragraph of the proclamation, that “both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights — even the right to life itself”.

13. In recent decades, human rights bodies have elaborated on the understanding that a healthy environment is of fundamental importance to the full enjoyment of a vast range of human rights. Treaty bodies, regional tribunals, special rapporteurs and other international human rights bodies have described how environmental degradation interferes with specific rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life. In effect, they have “greened” existing human rights. They have also explained that the obligations of States to respect, protect and fulfil human rights apply in the environmental context no less than in any other.

14. In the framework principles presented earlier in 2018 to the Human Rights Council, the Special Rapporteur summarizes the obligations of States under human rights law relating to the enjoyment of a safe, clean, healthy and sustainable environment. The framework principles include specific procedural obligations, such as the duties of States to respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters, provide for environmental education and public awareness, provide public access to environmental information, require the prior assessment of the possible environmental and human rights impacts of proposed projects and policies, provide for and facilitate public participation in decision-making related to the environment and provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

15. The framework principles also set out human rights obligations relating to substantive standards. Ideally, environmental standards would be set and implemented at levels that would prevent all environmental harm from human sources and ensure a safe, clean, healthy and sustainable environment. However, limited resources may prevent the immediate realization of the rights to health, food and water and other economic, social and cultural rights. The obligation of States to achieve progressively the full realization of these rights by all appropriate means<sup>1</sup> requires States to take deliberate, concrete and targeted measures towards that goal, but States have some discretion in deciding which means are appropriate in view of available resources.<sup>2</sup> Similarly, human rights bodies applying civil and political rights, such as the rights to life and private and family life, have held that States have some discretion in determining the appropriate levels of environmental protection, taking into account the need to balance the goal of preventing all environmental harm with other social goals.<sup>3</sup>

16. This discretion is not unlimited. One constraint is that decisions as to the establishment and implementation of appropriate levels of environmental protection must always comply with obligations of non-discrimination. Another constraint is the strong presumption against retrogressive measures in relation to the progressive realization of economic, social and cultural rights.<sup>4</sup> Other factors that should be taken

---

<sup>1</sup> See International Covenant on Economic, Social and Cultural Rights, art. 2, para. 1.

<sup>2</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties’ obligations.

<sup>3</sup> See, for example, European Court of Human Rights, *Hatton and others v. United Kingdom of Great Britain and Northern Ireland*, Application No. 36022/97, Judgment, 8 July 2003, para. 98; see also Rio Declaration on Environment and Development, principle 11.

<sup>4</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 9.

into account in assessing whether environmental standards otherwise respect, protect and fulfil human rights include the following:

(a) The standards should result from a procedure that itself complies with human rights obligations, including those relating to the rights to freedom of expression, freedom of association and peaceful assembly, information, participation and remedy;

(b) The standards should take into account and, to the extent possible, be consistent with all relevant international environmental, health and safety standards, such as those promulgated by the World Health Organization;

(c) The standards should take into account the best available science. However, the lack of full scientific certainty should not be used to justify the postponement of effective and proportionate measures to prevent environmental harm, especially when there are threats of serious or irreversible damage.<sup>5</sup> States should take precautionary measures to protect against such harm;

(d) The standards must comply with all relevant human rights obligations. For example, in all actions concerning children, the best interests of the child must be a primary consideration;<sup>6</sup>

(e) The standards must not strike an unjustifiable or unreasonable balance between environmental protection and other social goals given the effects of the standards on the full enjoyment of human rights.<sup>7</sup>

17. Once adopted, the standards must be implemented and enforced to be effective. Governmental authorities must comply with the relevant environmental standards in their own operations. They must also monitor and effectively enforce compliance with the standards by preventing, investigating, punishing and redressing violations of the standards by private actors as well as governmental authorities. In particular, States must regulate business enterprises to protect against human rights abuses resulting from environmental harm and to provide for remedies for such abuses.

18. Moreover, in accordance with the Guiding Principles on Business and Human Rights, the responsibility of business enterprises to respect human rights includes the responsibility to avoid causing or contributing to adverse human rights impacts through environmental harm, to address such impacts when they occur and to seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. Businesses should comply with all applicable environmental laws, issue clear policy commitments to meet their responsibility to respect human rights through environmental protection, implement human rights due diligence processes, including human rights impact assessments, to identify, prevent, mitigate and account for how they address their environmental impacts on human rights, and enable the remediation of any adverse environmental human rights impacts that they cause or to which they contribute.

19. Many environmental challenges, such as climate change, ozone depletion, the loss of biological diversity, long-range air pollution, marine pollution, plastic pollution and trade in hazardous substances, have global or transboundary dimensions. The obligation of States to cooperate to achieve universal respect for and

---

<sup>5</sup> See Rio Declaration on Environment and Development, principle 15.

<sup>6</sup> See Convention on the Rights of the Child, art. 3, para. 1.

<sup>7</sup> For example, a decision to allow massive oil pollution in the pursuit of economic development could not be considered reasonable because of its disastrous effects on the enjoyment of the rights to life, health, food, water and a healthy environment (see African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, communication No. 155/96, 2001).

observance of human rights requires States to work together to address transboundary and global environmental threats to human rights. States have entered into agreements on many international environmental problems, including climate change, ozone depletion, transboundary air pollution, marine pollution, desertification and the conservation of biodiversity.

20. The obligation of international cooperation does not require every State to take exactly the same actions. The responsibilities that are necessary and appropriate for each State will depend in part on its situation, and agreements between States may appropriately tailor their commitments to take account of their respective capabilities and challenges. Multilateral environmental agreements often include different requirements for States in different economic situations and provide for technical and financial assistance from wealthy States to other States.

21. Once their obligations have been defined, however, States must comply with them in good faith. No State should ever seek to withdraw from any of its international obligations to protect against transboundary or global environmental harm. States should continually monitor whether their existing international obligations are sufficient. When those obligations and commitments prove to be inadequate, States should quickly take the steps necessary to strengthen them, bearing in mind that the lack of full scientific certainty should not be used to justify the postponement of effective and proportionate measures to ensure a safe, clean, healthy and sustainable environment.

22. Finally, human rights law requires States to take special care to respect, protect and fulfil the rights of those who are most at risk from environmental harm. As the Human Rights Council has recognized, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population that are already in vulnerable situations (see Human Rights Council resolution 34/20). Persons may be vulnerable because they are unusually susceptible to certain types of environmental harm or because they are denied their human rights, or both. Those who are at greater risk from environmental harm for either or both reasons often include women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, national, ethnic, religious or linguistic minorities and displaced persons. Many persons are vulnerable and subject to discrimination along more than one dimension, such as children living in poverty or indigenous women.

23. Indigenous peoples are particularly vulnerable to environmental harm because of their close relationship with the natural ecosystems on their ancestral territories. Traditional (sometimes called “local”) communities that do not self-identify as indigenous may also have close relationships with their ancestral territories and depend directly on nature for their material needs and cultural life. Examples include the descendants of Africans brought to Latin America as slaves, who escaped and formed tribal communities. In order to protect the human rights of the members of such traditional communities, States have obligations towards them as well. The obligations of States towards indigenous peoples and traditional communities that are of particular relevance in the environmental context include the obligations to: (a) recognize and protect the rights of indigenous peoples and traditional communities to the lands, territories and resources that they have traditionally owned, occupied or used; (b) consult with them and obtain their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources; (c) respect and protect their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources; and (d) ensure that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.

24. Many other segments of the population can also be at risk from environmental harm. Examples of potential vulnerability include the following:

(a) In most households, women and girls are primarily responsible for water and hygiene. When sources of water are polluted, they are at greater risk of exposure to environmental contaminants. If women and girls must travel longer distances to find safer sources or sufficient quantities of water, they are deprived of educational and economic opportunities and are at greater risk of assault (see [A/HRC/33/49](#)). Nevertheless, women are too often excluded from decision-making procedures on water and sanitation;

(b) Children have little or no control over the environmental threats that they face, lack the knowledge and ability to protect themselves, and are developing physically. As a result, they are more susceptible to many types of environmental harm. Of the approximately 6 million deaths of children under the age of 5 in 2015, more than 1.5 million could have been prevented through the reduction of environmental risks. Moreover, exposure to pollution and other environmental harms in childhood can have lifelong consequences, including diminished mental capacity and an increased likelihood of cancer and other diseases (see [A/HRC/37/58](#));

(c) Persons living in poverty often lack adequate access to safe water and sanitation. They are also more likely to burn wood, coal and other solid fuels for heating and cooking, causing household air pollution that contributes to respiratory and cardiovascular disease, as well as cancer;

(d) Older persons may be vulnerable to environmental harm because they are more susceptible to heat, pollutants and vector-borne diseases, among other factors;

(e) The vulnerability of persons with disabilities to natural disasters and extreme weather is often exacerbated by barriers to receiving emergency information in an accessible format and to accessing means of transport, shelter and relief;

(f) Because minorities are often marginalized and lack political power, their communities often become the sites of a disproportionate number of waste dumps, refineries, power plants, other polluting facilities and roads with high volumes of traffic, exposing them to higher levels of air pollution and other types of environmental harm;

(g) Natural disasters and other types of environmental harm often cause internal displacement and transboundary migration, which can exacerbate vulnerabilities and lead to additional human rights violations and abuses (see [A/66/285](#) and [A/67/299](#)).

These vulnerabilities often overlap, such as in the case of women and children from minority groups who live in poverty, compounding the risks of environmental harm and the concomitant violation of their human rights.

25. The obligations of States to prohibit discrimination and to ensure equal and effective protection against discrimination<sup>8</sup> apply to the equal enjoyment of human

<sup>8</sup> See, for example, International Covenant on Civil and Political Rights, arts. 2, para. 1, and 26; International Covenant on Economic, Social and Cultural Rights, art. 2, para. 2; International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2 and 5; Convention on the Elimination of All Forms of Discrimination against Women, art. 2; Convention on the Rights of the Child, art. 2; and Convention on the Rights of Persons with Disabilities, art. 5. The term “discrimination” in the present report refers to any distinction, exclusion, restriction or preference which is based on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms (see Human Rights Committee, general comment No. 18 (1989) on non-discrimination, para. 7).

rights relating to a safe, clean, healthy and sustainable environment. States therefore have obligations, among others, 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. In order to protect the rights of those who are particularly vulnerable to or at risk from environmental harm, States must also ensure that their laws and policies take into account the ways that some parts of the population are more vulnerable or susceptible to environmental harm and the barriers that some face to exercising their human rights relating to the environment.

26. Finally, States have obligations to protect environmental human rights defenders, namely, individuals and groups striving to protect and promote human rights relating to the environment (see [A/71/281](#), para. 7). Those who work to protect the environment on which the enjoyment of human rights depends are protecting and promoting human rights as well, whether or not they self-identify as human rights defenders. They are among the human rights defenders most at risk. On average, four environmental defenders are killed every week because of their work, and countless more receive threats, suffer violence, are unlawfully detained or are otherwise harassed.

27. Like other human rights defenders, environmental human rights defenders are entitled to all the rights and protections set out in 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, including the rights to be protected in their work and to strive for the protection and realization of human rights at the national and international levels. To that end, States must provide a safe and enabling environment for defenders to operate free from threats, harassment, intimidation and violence. The requirements for such an environment include that States adopt and implement laws that protect human rights defenders in accordance with international human rights standards;<sup>9</sup> publicly recognize the contributions of human rights defenders to society and ensure that their work is not criminalized or stigmatized; develop, in consultation with human rights defenders, effective programmes for protection and early warning; provide appropriate training for security and law enforcement officials; ensure the prompt and impartial investigation of threats and violations and the prosecution of alleged perpetrators; and provide for effective remedies for violations, including appropriate compensation (see [A/66/203](#), [A/71/281](#) and [A/HRC/25/55](#), paras. 54–133).

### **III. National and regional recognition of the human right to a safe, clean, healthy and sustainable environment**

28. In addition to the greening of human rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life, there has been a second critical development in the field of human rights and the environment since the General Assembly first took note of the nexus between those issues in 1968. This involves the emergence of a new human right: the right to a safe, clean, healthy and sustainable environment, or, more simply, the right to a healthy environment. The roots of this new human right can be traced back to the Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) of 1972, in which, in the very first principle, it is stated that “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”.

---

<sup>9</sup> See Model Law for the Recognition and Protection of Human Rights Defenders.

29. Since 1972, the right to a healthy environment has gained widespread public and legal recognition across the world. Governments have incorporated it into constitutions and environmental legislation. The right to a healthy environment has also been incorporated into regional human rights agreements and regional environmental treaties. Governments have made genuine efforts, with varying degrees of success, to respect, protect, fulfil and promote this right. Over the past forty years, national courts, regional tribunals, treaty bodies, special procedures and many international institutions have contributed to defining the content, scope and parameters of the right to a healthy environment, as well as its relationship with other human rights.

30. At the national level, Portugal became the first country to adopt a constitutional “right to a healthy and ecologically balanced human environment”, in 1976, followed by Spain in 1978. Since then, the right to a healthy environment has gained constitutional recognition and protection in more than 100 States.<sup>10</sup> No other “new” human right has gained such widespread constitutional recognition so rapidly. About two thirds of the constitutional rights refer to a healthy environment; alternative formulations include rights to a clean, safe, favourable, wholesome or ecologically balanced environment. For example, according to article 112 of the human rights chapter of the Constitution of Norway: “Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well.” In the bill of rights chapter of the Constitution of South Africa, it is stated that everyone has the right: (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, promote conservation and secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development.

31. Some States have also included procedural environmental rights in their constitutions, such as the rights to receive information, to participate in decision-making about environmental matters and to obtain access to the justice system if the right to a healthy environment is being violated or threatened.

32. Also at the national level, more than 100 States have enacted legislation that specifically identifies and articulates the right to a healthy environment, including both procedural and substantive elements. Examples include the National Environment Protection Act of Bhutan of 2007, in which it is succinctly stated that “a person has the fundamental right to a safe and healthy environment with equal and corresponding duty to protect and promote the environmental well-being of the country”. The Environmental Code of France refers to “the individual’s right to a healthy environment” (art. L110-2), “the recognized right of all to breathe air which is not harmful to health” (art. L220-1) and comprehensive rights related to environmental information, public participation and access to justice. In the Clean Air Act of the Philippines of 1999, section 4 offers more detailed provisions setting forth the substantive right to breathe clean air, as well as procedural rights to be informed of environmental hazards such as air pollution, to participate in environmental

---

<sup>10</sup> See David R. Boyd, “Catalyst for change: evaluating forty years of experience in implementing the right to a healthy environment”, in *The Human Right to a Healthy Environment*, John H. Knox and Ramin Pejan, eds. (Cambridge, Cambridge University Press, 2018). See also David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, UBC Press, 2012); and James R. May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge, Cambridge University Press, 2015).

decision-making and to bring actions in court to compel the rehabilitation and clean-up of contaminated areas.

33. At the regional level, human rights agreements drafted after the 1970s have also included the right to a healthy environment. The African Charter on Human and Peoples' Rights of 1981 provides that "all peoples shall have the right to a general satisfactory environment favourable to their development" (art. 24). In the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), it is stated that "everyone shall have the right to live in a healthy environment" (art. 11, para. 1). In 2003, the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, in which it is stated that women shall have "the right to live in a healthy and sustainable environment" (art. 18) and "the right to fully enjoy their right to sustainable development" (art. 19). The Arab Charter on Human Rights of 2004 includes the right to a healthy environment as part of the right to an adequate standard of living that ensures well-being and a decent life (art. 38). Similarly, the Human Rights Declaration adopted by the Association of Southeast Asian Nations in 2012 incorporates a "right to a safe, clean and sustainable environment" as an element of the right to an adequate standard of living (para. 28 (f)).

34. Also at the regional level, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) of 1998, drafted under the auspices of the Economic Commission for Europe, refers to "the right of every person of present and future generations to live in an environment adequate to his or her health and well-being" (art. 1). Finally, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), concluded and opened for signature in 2018, is a regional agreement similar to the Aarhus Convention but covering Latin America and the Caribbean. One of the objectives of the Escazú Agreement is "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" (art. 1). The agreement also requires that "each Party shall guarantee the right of every person to live in a healthy environment" (art. 4). The above-mentioned regional human rights agreements and environmental treaties, all explicitly recognizing the right to a healthy environment, have been ratified by more than 130 States to date.

35. At both the regional and national levels, human rights commissions and courts have played an active role in defining the scope of the right to a healthy environment and the corresponding obligations upon Governments. The African Commission on Human and Peoples' Rights produced a ground-breaking decision in 2001 in a case involving pollution caused by the oil industry that violated the Ogoni people's right to a healthy environment under the African Charter. The Commission determined that Governments have clear obligations "to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources".<sup>11</sup> In 2017, the Inter-American Court of Human Rights ruled that the right to a healthy environment under the Protocol of San Salvador protects individuals and collectives, including future generations, and can be used to hold States responsible for cross-border violations that are within their "effective control".<sup>12</sup> The Inter-American Court stated that: "Environmental damage can cause irreparable damage to human beings. As such, a healthy environment is a fundamental right for the existence of humanity." Although

<sup>11</sup> African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, para. 52.

<sup>12</sup> Inter-American Court of Human Rights, Advisory Opinion, OC-23-17, 15 November 2017.

the Convention for the Protection of Human Rights and Fundamental Freedoms does not include any explicit references to the environment, the jurisprudence of the European Court of Human Rights has repeatedly referred to the right to a healthy environment. For example, in a case involving the dangers of using sodium cyanide for gold mining in Romania, the European Court concluded that the State's failure to take positive steps to prevent an environmental disaster violated the rights to life, private and family life and, more generally, to the enjoyment of a healthy and protected environment.<sup>13</sup> Similarly, the European Committee of Social Rights has interpreted the right to protection of health in article 11 of the European Social Charter to include an implicit right to a healthy environment.<sup>14</sup>

36. Taking into consideration the ratification of regional human rights agreements and environmental treaties, constitutions and national legislation, more than 150 States have already established legal recognition of the right to a healthy environment, with corresponding obligations. Many additional States have signed non-binding international declarations that explicitly incorporate the right to a healthy environment, including the Stockholm Declaration of 1972 and the Malé Declaration on the Human Dimension of Climate Change of 2007. In total, 155 States have a binding legal obligation to respect, protect and fulfil the right to a healthy environment, while 36 States have expressed their support for the right to a healthy environment through non-binding international declarations.<sup>15</sup> In many States, however, there is a large gap between the legal recognition or expression of support for this right and the implementation of measures to effectively respect, protect, fulfil and promote this right.

#### **IV. United Nations recognition of the human right to a safe, clean, healthy and sustainable environment**

37. The time has come for the United Nations to formally recognize the human right to a safe, clean, healthy and sustainable environment, or, more simply, the human right to a healthy environment. It is understandable that the central United Nations human rights instruments — the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights — do not include an explicit right to a healthy environment. They were drafted and adopted before the modern environmental movement raised awareness of the breadth and depth of the environmental challenges facing humanity. Today, however, it is beyond debate that human beings are wholly dependent on a healthy environment in order to lead dignified, healthy and fulfilling lives. The ecological systems, biological diversity and planetary conditions that are the vital foundations of human existence are under unprecedented stress. Were the Universal Declaration of Human Rights to be drafted today, it is hard to imagine that it would fail to include the right to a healthy environment, a right so essential to human well-being and so widely recognized in national constitutions, legislation and regional agreements.

38. States may be understandably reluctant to recognize a “new” human right if its content appears to be uncertain or its implications seem unclear. One of the primary purposes of the decision of the Human Rights Council to establish this mandate,

<sup>13</sup> European Court of Human Rights, *Tatar v. Romania*, Application No. 67021/01, Judgment, 27 January 2009, paras. 107 and 112.

<sup>14</sup> See European Committee of Social Rights, *Marangopoulos Foundation for Human Rights v. Greece*, Complaint No. 30/2005, Decision on the Merits, 6 December 2006, para. 195.

<sup>15</sup> The only exceptions among the 193 States Members of the United Nations are the Democratic People's Republic of Korea and Oman.

beginning in 2012, was to clarify what human rights law requires with respect to environmental protection. As the extensive reports of the Special Rapporteur forcefully demonstrate, the human right to a healthy environment is not an empty vessel waiting to be filled; on the contrary, its content has already been exhaustively discussed, debated, defined and clarified over the past 45 years.

39. Recognition of the right to a healthy environment by the United Nations would not only be consistent with the state of the law in most of the world, but would also provide a series of important and tangible benefits. It would raise awareness of and reinforce the understanding that human rights norms require protection of the environment and that environmental protection depends on the exercise of human rights. It would highlight that environmental protection must be assigned the same level of importance as other interests that are fundamental to human dignity, equality and freedom. It would also help to ensure that human rights norms relating to the environment continue to develop in a coherent, consistent and integrated manner. Recognition of the right to a healthy environment by the United Nations would complement, reinforce and amplify the regional and national norms and jurisprudence developed over the past 45 years.<sup>16</sup>

40. Examining experience at the national level demonstrates the many advantages of formal recognition of this right. Recognition of the right to a healthy environment in national constitutions has raised the profile and importance of environmental protection and provided a basis for the enactment of stronger environmental laws, standards, regulations and policies. At least 80 States enacted stronger environmental laws in direct response to the incorporation of the right to a healthy environment into their national constitutions. In States including Argentina, Brazil, Colombia, Costa Rica, France, Portugal, South Africa and Spain, the right to a healthy environment is one of the fundamental principles shaping, strengthening and unifying the entire body of environmental law. In India, Nepal and Uganda, the right to a healthy environment has been used to fill legislative or regulatory gaps related to air pollution, plastic pollution and forest conservation.

41. Recognition of the right to a healthy environment enables individuals, government agencies, communities, indigenous peoples, civil society organizations and the judiciary to contribute to improved implementation and enforcement of environmental laws and, concurrently, greater respect for human rights. When applied by the judiciary, constitutional environmental rights have helped to provide a safety net to protect against gaps in statutory laws, created opportunities for better access to justice and, most importantly, contributed to stopping or preventing human rights violations. Courts in many States are increasingly applying the right, as is illustrated by the interest in the regional judicial workshops held by UNEP and the Special Rapporteur. Thousands of cases decided by courts in more than 50 States have involved alleged violations of the right to a healthy environment over the past four decades. An impressive example comes from Costa Rica, where the constitutional recognition of the right to a healthy environment in 1994 contributed to a significant increase in the implementation and enforcement of environmental laws. In cases involving solid waste, sewage treatment, air pollution, groundwater and endangered species, the Constitutional Court has protected the right to a healthy environment and ruled that it includes a number of key principles, including the precautionary, polluter-pays and intergenerational equity principles.

42. Recognition of the right to a healthy environment has also contributed to substantial increases in the role of the public in environmental governance. People and organizations are empowered by the procedural elements of this right, including

---

<sup>16</sup> See John H. Knox and Ramin Pejan, eds., *The Human Right to a Healthy Environment* (Cambridge, Cambridge University Press, 2018).

access to information, participation in decision-making and access to justice. In many nations that recognize the right to a healthy environment, legislative processes, administrative procedures and courthouse doors are now open to citizens seeking to protect both their individual right to a healthy environment and society's collective interest in a healthy environment. According to the Environmental Democracy Index, Colombia, Latvia, Lithuania and South Africa are among the global leaders in enhancing access to justice to protect human rights, including the right to a healthy environment.<sup>17</sup> The Philippines has developed special rules of procedure for environmental litigation, which are specifically intended to facilitate protection of the right to a healthy environment.

43. Recognition of the right to a healthy environment has been a catalyst for national laws related to environmental education in States including Armenia, Brazil, the Philippines and the Republic of Korea. In addition, extensive efforts have been made by international agencies and the Special Rapporteur to educate judges, enforcement agencies, prosecutors and other groups involved in the implementation and enforcement of environmental laws about the right to a healthy environment.

44. The ultimate test in evaluating the right to a healthy environment is whether it contributes to healthier people and healthier ecosystems. The evidence in this regard is strikingly positive. One study concluded that nations with the right to a healthy environment in their constitutions have smaller ecological footprints, rank higher on comprehensive indices of environmental indicators, 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 nations without such provisions.<sup>18</sup> A second analysis, published in 2016 by two economists, determined that constitutional environmental rights have a positive causal influence on environmental performance.<sup>19</sup> A third study, also published in 2016, found that constitutional environmental rights are positively related to increases in the proportion of populations with access to safe drinking water.<sup>20</sup> Other studies have also found positive effects flowing from constitutional recognition of environmental rights.<sup>21</sup> In other words, as a result of the legal recognition of their right to a healthy environment, many millions of people are breathing cleaner air, have gained access to safe drinking water, have reduced their exposure to toxic substances and are living in healthier ecosystems.

45. Of particular importance are the positive effects of the recognition of the right to a healthy environment on vulnerable populations, including women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, minorities and displaced persons. Respecting and fulfilling the right to a healthy environment should ensure a minimum level of environmental quality for all members of society, consistent with international standards, with a particular emphasis on those populations that currently shoulder a disproportionate share of the burden of pollution and other environmental harms or that do not enjoy adequate access to essential environmental goods and services, such as

<sup>17</sup> See <https://environmentaldemocracyindex.org/rank-countries#all>.

<sup>18</sup> See David R. Boyd, *The Environmental Rights Revolution*.

<sup>19</sup> Christopher Jeffords and Lanse Minkler, "Do constitutions matter? The effects of constitutional environmental provisions on environmental outcomes", *Kyklos*, vol. 69, No. 2 (April 2016), pp. 294–335.

<sup>20</sup> Christopher Jeffords, "On the temporal effects of static constitutional environmental rights provisions on access to improved sanitation facilities and water sources", *Journal of Human Rights and the Environment*, vol. 7, No. 1 (March 2016), pp. 74–110.

<sup>21</sup> Joshua C. Gellers and Christopher Jeffords, "Toward environmental democracy? Procedural environmental rights and environmental justice", *Global Environmental Politics*, vol. 18, No. 1 (February 2018), 99–121.

safe water and adequate sanitation. A leading example is the progress made in respecting the right to a healthy environment of impoverished communities in the heavily polluted Matanza-Riachuelo watershed in Argentina following a powerful decision of the Supreme Court of Argentina in 2008. After confirming that the citizens' constitutional right to a healthy environment had been violated by extensive industrial pollution, the court ordered all levels of government and relevant businesses to undertake comprehensive remedial action, including pollution abatement, environmental remediation and clean-up, and infrastructure improvements. A decade after the court's decision, there have been substantial improvements in environmental quality (air, water and soil), and new drinking water and wastewater treatment infrastructure has been constructed. While the environmental problems facing the residents of this long-standing pollution hotspot are not completely solved, the extent of progress is impressive. It is worth noting that, in nations facing severe challenges with the rule of law or extreme poverty, the right to a healthy environment, like many human rights, is less likely to make a significant tangible impact on people's lives.

46. On the basis of the extensive experience with the right to a healthy environment and its critical importance in protecting human rights threatened by the multiple current environmental challenges, the Special Rapporteur recommends that the General Assembly recognize the right in a global instrument. One possible vehicle for such recognition would be a new international treaty. The Special Rapporteur notes that, in 2017, the Government of France presented for consideration a global pact for the environment, in which it is stated, in article 1, that "every person has the right to live in an ecologically sound environment adequate for their health, well-being, dignity, culture and fulfilment". In May 2018, the General Assembly adopted resolution [72/277](#), entitled "Towards a Global Pact for the Environment", in which it established an ad hoc open-ended working group to discuss possible options to address gaps in international environmental law and environment-related instruments. If necessary, the working group will discuss the scope, parameters and feasibility of an international instrument and make recommendations to the Assembly, which may include the convening of an intergovernmental conference to adopt such an international instrument during the first half of 2019. An instrument resulting from this process certainly could and should include recognition of the human right to a healthy environment.

47. A second option would involve the development of an additional protocol to an existing human rights treaty. For example, the right to a safe, clean, healthy and sustainable environment could be the focus of an optional protocol to the International Covenant on Economic, Social and Cultural Rights. This would be a logical choice in view of the fact that many national constitutions incorporate the right to a healthy environment into the same chapter as economic, social and cultural rights. A second optional protocol to the International Covenant on Economic, Social and Cultural Rights recognizing the right to a healthy environment, as an issue-specific instrument, would be comparable to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. Furthermore, the individual complaints mechanism established by the recent Optional Protocol to the International Covenant on Economic, Social and Cultural Rights could provide an important forum for addressing alleged human rights violations caused by environmental degradation.

48. A third and potentially more expeditious approach would be for the General Assembly to adopt a resolution focused on the right to a healthy environment. A model could be the resolution in which the Assembly recognized the rights to water and sanitation, which, like the right to a healthy environment, were not explicitly recognized in United Nations human rights treaties but are clearly necessary to the full enjoyment of human rights. In 2010, in its resolution [64/292](#), the Assembly

recognized the rights to safe and clean drinking water and sanitation as human rights that are essential for the full enjoyment of life and all human rights. The content of the rights to water and sanitation had been addressed in detail by the Committee on Economic, Social and Cultural Rights and the first Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque, before the Assembly acted in 2010.

49. Through any of the foregoing mechanisms, which are not mutually exclusive, recognition of the right to a safe, clean, healthy and sustainable environment by the United Nations would serve as acknowledgement that the right to a healthy environment must be universally protected (rather than subject to the current patchwork of protection measures), serve as an impetus for more nations to incorporate this right into their constitutions and legislation and potentially provide a mechanism for increased accountability where national governments violate or fail to protect this vital human right. Global recognition of the right to a healthy environment would also result in new reporting requirements (e.g., as part of the universal periodic review of the Human Rights Council) that would further raise the profile of this issue both politically and publicly. It would also support and advance the work of UNEP through its recently launched environmental rights initiative.

50. The proposal to recognize the right to a healthy environment meets the procedural and substantive requirements that have been established over time by the General Assembly to govern the proclamation of new human rights within the United Nations system. In 1986, the Assembly, in paragraph 4 of its resolution 41/120, adopted guidelines indicating that new human rights instruments should:

- (a) Be consistent with the existing body of international human rights law;
- (b) Be of fundamental character and derive from the inherent dignity and worth of the human person;
- (c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations;
- (d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;
- (e) Attract broad international support.

51. Each of these five requirements has clearly been met.<sup>22</sup> The links between a healthy environment, human dignity and human rights have been recognized since the adoption of the Stockholm Declaration in 1972. Extensive experience with the right to a healthy environment has been gained at the national and regional levels over four decades. In his previous reports, including his mapping reports,<sup>23</sup> the Special Rapporteur catalogued the large and strikingly consistent body of norms, principles and obligations governing the relationship between human rights and environmental degradation that has been developed by treaty bodies, the Human Rights Council, special procedures and regional human rights tribunals. The Council has provided a useful platform for intergovernmental discussions since 2011, when it requested, in its resolution 16/11, OHCHR to prepare a study on human rights and the environment. UNEP and OHCHR have provided expert advice on technical matters related to the right to a healthy environment since 2002, including through expert seminars, high-level meetings, side events at international forums and high-quality publications. In

<sup>22</sup> See Marcos Orellana, "Quality control of the right to a healthy environment", in *The Human Right to a Healthy Environment*, John H. Knox and Ramin Pejan, eds. (Cambridge, Cambridge University Press, 2018).

<sup>23</sup> Available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx).

summary, enough preparatory work has been completed. There has been a rich and comprehensive analysis of the elements, implications and obligations related to the right to a healthy environment. This analysis has been complemented by broad, long-standing consultations and political discussions involving Governments, international and intergovernmental organizations and civil society.

52. The recognition by the United Nations of a universal right to a safe, clean, healthy and sustainable environment would be very timely in view of the multiple ecological challenges facing the world. The World Health Organization reports that nearly one quarter of the global burden of disease is caused by exposure to environmental hazards in the air we breathe, the water we drink, the food we eat and the buildings and communities in which we live.<sup>24</sup> Despite the Paris Agreement, global emissions of greenhouse gases continue to rise, exacerbating the present and future impacts of climate change on human well-being. Despite the Convention on Biological Diversity, growing numbers of species are becoming endangered and extinct, with grave consequences for human rights and well-being. Although recognition of the right to a healthy environment is not a silver bullet that will solve these problems overnight, it will empower and inspire people throughout the world.

## V. Conclusions and recommendations

53. **The relationship between human rights and the environment has evolved rapidly over the past five decades, and even more so over the past five years. The greening of well-established human rights, including the rights to life, health, food, water, housing, culture, development, property and home and private life, has contributed to improvements in the health and well-being of people across the world. However, work remains to be done to further clarify and, more importantly, implement and fulfil the human rights obligations relating to a safe, clean, healthy and sustainable environment. Of paramount importance in this regard is the legal recognition of the right to a healthy environment at the global level, so that this fundamental human right can be enjoyed by all persons in all States, rather than in the subset of countries where it is currently recognized. The global recognition of this right would fill a glaring gap in the architecture of international human rights.**

54. **There can be no doubt that the right to a healthy environment is a moral right, essential to the health, well-being and dignity of all human beings. However, to ensure that this right is respected, protected and fulfilled, it requires legal protection. Tremendous progress has been made in this regard over the past four decades. The right to a healthy environment enjoys constitutional protection in more than 100 States. It is incorporated into the environmental legislation of more than 100 States. This right is included in regional human rights treaties and environmental treaties ratified by more than 130 States. In total, 155 States have already established legal recognition of the right to a healthy environment. Recognition of the right to a healthy environment by the United Nations would not only make this right universal in application but would also serve as a catalyst for the implementation of stronger measures to effectively respect, protect, fulfil and promote this right.**

55. **National and regional experiences demonstrate the potential benefits of recognizing the right to a healthy environment, namely:**

---

<sup>24</sup> World Health Organization, *Preventing Disease Through Healthy Environments: A Global Assessment of the Burden of Disease from Environmental Risks* (Geneva, World Health Organization, 2016).

- Stronger environmental laws and policies
- Improved implementation and enforcement
- Greater public participation in environmental decision-making
- Reduced environmental injustices
- A level playing field with social and economic rights
- Better environmental performance

56. The evidence presented in the present report clearly demonstrates that legal recognition of the right to a healthy environment in some States has contributed to cleaner air, safer water and healthier ecosystems. These benefits are vitally important to vulnerable populations, including women, children, persons living in poverty, members of indigenous peoples and traditional communities, older persons, persons with disabilities, minorities and displaced persons.

57. The Special Rapporteur therefore strongly recommends that Member States expedite the consideration of the three options outlined in paragraphs 46 to 48 of the present report for global recognition of the right to a safe, clean, healthy and sustainable environment. The three options are a new international treaty, such as the proposed global pact for the environment, a new optional protocol to the International Covenant on Economic, Social, and Cultural Rights and a General Assembly resolution focused on the right to a healthy environment. In view of the major global environmental problems that are currently causing tremendous hardship for many millions of people throughout the world, this ought to be a matter of the utmost urgency for the General Assembly.

58. In the meantime, the Special Rapporteur also recommends that all States dedicated to protecting the health of both humans and the ecosystems on which the well-being of humans depends move expeditiously to incorporate the right to a healthy environment into their constitutional, legal and policy frameworks. States in Latin America and the Caribbean should promptly sign and ratify the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), while other States should consider becoming parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

59. The Special Rapporteur is honoured to be part of an extensive global movement of people dedicated to the essential tasks of defending human rights and protecting the environment. In every country and every community there are women and men, girls and boys, courageously speaking out and taking action. They understand the intimate and indivisible relationship between human rights and the environment, as well as the fundamental reliance of humans on healthy ecosystems for life, well-being and dignity. They need and deserve the support of Governments, international institutions, national human rights institutions, businesses, judiciaries and civil society organizations. The recognition by the United Nations of a universal right to a healthy environment would be a profoundly meaningful way to empower, energize and inspire their continued efforts. Given the importance of clean air, safe water, healthy ecosystems and a stable climate to the ability of both current and future generations to lead healthy and fulfilling lives, global recognition of the right to a safe, clean, healthy and sustainable environment should be regarded as an urgent moral imperative.



# General Assembly

Distr.: General  
8 January 2019

Original: English

---

## Human Rights Council

### Fortieth session

25 February–22 March 2019

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### **Report of the Special Rapporteur**

#### *Summary*

In the present report, the Special Rapporteur recalls that the right to a healthy environment has been recognized by a majority of States in their constitutions, legislation, and various regional treaties to which they are parties. However, in spite of the wide recognition of its crucial importance, the right to a healthy environment has not yet been recognized as such at the global level. The Special Rapporteur focuses on the right to breathe clean air as one of its component and describes the negative impact of air pollution on the enjoyment of many human rights, in particular the right to life and the right to health, in particular by vulnerable groups. He highlights the different State obligations in relation to the right to breathe clean air, which are both procedural and substantive, as well as the specific obligation to protect people and groups in vulnerable situations. He identifies several good practices implemented worldwide that have helped to improve air quality. Finally, the Special Rapporteur offers a number of recommendations to States for actions they should consider as part of a national air quality action plan and urges businesses, in order to fulfil their responsibility in this regard, to contribute to and support efforts to reduce air pollution.



## I. Introduction

1. In its resolution 19/10, the Human Rights Council recognized that the human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment required clarification. The Council appointed John H. Knox as Independent Expert to study the obligations and to identify related best practices. The Independent Expert prepared two reports for the Council, mapping the statements of human rights bodies on human rights obligations relating to the environment (A/HRC/25/53) and describing more than 100 good practices in fulfilling the obligations (A/HRC/28/61).
2. In its resolution 28/11, the Council extended the mandate of the mandate holder as Special Rapporteur. Mr. Knox produced thematic reports addressing human rights obligations related to climate change (A/HRC/31/52), biodiversity (A/HRC/34/49) and children's rights and the environment (A/HRC/37/58). In 2018, he presented to the Council framework principles on human rights and the environment (A/HRC/37/59, annex), the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.
3. In its resolution 37/8, the Council renewed the mandate for a further three years. David R. Boyd was appointed as the new Special Rapporteur on 1 August 2018.
4. On 25 October 2018, Mr. Boyd presented his thematic report on the global recognition of the right to a safe, clean, healthy and sustainable environment (A/73/188) to the General Assembly, written jointly with Mr. Knox. He organized an expert consultation on human rights and environmental challenges in New York on 22 and 23 October 2018, in cooperation with SwedBio, Terre des hommes and the United Nations Environment Programme (UNEP). The Special Rapporteur participated in the First Global Conference on Air Pollution and Health, convened by the World Health Organization (WHO) in Geneva from 30 October to 1 November 2018. From 7 to 18 December 2018, the Special Rapporteur undertook a country visit to Fiji. A separate report will highlight his findings and recommendations.
5. To prepare the present report, the Special Rapporteur organized a public consultation with States, international organizations and other relevant stakeholders in Geneva on 29 October 2018. He also held a consultation with civil society representatives on 31 October 2018. These consultations complemented the call for inputs on air pollution and human rights circulated to all Member States on 27 September 2018, as well as to civil society organizations, private actors and academics.
6. In its resolution 37/8 the Council noted that more than 100 States had recognized some form of a right to a healthy environment in, inter alia, international agreements, their constitutions, legislation or policies. The Special Rapporteur would like to clarify the extent to which States are clearly obligated to respect, protect and fulfil the right to a healthy environment because of binding international treaties, constitutions and national environmental legislation. All of the following information is current as of 1 December 2018.
7. The African Charter on Human and Peoples' Rights of 1981 provides that "all peoples shall have the right to a general satisfactory environment favourable to their development" (art. 24). There are 53 States parties to the African Charter.
8. The 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) states that "everyone shall have the right to live in a healthy environment" (art. 11 (1)). There are 16 States parties to the Protocol of San Salvador.
9. The Arab Charter on Human Rights of 2004 includes the right to a healthy environment as part of the right to an adequate standard of living that ensures well-being and a decent life (art. 38). There are 13 States parties to the Arab Charter.
10. The 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) refers to "the

right of every person of present and future generations to live in an environment adequate to his or her health and well-being” (art. 1). There are 46 States parties to the Aarhus Convention (plus the European Union).

11. In total, 124 States are parties to legally binding international treaties that explicitly include the right to a healthy environment.<sup>1</sup>

12. In September 2018, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) opened for signature. The agreement requires that “each Party shall guarantee the right of every person to live in a healthy environment” (art. 4). Sixteen States have signed the Escazú Agreement, but it is not yet in force. The Human Rights Declaration adopted by the 10 States in the Association of Southeast Asian Nations in 2012 incorporates the “right to a safe, clean and sustainable environment” as an element of the right to an adequate standard of living (para. 28 (f)), but is not legally binding.

13. There are 100 States whose constitutions explicitly incorporate the right to a healthy environment, using a variety of phrases used to describe this right. For example, the Constitution of Costa Rica states: “All persons have the right to a healthy and ecologically balanced environment” (art. 50). The Constitution of Fiji states: “Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures” (art. 40 (1)).

14. There are at least 12 additional countries where courts have ruled that the right to a healthy environment is an essential element of the right to life (e.g. India, Ireland, Nigeria and Pakistan) and therefore is an enforceable, constitutionally protected right.<sup>2</sup>

15. There are more than 100 States where the right to a healthy environment is explicitly incorporated in national environmental legislation.

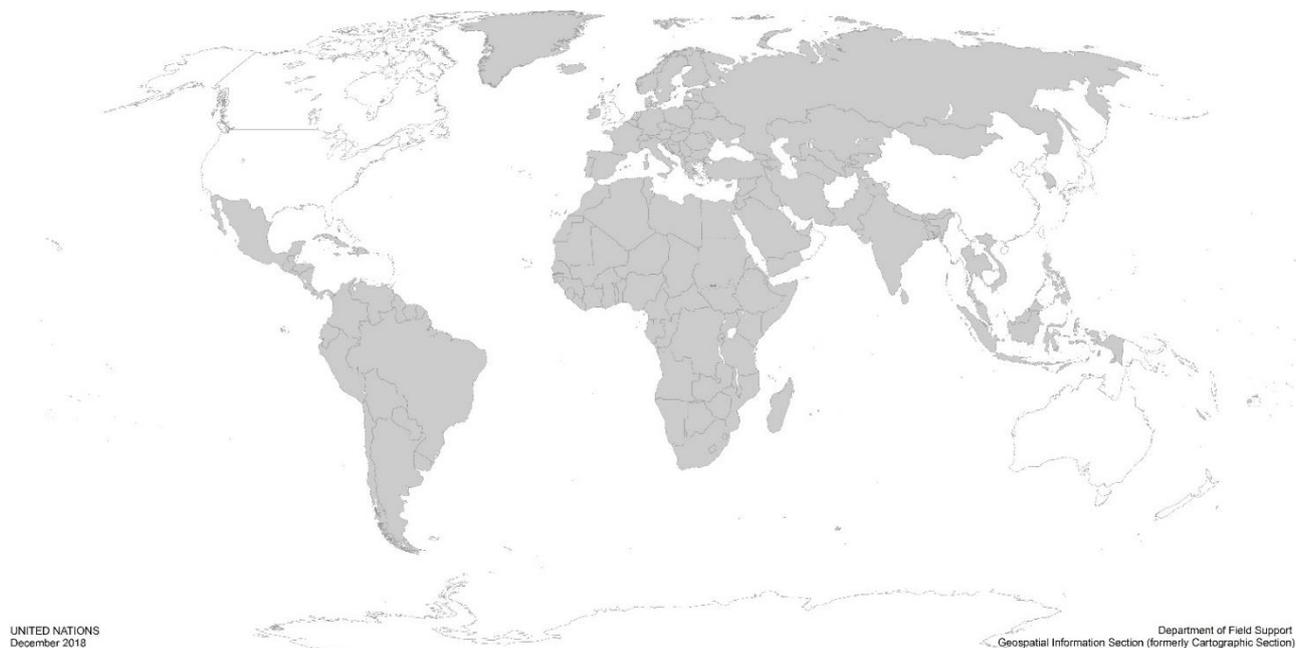
16. In total, at least 155 States are legally obligated, through treaties, constitutions, and legislation, to respect, protect, and fulfil the right to a healthy environment. This provides a compelling basis for the United Nations to move expeditiously to provide global recognition of the right to a healthy and sustainable environment, as recommended by both the previous and current Special Rapporteurs on human rights and the environment.

---

<sup>1</sup> The total number of parties to the African Charter, the Aarhus Convention, the Protocol of San Salvador and the Arab Charter is 128. (The United Kingdom of Great Britain and Northern Ireland has made a reservation to the Aarhus Convention; the State of Palestine has the status of “non-member observer State” at the United Nations; and Algeria and Libya are parties to both the Arab Charter and the African Charter, bringing the total to 124.)

<sup>2</sup> D.R. Boyd, “The implicit constitutional right to a healthy environment”, *Review of European Community and International Environmental Law*, vol. 20, No. 2 (July 2011) pp. 171–179.

## Right to a healthy environment



States in grey recognize the right to a healthy environment in their constitutions, legislation, as parties to a regional treaty, or a combination of these instruments.

*The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties. The final boundary between the Republic of the Sudan and the Republic of South Sudan has not yet been determined.*

### Right to breathe clean air

17. The remainder of the present report examines the human rights obligations relating to the right to breathe clean air, which is one of the vital elements of the right to a healthy and sustainable environment, along with access to clean water and adequate sanitation, healthy and sustainable food, a safe climate, and healthy biodiversity and ecosystems. The report draws on information provided in more than 30 submissions received in response to a call for inputs from States, civil society organizations, private actors and academic as well as statements and reports by international organizations, human rights treaty bodies, special procedures and other sources.

## II. Adverse impacts of poor air quality

### A. Ambient and household air pollution

18. Air quality is degraded by both ambient and household air pollution. Ambient air pollution is caused by electricity generation (from burning fossil fuels or biomass), industrial processes (e.g. oil refining, brick and cement manufacturing), mining, agricultural practices (e.g. burning crop residues or to clear land), poor waste management (e.g. open burning of garbage) and transportation (land, water, air). Civil society organizations raised concerns about open burning of waste in Lebanon, bauxite mining in Guinea and coal mining in Mozambique. Small-scale businesses in the informal economy can cumulatively produce large volumes of air pollution. Natural factors, such as wildfires and dust storms, also can contribute to ambient air pollution. Household air pollution is generated by the use

of solid fuels (e.g. wood, dung, crop residues, coal) for cooking and heating within the home, as well as by burning kerosene for lighting.

19. The primary sources of air pollution vary between and within States. The relative importance of ambient and household air pollution varies depending on the level of wealth and availability of resources. There are significant interactions between the two categories of air pollution, as burning solid fuels indoors pollutes outdoor air. For example, in India, more than 25 per cent of ambient air pollution is from household sources.<sup>3</sup> The adverse health effects of air pollution are highest in low- and middle-income countries where exposures to both ambient and household air pollution are high.

20. Thousands of chemicals can have negative impacts on air quality. The substances that have been the primary focus of abatement efforts to date because of their known adverse health effects are particulate matter (PM), sulphur dioxide, nitrogen oxides, carbon monoxide, ozone and lead. Among the many other air pollutants of concern are benzene, polycyclic aromatic hydrocarbons, dioxins and furans, and mercury.

21. A group of pollutants that must be targeted with great urgency because of their substantial negative impacts on climate change and air quality are called short-lived climate pollutants and include black carbon, methane and tropospheric ozone.

22. Fulfilling the right to breathe clean air will require action at the household, local, national, regional and international levels. In some States, a significant portion of ambient air pollution is transboundary, meaning the source originates in another country or countries. Prominent examples include sand dust from the Sahara and Gobi deserts, haze from agricultural burning in South-East Asia and forest fires.

## B. Impacts on human health

23. Exposure to air pollution causes a wide range of health effects including respiratory illness and infections, heart disease, stroke, lung cancer and negative birth outcomes (e.g. pre-term birth and low birth weight). A growing body of evidence links air pollution to other health problems including cataracts, ear infections, the onset of asthma in children, chronic deficits in lung function, stunting, diabetes, childhood obesity, developmental delays, reduced intelligence and neurological disorders afflicting both children and adults.<sup>4</sup>

24. Fine particulate air pollution is the single largest environmental risk to health worldwide. Consisting of tiny particles that are breathed into the lungs and then pass into the bloodstream, fine particulate matter contains a toxic mixture of soot, black carbon, sulphates, nitrates and heavy metals, varying from place to place depending on the sources.<sup>5</sup>

25. More than 90 per cent of the world's population lives in regions that exceed WHO guidelines for healthy ambient air quality, specifically with respect to fine particulate matter, or PM<sub>2.5</sub>. In other words, over 6 billion people – including 2 billion children – are breathing air that has adverse consequences for their health and well-being.<sup>6</sup>

26. Together, ambient and household air pollution contribute to 7 million premature deaths annually, including the deaths of approximately 600,000 children.<sup>7</sup> This staggering death toll includes more than 2 million people in South and South-East Asia, more than 2 million people in the Western Pacific region (including China), almost 1 million people in Africa, more than half a million in Europe, almost half a million in the Eastern Mediterranean and more than 300,000 in the Americas. Emerging evidence about air

<sup>3</sup> World Health Organization (WHO), *Burning Opportunity: Clean Household Energy for Health, Sustainable Development, and Wellbeing of Women and Children* (Geneva, 2016).

<sup>4</sup> WHO, *Inheriting a Sustainable World? Atlas on Children's Health and the Environment* (2017).

<sup>5</sup> WHO, "Ambient (outdoor) air quality and health", fact sheet, May 2018.

<sup>6</sup> WHO, *Air Pollution and Child Health: Prescribing Clean Air*, advance copy, 2018.

<sup>7</sup> WHO, "Burden of disease from the joint effects of household and ambient air pollution for 2016", May 2018.

pollution and health indicates these may be underestimates.<sup>8</sup> Dependence on solid fuels, kerosene and polluting cookstoves causes more premature deaths than HIV/AIDS, malaria and tuberculosis combined.<sup>9</sup>

27. In addition, poor air quality inflicts extensive harm on workers every year, an issue that was covered in depth in a recent report by the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (A/HRC/39/48 and Corr.1), and thus will not be further covered in the present report.

28. Hundreds of millions of people suffer from illnesses caused by poor air quality. Non-communicable diseases such as stroke, heart disease, chronic obstructive pulmonary disease and cancer have surpassed infectious diseases as the leading causes of death in the world. Air pollution is one of the five leading risk factors for non-communicable diseases globally.

29. Approximately 3 billion people continue to be exposed to household air pollution caused by burning solid fuels for cooking and heating. This includes people in Africa, South and South-East Asia and Latin America. Almost 1 billion people still rely on kerosene lamps and other polluting devices to light their homes. In poorly ventilated dwellings, levels of particulate matter can be more than 100 times acceptable levels.<sup>10</sup> The result is millions of preventable deaths caused by people breathing polluted air in the supposed safety of their own homes.

30. A study published in 2016 by the World Bank estimated that the global costs of air pollution exceed \$5 trillion per year.<sup>11</sup> Unless effective solutions are implemented immediately, the shocking statistics in the present report could grow even worse, as mortality caused by air pollution could increase by 50–100 per cent by 2050.<sup>12</sup>

### C. Impacts on vulnerable populations

31. Air pollution affects everyone, causing widespread violations of the right to breathe clean air. Yet the burden of related disease has a disproportionate impact on certain vulnerable populations. Among the most severely harmed are women, children, the elderly, minorities, indigenous peoples and members of traditional communities, people living in poverty, people with pre-existing health conditions such as respiratory conditions or heart disease and people who fall into several of these categories.

32. Women can be vulnerable to air pollution in particular situations. In States where household air pollution is prevalent, women suffer the highest levels of exposure because of their primary role in cooking. Women and girls often spend many hours each week gathering fuel for cooking and heating, which deprives them of educational and economic opportunities and raises the risks of injury and violence.<sup>13</sup>

33. Children are uniquely vulnerable to the adverse impacts of poor air quality due to physiological, behavioural and environmental factors.<sup>14</sup> Their developing brains and bodies are exquisitely sensitive to toxic substances and they have longer life expectancy, so that

<sup>8</sup> R. Burnett and others, “Global estimates of mortality associated with long-term exposure to outdoor fine particulate matter”, *Proceedings of the National Academy of Sciences*, vol. 115, No. 38 (18 September 2018), pp. 9592–597.

<sup>9</sup> World Bank, *The State of the Global Clean and Improved Cooking Sector*, Energy Sector Management Assistance Program Technical Report 007/15 (Washington, D.C., 2015).

<sup>10</sup> WHO, *Burning Opportunity*.

<sup>11</sup> World Bank and Institute for Health Metrics and Evaluation, *The Cost of Air Pollution: Strengthening the Economic Case for Action* (Washington, D.C., 2016).

<sup>12</sup> Organization for Economic Cooperation and Development, *OECD Environmental Outlook to 2050: The Consequences of Inaction* (Paris, 2012), pp. 275–278.

<sup>13</sup> WHO, *Burning Opportunity*.

<sup>14</sup> United Nations Children’s Fund (UNICEF), *Clear the Air for Children: The Impact of Air Pollution on Children* (New York, 2016); WHO, *Don’t Pollute My Future! The Impact of the Environment on Children’s Health* (2017).

childhood exposure can have lifelong health consequences. Air pollution is the leading risk factor for acute lower respiratory tract infections (e.g. pneumonia) in children under 5.<sup>15</sup>

34. The elderly in low- and middle-income countries are hit hard by air pollution. Of the total number of healthy years of life lost (disability adjusted life years, or DALY) due to air pollution, one quarter are lost by those over 70 years old. This problem is worsening as the global population ages.

35. Air pollution disproportionately harms poor people and poor communities. The overwhelming majority of illnesses and premature deaths caused by air pollution affect people in low- and middle-income countries. Poverty forces people to use polluting fuels and devices for cooking. Major sources of ambient air pollution, including power plants, factories, incinerators and busy roads, are often located in poor communities. Air pollution plagues low-quality housing, informal or temporary settlements and refugee camps. Poverty also exacerbates the impacts of air pollution through lack of access to information, health care and other resources.

36. As well as environmental injustices within nations, there are widening disparities in air quality between nations. Since 1990, wealthy, less-polluted countries (e.g. Japan, the United States of America and members of the European Union) have seen improvements in air quality while air quality has worsened in some heavily polluted countries (e.g. Bangladesh, India and Pakistan). A recent study estimated that 22 per cent of premature deaths caused by air pollution were linked to international trade, i.e. production of goods destined for export from low- and middle-income nations to wealthy nations.<sup>16</sup> For example, air pollution caused by producing goods for consumption in Western Europe and the United States is linked to over 100,000 premature deaths annually in China.

#### **D. Impacts on agriculture, biodiversity and ecosystems**

37. Some air pollutants have damaging impacts on agricultural productivity. It is estimated that 79–121 million tonnes of crops are lost annually due to ground-level ozone, leading to potential violations of the right to food.<sup>17</sup>

38. Air pollution has negative impacts on biological diversity and ecosystems. Various air pollutants cause or contribute to acidification of lakes, eutrophication of estuaries and coastal waters and mercury bioaccumulation in aquatic food webs. Terrestrial ecosystems are also damaged by air pollutants, including forests, grasslands and soils. For example, acid rain damages forests. Exposure to ozone lowers the rate of photosynthesis in many plants. Wildlife, from birds to amphibians, also are harmed by air pollution.

#### **E. Relationship between air pollution and climate change**

39. Greenhouse gas emissions are also a form of air pollution. As the previous mandate holder explained, States have obligations under human rights law to reduce their emissions of greenhouse gases and take steps to adapt to climate change (A/HRC/31/52). States are falling far short of the goals they need to meet to avoid catastrophic consequences.<sup>18</sup>

40. To a significant extent, many of the same activities that harm air quality also contribute to climate change (A/HRC/32/23, para. 14). This includes combustion in the electricity, industrial, transportation and waste sectors, livestock production and the use of solid fuels for cooking and heating.

<sup>15</sup> WHO, *Air Pollution and Child Health*.

<sup>16</sup> Q. Zhang and others, “Transboundary health impacts of transported global air pollution and international trade”, *Nature*, vol. 543, No. 7647 (30 March 2017), pp. 705–709.

<sup>17</sup> F. Sun, D. Yun and X. Yu, “Air pollution, food production and food security: a review from the perspective of food system”, *Journal of Integrative Agriculture*, vol. 16., No. 12 (December 2017), pp. 2945–2962.

<sup>18</sup> United Nations Environment Programme (UNEP), *Emissions Gap Report 2018* (Nairobi, 2018).

41. Black carbon is formed by incomplete combustion of fossil fuels, biofuels and biomass. It is a significant source of particulate matter and also contributes to climate change. In addition, when deposited on snow and ice (e.g. snowfields and glaciers), black carbon accelerates melting, contributing to natural disasters and water insecurity. This is a significant problem in mountain regions, such as the Andes and the Himalayas.

42. The overlap between air pollution and climate change has a silver lining. Well-designed laws, standards, policies and programmes can simultaneously reduce the emissions contributing to air pollution and climate change, producing a double dividend.<sup>19</sup> Improving air quality produces largely short-term and local benefits, whereas the positive effects of climate mitigation are long-term and global. Overall, the economic benefits are substantially larger than the costs of reducing emissions.<sup>20</sup> However, in some countries lack of capacity, inadequate human and financial resources, poor governance and weak rule of law are obstacles to implementing known solutions.

43. It is imperative that air quality solutions be implemented in systemic fashion, integrated with climate policy and the Sustainable Development Goals. For example, mistakes were made in earlier efforts to address climate change without adequately considering air quality. In a number of European countries, economic incentives encouraged the purchase of diesel vehicles in an effort to reduce carbon dioxide emissions. However, the climate mitigation benefits were outweighed by an increase in nitrogen oxides and particulate matter, resulting in an increase in premature deaths and preventable illnesses.<sup>21</sup>

### III. Effects of air pollution on the enjoyment of human rights

44. Poor air quality has implications for a wide range of human rights, including the rights to life, health, water, food, housing and an adequate standard of living. Air pollution also clearly violates the right to a healthy and sustainable environment. While the General Assembly has adopted numerous resolutions on the right to clean water, it has never adopted a resolution on the right to clean air. Surely if there is a human right to clean water, there must be a human right to clean air. Both are essential to life, health, dignity and well-being. The United Nations High Commissioner for Human Rights stated at the First Global Conference on Air Pollution and Health, held in 2018, that “there can be no doubt that all human beings are entitled to breathe clean air”.

45. Obligations related to clean air are implicit in a number of international human rights instruments, including the Universal Declaration of Human Rights (right to adequate standard of living), the International Covenant on Civil and Political Rights (right to life) and the International Covenant on Economic, Social, and Cultural Rights (right to health). Damage to crops inflicted by air pollution threatens the right to food, while contamination of aquatic ecosystems by airborne contaminants (e.g. mercury) jeopardizes both the right to food and the right to water.

46. In 2000, the Committee on Economic, Social and Cultural Rights called on States to formulate national policies with the objective of reducing and eliminating air pollution.<sup>22</sup> The High Commissioner for Human Rights (A/HRC/19/34 and Corr.1) and the Human Rights Council (resolution 35/24) have stressed the importance of addressing air pollution. The impacts of air pollution on human rights have been acknowledged repeatedly as part of

<sup>19</sup> V. Ramanathan and others, *Well Under 2 Degrees Celsius: Fast Action Policies to Protect People and the Planet from Extreme Climate Change*, report of the Committee to Prevent Extreme Climate Change (2017).

<sup>20</sup> D. Shindell and others, “Quantified, localized health benefits of accelerated carbon dioxide emissions reductions”, *Nature Climate Change*, vol. 8, No. 4 (April 2018), pp. 291–295.

<sup>21</sup> E. Mazzi and H. Dowlatabadi, “Air quality impacts of climate mitigation: UK policy and passenger vehicle choice”, *Environmental Science and Technology*, vol. 41, No. 2 (15 January 2007), pp. 387–392.

<sup>22</sup> General comment No. 14 (2000) on the right to the highest attainable standard of health.

the universal periodic review process.<sup>23</sup> The New Urban Agenda developed at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) and endorsed by the General Assembly (resolution 71/256, annex) contains extensive references to the interrelated imperatives of respecting human rights and improving both ambient and household air quality.

47. Special procedures of the Human Rights Council have urged States to tackle the scourge of air pollution. In a report on children's rights and the environment (A/HRC/37/58), the mandate holder emphasized the need to reduce the catastrophic health impacts of air pollution. In 2016, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes decried the "silent pandemic" of disease associated with childhood exposure to toxic substances, including air pollution (A/HRC/33/41). In 2018, the Independent Expert on the enjoyment of all human rights by older persons called upon States to reduce air pollution because it "disproportionately affects the health of older persons" (A/HRC/39/50). Special rapporteurs have also produced country reports highlighting the importance of tackling air pollution (A/HRC/30/40/Add.1 and Corr.1, A/HRC/37/58/Add.2).

48. Human rights are a vital element of the Sustainable Development Goals and improving air quality is essential to achieving several targets within the Goals, including target 3.9 on reducing deaths and illnesses from pollution; targets 7.1 on universal access to modern energy services and 7.2 on increasing the use of renewable energy; target 11.6 on reducing the per capita environmental impact of cities; and target 12.4 on environmentally sound management of chemicals and wastes.

49. Improving air quality would also benefit human rights related to other Sustainable Development Goals, including Goal 1 on no poverty; Goal 5 on gender equality; Goal 6 on clean water and sanitation; Goal 9 on industry, innovation and infrastructure; Goal 10 on reduced inequalities; and Goal 13 on climate action.

50. Approaching air quality from a human rights perspective highlights the principles of universality and non-discrimination, under which human rights are guaranteed for all persons, including persons living in vulnerable situations. A human rights perspective can also serve as a catalyst for accelerated action to achieve clean air, empower those working to improve air quality and serve as a North Star or Southern Cross to guide our actions as we navigate towards a healthy and sustainable future.

## A. Right to life

51. The right to life is universally recognized in human rights law. The Human Rights Committee, in 2018, stated: "Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life."<sup>24</sup>

52. As noted earlier, air pollution causes 7 million premature deaths annually, including the deaths of more than 600,000 children. These staggering and almost incomprehensible statistics represent an egregious violation of the right to life.

## B. Right to health

53. The Universal Declaration of Human Rights includes health as part of the right to an adequate standard of living (art. 25). The International Covenant on Economic, Social and Cultural Rights enshrines the right to health and provides that the steps to be taken by States to achieve the full realization of that right "shall include those necessary for ... the improvement of all aspects of environmental and industrial hygiene" (art. 12). The

<sup>23</sup> See, for example, Kuwait (A/HRC/29/17, para. 157.257) and the former Yugoslavian Republic of Macedonia (A/HRC/26/10, para. 101.104).

<sup>24</sup> General comment No. 36 (2018) on the right to life, para. 62.

Committee on Economic, Social and Cultural Rights determined that the right to health extends to the “underlying determinants of health”, including safe drinking water, adequate sanitation, safe food, adequate housing and healthy working and environmental conditions.<sup>25</sup> The Committee has also encouraged individual States to increase their efforts to reduce air pollution in order to protect human rights.<sup>26</sup>

54. The number of people whose right to health is violated by air pollution is in the billions. Again, 90 per cent of all people live in places where the air quality fails to meet the guidelines established by WHO.

### C. Rights of the child

55. The Convention on the Rights of the Child, in describing the right to health, explicitly requires that States act in the best interests of the child and consider “the dangers and risks of environmental pollution” (art. 24 (2) (c)). This led WHO to conclude that “children have a basic human right to breathe clean air in their homes, schools, and communities”.<sup>27</sup>

56. The Committee on the Rights of the Child concluded that “States should take measures to address the dangers and risks that local environmental pollution poses to children’s health in all settings”.<sup>28</sup> In several concluding observations, the Committee has urged States to scale up and expedite actions to protect children from polluted air.<sup>29</sup>

## IV. Human rights obligations relating to clean air

57. As the previous mandate holder made clear, States have obligations to protect the enjoyment of human rights from environmental harm (A/HRC/25/53). The foreseeable adverse effects of poor air quality on the enjoyment of human rights give rise to extensive duties of States to take immediate actions to protect against those effects. In a joint statement issued in 2017, a group of United Nations experts said “a threat like this can no longer be ignored. States have a duty to prevent and control exposure to toxic air pollution and to protect against its adverse effects on human rights.”<sup>30</sup>

58. The framework principles on human rights and the environment clarify the three categories of State obligations: procedural, substantive, and special obligations towards those in vulnerable situations. Therefore, the framework principles can be operationalized in the context of air pollution in order to respect, protect and fulfil human rights.

59. The procedural obligations of States in relation to the right to breathe clean air include duties related to promoting education and public awareness; providing access to information; ensuring freedom of expression, association and assembly; facilitating public participation in the assessment of proposed projects, policies and environmental decisions; and ensuring affordable, timely access to remedies.

60. With respect to substantive obligations, States must not violate the right to breathe clean air through their own actions; must protect the right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil the right. States also must avoid discrimination and retrogressive measures.

<sup>25</sup> General comment No. 14.

<sup>26</sup> See E/C.12/MNG/CO/4, E/C.12/KWT/CO/2 and E/C.12/KAZ/CO/1.

<sup>27</sup> WHO, “Air pollution and children’s health: a global health emergency”, background document prepared for the First WHO Global Conference on Air Pollution and Health, Geneva, 2018.

<sup>28</sup> General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health, para. 49.

<sup>29</sup> See CRC/C/BRA/CO/2-4, CRC/C/PAK/CO/5 and CRC/C/GBR/CO/5.

<sup>30</sup> “Toxic air pollution: UN rights experts urge tighter rules to combat ‘invisible threat’”, press release, 24 February 2017.

61. There are seven key steps that States must take in fulfilling the right to breathe clean air: monitor air quality and impacts on human health; assess sources of air pollution; make information publicly available, including public health advisories; establish air quality legislation, regulations, standards and policies; develop air quality action plans at the local, national and, if necessary, regional levels; implement an air quality action plan and enforce the standards; and evaluate progress and, if necessary, strengthen the plan to ensure that the standards are met.

62. At each of these stages, States must ensure that the public is fully informed and has an opportunity to participate in decision-making processes. Extra effort should always be made to reach out to women, children and others in vulnerable situations whose voices are too often not heard in environmental policy processes. States must pay special attention to environmental defenders working to protect the right to clean air.

### **A. Monitoring air quality and health effects**

63. States must establish networks and programmes to monitor air quality and health effects, particularly in urban areas and other regions known to suffer from poor air quality. Direct monitoring data can be complemented by air quality observations from satellites and outputs from computer models. Monitoring is a prerequisite to fulfilling a State's obligation to provide information to the public and is also essential to informed policy-making.

64. Most high-income countries operate extensive air quality monitoring networks providing continuous, hourly measurements of pollution levels. However, these networks are less common or provide less comprehensive coverage in low- and middle-income countries where air quality is generally worse. Some countries, particularly in Africa, have no air quality monitoring stations at all. Several States with severe air quality problems, such as China and India, have made great strides in recent years in establishing hundreds (India) and thousands (China) of new air quality monitoring stations.

65. New technologies offer the possibility of leapfrogging expensive air quality monitoring stations. Stationary and dynamic networks of low-cost sensors are much less expensive. Air pollution sensors can be deployed on cell phones, drones and vehicles by Governments, citizens, communities and businesses. Networks of these devices, integrated with satellite data and modelling, could complement regulatory monitoring and help identify air pollution hotspots. However, questions regarding the reliability and consistency of low-cost sensors need to be addressed by standards and protocols.

### **B. Assessing the sources of air pollution**

66. Reducing the disease burden attributable to air pollution and fulfilling the right to clean air require understanding the types of pollution and major contributing sources. This is critical for identifying the highest priority and most cost-effective actions for controlling emissions to protect public health, human rights and the environment. Source assessments have been completed in many high-income nations, as well as in China and India, although there is substantial uncertainty regarding emissions from the large informal sectors in these economies.<sup>31</sup> Modelling and forecasting inform estimates of exposure and health impacts, provide a basis for air quality advisories and identify measures needed to control specific emissions. Without adequate information, designing effective policies, programmes and other interventions is impossible.

### **C. Public reporting on air quality**

67. In addition to systematically collecting air quality information, States must share this information in a timely, accessible way, educate the public about the health risks posed by

<sup>31</sup> Health Effects Institute, *State of Global Air 2018: A Special Report on Global Exposure to Air Pollution and its Disease Burden* (Boston, 2018).

poor air quality and have systems in place to provide warnings when pollution poses an acute health threat, particularly for vulnerable populations.

68. In its general recommendation 32/2018, the National Human Rights Commission of Mexico described that country's inadequate air quality monitoring system as a violation of the public's right to environmental information and a violation of the right to a healthy environment.

#### **D. Establishing air quality legislation, regulations and standards**

69. States have an obligation to “establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights” (A/37/59, annex, framework principle 11). WHO has published guidelines for ambient air quality as well as indoor air quality, which States should incorporate as legally binding national standards.<sup>32</sup> In recognition of the different national contexts and capacities, WHO created interim guidelines for ambient particulate matter. The focus of the indoor air quality guidelines is on shifting to cleaner fuels and technologies for cooking, heating and lighting. These guidelines are under review because new evidence indicates that there is no safe level of exposure for some air pollutants, such as fine particles.

70. A global review of national air quality standards published in 2017 revealed that few States have incorporated the WHO guidelines into their air quality standards.<sup>33</sup> Not one State has adopted all of the WHO air quality guidelines, and only seven have adopted the most stringent WHO guideline for fine particulate matter. Incredibly, 80 States have no air quality standards or guidelines at all. Even in the European Union, air quality standards fail to meet the WHO guidelines. For example, the annual fine particulate limit is 2 1/2 times higher than the WHO recommendation. In the absence of strong standards, it is likely impossible to fulfil the right to breathe clean air.

71. Air quality standards should protect the most vulnerable members of society, in part by applying the precautionary principle and using adequate margins of safety. National standards must take into consideration the best interests of children.<sup>34</sup> The complete absence or weakness of national air quality standards in many States indicates a widespread failure to fulfil this fundamental human rights obligation, with devastating impacts upon the health of children around the world.

#### **E. Air quality action plans**

72. States must develop air quality action plans that identify the most important and effective measures that can be implemented to improve air quality, particularly for vulnerable populations.

73. Pursuant to principles of international human rights law, the right to breathe clean air is subject to progressive realization, recognizing that in some low- and middle-income States it cannot be immediately fulfilled. States have discretion to determine which air quality policies and programmes are best suited to their particular circumstances. However, they have obligations, to the maximum of their available resources (in some cases supplemented with international assistance), to implement concrete and effective measures to prevent increases in air pollution, improve air quality and fulfil the right to breathe clean air. Some obligations, such as non-discrimination and non-regression, are of immediate

<sup>32</sup> WHO, *WHO Guidelines for Indoor Air Quality: Household Fuel Combustion* (Geneva, 2014); and WHO Regional Office for Europe, *Air Quality Guidelines: Global Update 2005: Particulate Matter, Ozone, Nitrogen Dioxide and Sulfur Dioxide* (Copenhagen, 2006).

<sup>33</sup> M.K. Joss and others, 2017. “Time to harmonize national ambient air quality standards for global health equity”, *International Journal of Public Health*, vol. 62, No. 4 (May 2017), pp. 453–462.

<sup>34</sup> Convention on the Rights of the Child, art. 3 (1).

effect. The principle of non-regression means States must not weaken air quality regulations, standards or policies.

74. A comprehensive assessment of potential air quality actions in the Asia-Pacific region identified 25 measures that could save millions of lives annually, reduce crop losses by 45 per cent, fulfil the right to breathe clean air for a billion people by 2030 and provide benefits for water, soil, forests and biodiversity. The measures include conventional actions (e.g. standards for power plants, industry and vehicles), less common actions (e.g. restrictions on burning agricultural waste and garbage and rules governing livestock manure) and development actions with air quality co-benefits (e.g. clean cooking, energy efficiency incentives and improved public transit). The annual costs of \$300–\$600 billion would be offset by benefits for human health, food production, water security, environmental quality and climate protection.<sup>35</sup>

75. As mentioned earlier, certain aspects of air pollution cannot be addressed effectively without coordinated international action. Under international human rights law, States have an obligation to cooperate in addressing environmental problems that cross national borders, including transboundary air pollution.

## **F. Implementing and enforcing air quality rules**

76. States must ensure the effective enforcement of their environmental standards against public and private actors (*ibid.*, framework principle 12). Environmental laws, regulations and standards are useless if they are not implemented and enforced. Sufficient human and financial resources must be allocated to government agencies responsible for enforcing them.

77. States are obligated to ensure that people have access to remedies, through judicial or similar processes, when their right to breathe clean air is being threatened or violated or when other legal obligations related to air quality are not being fulfilled. In some States, efforts to improve the environmental rule of law are needed to enable implementation and enforcement.

## **G. Evaluating and revising air quality standards and plans**

78. An essential element of efforts to improve air quality is to evaluate progress (or the lack thereof) on a regular basis and revise air quality standards and plans accordingly. New scientific evidence and public participation must also be incorporated into the review and revision processes.

### **Business obligations related to air quality**

79. Businesses are obliged to respect human rights in all aspects of their operations, yet are a major source of air pollution. In terms of their potential impacts on air quality, businesses should comply with the Guiding Principles on Business and Human Rights as well as the Children’s Rights and Business Principles.

80. Regrettably, there are countless examples of businesses violating the right to breathe clean air. For example, some Swiss businesses are selling extremely dirty diesel and gasoline in West Africa (containing sulphur levels hundreds of times higher than European law permits).<sup>36</sup> Some vehicle manufacturers acted fraudulently in selling millions of vehicles equipped with “defeat devices” that enabled vehicles to pass emission tests but produce illegal quantities of pollution under normal driving conditions. Businesses have exported polluting facilities, outdated manufacturing equipment and used vehicles from

<sup>35</sup> UNEP, *Air Pollution in Asia and the Pacific: Science-Based Solutions* (Bangkok, 2018).

<sup>36</sup> Public Eye, *Dirty Diesel: How Swiss Traders Flood Africa with Dirty Fuel* (Lausanne, 2016).

high-income nations to low-income nations, where environmental and occupational standards are lower or not vigorously enforced.<sup>37</sup>

## H. Environmental human rights defenders

81. Across the world there has been a terrible increase in the number of people being murdered, criminalized, harassed, sued or otherwise intimidated because of their courageous efforts to protect the environment and human rights.<sup>38</sup> Individuals working to protect the right to breathe clean air are among the victims. One example is Phyllis Omido of Kenya, who was subjected to death threats because she opposed a lead smelter operating near her home. Gloria Capitan, a heroic woman from the Philippines, was killed because of her opposition to the coal industry.

82. States must prioritize action to protect environmental human rights defenders, ideally by establishing institutions and rules to address the root causes of violence and harassment, celebrating and supporting defenders' work instead of attacking it and ensuring justice by holding perpetrators of violence accountable for their actions.<sup>39</sup>

## V. Good practices

83. WHO observed in 2017 that “experiences and insights about good practices are not widely accessible or used” in the area of air pollution.<sup>40</sup> Therefore, the present report highlights a number of laws, policies, programmes and initiatives that have prevented or alleviated human rights violations caused by air pollution.

84. Many States reported to the Special Rapporteur that they are making dedicated efforts to improve air quality and protect their peoples' right to live in a healthy and sustainable environment.<sup>41</sup> Some are establishing or improving air quality monitoring networks, including Azerbaijan, Bolivia (Plurinational State of), Jordan, Mali, Morocco and Qatar. Bulgaria, Costa Rica, Croatia, Singapore and Slovakia are enacting increasingly stringent regulations for industry, vehicles, fuels and other sectors. Improving air quality within buildings is a priority for Bulgaria, Hungary, Montenegro and Poland. National action plans to improve air quality are being developed or implemented in Bahrain, Colombia, Ireland, Kuwait, Montenegro and Uruguay. Slovenia has a website dedicated to air quality action. Colombia, Costa Rica and Uruguay are promoting renewable energy and electric vehicles. Singapore created a vehicular emissions scheme that provides for surcharges or rebates on new and imported vehicles based on their environmental impact. Mali has an agency dedicated to rural electrification and adopted a law protecting human rights defenders, including environmentalists.<sup>42</sup>

85. The United Nations has established various initiatives to address air pollution. The Climate and Clean Air Coalition focuses on reducing short-lived climate pollutants. The goals of the Sustainable Energy for All initiative are to achieve universal access to modern energy services, double the global rate of improvement in energy efficiency and double the share of renewable energy in the global energy mix. Other initiatives include BreatheLife,

<sup>37</sup> A. Levinson and M.S. Taylor, “Unmasking the pollution haven effect”, *International Economic Review*, vol. 49, No. 1 (February 2008), pp. 223–254.

<sup>38</sup> Global Witness, *At What Cost? Irresponsible Business and the Murder of Land and Environmental Defenders in 2017* (London, 2018).

<sup>39</sup> See Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders); and Inter-American Court of Human Rights, *Kawas Fernández v. Honduras*, Merits, Reparations and Costs, Judgment of 3 April 2009.

<sup>40</sup> WHO, “Draft road map for an enhanced global response to the adverse health effects of air pollution”, document EB 138/17, p. 2, note 1.

<sup>41</sup> The submissions made in response to the Special Rapporteur's call for inputs are publicly available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AirPollution.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AirPollution.aspx).

<sup>42</sup> Law No. 2018-003 of 12 January 2018 on human rights defenders.

the Urban Health Initiative (with pilot projects in Accra and Kathmandu) and the Global Platform on Air Quality and Health.

## A. Cleaner air: progress in reducing household air pollution

86. The proportion of households using solid fuels for cooking and heating has been declining in Latin America, parts of Asia (including China, India and Indonesia), Europe and the Eastern Mediterranean. This has contributed to a significant decline in premature deaths from household air pollution.<sup>43</sup> It is strong evidence of the preventable nature of this problem, which can be effectively addressed by government policies and programmes, market-oriented solutions and targeted development assistance. However, there has been only modest progress in Africa.

87. There are many initiatives under way to accelerate the replacement of polluting fuels and cooking/heating/lighting technologies with clean fuels and clean technologies.<sup>44</sup> The Clean Cooking Alliance is working towards an objective of having at least 100 million homes adopt clean fuels and stoves by 2020. WHO has developed a Clean Household Energy Solutions Toolkit and “guidelines for indoor air quality: household fuel combustion” that clarify what is considered “clean”. Cooking for Life, a project developed by the World LPG Association and the United Nations, aims to transition households from using polluting fuels to liquefied petroleum gas (LPG) for cooking.

88. Pradhan Mantra Ujjwala Yojana is an Indian government programme started in 2016 that targets women living in poverty. Funds are provided directly to women to purchase LPG stoves, connections and fuel. More than 50 million new LPG connections have already been made.<sup>45</sup> The goal is to have LPG in 95 per cent of households by 2022. This programme has a positive impact on the lives of millions of women, girls and households living in poverty by providing them with access to safe, affordable cooking technologies and fuels and reducing time previously spent gathering fuels. However, many households with LPG connections continue to use solid fuels sometimes for cooking (for economic and cultural reasons).<sup>46</sup>

89. Indonesia implemented a successful “Zero Kero Programme”, launched in 2007, to convert households from kerosene to LPG.<sup>47</sup> Kerosene is less efficient than LPG and produces more household air pollution. Over 57 million free LPG starter packages (including a one-burner stove, hose, regulator and a filled 3-kilogram cylinder) were distributed to households and micro-businesses. Total household kerosene use in Indonesia dropped 92 per cent between 2006 and 2015, while per capita LPG use quintupled. Although household air quality improved, some households practise fuel stacking (i.e. the side-by-side use of different fuels and stoves). The programme resulted in net savings in the billions of dollars for the Government by replacing kerosene subsidies with smaller LPG subsidies (taking into account the cost of the starter packages). The programme also reduced overall greenhouse gas emissions from cooking. A post-implementation survey showed that 99.8 per cent of the households preferred using LPG to kerosene, citing its greater efficiency, speed of cooking and cleanliness.<sup>48</sup>

90. The national efficient cooking programme of Ecuador removes LPG subsidies (previously costing \$700 million per year) and helps households switch to induction

<sup>43</sup> Health Effects Institute, *State of Global Air 2018*.

<sup>44</sup> A. Quinn and others, “An analysis of efforts to scale up clean household energy for cooking around the world”, *Energy for Sustainable Development*, vol. 46 (October 2018), pp. 1–10.

<sup>45</sup> See [www.pmujiwalayojana.com](http://www.pmujiwalayojana.com).

<sup>46</sup> A. Kar and H. Zerriffi, “From cookstove acquisition to cooking transition: framing the behavioural aspects of cookstove interventions”, *Energy Research and Social Science*, vol. 42 (August 2018), pp. 23–33.

<sup>47</sup> K. Thoday and others, “The mega conversion program from kerosene to LPG in Indonesia: lessons learned and recommendations for future clean cooking energy expansion”, *Energy for Sustainable Development*, vol. 46 (December 2018), pp. 71–81.

<sup>48</sup> World LPG Association, Kerosene to LPG conversion programme in Indonesia, 2018.

cooktops and renewable electricity. The programme aims to replace LPG-based cooktops and water heating systems with electric systems for 3 million families. Families will save time cooking, and the programme will reduce greenhouse gas emissions.<sup>49</sup>

91. The International Energy Agency estimated that annual investments of \$4.7 billion could achieve universal access to clean cooking by 2030.<sup>50</sup> This relatively modest investment would produce tremendous returns: millions of premature deaths avoided each year, improved health, better quality of life, expanded economic opportunities, reduced deforestation and decreased greenhouse gas emissions.

## B. Cleaner air: progress in reducing ambient air pollution

92. There is compelling evidence that enacting and enforcing strong air quality regulations saves lives and prevents illnesses. Since the Clean Air Act was enacted in 1970, the economy of the United States of America has grown by 262 per cent (measured by increased gross domestic product) while achieving average reductions of 73 per cent for six main air pollutants. Full implementation of the Clean Air Act will prevent 230,000 premature deaths per year by 2020. Its costs are measured in billions of dollars, while the benefits are in the trillions.<sup>51</sup> Reduced air pollution in California resulted in significant improvements in children’s lung function.<sup>52</sup>

93. Air quality in China is improving as a result of strong laws, policies and actions. China strengthened its Law on the Prevention and Control of Atmospheric Pollution Control and invested hundreds of billions of dollars to improve air quality. The Government is implementing a “three-year plan on defending the blue sky”, with specific targets for reducing air pollution by 2020. Levels of particulate matter in 74 cities decreased by 33 per cent in five years.<sup>53</sup> China also achieved substantial reductions in nitrogen oxides and sulphur dioxide. Cleaner air is linked to significant declines in infant mortality.<sup>54</sup>

94. Shenzhen, in southern China, has grown from a town of 30,000 in 1980 to a megalopolis of 12 million, but managed to maintain 45 per cent of the metropolitan area as green space. Shenzhen converted its entire municipal bus fleet – more than 16,000 buses – to fully electric, making a significant contribution to improving urban air quality.

95. Several States explicitly recognize the right to breathe clean air. Examples include the Philippines Clean Air Act, the Environmental Code of France and the General Law on the Environment and Natural Resources 2000 of the Dominican Republic. The right to breathe clean air is also recognized at the subnational level in some countries, including the state constitutions of Pennsylvania and Massachusetts in the United States.<sup>55</sup> In other countries, including India and Pakistan, courts have clarified that the right to breathe clean air is constitutionally protected because it is an integral component of the rights to life and health. The National Strategy for Air Quality Management of Lebanon states: “Every citizen has the right to enjoy clean air.”

<sup>49</sup> See <https://unfccc.int/climate-action/momentum-for-change/activity-database/efficient-cooking-program-ecp>.

<sup>50</sup> World Bank, *The State of the Global Clean and Improved Cooking Sector*, p. 8.

<sup>51</sup> United States Environmental Protection Agency, *The Benefits and Costs of the Clean Air Act from 1990 to 2020* (2011).

<sup>52</sup> W.J. Gauderman and others, “Association of improved air quality with lung development in children”, *New England Journal of Medicine*, vol. 372, No. 10 (5 March 2015), pp. 905–913.

<sup>53</sup> J. Huang and others, “Health impact of China’s Air Pollution Prevention and Control Action Plan: an analysis of national air quality monitoring and mortality data”, *Lancet Planetary Health*, vol. 2, No. 7 (July 2018), pp. e313–323.

<sup>54</sup> S. Tanaka, “Environmental regulations on air pollution in China and their impact on infant mortality”, *Journal of Health Economics*, vol. 42 (July 2015), pp. 90–103.

<sup>55</sup> Constitution of the State of Pennsylvania: art. 27: “The people have a right to clean air ....”

96. In Europe, a series of legal developments has established that European citizens have an enforceable right to breathe clean air.<sup>56</sup> In 2008, the European Union amended its rules governing air quality.<sup>57</sup> Many States are not in compliance with the new rules. Successful lawsuits based on violations of air quality standards have been brought by civil society organizations including ClientEarth in the United Kingdom of Great Britain and Northern Ireland, Friends of the Earth in France, Deutsche Umwelthilfe in Germany and others in Austria, Czechia and Poland.<sup>58</sup>

97. In its latest report, the Intergovernmental Panel on Climate Change calls for a two-thirds reduction in coal power generation in 2030 and a near-total elimination by 2050.<sup>59</sup> A growing number of States have eliminated the use of coal to generate electricity, are phasing out coal or are committed to never using coal for electricity generation. Canada and the United Kingdom created the Powering Past Coal Alliance in 2017 and have been joined by more than 25 States pledging to end coal use by 2030. China and India have closed coal-fired electricity plants located in proximity to large cities. The number of proposed coal-fired power plants has fallen dramatically since 2015 and new construction is almost offset by the retirement of existing coal plants.<sup>60</sup>

98. Two initiatives that have dramatically improved air quality in many countries are the phase-out of leaded gasoline and major reductions in the sulphur content of transport fuels. These actions have produced enormous health, environmental and economic benefits, valued in the trillions of dollars.<sup>61</sup>

99. Curitiba, a large Brazilian city, has built an extensive rapid bus system. In 2013, a plan to add 300 kilometres of bicycle paths was launched. These transport initiatives have contributed to making life expectancy in Curitiba two years longer than the national average and to relatively low infant mortality.<sup>62</sup> Estonia piloted free public transit in its capital in 2013 and recently extended the system across the whole country. There are approximately 100 public transit systems in the world, from Dunkirk, France, to Changning, China, offering free fare programmes.

100. A growing number of countries (e.g. China, Germany, India and the United Kingdom) have pledged to phase out the sale of internal combustion vehicles by dates ranging from 2030 to 2040.<sup>63</sup>

101. Norway has achieved a remarkably high proportion of electric vehicle sales through a variety of incentives and disincentives. The most recent data indicate that 60 per cent of new vehicle sales in Norway are fully electric or gas/electric hybrids, compared with 1 per cent in the United States and 2 per cent in China. Throughout the European Union, States impose vehicle registration taxes and fuel taxes intended to encourage the purchase of clean vehicles and discourage the purchase of more polluting models.

102. In California, rules prohibit siting new schools within 500 feet (150 metres) of busy roads, in response to scientific evidence about the adverse health effects of traffic-related air pollution on developing lungs, brains and other organs.

103. Shipping is a major source of air pollution. The International Maritime Organization recently established a strict new limit for the sulphur content of fuel used in shipping. This change will prevent an estimated 570,000 premature deaths between 2020 and 2025.<sup>64</sup>

<sup>56</sup> A. Andrews, *The Clean Air Handbook: A Practical Guide to EU Air Quality Law* (London, ClientEarth, 2015).

<sup>57</sup> Directive 2008/50/EC on ambient air quality and cleaner air for Europe.

<sup>58</sup> See [www.right-to-clean-air.eu/en/](http://www.right-to-clean-air.eu/en/).

<sup>59</sup> Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5° C* (2018).

<sup>60</sup> See [www.endcoal.org](http://www.endcoal.org).

<sup>61</sup> E. Gould, "Childhood lead poisoning: conservative estimates of the social and economic benefits of lead hazard control", *Environmental Health Perspectives*, vol. 117, No. 7 (July 2009), pp. 1162–1167.

<sup>62</sup> WHO, *Inheriting a Sustainable World?*

<sup>63</sup> Center for Climate Protection, *Actions by countries to phase out internal combustion engines*, 2018.

104. Many economists support putting fees or taxes on air emissions, thus implementing the polluter pays principle. A challenge is to ensure that the price on air emissions is high enough to produce substantial reductions, as affected businesses will raise competitiveness concerns. Another challenge is that different pollutants have different health and environmental impacts, so prices should be higher on emissions of more harmful substances.

105. Good examples include a tax in Chile on stationary sources of air pollution that is higher for facilities located in more densely populated areas and the national pollution tax in France that imposes higher taxes on more harmful air pollutants.

106. The Economic Commission for Europe Convention on Long-range Transboundary Air Pollution is an excellent example of regional cooperation. The Convention was signed in 1979, entered into force in 1983 and is now accompanied by eight protocols. Fifty-one parties from three continents have collaborated to set emission reduction targets, monitor compliance, build capacity and raise awareness. Sulphur dioxide emissions in the region have declined 70 per cent since 1990, while nitrogen dioxide emissions fell 40 per cent.<sup>64</sup> The 1999 Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-level Ozone, as amended in 2012, is the first legally binding agreement containing obligations to reduce short-lived climate pollutants.

107. The Aarhus Convention and its Protocol on Pollutant Release and Transfer Registers provide other examples of effective international instruments. The Aarhus Convention guarantees three key procedural rights (information, participation and access to justice) and promotes good practices as means of fulfilling the right to a healthy environment.

108. In response to problems caused by transboundary air pollution, Singapore created a programme in 2013 to subsidize medical treatment for air pollution-related illnesses experienced by vulnerable populations including children, the elderly and low-income residents. Approximately 100,000 people benefited from these medical subsidies.

## VI. Conclusions and recommendations

109. **Given the devastating impacts of poor air quality on people's lives, health and human rights, actions must be taken rapidly and systematically, with a priority focus on ameliorating conditions for the most vulnerable. Fulfilling the right to breathe clean air goes hand in hand with achieving the Sustainable Development Goals, including healthy lives for all, sustainable cities, universal access to clean energy and effective action to address climate change. A rapid shift away from fossil fuels to renewables such as solar and wind (except in the context of clean cooking, which often involves a shift to LPG) could save as many as 150 million lives over the course of the twenty-first century by reducing air pollution.**

110. **The failure to respect, protect and fulfil the right to breathe clean air is inflicting a terrible toll on people all across the world. The statistics presented in the present report depict a public health catastrophe, yet the numbers fail to capture the magnitude of human suffering involved. Each premature death, every illness and every disability afflicts an individual with hopes, dreams and loved ones. Air pollution is a preventable problem. The solutions – laws, standards, policies, programmes, investments and technologies – are known. Implementing these solutions will of course entail large investments, but the benefits of fulfilling the right to breathe clean air for all of humanity are incalculable.**

111. **In order to respect, protect and fulfil the right to breathe clean air, States must implement the seven steps outlined in paragraphs 63–78 (monitoring, source assessment, public information, air quality standards, action plan, implementation/enforcement and evaluation). States should review existing laws,**

<sup>64</sup> The regulation in revised annex VI to the International Convention for the Prevention of Pollution from Ships (MARPOL) limiting the sulphur content of bunker fuel to a maximum of 0.5 per cent will enter into force on 1 January 2020.

<sup>65</sup> Economic Commission for Europe, *Towards Cleaner Air: Scientific Assessment Report 2016*, 2017.

standards, policies and programmes to determine if they are consistent with their human rights obligations related to air quality, and amend them if necessary.

112. Specific actions that States should consider as part of the national air quality action plan include:

- (a) Prohibiting the construction of new fossil fuel power plants and replacing existing fossil fuel power plants with renewable sources of energy (by 2030 in high-income nations and 2050 elsewhere);
- (b) Eliminating all remaining fossil fuel subsidies, except for LPG cooking programmes;
- (c) Supporting the growth of distributed renewable energy generation systems;
- (d) Reducing, minimizing or avoiding government actions that cause air pollution;
- (e) Conducting assessments of the environmental, health and human rights implications of new projects, policies and plans that could cause air pollution;
- (f) Disseminating information about best available technologies;
- (g) Requiring industry to reduce and eliminate emissions of harmful air pollutants;
- (h) Requiring the oil and gas industry to recover and use methane and other gases released during the exploration, development and production processes;
- (i) Prioritizing emission reductions from high-polluting industrial facilities such as coke ovens, smelters, refineries, cement plants and brick kilns;
- (j) Refusing to issue permits for new polluting facilities or activities in areas that are air pollution hotspots until air quality in such areas meets national standards and would continue to meet those standards despite the additional pollution;
- (k) Ensuring an integrated approach to tackling air pollution and climate change to maximize co-benefits;
  - (l) Promoting compact and mixed-use urban design;
  - (m) Protecting and expanding urban green spaces;
  - (n) Prioritizing investments in safe walking, safe cycling and rapid public transit over infrastructure for private vehicles;
  - (o) Shifting to cleaner vehicles by strengthening emission standards and fuel efficiency rules while accelerating the transition to zero emission vehicles;
  - (p) Implementing building codes, rules and standards that substantially increase energy efficiency in buildings;
  - (q) Improving waste management by prohibiting the open burning of garbage, avoiding incineration and requiring the capture of methane at landfills;
  - (r) Creating laws, policies and programmes to discourage or prohibit burning of crop residue or agricultural waste and assist farmers to shift to cleaner practices;
  - (s) Lowering ammonia emissions from livestock manure and fertilizer use, in part by promoting a predominantly plant-based diet;
  - (t) Educating the public about the adverse health effects of air pollution and the benefits of implementing solutions;
  - (u) Using government procurement policies to advance all of the foregoing.

113. All new or amended laws, standards, policies and programmes should incorporate public participation, with an emphasis on including vulnerable populations and communities suffering from poor air quality. Accessible, affordable

and effective judicial or quasi-judicial mechanisms are essential for enforcement, accountability and ensuring remedies are available if the right to clean air is threatened or violated.

114. States must accelerate programmes to replace solid fuels and kerosene with cleaner energy and clean technologies. A concerted effort is required to address non-financial barriers to clean cooking by extending fuel supply infrastructure, implementing policies to reduce the variability of fuel prices and promoting gender equity in household decision-making. States must also educate the public about the adverse health consequences of household air pollution and the availability of cleaner alternatives. Transitional fuels and technologies may achieve major health gains at a lower cost, but the end goal is clean fuels and clean technologies, not merely less dirty ones. States should increase their financing to reduce and eliminate household air pollution and achieve universal access to clean cooking by 2030

115. Governments, businesses, international agencies and philanthropic foundations must accelerate their efforts to ensure access to clean energy. High-income countries should provide economic and technical assistance to low-income countries to support their efforts to fulfil the right to breathe clean air. The international financial institutions (e.g. World Bank, International Monetary Fund, Asian Development Bank and European Investment Bank) must avoid financing projects that will cause significant increases in air pollution.

116. In order to fulfil their responsibility to respect the human right to breathe clean air, businesses should:

- (a) Make every effort to reduce emissions of air pollutants from their facilities and supply chains;
  - (b) Stop delaying the transition away from fossil fuels;
  - (c) Embrace the extraordinary economic opportunities presented by renewable energy, energy storage, energy efficiency, clean cook stoves, heating and lighting and zero emission vehicles;
  - (d) Contribute to and support efforts to shift towards the goal of a pollution-free circular economy.
-



# General Assembly

Distr.: General  
15 July 2019

Original: English

---

## Seventy-fourth session

Item 72 (b) of the preliminary list\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the 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 R. Boyd, submitted in accordance with Human Rights Council resolution [37/8](#).

---

\* [A/74/50](#).



## **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### *Summary*

In the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment discusses the urgent need for action to ensure a safe climate for humanity. He illustrates the devastating effects of the current global climate emergency on the enjoyment of human rights, and the crucial role for human rights in catalysing action to address climate change. After clarifying the obligations of States and the responsibilities of businesses, the Special Rapporteur makes practical recommendations with respect to addressing society's addiction to fossil fuels; accelerating other mitigation actions; enhancing adaptation to protect vulnerable people; ramping up climate finance; financing loss and damage; and empowering United Nations institutions. The Special Rapporteur concludes that a safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being.

The Special Rapporteur is submitting the present report together with an annex on good practices related to ensuring a safe climate, available on the website of the Office of the United Nations High Commissioner for Human Rights.\* The good practices demonstrate that effective actions are available to simultaneously address climate change and protect human rights. Drawn from every continent and featuring more than 60 States and a wide range of actors, the good practices are intended to inspire ambitious action to address the global climate emergency.

\* Available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx).

## Contents

	<i>Page</i>
I. The global climate emergency .....	4
A. Overview of climate change impacts .....	5
B. Causes of the global climate crisis .....	6
C. Magnitude of the challenges ahead .....	7
II. Effects of climate change on the enjoyment of human rights .....	10
A. Right to life .....	10
B. Right to health .....	11
C. Right to food .....	11
D. Rights to water and sanitation .....	12
E. Rights of the child .....	13
F. Right to a healthy environment .....	13
G. Vulnerable populations .....	14
III. Human rights obligations relating to climate change .....	15
A. State obligations .....	17
B. Business responsibilities .....	19
IV. Conclusion and recommendations .....	20
A. Addressing society's addiction to fossil fuels .....	20
B. Accelerating other mitigation actions .....	21
C. Adaptation to protect vulnerable people .....	22
D. Ramping up climate finance .....	23
E. Financing loss and damage .....	24
F. Empowering United Nations institutions .....	24
G. The last word .....	25

## I. The global climate emergency

1. We are in the midst of an unprecedented environmental crisis. Human activities are causing pollution, extinction and climate change. Air pollution causes millions of premature deaths annually, including hundreds of thousands of children aged five and under. Wildlife populations are in free fall and one million species are at risk of extinction. The most pressing environmental risk is climate change, which not only exacerbates air pollution and biodiversity loss, but multiplies a broad range of risks, detailed below, leading to negative impacts on billions of people. A growing number of States, including Canada, France and the United Kingdom of Great Britain and Northern Ireland, have declared a global climate emergency.

2. Human society developed during the Holocene, an 11,500-year-long interglacial period characterized by a relatively stable climate. The Holocene epoch enabled the emergence of agriculture, cities and civilization. However, human activities – burning fossil fuels (coal, oil and natural gas), deforestation and industrial agriculture – are changing the Earth’s climate, destabilizing the climate system. Atmospheric concentrations of carbon dioxide have risen by 50 per cent since the Industrial Revolution, from 280 parts per million to more than 415 parts per million. The last time carbon dioxide levels were this high was during the Pliocene epoch 3 million years ago, meaning that our species, homo sapiens, has never experienced this situation.<sup>1</sup> To make matters worse, there is a risk that natural feedback mechanisms, such as the melting of Greenland and Antarctic ice sheets or methane released from melting permafrost, could trigger catastrophic runaway climate change.

3. We have entered a new geological epoch of great impacts, risks and uncertainty, referred to as the Anthropocene, in which human actions are transforming the Earth. With continued economic growth, high energy and resource consumption in wealthy nations, and the world population expected to exceed 9 billion by 2050, it is clear that the global climate crisis will worsen, with devastating implications for human rights, unless society changes direction.

4. In its latest report, the Intergovernmental Panel on Climate Change stated that “limiting global warming to 1.5°C would require rapid, far-reaching, and unprecedented changes in all aspects of society”.<sup>2</sup> To meet the 1.5°C target, urgent and effective actions must be implemented immediately to reduce greenhouse gas emissions by 45 per cent by 2030, phase out unabated fossil fuel burning by the middle of the century and reverse deforestation. To empower and protect vulnerable populations requires the mobilization of at least \$100 billion in annual funding to assist low-income countries, and establishing a new fund, perhaps using an air travel levy, to support small island developing States and least developed countries in addressing loss and damage caused by climate change. Wealthy countries and other large emitters must lead these efforts and provide the majority of the requisite financing.

5. To prepare the present report, the Special Rapporteur held consultations in Geneva with civil society organizations on 6 March 2019, with States that have signed the Geneva Pledge for Human Rights in Climate Action on 7 March 2019, with small

---

<sup>1</sup> IPCC, *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (IPCC, 2018).

<sup>2</sup> IPCC, Press release 2018/24/PR, “Summary for Policymakers of IPCC Special Report on Global Warming of 1.5°C approved by governments” (October 2018). Available at [www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/](http://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/).

island developing States on 8 March 2019, and with other States, international organizations and stakeholders on 21 June 2019. These consultations complemented a call for inputs on climate change and human rights circulated on 8 April 2019. The Special Rapporteur is grateful to Colombia, Cuba, Germany, Greece, Honduras, Hungary, Kazakhstan, Mali, Mauritius, Mexico, Moldova, Monaco, Norway, Senegal, Slovenia, Sweden and Uruguay, as well as to civil society organizations and academics, for their helpful submissions.<sup>3</sup> The Special Rapporteur also met with children and young people from Bolivia (Plurinational State of), Canada, Colombia, El Salvador, Fiji and Peru, and heard their pleas for urgent action to address the global climate crisis.

## A. Overview of climate change impacts

6. Climate change is already having major impacts on human health, livelihoods and rights. One degree of warming has occurred at the global level, with some regions, such as the Arctic and high mountain areas, experiencing two or three times as much warming. Eighteen of the warmest years in recorded history occurred in the past 19 years. In 2018, the Intergovernmental Panel on Climate Change reported that humanity is already enduring increased frequency, intensity and duration of extreme weather events, melting of glaciers and ice sheets, rising sea levels, storm surges, saltwater intrusion, ocean acidification, changes in precipitation, flooding, heatwaves, droughts, wildfires, increased air pollution, desertification, water shortages, the destruction of ecosystems, biodiversity loss and the spread of water-borne and vector-borne disease.<sup>4</sup> The number of extreme weather events has doubled since the early 1990s.<sup>5</sup> Between 2005 and 2015, over 700,000 people died, over 1.4 million were injured, 23 million lost their homes and over 1.5 billion were affected by natural disasters, at a total cost exceeding \$1.3 trillion.<sup>6</sup> Economic losses from natural disasters, exacerbated by climate change, were \$330 billion in 2017, making it the costliest year on record. Most of these losses were uninsured, including 99 per cent of losses in low-income countries.

7. Climate change interacts with poverty, conflict, resource depletion and other factors to cause or exacerbate food insecurity, loss of livelihoods, infrastructure breakdown and loss of access to essential services including electricity, water, sanitation and health care. Poor people are disproportionately affected by climate impacts, which could push an additional 100 million people into extreme poverty by 2030.<sup>7</sup> Climate change is an increasingly important contributor to displacement and migration, both within nations and across international borders.<sup>8</sup> Record high temperatures, heatwaves and wildfires in 2018 afflicting wealthy countries – Australia, Canada, Sweden and the United States of America – demonstrated that no State is immune to the impacts of the global climate crisis.

<sup>3</sup> Submissions are available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SafeClimate.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SafeClimate.aspx).

<sup>4</sup> IPCC, *Global Warming of 1.5°C* (IPCC, 2018).

<sup>5</sup> Food and Agriculture Organization of the United Nations (FAO), International Fund for Agricultural Development (IFAD), United Nations Children's Fund (UNICEF), World Food Programme (WFP) and World Health Organization (WHO), *The State of Food Security and Nutrition in the World 2018. Building climate resilience for food security and nutrition* (Rome, FAO, 2018).

<sup>6</sup> Sendai Framework for Disaster Risk Reduction 2015–2030.

<sup>7</sup> World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty*, Climate Change and Development Series (Washington, D.C., World Bank, 2016).

<sup>8</sup> IPCC, *Climate Change 2014: Synthesis Report* (IPCC, 2014) and IPCC, *Global Warming of 1.5°C* (IPCC, 2018).

8. Climate-related natural disasters are hitting low-income countries and small island developing States hard. Flooding in Pakistan in 2010 affected 20 million people, causing almost 2,000 deaths. The 2011 East Africa drought and the 2011–2012 Somalia famine were extreme climate-related events that, combined with other vulnerabilities, such as conflict and rising food prices, overwhelmed coping mechanisms, causing destitution, food insecurity and malnutrition.

9. In 2015, Cyclone Pam displaced a quarter of the population of Vanuatu and inflicted \$590 million in damages, equivalent to 65 per cent of the country's gross domestic product (GDP). Fiji was blasted by Cyclone Winston in 2016, resulting in more than 40,000 homes being damaged or destroyed and \$1.4 billion in damages. In 2017, just two years after Hurricane Erika caused damage equivalent to 90 per cent of its GDP, Dominica was hit by Hurricane Maria, which damaged 98 per cent of homes and resulted in losses equalling 260 per cent of the country's GDP. Mozambique was hammered by two major cyclones just six weeks apart in 2019, causing extensive flooding, thousands of deaths and billions in damages. This list could go on and on.

10. Entire communities have been or are in the process of being relocated owing to rising sea levels, coastal erosion, storm surges, salinization and other climate impacts. These include the communities of Vunidogoloa, Fiji; Nuatambu, Nusa Hope and Taro, Solomon Islands; and Shishmaref, Kivalina, Newtok and Isle de Jean Charles, United States. Hundreds more face a similar fate. It is estimated that by 2050, 150 million people or more could be displaced by the impacts of climate change as a result of extreme weather, slow-onset events such as rising sea levels and desertification, relocation from high-risk areas (such as floodplains), and conflicts over scarce resources. Also by 2050, 4 million people, and around 70 per cent of Arctic infrastructure, will be threatened by thawing permafrost.<sup>9</sup> Over a longer time frame, entire States are at risk of becoming uninhabitable, including Kiribati, Maldives and Tuvalu.

11. Climate change is also a major contributor to the declining diversity of life on Earth, with potentially devastating impacts on coral reefs, tropical forests and Arctic ecosystems. In the most comprehensive assessment of the state of nature ever undertaken, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services recently identified climate change as the third most important risk factor contributing to the loss of biodiversity.<sup>10</sup>

## **B. Causes of the global climate crisis**

12. The human activities that have the largest impact on the Earth's climate are the burning of fossil fuels and biomass, deforestation and industrial agriculture. Seventy per cent of greenhouse gas emissions are produced by the burning of fossil fuels and biomass for electricity and heat (25 per cent of the global total), industrial processes (21 per cent), transportation (14 per cent) and other indirect energy use (10 per cent). Agriculture, deforestation and changes in land use cause 24 per cent of emissions, while building operations produce the remaining 6 per cent. Key greenhouse gases include carbon dioxide (76 per cent of global greenhouse gas emissions), methane (16 per cent), nitrous oxide (6 per cent) and fluorinated gases such as chlorofluorocarbons and hydrofluorocarbons (2 per cent). Short-lived climate pollutants, including black

<sup>9</sup> United Nations Environment Programme (UNEP), *Global Linkages: A graphic look at the changing Arctic* (UNEP, 2019).

<sup>10</sup> Intergovernmental Science-Policy Platform for Biodiversity and Ecosystem Services, "Summary for policymakers of the global assessment report on biodiversity and ecosystem services", document IPBES/7/10/Add.1.

carbon, methane and hydrofluorocarbons, have substantial short-term impacts on climate change, making it a priority to reduce these emissions. Black carbon, for example, is produced by inefficient combustion in cookstoves and diesel engines. Black carbon deposits on Himalayan glaciers are accelerating melting, thereby threatening a vital water source for more than a billion people in South Asia.

13. The poorest half of the world's population, 3.9 billion people, generate only 10 per cent of global emissions. Conversely, the richest 10 per cent produce half of global emissions. The wealthiest 1 per cent have a carbon footprint that is 2,000 times larger than that of the poorest 1 per cent.<sup>11</sup> Just 100 businesses (known as “carbon majors”) are responsible for 71 per cent of industrial greenhouse gas emissions since 1988.<sup>12</sup>

14. Three quarters of global emissions are produced by 20 States, namely (in diminishing order) China, the United States, India, Indonesia, the Russian Federation, Brazil, Japan, Canada, Germany, the Islamic Republic of Iran, Mexico, the Republic of Korea, Saudi Arabia, South Africa, Australia, the United Kingdom, Nigeria, Argentina, Zambia and Thailand.<sup>13</sup> Taking into account historical emissions, some nations are disproportionately responsible for the climate crisis. The United States has produced 25 per cent of global emissions since 1750, followed by China with 12 per cent and the United Kingdom with 5 per cent.<sup>14</sup> These facts have important ramifications for the human rights obligations of developed States, which must reduce emissions more rapidly and pay the lion's share of the costs to assist developing States.

15. Deforestation has declined since the 1990s but continues, with an average loss of 6.5 million hectares of natural forests annually from 2000 to 2015.<sup>15</sup> These losses were partially offset by an increase in planted forests, averaging 3.2 million hectares annually from 2000 to 2015. The majority of ongoing deforestation is in tropical forests, which are important carbon sinks and also home to tremendous biodiversity.

### C. Magnitude of the challenges ahead

16. Society is addicted to fossil fuels. Despite 27 years of commitments dating back to the United Nations Framework Convention on Climate Change, the world is neither headed in the right direction, nor addressing the crisis at an adequate pace. Since 1990, global energy consumption has increased by 57 per cent. The share of the world's total energy supply provided by fossil fuels has remained unchanged at 81 per cent.<sup>16</sup> Coal use is up 68 per cent, oil use is up 36 per cent and natural gas use is up 82 per cent. Even the fossil fuel share of electricity production has increased, from 62 per cent in 1992 to 65 per cent in 2016. Global greenhouse gas emissions are up 60 per cent since 1990. Wealthy people and large corporations are deeply invested in the status quo and use their immense economic and political power to resist the societal transformations needed to successfully address climate change.

<sup>11</sup> Oxfam, “Extreme Carbon Inequality: Why the Paris climate deal must put the poorest, lowest emitting and most vulnerable people first”, Oxfam Media Briefing (Oxfam, 2015).

<sup>12</sup> Richard Heede, “Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010”, *Climatic Change*, vol. 122, issue 1–2, pp. 229–241 (January 2014).

<sup>13</sup> Climate Watch, Global greenhouse gas emissions database. Available at [www.climatewatchdata.org/ghg-emissions?regions=TOP&source=34](http://www.climatewatchdata.org/ghg-emissions?regions=TOP&source=34).

<sup>14</sup> Our World in Data, Cumulative Share of Global CO<sub>2</sub> Emissions. The long-run history: Cumulative CO<sub>2</sub>. <https://ourworldindata.org/co2-and-other-greenhouse-gas-emissions#the-long-run-history-cumulative-co2>.

<sup>15</sup> UNEP, *Global Environment Outlook 6: Healthy Planet, Healthy People* (Nairobi, UNEP, 2019).

<sup>16</sup> International Energy Agency, *World Energy Balances* (International Energy Agency, 2018).

17. Despite the Paris Agreement, energy-related carbon dioxide emissions rose in 2018 at the fastest rate since 2011, with the United States, China and India accounting for 85 per cent of the increase. Coal reversed its recent decline. Emissions from natural gas jumped 5 per cent. Deforestation in Brazil's Amazon rainforest increased 14 per cent in 2018.<sup>17</sup>

18. The International Monetary Fund estimated that fossil fuel subsidies in 2017 were \$5.2 trillion, with coal and oil accounting for 85 per cent of this total.<sup>18</sup> In 2018, global energy investment was \$1.8 trillion, but three times as much money was invested in fossil fuels compared to renewables.<sup>19</sup> The poorest countries, despite being home to 42 per cent of the world's population and having the most pressing energy needs, received only 14 per cent of total energy investment. According to the International Energy Agency, there is "a growing mismatch between current trends and the paths to meeting the Paris Agreement and other sustainable development goals."<sup>20</sup>

19. In response to the climate crisis, the Paris Agreement aims to hold the increase in global average temperatures to well below 2°C, while striving to limit the increase to 1.5°C. Parties filed nationally determined contributions indicating the climate actions they plan to implement by 2030. Unfortunately, even if fully implemented by all States, the current nationally determined contributions would lead to a disastrous global temperature rise of 3°C above pre-industrial levels, violating the Paris Agreement.

20. In order to meet the Paris targets, only a limited volume of additional emissions can be allowed, known as the carbon budget. As of 2018, to have a likely chance (67 per cent) of limiting warming to 1.5°C, the remaining global budget is 580 gigatons of carbon dioxide. Annual emissions are roughly 50 gigatons, indicating that the entire budget will be exhausted by 2030 unless substantial emission reductions take place. The Intergovernmental Panel on Climate Change identified a 45 per cent reduction in carbon dioxide emissions by 2030 and net zero emissions by 2050 as necessary in order to limit warming to 1.5°C. To achieve the 2°C target requires a 25 per cent reduction in emissions by 2030 and net-zero emissions by 2070. The current level of ambition in reducing emissions must be tripled to achieve the 2°C target and quintupled to reach the 1.5°C goal.<sup>21</sup> Put simply, complying with the Paris Agreement requires dramatically accelerated climate action.

21. Net zero means that all greenhouse gas emissions will be offset by carbon dioxide removal, through afforestation, reforestation, land restoration, soil carbon sequestration, bioenergy with carbon capture and storage, and direct air carbon capture and storage. Implemented well, some carbon dioxide removal tools could provide co-benefits, such as healthier biodiversity, improved soil quality and local food security. Done poorly, carbon dioxide removal efforts could displace other land uses, causing adverse effects on food security, biodiversity and human rights.

22. Climate change is already, at warming of 1°C, having a negative impact on billions of people. According to the Intergovernmental Panel on Climate Change, "warming of 1.5°C is not considered 'safe' for most nations, communities,

---

<sup>17</sup> Climate Action Tracker, "June 2019 update: Climate crisis demands more government action as emissions rise" (Climate Action Tracker, 2019).

<sup>18</sup> International Monetary Fund, "Global Fossil Fuel Subsidies Remain Large: An Update Based on Country-Level Estimates", IMF Working Paper, WP/19/89 (International Monetary Fund, 2019).

<sup>19</sup> International Energy Agency, World Energy Investment 2019 (International Energy Agency, 2019).

<sup>20</sup> International Energy Agency, World Energy Investment 2019 (International Energy Agency, 2019).

<sup>21</sup> UNEP, *Emissions Gap Report 2018* (Nairobi, UNEP, 2018).

ecosystems and sectors and poses significant risks to natural and human systems as compared to the current warming of 1°C.”<sup>22</sup> As temperatures increase, so do the negative impacts. At 2°C, the Intergovernmental Panel on Climate Change forecasts that droughts and heat waves will be more frequent and twice as long, 100 million more people will face water insecurity, and the risks of an ice-free Arctic and glacier-free mountains will rise substantially. It will be easier and less expensive to ensure adaptive capacity and resilience at 1.5°C compared to 2°C or higher.

23. The Intergovernmental Panel on Climate Change has identified “rapid and far-reaching transitions” in energy, land use, urban areas, infrastructure and industrial systems, stating that these changes would be unprecedented in terms of scale and would require deep emission reductions across all sectors. For example, to meet the objectives of the Paris Agreement, the electricity sector must be almost completely decarbonized by 2050. The market share of coal must fall from its current share of 38 per cent to between 1 and 7 per cent by 2050, and even that small amount of coal must deploy carbon capture and storage. The share of renewables would have to grow from 25 per cent today to 70–80 per cent by 2050.

24. In 2012, the International Energy Agency estimated that two thirds of proven fossil fuel reserves must not be burned if we are to limit warming to 2°C.<sup>23</sup> A similar study published in 2015 concluded that 82 per cent of known coal reserves, 49 per cent of gas reserves and 33 per cent of oil reserves cannot be burned if we are to avoid dangerous climate change of more than 2°C. The future greenhouse gas emissions contained in known reserves of fossil fuels are three times larger than the 2°C carbon budget.<sup>24</sup> The obvious conclusion is that further investments in new fossil fuel generating capacity or exploration for additional fossil fuel resources will either lock in a future that precludes achieving the required emission reductions or result in stranded assets.

25. There is some good news. Dramatic declines in the cost of renewable energy are accelerating the implementation of clean energy. Solar electricity costs have declined 75 per cent per watt since 2010. In many countries, wind and solar are now cheaper than fossil fuel electricity. Solar electricity generating capacity now exceeds 550 gigawatts globally, more than 500 times higher than in 2000. Total wind electricity generating capacity has soared from 17 gigawatts in 2000 to over 600 gigawatts today. Some 49 countries, responsible for 36 per cent of global emissions, have already seen their greenhouse gas emissions peak and begin declining.<sup>25</sup> Concurrently addressing climate change and air pollution, since the sources of these problems overlap, could prevent millions of premature deaths every year while securing trillions of dollars in benefits.<sup>26</sup> Eliminating hydrofluorocarbons, combined with increasing energy efficiency in air conditioners and other cooling products, would double the climate benefits and save \$2.9 trillion through 2050 by using less electricity.<sup>27</sup> The Global Commission on the Economy and Climate estimates that bold climate action and investment in climate-friendly infrastructure could generate \$26 trillion in benefits

<sup>22</sup> IPCC, *Global Warming of 1.5°C* (IPCC, 2018).

<sup>23</sup> International Energy Agency, *World Energy Outlook 2012* (International Energy Agency, 2012).

<sup>24</sup> Christophe McGlade and Paul Ekins, “The geographical distribution of fossil fuels unused when limiting global warming to 2°C”, *Nature*, vol. 517 (January 2015).

<sup>25</sup> UNEP, *Emissions Gap Report 2018* (Nairobi, UNEP, 2018).

<sup>26</sup> Drew Shindell and others, “Quantified, localized health benefits of accelerated carbon dioxide emissions reductions”, *Nature Climate Change*, vol. 8, pp. 291–295 (March 2018), and Toon Vandyck and others, “Air quality co-benefits for human health and agriculture counterbalance costs to meet Paris Agreement pledges”, *Nature Communications*, vol. 9 (November 2018).

<sup>27</sup> International Energy Agency, *The Future of Cooling: Opportunities for energy-efficient air conditioning* (International Energy Agency, 2018).

by 2030, compared with a business-as-usual scenario<sup>28</sup> (see the annex on good practices for additional information<sup>29</sup>).

## II. Effects of climate change on the enjoyment of human rights

26. Climate change is having a major impact on a wide range of human rights today, and could have a cataclysmic impact in the future unless ambitious actions are undertaken immediately. Among the human rights being threatened and violated are the rights to life, health, food, water and sanitation, a healthy environment, an adequate standard of living, housing, property, self-determination, development and culture. Addressing climate change raises issues of justice and equity, both between and within nations and generations. The main contributors to the problem have reaped immense economic benefits and thus have the greatest responsibility to solve the problem, pursuant to the principle of common but differentiated responsibilities. The adverse impacts of climate change disproportionately affect people living in poverty, whose contribution to the problem is minimal and who lack the resources to protect themselves or to adapt to the changes. The Special Rapporteur on extreme poverty and human rights recently warned about a future of climate apartheid, where the wealthy pay to shield themselves from the worst impacts of climate change while the poor suffer immensely.<sup>30</sup>

27. Approaching climate change from a human rights perspective highlights the principles of universality and non-discrimination, emphasizing that rights are guaranteed for all persons, including vulnerable groups. A rights-based approach could serve as a catalyst for accelerated action to achieve a healthy and sustainable future where all energy is provided by zero carbon sources, forests are flourishing, oceans are healthy and food is sustainably produced.

### A. Right to life

28. The right to life is universally recognized in human rights law. In 2018, the Human Rights Committee stated that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”<sup>31</sup> In order to uphold the right to life, States have an obligation to take effective measures to mitigate climate change, enhance the adaptive capacity of vulnerable populations and prevent foreseeable loss of life.

29. Climate change has many direct and indirect effects on the full enjoyment of the right to life. Climate-related deaths are caused by extreme weather events, heat waves, floods, droughts, wildfires, water-borne and vector-borne diseases, malnutrition and air pollution. Globally, at least 150,000 premature deaths annually have been linked to climate change.<sup>32</sup> The heat wave that struck western Europe in 2003 caused approximately 70,000 premature deaths. Mortality data are not yet available for the record-breaking heat waves experienced in India, Pakistan, Europe and Alaska in

<sup>28</sup> Global Commission on the Economy and Climate, *Unlocking the Inclusive Growth Story of the 21st Century: Accelerating Climate Action in Urgent Times* (Washington, D.C., Global Commission on the Economy and Climate, 2018).

<sup>29</sup> Available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx).

<sup>30</sup> A/HRC/41/39.

<sup>31</sup> General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life.

<sup>32</sup> DARA and the Climate Vulnerable Forum, *Climate Vulnerability Monitor 2<sup>nd</sup> Edition: A Guide to the Cold Calculus of a Hot Planet* (DARA, 2012).

2019. The World Health Organization (WHO) estimates that by 2030, some 250,000 climate-related deaths each year will be caused by heat stress, malaria, diarrhoea and malnutrition alone.<sup>33</sup> The Office of the United Nations High Commissioner for Human Rights concluded that, “at its most extreme, climate change kills”.<sup>34</sup>

## B. Right to health

30. The Universal Declaration of Human Rights includes health as part of the right to an adequate standard of living. The International Covenant on Economic, Social and Cultural Rights enshrines the right to health and requires that State actions to fulfil that right “shall include those necessary for ... the improvement of all aspects of environmental and industrial hygiene.”

31. The adverse health impacts of climate change include not only premature deaths but also increased incidences of respiratory disease, cardiovascular disease, malnutrition, stunting, wasting, allergies, heat stroke, injuries, water-borne and vector-borne diseases and mental illness.<sup>35</sup> Dengue fever is the most rapidly spreading vector-borne disease, with a thirtyfold increase in global incidence that is largely attributable to climate change. Hundreds of millions of people are exposed to extreme weather events annually, resulting in injuries, illnesses and mental health impacts. Climate change also erodes many of the key social and environmental determinants of health, including access to adequate food and water, clean air, culture and livelihoods.<sup>36</sup> Health is also affected by climate-related displacement, migration and reduced access to health-care services.

32. According to the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, “the international community has not confronted the health threats posed by global warming. The failure of the international community to take the health impact of global warming seriously will endanger the lives of millions of people across the world.”<sup>37</sup> The World Health Organization concluded that climate change already has negative effects on health and is undermining the right to health.<sup>38</sup> The Lancet Commission on Health and Climate Change warned that climate change is the biggest global health threat of the twenty-first century and could reverse five decades of progress in global health.<sup>39</sup>

## C. Right to food

33. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights include food as part of the right to an adequate standard of living, with the Covenant referring to the “fundamental right of everyone to be free from hunger”.

34. Food production, food security and the enjoyment of the right to food are affected by shifting precipitation patterns, higher temperatures, extreme weather events, changing sea ice conditions, droughts, floods, algal blooms and salinization. Changes in climate are already undermining the production of major crops, such as

<sup>33</sup> WHO, *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (WHO, 2014).

<sup>34</sup> [A/HRC/32/23](#).

<sup>35</sup> IPCC, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (IPCC, 2014).

<sup>36</sup> [A/HRC/32/23](#).

<sup>37</sup> [A/62/214](#).

<sup>38</sup> WHO, *COP 24 Special Report: Health and Climate Change* (WHO, 2018).

<sup>39</sup> N. Watts and others, “Health and climate change: policy responses to protect public health”, *Lancet*, vol. 386, issue 10006, pp. 1861–1914 (November 2015).

wheat, rice and maize. Without adaptation, or where adaptations fall short, this is expected to worsen as temperatures increase and become more extreme. In the oceans, temperature changes, bleaching of coral reefs and ocean acidification are affecting fisheries. Climate change also exacerbates drivers of food insecurity and malnutrition, such as conflict and poverty.

35. In 2016 and 2017, an encouraging decade-long trend towards lower levels of hunger and malnutrition reversed. According to the Food and Agriculture Organization of the United Nations, “climate variability and extremes are among the key drivers behind the recent uptick in global hunger and one of the leading causes of severe food crises. The cumulative effect of changes in climate is undermining all dimensions of food security – food availability, access, utilization and stability”.<sup>40</sup> The World Bank estimates that a 2°C increase in the average global temperature would put between 100 million and 400 million more people at risk of hunger and could result in over 3 million additional deaths from malnutrition each year.<sup>41</sup>

36. The negative impacts of climate change on food production and availability are unequally distributed both among and within States. States in sub-Saharan Africa and south Asia, where agriculture production, food systems and livelihoods are especially vulnerable to climate variability and extremes, face the greatest risk of food insecurity, malnutrition and violations of the right to food. Within countries, people living in mountain areas face high levels of food insecurity and are more vulnerable to climate change.<sup>42</sup>

#### **D. Rights to water and sanitation**

37. The human rights to water and sanitation were recognized in General Assembly resolution [64/292](#) and have been repeatedly affirmed.

38. 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. The four key elements of the rights to water and sanitation are threatened: availability, accessibility, acceptability and quality. The Intergovernmental Panel on Climate Change warned of particularly high vulnerability to water stress in small island developing States and parts of Africa, Asia and Latin America. Climate change has already contributed to a water crisis in the Plurinational State of Bolivia, where glaciers are receding and water rationing has been required in major cities. Indigenous pastoralists in Turkana County, Kenya, are struggling because climate change is negatively affecting water supplies, grazing opportunities and livestock herds, and increasing competition, conflict and insecurity.<sup>43</sup> Turkana women and girls bear the burden of longer walks to obtain potable water.

39. The right to sanitation may be threatened when water is increasingly scarce, and when floods, intense precipitation or other extreme weather events damage infrastructure or impair access. The rise in extreme weather events owing to climate change increases the risk of water-borne diseases, including typhoid fever and cholera.

<sup>40</sup> FAO, IFAD, UNICEF, WFP and WHO, *The State of Food Security and Nutrition in the World 2018. Building climate resilience for food security and nutrition* (Rome, FAO, 2018).

<sup>41</sup> World Bank, *World Development Report 2010: Development and Climate Change* (World Bank, 2010).

<sup>42</sup> FAO, *Mapping the vulnerability of mountain peoples to food insecurity* (FAO, 2015).

<sup>43</sup> Human Rights Watch, “There is no time left: climate change, environmental threats, and human rights in Turkana County, Kenya” (Human Rights Watch, 2015).

## E. Rights of the child

40. The Convention on the Rights of the Child, in describing the right to health, explicitly requires that States act in the best interests of the child and consider “the dangers and risks of environmental pollution”. Children and young people around the world are increasingly outspoken about the impacts of climate change on their rights and their future and the need for urgent action. In response to the call for inputs for the present report, one indigenous youth leader observed that “Earth is a giving planet ... Everything we ever needed to live, to survive, to enjoy the wonders of the world was provided by nature, yet we humans have become the most dangerous threat to life on Earth.”

41. Children are particularly vulnerable to health problems exacerbated by climate change, including vector-borne diseases, malnutrition, acute respiratory infections, diarrhoea and other water-borne illnesses.<sup>44</sup> Extreme weather events pose unique threats to the health and well-being of young bodies and minds. Globally, over 500 million children live in extremely high-risk flood zones; 160 million live in high or extremely high drought severity zones; and 115 million are at high risk from tropical cyclones. By 2040, almost 600 million children will live in regions with extremely limited water resources. The United Nations Children’s Fund warns that “climate change will harm the poorest and most vulnerable children first, hardest and longest”.<sup>45</sup>

42. The Committee on the Rights of the Child has implored States to address climate change, “as this is one of the biggest threats to children’s health and exacerbates health disparities”.<sup>46</sup> In its reporting procedure, the Committee has increasingly referred to climate change, urging States to consider the best interests of the child as a matter of primary consideration when designing, implementing and monitoring laws and policies related to climate change, taking into account the explicit reference to children’s rights and intergenerational equity in the Paris Agreement.

## F. Right to a healthy environment

43. As noted in the Special Rapporteur’s previous reports, the right to a safe, clean, healthy and sustainable environment is recognized in law by at least 155 Member States.<sup>47</sup> The substantive elements of this right include a safe climate, clean air, clean 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. These elements are informed by commitments made under international environmental treaties, such as the United Nations Framework Convention on Climate Change, wherein States pledged to “prevent dangerous anthropogenic interference with the climate system”, or in other words to maintain a safe climate.

44. The failure of States to take adequate steps to address climate change can constitute a violation of the right to a healthy environment, as the Supreme Court of Colombia and other courts have recently recognized.<sup>48</sup>

<sup>44</sup> [A/HRC/35/13](#).

<sup>45</sup> UNICEF, *Unless we act now: The impact of climate change on children* (UNICEF, 2015).

<sup>46</sup> General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24).

<sup>47</sup> [A/HRC/40/55](#).

<sup>48</sup> Supreme Court of Colombia, *Demanda Generaciones Futuras v. Minambiente*, Decision of 5 April 2018, and Lahore High Court, *Leghari v. Federation of Pakistan*, W.P. No. 25501/201, Decision of 4 April 2015.

## G. Vulnerable populations

45. The Intergovernmental Panel on Climate Change observed that “people who are socially, economically, culturally, politically, institutionally, or otherwise marginalized are especially vulnerable to climate change”.<sup>49</sup> This includes people or communities whose vulnerabilities are caused by poverty, gender, age, disability, geography and cultural or ethnic background. Although at risk, these people often have the potential to contribute to climate solutions when empowered to do so.

46. The worst impacts afflict those who have contributed least to the problem and who have the fewest resources to adapt to, or cope with, the impacts. For example, during droughts, women and children in low-income countries are often disproportionately affected because of their responsibilities for collecting water and firewood. On the other hand, male farmers face elevated risks of suicide during droughts. Understanding gender differences in vulnerability, roles and capacity is essential for designing fair and effective climate actions.<sup>50</sup>

47. In 2018, the Committee on the Elimination of Discrimination against Women recognized that climate change impacts, including disasters, have a disproportionate effect on women.<sup>51</sup> Women experience greater financial and resource constraints, lower levels of access to information, and less decision-making authority in their homes, communities and countries.<sup>52</sup> In its recommendations to States (concluding observations), the Committee has repeatedly urged States to take into account the greater vulnerability of women by adopting a human rights-based approach to all decisions related to adaptation, mitigation, disaster risk reduction and climate finance.<sup>53</sup> The Committee has made specific recommendations regarding older women and rural women, two groups with particular vulnerabilities to climate change.<sup>54</sup> Women are also leaders and vital agents of change, maximizing use of their knowledge and resources to help families to adapt.<sup>55</sup>

48. Despite contributing little to the problem, roughly 400 million indigenous peoples around the world are especially vulnerable to climate change because of their close connection to nature and dependence on wildlife, plants and healthy ecosystems for food, medicine and cultural needs. On the other hand, indigenous people can make important contributions to solutions, through traditional knowledge, legal systems and cultures that have proven effective at conserving land, water, biodiversity and ecosystems, including forests.<sup>56</sup>

49. An example of climate change impacts on indigenous peoples is reductions in Arctic sea ice that affect wildlife distribution and complicate ice-based travel, undermining the ability of Inuit hunters to secure food. Indigenous peoples on Pacific

<sup>49</sup> IPCC, “Summary for policymakers”, *Climate Change 2014: Impacts, Adaptation, and Vulnerability* (IPCC, 2014).

<sup>50</sup> WHO, *Gender, climate change and health* (WHO, 2014).

<sup>51</sup> General recommendation No. 37 on gender-related dimensions of disaster risk reduction in the context of climate change and [A/HRC/41/26](#).

<sup>52</sup> United Nations Development Programme (UNDP), *Gender Equality in National Climate Action: Planning for Gender-Responsive Nationally Determined Contributions* (UNDP, 2016).

<sup>53</sup> Center for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, *States’ Human Rights Obligations in the Context of Climate Change: 2019 Update* (Center for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, 2019).

<sup>54</sup> General recommendation No. 27 on older women and general recommendation No. 34 on the rights of rural women.

<sup>55</sup> WHO, *Gender, climate change and health* (WHO, 2014).

<sup>56</sup> Permanent Forum on Indigenous Issues, “Climate change and indigenous peoples” (Permanent Forum on Indigenous Issues, 2008).

islands are directly threatened with partial or total disappearance of their lands as a result of climate change. In addition, climate mitigation projects have jeopardized or violated indigenous rights, including the Barro Blanco hydropower project in Panama, the Water Towers Protection and Climate Change Mitigation and Adaptation Programme in Kenya and the Agua Zarca dam in Honduras.<sup>57</sup>

50. Persons with disabilities could also be disproportionately affected by climate change. The Committee on the Rights of Persons with Disabilities emphasized that States must ensure that the requirements of all persons with disabilities are taken into consideration when designing and implementing adaptation and disaster risk reduction measures.<sup>58</sup>

51. Small island developing States produce only 0.03 per cent of global greenhouse gas emissions, yet experience some of the most severe impacts of climate change. Nine of the ten worst climate-related disasters between 1998 and 2017, measured by losses as a percentage of GDP, involved storms that devastated small island developing States.<sup>59</sup>

### III. Human rights obligations relating to climate change

52. The purpose of the United Nations Framework Convention on Climate Change is to achieve “stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” (see article 2). In other words, States committed themselves to ensuring a safe climate, which is vital to the enjoyment of a broad range of human rights.

53. In 2010, in Cancún, Mexico, the Conference of the Parties to the United Nations Framework Convention on Climate Change adopted Decision 1/CP.16, in which they noted that the adverse effects of climate change have implications for the effective enjoyment of human rights, that the effects will be felt most acutely by those segments of the population that are already vulnerable, and that States parties should, in all climate change-related actions, fully respect human rights.<sup>60</sup>

54. The Paris Agreement represents a breakthrough, in that it explicitly links human rights and climate change. In the Agreement, the parties acknowledged that they “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.” The Paris Agreement refined the concept of a safe climate as “well below” a 2°C increase in the average global temperature, and ideally limited to a 1.5°C increase.

55. The human rights obligations related to climate change have been explored by the Human Rights Council, the special procedures, the treaty bodies, Governments, the Inter-American Court of Human Rights<sup>61</sup> and many international agencies. The following summary of this work is intended to be illustrative rather than exhaustive. All of these experts have reached two common conclusions: first, climate change and

<sup>57</sup> [A/HRC/36/46](#).

<sup>58</sup> [CRPD/C/SYC/CO/1](#).

<sup>59</sup> Centre for Research on the Epidemiology of Disasters and United Nations Office for Disaster Risk Reduction, *Economic Losses, Poverty and Disasters 1998–2017* (Centre for Research on the Epidemiology of Disasters and United Nations Office for Disaster Risk Reduction, 2018).

<sup>60</sup> [FCCC/CP/2010/7/Add.1](#).

<sup>61</sup> Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 of 15 November 2017 requested by the Republic of Colombia*.

its impacts threaten a broad range of human rights, and second, as a result, States and private actors have extensive human rights obligations and responsibilities.

56. Early milestones were the 2005 Inuit petition to the Inter-American Commission on Human Rights asserting that greenhouse gas emissions from the United States were violating the human rights of the Inuit, and the Malé Declaration on the Human Dimension of Global Climate Change. Although the Inuit petition was ruled inadmissible, it was a catalyst for action, including a hearing on climate change held by the Inter-American Commission in 2006. The Malé Declaration, adopted by representatives of small island developing States in 2007, was the first intergovernmental statement explicitly recognizing that climate change has “clear and immediate implications for the full enjoyment of human rights”.

57. Beginning in 2008, the Human Rights Council adopted a series of resolutions expressing concern that climate change poses an immediate and far-reaching threat to people and communities around the world, and that the effects will be felt most acutely by those who already live in vulnerable situations.<sup>62</sup> The resolutions resulted in a series of reports on climate change and human rights prepared by the Office of the United Nations High Commissioner for Human Rights, addressing general linkages,<sup>63</sup> health,<sup>64</sup> children’s rights,<sup>65</sup> migration<sup>66</sup> and gender.<sup>67</sup>

58. The Special Rapporteur on the right to food,<sup>68</sup> the Special Rapporteur on adequate housing,<sup>69</sup> the Special Rapporteur on the human rights of migrants,<sup>70</sup> the Special Rapporteur on the rights of indigenous peoples,<sup>71</sup> the Special Rapporteur on extreme poverty and human rights,<sup>72</sup> the Special Rapporteur on the human rights of internally displaced persons,<sup>73</sup> the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment<sup>74</sup> and the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment<sup>75</sup> have all warned that climate change threatens the full enjoyment of human rights and that climate actions must be developed and implemented in accordance with human rights laws and norms.

59. The special procedures mandate holders have also issued joint statements and reports on climate change and human rights.<sup>76</sup> In 2014, 27 special rapporteurs and independent experts issued a joint letter concluding that “there can no longer be any doubt that climate change interferes with the enjoyment of human rights recognised and protected by international law.”<sup>77</sup> That same year, on Human Rights Day, all

---

<sup>62</sup> Human Rights Council resolutions 7/23, 10/4, 18/22, 26/27, 29/15, 32/33, 35/20 and 38/4.

<sup>63</sup> A/HRC/10/61.

<sup>64</sup> A/HRC/32/23.

<sup>65</sup> A/HRC/35/13.

<sup>66</sup> A/HRC/38/21.

<sup>67</sup> A/HRC/41/26.

<sup>68</sup> A/70/287.

<sup>69</sup> A/64/255.

<sup>70</sup> A/67/299.

<sup>71</sup> A/HRC/36/46.

<sup>72</sup> A/HRC/41/39.

<sup>73</sup> A/HRC/16/43 and A/66/285.

<sup>74</sup> A/HRC/31/52.

<sup>75</sup> A/HRC/25/53.

<sup>76</sup> Office of the United Nations High Commissioner for Human Rights, *The Effects of Climate Change on the Full Enjoyment of Human Rights* (Office of the United Nations High Commissioner for Human Rights, 2015).

<sup>77</sup> Office of the United Nations High Commissioner for Human Rights, “A new climate change agreement must include human rights protections for all”, 17 October 2014. Available at [www.ohchr.org/Documents/HRBodies/SP/SP\\_To\\_UNFCCC.pdf](http://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf).

special procedures mandate holders issued a statement in which they noted that “Climate change is one of the greatest challenges of our generation with consequences that transform life on earth and adversely impact the livelihood of many people. It poses great risks and threats to the environment, human health, accessibility and inclusion, access to water, sanitation and food, security, and economic and social development. These impacts of climate change interfere with the effective enjoyment of human rights. In particular, climate change has a disproportionate effect on many disadvantaged, marginalized, excluded and vulnerable individuals and groups, including those whose ways of life are inextricably linked to the environment.”<sup>78</sup>

60. The United Nations Environment Assembly adopted a resolution in 2019 in which it noted that women “are often disproportionately affected by the impact of climate change”, but recognized “the active and meaningful role of women as key agents of change in developing innovative solutions to climate change”.<sup>79</sup>

61. The treaty bodies, created to monitor the implementation of the key United Nations human rights treaties, have made valuable recommendations that emphasize the relevance of human rights obligations to climate change. The number of references to climate change in the concluding observations of treaty bodies increased from just 1 in 2008 to more than 30 in 2018.<sup>80</sup> The Committee on the Elimination of Discrimination Against Women has demonstrated leadership in this area, making climate-related recommendations to three quarters of the States it reviewed.

## A. State obligations

62. States have obligations to protect human rights from environmental harm and obligations to fulfil their international commitments.<sup>81</sup> The foreseeable and potentially catastrophic adverse effects of climate change on the enjoyment of a wide range of human rights give rise to extensive duties of States to take immediate actions to prevent those harms. To comply with their international human rights obligations, States should apply a rights-based approach to all aspects of climate change and climate action. Applying a rights-based approach clarifies the obligations of States and businesses; catalyses ambitious action; highlights the plight of the poorest and most vulnerable; and empowers people to become involved in designing and implementing solutions.

63. The framework principles on human rights and the environment clarify three categories of State obligations: procedural, substantive, and special obligations towards those in vulnerable situations.<sup>82</sup> The framework principles can be operationalized in the context of climate change in order to respect, protect and fulfil human rights.

64. Pursuant to international human rights law, States have procedural obligations to:

<sup>78</sup> Statement of the special procedures mandate holders on the occasion of Human Rights Day. Available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15393&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15393&LangID=E).

<sup>79</sup> UNEP/EA.4/Res.17.

<sup>80</sup> Center for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, *States' Human Rights Obligations in the Context of Climate Change: 2019 Update* (Center for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, 2019).

<sup>81</sup> [A/HRC/25/53](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15393&LangID=E).

<sup>82</sup> [A/HRC/37/59](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15393&LangID=E), see annex.

(a) Provide the public with accessible, affordable and understandable information regarding the causes and consequences of the global climate crisis, including incorporating climate change into the educational curriculum at all levels;

(b) Ensure an inclusive, equitable and gender-based approach to public participation in all climate-related actions, with a particular emphasis on empowering the most affected populations, namely women, children, young people, indigenous peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other potentially at-risk communities;

(c) Enable affordable and timely access to justice and effective remedies for all, to hold States and businesses accountable for fulfilling their climate change obligations;

(d) Assess the potential climate change and human rights impacts of all plans, policies and proposals, including both upstream and downstream effects (i.e. both production- and consumption-related emissions);

(e) Integrate gender equality into all climate actions, enabling women to play leadership roles;

(f) Respect the rights of indigenous peoples in all climate actions, particularly their right to free, prior and informed consent;

(g) Provide strong protection for environmental and human rights defenders working on all climate-related issues, from land use to fossil fuels. States must vigilantly protect defenders from harassment, intimidation and violence.<sup>83</sup>

65. With respect to substantive obligations, States must not violate the right to a safe climate through their own actions; must protect that right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil that right.<sup>84</sup> States also must avoid discrimination and retrogressive measures. These principles govern all climate actions, including obligations related to mitigation, adaptation, finance, and loss and damage.

66. Human rights obligations are reinforced by international environmental law, as States are obliged to ensure that polluting activities within their jurisdiction or control do not cause serious harm to the environment or peoples of other States or to areas beyond the limits of national jurisdiction.<sup>85</sup> Given the foreseeability of increasing climate impacts, this well-established “no harm” rule of customary international law is being violated as a result of greenhouse gas emissions, which, regardless of where they are emitted, are contributing, cumulatively, to adverse effects in other States, including small island developing States. The *Urgenda* case in the Netherlands is an important precedent, as the Court relied on international human rights law to hold the Government of the Netherlands accountable for fulfilling commitments the Government itself says are necessary to prevent dangerous climate change.<sup>86</sup>

67. The Committee on Economic, Social and Cultural Rights has begun recommending that States stop some oil and gas developments. For example, the

<sup>83</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (A/RES/53/144) and Human Rights Council resolution 40/11 on recognizing the contribution of environmental human rights defenders to the enjoyment of human rights, environmental protection and sustainable development (A/HRC/RES/40/11).

<sup>84</sup> Committee on Economic, Social and Cultural Rights, general comment No. 3 on the nature of States parties’ obligations (E/1991/23).

<sup>85</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14.

<sup>86</sup> Hague Court of Appeal, *Urgenda Foundation v. Netherlands*, Case No. 200.178.245/01, Decision, 9 October 2018.

Committee recommended that Argentina reconsider plans for the large-scale exploitation of shale oil and gas because those plans ran “counter to the State party’s commitments under the Paris Agreement and would have a negative impact on global warming and on the enjoyment of economic and social rights by the world’s population and future generations”.<sup>87</sup> The Committee expressed similar concerns about gas extraction in the Netherlands.

68. States have an obligation to cooperate to achieve a low-carbon, climate resilient and sustainable future, which means sharing information; the transfer of zero-carbon, low-carbon and high-efficiency technologies from wealthy to less wealthy States; building capacity; increasing spending on research and development related to the clean energy transition; honouring international commitments; and ensuring fair, legal and durable solutions for migrants and displaced persons. Wealthy States must contribute their fair share towards the costs of mitigation and adaptation in low-income countries, in accordance with the principle of common but differentiated responsibilities. Climate finance to low-income countries should be composed of grants, not loans. It violates basic principles of justice to force poor countries to pay for the costs of responding to climate change when wealthy countries caused the problem.

69. Climate actions, including under new mechanisms being negotiated pursuant to article 6 of the Paris Agreement, must be designed and implemented to avoid threatening or violating human rights. In the past, policies supporting biofuel production contributed to spikes in food prices, riots, and a major increase in the total number of people suffering from hunger.<sup>88</sup> Forest preservation policies raise similar concerns about the impact on rights, as such policies may limit access to lands used for hunting, fishing, gathering, cultivation and other important cultural activities. Integrating actions to achieve climate targets and the Sustainable Development Goals, in cooperation with affected communities, will ensure that these types of adverse outcomes are avoided.

70. In 2018, the Committee on Economic, Social and Cultural Rights warned States that a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of their obligation to respect, protect and fulfil all human rights for all.<sup>89</sup> States must, therefore, dedicate the maximum available financial and material resources to shift to renewable energy, clean transport and agroecological farming; halt and reverse deforestation and soil deterioration; and increase adaptive capacity, especially in vulnerable and marginalized communities.

## B. Business responsibilities

71. Businesses must adopt human rights policies, conduct human rights due diligence, remedy human rights violations for which they are directly responsible, and work to influence other actors to respect human rights where relationships of leverage exist. As a first step, corporations should comply with the Guiding Principles on Business and Human Rights as they pertain to human rights and climate change.

72. The five main responsibilities of businesses specifically related to climate change are to reduce greenhouse gas emissions from their own activities and their

<sup>87</sup> [E/C.12/ARG/CO/4](#).

<sup>88</sup> High Level Panel of Experts on Food Security and Nutrition, *Biofuels and food security* (Rome, FAO, 2013).

<sup>89</sup> Committee on Economic, Social, and Cultural Rights, “Climate change and the International Covenant on Economic, Social, and Cultural Rights”, 8 October 2018. Available at [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E).

subsidiaries; reduce greenhouse gas emissions from their products and services; minimize greenhouse gas emissions from their suppliers; publicly disclose their emissions, climate vulnerability and the risk of stranded assets; and ensure that people affected by business-related human rights violations have access to effective remedies.<sup>90</sup> In addition, businesses should support, rather than oppose, public policies intended to effectively address climate change.

## IV. Conclusion and recommendations

**73. Climate change is already harming billions of people, violating human rights, exacerbating inequality and perpetuating injustice. Parties to the Paris Agreement are not on track to meet their commitments. Instead of falling, global emissions are rising. Instead of phasing out fossil fuels, States provide subsidies and banks offer financing, both measured in trillions of dollars annually. New coal-fired power plants are still being built. Instead of reforestation, deforestation continues. Funding has fallen short of the promised \$100 billion per year. Between 2015 and 2018, the Green Climate Fund received only \$10.3 billion in total pledges and the United States refuses to pay \$2 billion that it committed.<sup>91</sup>**

**74. A failure to fulfil international climate change commitments is a prima facie violation of the State's obligations to protect the human rights of its citizens. As global average temperatures rise, even more people's rights will be violated, and the spectre of catastrophic runaway climate chaos increases. There is an immense gap between what is needed to seriously tackle the global climate emergency and what is being done.**

**75. A dramatic change of direction is needed. 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.**

### A. Addressing society's addiction to fossil fuels

**76. Fossil fuel burning accounts for more than 70 per cent of global greenhouse gas emissions. Even the continued use of existing fossil fuel infrastructure for its expected lifespan would generate emissions (658 billion metric tons of carbon dioxide) that exhaust the available carbon budget (580 billion tons) for limiting**

---

<sup>90</sup> Expert Group on Climate Obligations of Enterprises, *Principles on Climate Obligations of Enterprises: Legal Perspectives for Global Challenges* (Expert Group on Climate Obligations of Enterprises, 2018).

<sup>91</sup> See [www.greenclimate.fund/how-we-work/resource-mobilization](http://www.greenclimate.fund/how-we-work/resource-mobilization).

warming to 1.5°C.<sup>92</sup> Clearly, emissions from fossil fuels need to be reduced, beginning immediately.

77. To address society's addiction to fossil fuels, all States should:

(a) Immediately terminate all fossil fuel subsidies, except for clean cookstove programmes;

(b) Stop building new coal-fired power plants unless equipped with carbon capture and storage technology, and require existing coal-fired power plants to be retrofitted with carbon capture and storage technology or be closed by 2030 in high-income nations (already committed to by 30 nations), by 2040 in upper middle-income nations, and by 2050 elsewhere;

(c) Enact laws that phase in zero-carbon transportation, including zero-emission vehicle mandates and low-carbon fuel standards, and laws that phase out the sale of new diesel and gasoline passenger vehicles;

(d) Limit fossil fuel businesses and their industry associations from influencing climate, energy and environmental policies, in light of their responsibility for the majority of emissions and their well-known efforts to subvert and deny scientific evidence of climate change. This is a key element of the WHO Framework Convention on Tobacco Control, which limits the involvement of tobacco companies in health policy.

78. Developed States should demonstrate leadership by:

(a) Prohibiting further exploration for additional fossil fuels, since not all existing reserves can be burned while still meeting the commitments of the Paris Agreement;

(b) Requiring all new natural gas power plants to use carbon capture and storage technology and requiring existing gas plants to be retrofitted with carbon capture and storage technology;

(c) Rejecting any other expansion of fossil fuel infrastructure;

(d) Prohibiting the expansion of the most polluting and environmentally destructive types of fossil fuel extraction, including oil and gas produced from hydraulic fracturing (fracking), oil sands, the Arctic or ultra-deepwater.

79. International financial institutions and banks should eliminate financing for fossil fuel projects, with the exception of clean cookstove programmes.

## B. Accelerating other mitigation actions

80. States should also consider the following mitigation priorities:

(a) Triple investment in renewables, electricity storage and energy efficiency to roughly \$2 trillion per year in the short term, increasing to \$3 trillion by 2050;<sup>93</sup>

(b) Accelerate actions to reduce short-lived climate pollutants (methane, black carbon, ground-level ozone and hydrofluorocarbons), including through the ratification and implementation of the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer; the expansion of

<sup>92</sup> D. Tong and others, "Committed emissions from existing energy infrastructure jeopardize 1.5°C climate target", *Nature* (July 2019).

<sup>93</sup> Dolf Gielen and others, "The role of renewable energy in the global energy transformation", *Energy Strategy Reviews*, vol. 24, pp. 38–50 (January 2019).

programmes to replace polluting cookstoves and fuels with clean technologies; and binding regulations to address methane emissions from the oil and gas industry, agriculture and waste;<sup>94</sup>

(c) Commit to ending deforestation by 2020 and immediately commencing a trillion tree reforestation and afforestation programme;<sup>95</sup>

(d) Phase out the production and use of harmful single-use plastics by 2025, as plastic production generates high volumes of greenhouse gas emissions;<sup>96</sup>

(e) Take stronger steps to reduce emissions from aviation and shipping;

(f) Reconsider policies and programmes that subsidize and support biofuels, in light of their negative impact on food security and uncertain impact on emission reduction;

(g) Promote healthy plant-based diets that are less land-, resource- and greenhouse gas emission-intensive;

(h) Take action to substantially reduce food waste.

81. Corporations have used Investor-State dispute settlement mechanisms in investment treaties to file lawsuits seeking compensation for lost profits when climate policies are strengthened, creating regulatory chill. States should withdraw consent to arbitration or negotiate a carve-out for climate actions as a safeguard to protect against these types of lawsuits.<sup>97</sup>

82. States that have substantial fossil fuel industries should incorporate strategies for a just transition, including social and economic impact assessments as well as policies and programmes for skills development, retraining and adult education.

83. Some proposed geoengineering strategies to mitigate climate change involve the large-scale manipulation of natural systems through measures such as fertilizing the oceans with iron, installing mirrors in outer space to reflect solar radiation, or shooting aerosols into the atmosphere (imitating the effects of large volcanic eruptions). These untested technological approaches could have massive impacts on human rights, severely disrupting ocean and terrestrial ecosystems, interfering with food production and harming biodiversity. These types of geoengineering strategies should not be used until their implications are much better understood.

### C. Adaptation to protect vulnerable people

84. The goals of adaptation are to prevent and reduce vulnerability, strengthen resilience, minimize harm and capitalize on new opportunities. The annual costs

<sup>94</sup> V. Ramanathan and others, *Well Under 2 Degrees Celsius: Fast Action Policies to Protect People and the Planet from Extreme Climate Change* (2017). Available at [www.igsd.org/wp-content/uploads/2017/09/Well-Under-2-Degrees-Celsius-Report-2017.pdf](http://www.igsd.org/wp-content/uploads/2017/09/Well-Under-2-Degrees-Celsius-Report-2017.pdf).

<sup>95</sup> Jean-Francois Bastin and others, "The global tree restoration potential," *Science*, vol. 365, issue 6448, pp. 76–79 (July 2019).

<sup>96</sup> Jiajia Zheng and Sangwon Suh, "Strategies to reduce the global carbon footprint of plastics", *Nature Climate Change*, vol. 9, pp. 374–378 (May 2019).

<sup>97</sup> Nathan Lobel and Matteo Fermeglia, "Investment Protection and Unburnable Carbon: Competing Commitments in International Investment and Climate Governance", *Diritto del Commercio Internazionale* (June 2019).

of adaptation could range from \$140 billion to \$300 billion by 2030, and from \$280 billion to \$500 billion by 2050.<sup>98</sup>

85. The implementation of adaptation measures needs to be accelerated dramatically. A rights-based approach should be applied in order to tackle the root causes of vulnerability, such as poverty, inequality, discrimination and marginalization, and not merely the symptoms of climate change impacts. Developing States should pursue climate-resilient, low-carbon development, integrating adaptation and disaster risk reduction measures, with financial and technical assistance from developed States. Priority should be given to the most vulnerable and marginalized communities.

86. To accelerate the implementation of effective adaptation actions, States should:

(a) Develop adaptation actions through inclusive, participatory processes, informed by the knowledge, aspirations and specific contexts of affected countries, communities and individuals;

(b) Implement national adaptation plans and/or national adaptation programmes of action that address both extreme weather disasters and slow-onset events by building or upgrading infrastructure (such as water, sanitation, health and education facilities) to be climate resilient; developing disaster risk reduction and management strategies, early warning systems and emergency response plans; and providing disaster relief and humanitarian assistance in emergencies, consistent with the Sendai Framework for Disaster Risk Reduction 2015–2030;

(c) Provide social protection mechanisms to reduce vulnerability to climate-related disasters and stresses, enabling people to become more resilient;

(d) Prioritize nature-based adaptation actions, because protecting and restoring ecosystems can reduce vulnerability, buffering the impacts of extreme weather disasters and slow-onset events, and enhance ecosystem services, including fresh water, clean air, fertile soil, pest control and pollination;

(e) Accelerate and scale up actions to strengthen the resilience and adaptive capacity of food systems and people's livelihoods in response to climate variability and extremes;

(f) Ensure that adaptation actions do not reduce the vulnerability of one group at the expense of other people, future generations or the environment.

#### **D. Ramping up climate finance**

87. Wealthy States must fulfil their commitment to mobilize at least \$100 billion annually by 2020 to finance the urgent mitigation and adaptation needs of developing States, with priority given to the least developed countries and small island developing States. Adaptation has been chronically underfunded compared to mitigation. Funding needs to be ramped up by 2025 to meet the full costs of adaptation, estimated to be \$140 to \$300 billion per year by 2030.

88. Steps should be taken by climate funds to strengthen and harmonize social, environmental and human rights safeguards when financing projects. All climate funds should require project-specific gender action plans and consistency with the Sustainable Development Goals as prerequisites for project approval.

<sup>98</sup> UNEP, *The Adaptation Gap Report 2018* (Nairobi, UNEP, 2018).

89. Climate funds, including the Green Climate Fund, need to simplify their procedures and reach out to least developed countries and small island developing States, so that these States are able to access the funds required for mitigation and adaptation.

90. To address fossil fuel subsidies, internalize the health and environmental costs of burning fossil fuels, and implement the polluter pays principle, States should establish a global carbon tax with a floor price per ton for developing States and a higher floor price for developed States. The tax, covering as many emission sources as possible, should gradually increase every year. The incremental revenue generated by the higher price in developed countries could be used to finance mitigation and adaptation efforts in developing countries.

## **E. Financing loss and damage**

91. Twenty-eight years after the Alliance of Small Island States first proposed a mechanism to address loss and damage, it is time for action. States should agree on a common definition of the concept, including economic costs (such as damages to crops, buildings and infrastructure) and non-economic losses (such as loss of life, livelihoods, territory, culture, habitats or species). States must establish one or more new financing mechanisms that generate revenue to fund payments for loss and damage suffered by vulnerable developing countries, such as small island developing States, because of climate change.

92. Financing for loss and damage could be provided through an air travel levy, a levy on fuels used by the aviation and shipping industries, or a climate damages levy on the revenues of fossil fuel companies. A basic global air travel levy would raise \$40–\$100 billion annually (at \$10–\$25 per person per flight, given that current passenger levels exceed 4 billion per year). Air travel causes significant, largely unregulated emissions, and is used primarily by relatively wealthy people. A progressive air travel levy could impose higher payments on business- and first-class tickets, as well as on longer flights. Nine States, including Cameroon, Chile, France and the Republic of Korea, have already adopted an air-ticket solidarity levy, with the proceeds going towards Unitaid, a global health initiative.

## **F. Empowering United Nations institutions**

93. The United Nations human rights mechanisms, including the treaty bodies, the Universal Periodic Review and the special procedures mandate holders, should be more proactive in promoting a safe climate and protecting human rights from climate impacts. They should:

(a) Integrate climate change into their work through reporting, monitoring and fully implementing the existing recommendations of the treaty bodies, the Universal Periodic Review, the special procedures mandate holders and the Office of the United Nations High Commissioner for Human Rights, as well as the recommendations contained in the present report;

(b) Consistently report on the extent to which States are fulfilling their human rights obligations relating to climate change;

(c) Encourage businesses to respect their human rights responsibilities relating to climate change;

(d) Encourage States to make technical assistance and resources available to countries that lack expertise or resources, such as least developed countries and small island developing States, so that these countries can prioritize and address climate change issues.

94. The United Nations Framework Convention on Climate Change has established focal points on gender and indigenous peoples. It would be useful to add another focal point on human rights to ensure a rights-based approach to negotiating, implementing and monitoring actions pursuant to the Paris Agreement.

## **G. The last word**

95. Effective climate actions will propel progress towards achieving multiple Sustainable Development Goals, including reduced air pollution, clean energy for all, improved health, decreased inequality and poverty, and enhanced infrastructure. Meeting the Paris Agreement target of 1.5°C could save millions of lives every year, providing trillions of dollars in health and environmental benefits. Replacing fossil fuels with renewable energy, energy storage and energy efficiency would create unprecedented economic opportunities.

96. A safe climate is a vital element of the right to a healthy environment and is absolutely essential to human life and well-being. In today's global climate emergency, meeting the obligations to respect, protect and fulfil human rights could help to spur the transformative changes that are so urgently required. To successfully address the daunting challenge of climate change demands heroic action. The world has many grassroots climate heroes, but needs more political and corporate leaders to rise to the challenge. In the words of Swedish teenager Greta Thunberg, who inspired millions of children to participate in school strikes for climate action, "I want you to act as if our house is on fire. Because it is."



---

**Human Rights Council****Forty-third session**

24 February–20 March 2020

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Right to a healthy environment: good practices****Report of the Special Rapporteur on the issue of human rights  
obligations relating to the enjoyment of a safe, clean, healthy and  
sustainable environment***Summary*

In the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment describes good practices followed by States in recognizing the right to live in a safe, clean, healthy and sustainable environment and in implementing the procedural and substantive elements of the right. This fundamental human right is now recognized in law by more than 80 per cent (156 out of 193) of States Members of the United Nations. The procedural elements are access to information, public participation, and access to justice and effective remedies. The substantive elements include clean air, a safe 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. In the context of the global environmental crisis, accelerated diffusion and adoption of good practices to protect human rights is imperative.



## Contents

	<i>Page</i>
I. Introduction .....	3
II. The process of compiling good practices .....	3
III. Good practices in the implementation of the right to a safe, clean, healthy and sustainable environment .....	4
A. Legal recognition .....	4
B. Procedural elements .....	5
C. Substantive elements .....	8
IV. Conclusions .....	18
Annexes	
I. Contributors to the global online researchathon .....	20
II. Legal recognition of the right to a healthy environment .....	22

## I. Introduction

1. In 2018, the Human Rights Council appointed David R. Boyd Special Rapporteur on human rights obligations related to the enjoyment of a safe, clean, healthy and sustainable environment. Over the past year, the Special Rapporteur has made country visits to Fiji and Norway (see A/HRC/43/53/Add.1 and Add.2), presented thematic reports on clean air (A/HRC/40/55) to the Council and on a safe climate to the General Assembly (A/74/161), and hosted an expert meeting on the theme of experience and best practices of States at the national and regional levels with regard to human rights obligations relating to the environment (see A/HRC/43/54).

2. In the present report, the Special Rapporteur highlights good practices in the recognition and implementation of the human right to a safe, clean, healthy and sustainable environment. The term “good practice” is defined broadly to include laws, policies, jurisprudence, strategies, programmes, projects and other measures that contribute to reducing adverse impacts on the environment, improving environmental quality and fulfilling human rights. The good practices address both the procedural and substantive elements of the right to a safe, clean, healthy and sustainable environment. The procedural elements are access to information, public participation, and access to justice and effective remedies. The substantive elements include clean air, a safe 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.

## II. The process of compiling good practices

3. In April 2019, the Special Rapporteur issued a call for inputs on good practices relating to the implementation of the human right to a safe, clean, healthy and sustainable environment. He thanks the Governments of Bosnia and Herzegovina, Brazil, Colombia, Honduras, Hungary, Italy, Kazakhstan, Mali, Mauritius, Mexico, Monaco, Norway, Senegal, Serbia, Slovenia, Sweden, Ukraine, Uruguay and the Bolivarian Republic of Venezuela for their informative responses. A number of international organizations, civil society organizations and individuals also provided useful inputs.<sup>1</sup> At the request of the Human Rights Council, on 20 and 21 June 2019 the Special Rapporteur co-hosted, with the United Nations Environment Programme (UNEP), an expert seminar to discuss the experiences and good practices of States with regard to the implementation of the right to a safe, clean, healthy and sustainable environment.

4. The Special Rapporteur also created a global online “researchathon”, which resulted in the submission of hundreds of good practices from more than 175 States Members of the United Nations. Contributors included government officials, representatives of international agencies, civil society organizations, academics, students, lawyers and judges (see annex I).

5. In November 2019, the Special Rapporteur co-hosted five regional webinars on the role of national human rights institutions in protecting the right to a safe, clean, healthy and sustainable environment. Co-organized by the United Nations Development Programme, UNEP, the Swedish Environmental Protection Agency and the Global Alliance of National Human Rights Institutions, these informative webinars also identified many good practices.

6. In the present report, the Special Rapporteur summarizes only a subset of submitted good practices; he describes additional good practices in a document available on the webpage of the mandate.<sup>2</sup> All good practices collected will be added to the inventory compiled by the previous mandate holder and made available at [www.environmentalrightsdatabase.org](http://www.environmentalrightsdatabase.org). There are many more good practices in addition to

<sup>1</sup> All submissions are available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/GoodPracticesRight2HESubmissions.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/GoodPracticesRight2HESubmissions.aspx).

<sup>2</sup> Additional Good Practices in the Implementation of the Right to a Safe, Clean, Healthy and Sustainable Environment. Available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx).

those identified in the present report. The practices highlighted by the Special Rapporteur are intended to illustrate the innovative and exemplary efforts being made to respect, protect and fulfil the right to a safe, clean, healthy and sustainable environment.

7. These good practices show that environmental progress and the protection of human rights from environmental harm are possible. While the contribution of such a prodigious variety of good practices by such a large number of States is encouraging, the Special Rapporteur cautions against complacency. Humanity is embroiled in an unprecedented global environmental crisis. Its actions are causing a climate emergency, a massive decline in biodiversity, and pollution of air, water and soil that contributes to millions of premature deaths annually. An accelerated dissemination and adoption of good practices is imperative to transform society onto a genuinely sustainable pathway and to protect human rights.

8. To be clear, all States have obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, including States that have not yet recognized the right to a healthy and sustainable environment. These obligations are set forth in extensive detail in the framework principles presented to the Human Rights Council by the previous mandate holder (A/HRC/37/59, annex).

### **III. Good practices in the implementation of the right to a safe, clean, healthy and sustainable environment**

#### **A. Legal recognition**

9. In the present report, the Special Rapporteur focuses on the implementation of the right to a safe, clean, healthy and sustainable environment. The legal recognition of this right can itself be considered a good practice, whether by means of constitutional protection, inclusion in environmental legislation or through ratification of a regional treaty that includes the right.

10. In cooperation with the Vance Center for International Justice, the Special Rapporteur prepared an updated list of States that legally recognize the right to a safe, clean, healthy and sustainable environment (see annex II). There are 110 States where this right enjoys constitutional protection. Constitutional protection for human rights is essential, because the constitution represents the highest and strongest law in a domestic legal system. Furthermore, the constitution plays an important cultural role, reflecting a society's values and aspirations.

11. The right to a healthy environment is explicitly included in regional treaties ratified by 126 States. This includes 52 States that are parties to the African Charter on Human and Peoples' Rights, 45 States that are parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 16 States that are parties to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and 16 States that are parties to the Arab Charter on Human Rights. As at 1 December 2019, five States had ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement); this recent treaty requires, however, 11 ratifications to enter into force. Ten States adopted the non-binding Declaration on Human Rights of the Association of South-East Asian Nations.

12. It is also important that legislation be enacted and implemented to respect, protect and fulfil the right to a safe, clean, healthy and sustainable environment. There are 101 States where this right has been incorporated into national legislation. Especially good practices can be seen in Argentina, Brazil, Colombia, Costa Rica, France, the Philippines, Portugal and South Africa, where the right to a healthy environment serves as a unifying principle that permeates legislation, regulations and policies.

13. In total, more than 80 per cent of States Members of the United Nations (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment. The

Special Rapporteur has collected the texts of the constitutional and legislative provisions that recognize this right.<sup>3</sup>

## **B. Procedural elements**

### **1. Access to environmental information**

14. Access to information is a widely recognized human right and is essential for people to be able to protect and defend their human rights from potentially harmful environmental impact. Some States have put in place laws, policies and programmes that afford enhanced access to environmental information, including at least 20 States (such as Albania, Argentina, Azerbaijan, Belarus, the Plurinational State of Bolivia, Brazil, Czechia, France, Norway and Ukraine) the constitutions of which guarantee the right of access to environmental information.

15. Other States have enacted legislation specifically authorizing affordable access to environmental information. For example, in Norway, the Environmental Information Act recognizes every person's right to obtain a broad range of environmental information from public and private entities, subject to specified exceptions that are to be narrowly interpreted. In Slovenia, the Environmental Act specifies that environmental information is public and everyone has the right to have access to environmental information.

16. A growing number of States have created websites that offer comprehensive information relating to the environment. In Uruguay, a national environmental observatory was created to organize and disseminate all available environmental information in a single portal.<sup>4</sup> Environmental indicators identify not only trends in the state of the environment, such as pollutant emissions, waste, effects on the quality of water, air, soil and biodiversity, but also the protection and response measures being developed by Governments. The observatory also provides information on territorial planning and the environmental management of river basins and aquifers, technical reports and open data for researchers. One innovative feature of the observatory is the fact that it provides citizens with a simple procedure for reporting potential violations of environmental law. Citizens can also share information on wildlife species sighting and coastal monitoring. A similar environmental observatory operates in El Salvador.

17. Hungary has a comprehensive national environmental information system. The national public health institute publishes updated data online on air quality and the quality of drinking water and bathing water, pollen levels, and other factors posing a potential health risk.<sup>5</sup> France, North Macedonia, Norway and Sweden also have excellent websites with comprehensive information on the state of the environment.

18. Fiji, Kiribati, the Marshall Islands, the Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu are collaborating on a Pacific island network of national and regional data repositories, reporting tools and public websites to monitor, evaluate and analyse environmental information, supporting planning, forecasting and reporting requirements.<sup>6</sup>

19. Another important type of environmental information is data about toxic substances. The Protocol on Pollutant Release and Transfer Registers to the Aarhus Convention requires its 35 parties thereto to collect and publish information on pollution from industrial facilities. This information must be gathered annually, made available in a user-friendly way to the public for free, and must include at least 86 pollutants covered by the Protocol. Canada, Mexico and the United States of America also have comprehensive pollutant release inventories.

20. A growing number of States publish regular national reports on the state of the environment, including Hungary, Kazakhstan and Turkey. Kazakhstan also publishes

<sup>3</sup> See [www.ohchr.org/EN/Issues/Environment/SREnvironment/Right2HE/Pages/national.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Right2HE/Pages/national.aspx).

<sup>4</sup> See [www.dinama.gub.uy/oan/](http://www.dinama.gub.uy/oan/).

<sup>5</sup> See <http://oki.antsz.hu/>.

<sup>6</sup> See [www.sprep.org/inform/data-portals](http://www.sprep.org/inform/data-portals).

monthly bulletins on topics relating to the state of the environment and the use of natural resources. South Sudan published its first state of the environment and outlook report just one month after gaining independence.

21. Laws in Armenia, Azerbaijan, Brazil, Montenegro, the Philippines, Portugal, the Republic of Korea and Senegal require the Government to provide environmental education. For example, in Montenegro, Law on the Protection of Nature (2016) calls for “emphasizing the importance and necessity of nature protection through the education system from pre-school to university”. After adopting a national climate change policy, Ghana is now implementing a national climate education strategy. Lessons on climate change will be included in the primary school curriculum with a goal of raising schoolchildren’s awareness of environmental issues.

## **2. Public participation in environmental decision-making**

22. Ensuring broad, inclusive and gender-sensitive public participation not only fulfils human rights obligations but also results in better outcomes.

23. In 2005, France enshrined in its Constitution the public’s right to participate in decisions affecting the environment. The Economic, Social and Environmental Council is a consultative assembly that promotes dialogue and cooperation between different groups of stakeholders to ensure that a diversity of views contribute to public policy development. The National Commission for Public Debate organizes public debates on proposals for major development projects, such as nuclear reactors, railways, highways, natural gas pipelines, hydroelectric dams, sports stadiums, and radioactive waste storage facilities. Between 2002 and 2014, the Commission held 70 public debates and 800 meetings involving approximately 150,000 people.

24. In Slovenia, the Environmental Act articulates the public’s right to participate in a wide range of procedures relating to environmental protection. Laws adopted in Hungary also guarantee the involvement of the public in decision-making processes.

25. In Norway, the Environmental Information Act includes provisions for public participation in environmental decision-making, while the Planning and Building Act provides extensive opportunities for residents to advocate for local plans that advance sustainability. A national guide to public participation in planning was published in 2014, with special attention paid to the protection of the interests of vulnerable groups. In 2018, Norway adopted a new Local Government Act, which requires all local and regional authorities to establish three councils, to represent young people, older persons and persons with disabilities. Norway also formalized a consultation procedure with the Sami indigenous people in 2005, fulfilling the right of indigenous peoples to participate in decision-making processes.

26. In 2017, Finland created the Agenda 2030 Youth Group to serve as an advocate for the Sustainable Development Goals and to participate in national planning and implementation to achieve them. The Agenda 2030 Youth Group comprises 20 people with diverse backgrounds, aged between 15 and 28 years, from all over Finland. The group organized a debate on climate change for presidential candidates and a youth climate summit in 2019, which involved 500 young people.

27. A crucial aspect of public participation involves the protection of environmental human rights defenders, who are often harassed, intimidated, criminalized or even murdered. In 2018, Mali adopted Law No. 2018-003 that affords protection to human rights defenders, including environmentalists. Burkina Faso and Côte d’Ivoire also enacted laws to safeguard human rights defenders.<sup>7</sup>

28. Honduras enacted a new law in 2015, establishing a national protection mechanism to safeguard the rights of human rights defenders, journalists and judges. Associated regulations were adopted in 2016. The Office of the Special Prosecutor for the Protection of Human Rights Defenders, Journalists, Media Professionals and Justice Officials was established in 2018 with six prosecutors, four assistant prosecutors, and 10 investigators (see

---

<sup>7</sup> See Front Line, *Front Line Defenders: Global Analysis 2018, 2019*.

A/HRC/40/60/Add.2). These positive steps were taken to respond to the murders of high-profile defenders, and implement recommendations made by the Inter-American Commission on Human Rights. In 2019, seven men were sentenced to at least 30 years in jail for their role in the murder of Berta Cáceres, an indigenous environmental defender.

29. In Peru, the national human rights plan for 2018–2021 highlights the vital work of human rights defenders. In 2019, the Ministry of Justice drafted a protocol guaranteeing the protection of human rights defenders. The objectives are to promote the recognition of human rights defenders, to take specific protection measures for those at risk, to work towards the implementation of preventive measures, and to ensure prompt and effective investigation of threats against defenders. In the first case of its kind, prosecutors are seeking a 35-year jail sentence for two businessmen and three loggers implicated in the murder of four indigenous environmental human rights defenders.<sup>8</sup>

### 3. Access to justice

30. Good practices relating to access to justice and effective remedies are often aimed at overcoming three major obstacles: standing to sue, economic barriers, and lack of judicial expertise in environmental matters. In most States where the right to a safe, clean, healthy and sustainable environment is recognized in the Constitution, individuals and non-governmental organizations have standing to bring lawsuits based on the violation of this right or of environmental laws (for example, in Argentina, Colombia, Costa Rica, India, Portugal, Romania and Slovenia).

31. Globally, there are more than 1,000 specialized environmental courts and tribunals at the national and subnational levels. The advantages of these judicial and quasi-judicial bodies include enhanced legal and scientific expertise, streamlined processes, flexibility, the use of alternative dispute resolution, comprehensive jurisdiction, open rules about standing (eligibility to file cases), effective remedies and enforcement powers, and unique case management tools.<sup>9</sup> Examples include the National Green Tribunal in India, the Environment and Land Courts and National Environmental Tribunal in Kenya and the Land and Environment Courts in Sweden.

32. According to the Global Alliance for National Human Rights Institutions, more than 100 States have national human rights institutions in the form of human rights commissions or human rights ombudspersons.<sup>10</sup> These institutions generally have two core functions: independent review of the nation's human rights record, and addressing individual grievances or complaints alleging human rights violations. Some national human rights institutions (such as those in Austria, Chile, Czechia, Hungary, Kenya and Romania) also have the power to file lawsuits or to intervene in cases against the Government on behalf of communities whose rights are being violated.

33. Costa Rica has three exemplary institutions that provide access to justice. First, an independent office of the ombudsperson protects the rights of citizens by ensuring that the public sector meets the standards set by the Constitution, statutes, treaties and general principles of law, as well as standards of morality and justice. The office may, either on its own initiative or upon request, investigate complaints of alleged human rights violations by public authorities, initiate judicial or administrative proceedings to address such violations, participate in parliamentary debates or review legislative proposals. Much of the work of the Ombudsperson in recent years has concerned environmental issues, including the constitutional right to a healthy and ecologically balanced environment. Colombia, Croatia and Portugal also have ombudspersons who are active in environmental matters.

34. Second, the Environmental Administrative Tribunal has jurisdiction to hear complaints for violations of all laws protecting the environment and natural resources. The Tribunal may carry out site visits to determine the nature of environmental damage, require

<sup>8</sup> See [www.voanoticias.com/a/peru-fiscalia-asesinato-ambientalistas-/5148352.html](http://www.voanoticias.com/a/peru-fiscalia-asesinato-ambientalistas-/5148352.html).

<sup>9</sup> George Pring and Catherine Pring, *Environmental Courts & Tribunals: A Guide for Policy Makers*, UNEP, 2016.

<sup>10</sup> See <https://nhri.ohchr.org/EN/Pages/default.aspx>.

interim protection measures, and levy fines and administrative sanctions to eliminate or mitigate environmental damage.

35. The third element of ensuring access to justice cases involving the right to a healthy environment is the Constitutional Chamber of the Supreme Court, which has applied this right to a wide range of cases involving mineral concessions, aerial pesticide spraying, toxic substances, deforestation, ecotourism, the protection of national parks, timber harvesting in the habitat of endangered species, and groundwater pollution.

36. Under Indonesian law (Act 32/2009 regarding Environmental Protection and Management), every person has the rights of access to information, to participate in environmental decisions and to effective remedies if they are harmed by environmental degradation. The Supreme Court has adopted policies that require all environmental cases to be handled by a judge with environmental certification (obtained through specialized training).

37. When access to justice and/or effective remedies are denied at the national level, regional courts, tribunals and committees can play an important role. Cases involving the right to a healthy environment have been decided by the African Commission on Human and Peoples' Rights,<sup>11</sup> the Inter-American Court of Human Rights,<sup>12</sup> the European Court of Human Rights,<sup>13</sup> the European Committee of Social Rights<sup>14</sup> and the Aarhus Convention Compliance Committee.

## C. Substantive elements

### 1. Clean air

38. Nine out of 10 people globally live in areas that do not meet World Health Organization guidelines for air quality. Air pollution causes 7 million premature deaths annually, including 600,000 children under the age of 5. More than 2 billion people still rely on polluting cooking systems.

39. To protect the clean air component of the right to a healthy environment, States must take seven key steps, including (a) monitor air quality and impact on human health; (b) assess sources of air pollution; (c) make information publicly available, including public health advisories; (d) establish air quality legislation, regulations, standards and policies; (e) develop air quality action plans at the local, national and, if necessary, regional levels; (f) implement air quality action plans, and enforce the standards; and (g) evaluate progress and, if necessary, strengthen plans to ensure that the standards are met (A/HRC/40/55). As the good practices described below show, many States are making dedicated efforts to improve air quality and to protect their peoples' right to live in a healthy and sustainable environment (For additional good practices that relate to clean air, such as phasing out coal, accelerating renewable electricity generation and shifting to zero emission transportation, see paras. 48–72 below).

40. Many States are establishing or improving air quality monitoring networks, including Azerbaijan, the Plurinational State of Bolivia, Jordan, Kuwait, Lebanon, Mali, Morocco and Qatar.

41. North Macedonia has a public air quality portal containing information on measures to improve air quality, sustainable transport, cleaner domestic heating practices, alert thresholds set for certain pollutants, and health advice from the institute of public health. The portal also provides information on air quality monitoring, legislation and policies, projects, and emission inventories.

<sup>11</sup> Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria (communication No. 155/96), 2001.

<sup>12</sup> Advisory Opinion OC-23-17, 15 November 2017.

<sup>13</sup> *Tatar v. Romania*, Application No. 67021/01, Judgment, 27 January 2009, paras. 107 and 112.

<sup>14</sup> *Marangopoulos Foundation for Human Rights v. Greece*, Complaint No. 30/2005, Decision on the Merits, 6 December 2006, para. 195.

42. The Dominican Republic, France and the Philippines explicitly recognize the right to breathe clean air. In India and Pakistan, courts have clarified that the right to breathe clean air is constitutionally protected because it is essential to the rights to life and health. In Lebanon, the National Strategy for Air Quality Management states that “every citizen has the right to enjoy clean air”.

43. There is compelling evidence to suggest that enacting and enforcing strong air quality regulations save lives and prevent illnesses. Since the Clean Air Act was enacted in 1970, the American economy has grown by 262 per cent (measured by increased GDP) while achieving an average reduction of 73 per cent for the six main air pollutants. The costs of the Clean Air Act are measured in billions of dollars, while the benefits are in the trillions.<sup>15</sup> Reduced air pollution in California resulted in significant improvements in children’s lung function.<sup>16</sup>

44. Bosnia and Herzegovina, Bulgaria, Costa Rica, Croatia, Singapore, Slovakia and Turkmenistan recently enacted stronger air quality laws or regulations. National action plans to improve air quality are being developed or implemented in Bahrain, Colombia, Ireland, Kuwait, Montenegro and Uruguay.

45. Household air pollution from the use of inefficient stoves burning biomass, kerosene and coal causes millions of premature deaths every year. Women and children face the highest risks. The most rapid progress in providing access to clean cooking, through either liquefied petroleum gas, piped natural gas or electricity, has been achieved in India, Indonesia, Pakistan, the Sudan and Viet Nam.<sup>17</sup>

46. Two initiatives that have dramatically improved air quality in many countries are the phasing-out of leaded gasoline and major reductions in the sulphur content of transport fuels. These actions have produced enormous health, environmental and economic benefits, valued in the trillions of dollars.<sup>18</sup>

47. In large cities in States from Germany and the United Kingdom to China and Mexico, low emission zones have been established to reduce pollution from motor vehicles and to protect public health. Entry into low emission zones is restricted to vehicles that meet specific emission standards.

## 2. A safe climate

48. Because of human activities, the concentrations of greenhouse gases in the atmosphere are at their highest level in millions of years, causing climate change and a devastating array of effects, from droughts and floods to rising sea levels and more intense extreme weather events. The United Nations High Commissioner for Human Rights has warned that “the world has never seen a human rights threat of this scope.”<sup>19</sup>

49. The historic inclusion of human rights in the Paris Agreement indicated that human rights should be at the heart of all climate action, including legislation, mitigation, adaptation, finance, and loss and damage.

50. Nine States now include responsibilities relating to climate change in their Constitutions: Côte d’Ivoire, Cuba, the Dominican Republic, Ecuador, Thailand, Tunisia, the Bolivarian Republic of Venezuela, Viet Nam and Zambia. Draft constitutions in the Gambia and Yemen also include references to addressing climate change.

<sup>15</sup> See *The Benefits and Costs of the Clean Air Act from 1990 to 2020*, United States Environmental Protection Agency, 2011.

<sup>16</sup> W. James Gauderman, Robert Urman, Edward Avol et al., “Association of improved air quality with lung development in children”, *New England Journal of Medicine*, vol. 372, pp. 905–913.

<sup>17</sup> *Tracking SDG 7: The Energy Progress Report 2018*, International Energy Agency, World Bank et al., 2019.

<sup>18</sup> Elise Gould, “Childhood lead poisoning: conservative estimates of the social and economic benefits of lead hazard control”, *Environmental Health Perspectives*, vol. 117, No. 7 (July 2009), pp. 1162–1167.

<sup>19</sup> “Climate change is greatest ever threat to human rights, UN warns”, *Guardian*, 9 September 2019.

51. Approximately 140 States have enacted framework climate legislation.<sup>20</sup> The best laws include bold targets, timelines and accountability mechanisms.<sup>21</sup> For example, in the United Kingdom of Great Britain and Northern Ireland, the Climate Change Act requires a reduction of greenhouse gas emissions by at least 80 per cent by 2050 compared to 1990 levels, through legally binding caps on emissions, carbon budgets and various programmes. Elements of the British law have been emulated by other States, such as Denmark, France, Mexico, Norway and Sweden. In Peru, the framework law on climate change (2018) mandates that climate change considerations be incorporated into public spending decisions at all levels of the Government.

52. Long-term plans for achieving deep reductions in emissions by 2050 provide an essential vision as well as certainty to investors that economies will shift away from fossil fuels over the next three decades. Thirteen States have filed long-term de-carbonization plans with the United Nations: Benin, Canada, Czechia, Fiji, France, Germany, Japan, the Marshall Islands, Mexico, Portugal, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America.<sup>22</sup> The 2050 Climate Strategy adopted by the Marshall Islands emphasizes a rights-based approach, while Fiji and Mexico make multiple references to human rights in their plans.

53. A growing number of States has incorporated, in law, specific timelines for achieving net-zero carbon emissions, such as Norway (2030), Finland (2035), Sweden (2045), France (2050), New Zealand (2050) and the United Kingdom (2050). Bhutan is already carbon negative and intends to maintain carbon neutrality. Costa Rica, Fiji, Iceland, Ireland, the Marshall Islands, Portugal and Uruguay have made similar but not legally binding commitments. Denmark recently raised its ambition by setting a goal of reducing greenhouse gas emissions 70 per cent by 2030.

54. Dozens of States have substantially reduced their greenhouse gas emissions, led by Czechia, Denmark, Hungary, Slovakia and the United Kingdom, where emissions declined by more than 30 per cent between 1990 and 2017.<sup>23</sup> Other State parties included in annex I of the Paris Agreement making progress (namely, those having achieved at least a 20 per cent decline in emissions since 1990) include Belgium, Croatia, Estonia, Finland, Germany, Luxembourg, Portugal, Romania and Sweden.<sup>24</sup> Sweden has reduced emissions by 26 per cent since 1990, while enjoying an increase in GDP of 75 per cent over the same period.

55. Guatemala, Mexico, Morocco and the Philippines provide examples of climate change legislation addressing gender equality. In Mexico, the General Law on Climate Change includes a specific focus on gender equality and empowering women. In the Philippines, the Climate Change Act of 2009 requires the State to incorporate “a gender-sensitive, pro-children and pro-poor perspective” in all climate change and renewable energy efforts, plans and programmes.

56. Uruguay has done an exemplary job of integrating human rights into both the process of climate change policymaking and the substance of the policies produced, such as its national climate change plan. This integration flows from a partnership between the Ministry of Housing, Territorial Planning and Environment and the Secretariat of Human Rights of the Office of the President.

57. Nationally determined contributions comprise the commitments made by States pursuant to the Paris Agreement on a five-year cycle. In the first cycle, 24 such contributions incorporated human rights. Seventeen States committed to taking a rights-based approach to climate action: the Plurinational State of Bolivia, Brazil, Chad, Chile, Costa Rica, Ecuador,

<sup>20</sup> Global trends in climate change legislation and litigation: 2018 snapshot, Grantham Research Institute on Climate Change and the Environment.

<sup>21</sup> Alina Averchenkova *Legislating for a low carbon and climate resilient transition: learning from international experiences*, Elcano Policy Paper, 2019.

<sup>22</sup> See <https://unfccc.int/process/the-paris-agreement/long-term-strategies>.

<sup>23</sup> Corinne Le Quéré et al., “Drivers of declining CO<sub>2</sub> emissions in 18 developed economies”, *Nature Climate Change*, vol. 9, 2019, pp. 213–17.

<sup>24</sup> See [https://di.unfccc.int/time\\_series](https://di.unfccc.int/time_series).

Georgia, Guatemala, Guyana, Honduras, Malawi, the Marshall Islands, Mexico, Morocco, the Philippines, South Sudan and Uganda. Seven States – Cuba, El Salvador, Indonesia, Nepal, the Bolivarian Republic of Venezuela, Yemen and Zimbabwe – identified human rights as a key element of the legal context in which actions would be taken. Nationally determined contributions from more than 50 States address gender issues, participation and the empowerment of women, while those from 19 other States include references to indigenous peoples and/or traditional knowledge.<sup>25</sup>

58. France enacted a law in 2017 banning new fossil fuel exploration and development and requiring existing projects to be concluded by 2040 (including those in French territories overseas). An earlier law prohibiting the exploitation of shale gas by hydraulic fracturing was challenged by industry but upheld by the Constitutional Council.

59. Costa Rica (by Executive Decree No. 41578) and Belize (by the Petroleum Operations (Maritime Zone Moratorium) Act, 2017) were the first States to prohibit all offshore oil and gas exploration and development, demonstrating climate leadership and protecting marine ecosystems. Denmark and New Zealand have also established limits on exploration for oil and gas.<sup>26</sup>

60. In a special report *Global Warming of 1.5°C*, the Intergovernmental Panel on Climate Change concluded that a safe climate requires a two-thirds reduction in coal power generation in 2030 and its near total elimination by 2050.<sup>27</sup> Canada and the United Kingdom created the Powering Past Coal Alliance in 2017 and have been joined by 28 States and 22 subnational Governments pledging to end the use of coal to generate electricity by 2030, or in some States to never use coal for electricity.<sup>28</sup> In 2019, Finland enacted law No. 416/2019 that bans the use of coal for electricity generation and heating as of 1 May 2029.

61. Spain and Germany are phasing out the coal industry and have put in place just transition strategies for workers.<sup>29</sup>

62. Dramatic declines in the cost of renewable energy are accelerating the transition to clean energy. In many countries, wind and solar power now provide cheaper electricity than fossil fuels. Global solar electricity generating capacity has grown exponentially from one gigawatt in 2000 (one gigawatt equals one billion watts) to over 500 gigawatts in 2019. Thanks to supportive public policies, the top five solar electricity producing countries in the world are now China, the United States, Japan, Germany and India.

63. The global total of wind electricity generating capacity grew from 17 gigawatts in 2000 to over 600 gigawatts in 2019. The top five countries in the world in generating electricity from wind, again thanks to effective public policies, are China, the United States, Germany, India and Spain.

64. The steep decline in the cost of wind and solar power means that rapidly shifting to 100 per cent renewable electricity is environmentally responsible and economically attractive. Albania, Costa Rica, Iceland, Namibia, Norway, Paraguay and Uruguay already secure between 98 and 100 per cent of their electricity from renewables including hydroelectric, solar, wind, geothermal and biomass. Belize, Bhutan, Burundi, the Democratic Republic of the Congo, Kyrgyzstan, the Lao People's Democratic Republic, Mozambique, Nepal, Tajikistan and Zambia are above 90 per cent.

65. Distributed renewable energy programmes (where electricity is produced at or near the point where it is used) offer an excellent way to extend reliable access to clean and affordable electricity, and have been established in many low- and middle-income countries in Asia, Africa and Latin America. For example, at least 20 million people in remote villages

<sup>25</sup> Sébastien Duyck et al., "Human rights and the Paris Agreement's Implementation Guidelines: opportunities to develop a rights-based approach", *Carbon and Climate Law Review*, vol. 12, No. 3, pp. 191–202.

<sup>26</sup> *The Production Gap, 2019 Report*, United Nations Environment Programme (UNEP).

<sup>27</sup> [www.ipcc.ch/sr15/](http://www.ipcc.ch/sr15/).

<sup>28</sup> See <https://poweringpastcoal.org>.

<sup>29</sup> See UNEP, *The Production Gap*.

in Bangladesh have solar panels with batteries that store electricity, improving their quality of life.<sup>30</sup>

66. Nineteen West African States are collaborating in the Regional Off-Grid Electrification Project to increase access to electricity for households and businesses using off-grid solar systems. The \$150 million project is expected to benefit 585,000 households (2 million people), as well as 65,000 small and medium-sized businesses.<sup>31</sup> Participating States include Benin, Burkina Faso, Cabo Verde, Cameroon, the Central African Republic, Chad, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, the Niger, Nigeria, Senegal, Sierra Leone and Togo.<sup>32</sup>

67. Through the African Forest Landscape Restoration Initiative, 28 countries across Africa have committed to restore more than 100 million hectares of deforested and degraded landscapes. Funding includes \$1 billion in development finance and \$500 million in private sector funding. Although the focus is on improving livelihoods, the initiative will also increase carbon storage by creating healthy forests. Participating States include Benin, Burkina Faso, Burundi, Cameroon, the Central African Republic, Chad, the Congo, Côte d'Ivoire, the Democratic Republic of the Congo, Eswatini, Ethiopia, Ghana, Guinea, Kenya, Liberia, Madagascar, Malawi, Mozambique, the Niger, Nigeria, Rwanda, Senegal, South Africa, the Sudan, Togo, Uganda, the United Republic of Tanzania and Zimbabwe.<sup>33</sup>

68. In 2018, Vanuatu launched its National Policy on Climate Change and Disaster-Induced Displacement, emphasizing a rights-based approach that draws on the Sendai Framework for Disaster Risk Reduction and the Guiding Principles on Internal Displacement. The policy is systemic and action-oriented, incorporating non-discrimination, gender responsiveness and community participation. It addresses prevention, protects persons during evacuation and throughout the term of displacement, and seeks durable solutions.

69. Although relocating communities should be the last resort, in cases where it is inevitable, plans should be developed in close cooperation with the affected communities. In Fiji, the *Planned Relocation Guidelines*, published in 2018, are a commendable example of a rights-based approach to relocation.

70. Australia, Canada, Denmark, the Netherlands, Sweden and Switzerland provide 98 to 100 per cent of bilateral public climate finance in the form of grants, which are much better for developing countries than loans.<sup>34</sup>

71. Germany funds projects in Mexico to foster women's participation in climate action, such as *Red Mujeres en Energía Renovable y Eficiencia Energética* (Renewable Energy and Energy Efficiency Women's Network). Ireland promotes gender equality in access to renewable energy, developing climate-resilient agriculture and greening the health sector.

72. The Global Environment Facility established an indigenous peoples advisory group and an indigenous peoples fellowship programme. These are important first steps towards increasing flows of climate finance to indigenous peoples.

### 3. Healthy and sustainably produced food

73. More than 800 million people were undernourished in 2017, marking the third consecutive year where hunger has increased globally. Faced with the immense impact of industrial agriculture on the environment and the need to feed almost 8 billion humans, it is imperative that diets evolve and food be sustainably produced.

74. The right to food is recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights as part of the right to an

<sup>30</sup> Ehsanul Kabir, Ki-Hyun Kim and Jan E. Szulejko, "Social Impacts of Solar Home Systems in Rural Areas: A Case Study in Bangladesh", *Energies*, vol. 10, No. 10, pp. 1–12.

<sup>31</sup> <https://projects.worldbank.org/en/projects-operations/project-detail/P160708?lang=en>.

<sup>32</sup> [www.lightingafrica.org/publication/regional-off-grid-electrification-project-rogep-overview/](http://www.lightingafrica.org/publication/regional-off-grid-electrification-project-rogep-overview/).

<sup>33</sup> See <https://afr100.org/content/home>.

<sup>34</sup> Tracy Carty and Armelie le Comte, *Climate Finance Shadow Report 2018: Assessing progress towards the \$100 billion commitment*, Oxfam, 2018.

adequate standard of living. Thirty-one States provide constitutional recognition of the right to food: Belarus, the Plurinational State of Bolivia, Brazil, Colombia, Costa Rica, Cuba, the Democratic Republic of the Congo, the Dominican Republic, Ecuador, Egypt, Fiji, Guatemala, Guyana, Haiti, Honduras, India, Kenya, Malawi, Maldives, Mexico, Nepal, Nicaragua, the Niger, Panama, Paraguay, the Philippines, the Republic of Moldova, South Africa, Suriname, Ukraine and Zimbabwe.

75. Agroecological farming can help to improve livelihoods for small-scale farmers and those living in poverty, including women, because it involves limited reliance on expensive external inputs. Agroecology improves air, soil, surface water and groundwater quality, is less energy-intensive, reduces emissions of greenhouse gases and enhances carbon sinks (A/HRC/16/49, para. 31). The United Nations Food and Agriculture Organization has identified agroecology policies in Brazil, Denmark, Ecuador, India, the Philippines, Senegal and the United States as winners of Future Policy Awards in 2018 for scaling up agroecology, improving the livelihoods of small-scale food producers, ensuring sustainable food production systems and implementing climate-resilient agricultural practices.<sup>35</sup> Agroecology projects in Benin, Brazil, Cameroon, Cuba, Egypt, India, Mozambique, Nepal, the Niger and the Philippines were recognized for good practices by the World Future Council in 2019.<sup>36</sup>

76. Turkey passed a law on organic agriculture in 2004 and a by-law on organic agriculture principles and practices in 2010. The number of farmers and areas under organic cultivation has grown rapidly since 2010, with the area in organic production jumping more than 60 per cent between 2010 and 2014.<sup>37</sup>

77. The Great Green Wall is an extraordinary initiative to restore degraded land in the Sahel region of Africa. The States involved include Algeria, Benin, Burkina Faso, Cameroon, Cabo Verde, Chad, Djibouti, Egypt, Eritrea, Ethiopia, the Gambia, Ghana, Libya, Mali, Mauritania, the Niger, Nigeria, Senegal, Somalia, the Sudan and Tunisia. The Great Green Wall will help to combat climate change, drought, famine, conflict and migration. Senegal has already planted more than 12 million drought-resistant trees. In Ethiopia, 15 million hectares of degraded land have been restored and hundreds of millions of trees planted. In the Niger, 5 million hectares of land have been restored, producing an additional 500,000 tonnes of grain annually, enough to feed 2.5 million people.<sup>38</sup>

78. Field schools for farmers can significantly reduce pesticide use, as inputs are replaced by knowledge. Large-scale studies conducted in Bangladesh, Indonesia and Viet Nam showed decreases of 34 to 92 per cent in pesticides used on rice crops.<sup>39</sup>

79. An important element of shifting to a healthy and sustainable food system is a decrease in the production and consumption of meat, particularly beef, because of the huge impact on the environment.<sup>40</sup> Protein crops (for example, soybeans, lentils and chickpeas) can provide benefits, such as less disease and pest pressure, improved nitrogen management, lower nitrogen emissions and increased opportunities for farmers. In 2015, Ireland introduced a programme offering incentives to farmers to grow protein crops. In the first year of the programme, a 300 per cent increase in production was reported.<sup>41</sup>

#### 4. Access to safe water and adequate sanitation

80. In 2017, 785 million people still lacked access to basic water services and 700 million people still practiced open defecation due to lack of sanitation services. The lack of access to

<sup>35</sup> See [www.fao.org/agroecology/slideshow/news-article/en/c/1187596/](http://www.fao.org/agroecology/slideshow/news-article/en/c/1187596/).

<sup>36</sup> See [www.worldfuturecouncil.org/press-release-opa-2019/](http://www.worldfuturecouncil.org/press-release-opa-2019/).

<sup>37</sup> *State of the Environment Report for Republic of Turkey*, Ministry of Environment and Urbanisation, 2016.

<sup>38</sup> [www.greatgreenwall.org](http://www.greatgreenwall.org).

<sup>39</sup> Henk Van den Berg and Janice Jiggins, "Investing in Farmers: the Impacts of Farmer Field Schools in Relation to Integrated Pest Management", *World Development*, vol. 35, No. 4, April 2007, pp. 663–686.

<sup>40</sup> Special Report on Climate Change and Land: Summary for Policymakers, IPCC, 2019 (available from [www.ipcc.ch/srccl/chapter/summary-for-policymakers](http://www.ipcc.ch/srccl/chapter/summary-for-policymakers)).

<sup>41</sup> *Solutions for the Farm of the Future: Go Green*, New Economics Foundation. 2017.

safe drinking water and adequate sanitation causes 870,000 premature deaths annually (see E/2019/68).

81. The human rights to water and sanitation were recognized in 2010 by the General Assembly in its resolution 64/292 and the Human Rights Council in its resolution 15/9, and have been repeatedly re-affirmed.<sup>42</sup> A former Special Rapporteur on the human rights to safe drinking water and sanitation published a comprehensive set of good practices in implementing the rights to water and sanitation.<sup>43</sup> In the handbook, the former mandate holder emphasizes the need for clear articulation of the content of the rights to water and sanitation through laws, regulations and policies governing availability, physical accessibility, affordability, quality and safety, and acceptability. Also essential are legal frameworks to eliminate discrimination in the provision of water and sanitation services (as reported for example in Ghana, Honduras and Pakistan).

82. Today, dozens of States recognize the human rights to water and/or sanitation in their constitutions and/or legislation, including Belgium, the Plurinational State of Bolivia, Chile, the Democratic Republic of the Congo, Cuba, the Dominican Republic, Ecuador, Ethiopia, Fiji, France, Kenya, Maldives, Mexico, the Netherlands, Nicaragua, the Niger, Paraguay, Slovenia, the Solomon Islands, South Africa, Tunisia, the United Republic of Tanzania and Uruguay.

83. Ideally, the rights to water and sanitation should be embedded throughout a State's legal framework, including in the constitution, legislation, policies and programmes. For example, in South Africa, the right to water is enshrined in the Constitution, the National Water Act, the Water Services Act, the Free Basic Water Implementation Strategy and the National Framework for Municipal Indigent Policies. The Water Services Act also includes recognition of the right to sanitation. The legal framework helped to secure financing to ensure implementation of rights. Between 2000 and 2017, 14 million South Africans gained access to basic water services, while 17 million people gained access to at least basic sanitation.<sup>44</sup>

84. In Poland, the National Programme for Municipal Wastewater Treatment was introduced to ensure compliance with upgraded water legislation. The policy fostered the construction of new and updated wastewater treatment plants that reduced water pollution and generated energy from waste. As at 2017, 99 per cent of the population in Poland had access to at least basic sanitation service, and 99 per cent of wastewater was treated at plants providing at least secondary treatment.

85. Pro-poor programmes to ensure access to safe drinking water are a leading good practice. In France and Belgium, a type of subsidy, referred to as a solidarity mechanism, pays water bills for the most financially deprived people (A/HRC/18/33/Add.1, para. 33). Chile employs a similar approach, allowing connection costs to be paid in affordable monthly instalments over five years instead of a lump sum. In Zambia, the Devolution Trust Fund was created in 2003 to finance water and sanitation services for poor urban areas and informal settlements. Funding came from development partners, government and water utilities and is replenished by a 3 per cent solidarity levy on the water bills of all customers.<sup>45</sup> Community members are represented in the project task team and decide where water distribution kiosks are to be placed, and local water watch groups serve as an accountability mechanism.

86. Bangladesh, Hungary, Kenya, Mozambique and Peru also have strong laws, policies, or programmes in place to provide water and sanitation to poor and marginalized communities.

87. Cabo Verde, Comoros, Maldives, Mauritius, Sao Tome and Principe and Seychelles have begun an initiative to fix problems relating to the scarcity and contamination of

<sup>42</sup> See for example General Assembly resolution 68/157 and Human Rights Council resolution 27/7.

<sup>43</sup> Caterina de Albuquerque, *Realising the Human Rights to Water and Sanitation: A Handbook*, 2014.

<sup>44</sup> *Progress on household drinking water, sanitation, and hygiene 2000-2017: Special focus on inequalities*, UNICEF and World Health Organization, 2019.

<sup>45</sup> Robert Bos et al., *Manual of the Human Rights to Safe Drinking Water and Sanitation for Practitioners* (London, IWA Publishing, 2016).

freshwater supplies, over-exploitation and the poor management of groundwater resources, and pollution in surface water.<sup>46</sup> About 100,000 community members have already benefited from improved water quality. This project contributes to fulfilling the right to water, reduces poverty, improves health and facilitates climate change adaptation.

88. The ultimate objective is to ensure universal access to safe water and adequate sanitation. Regarding sanitation, there is some very positive news. Between 2000 and 2017, Ethiopia, India and Nepal achieved a substantial reduction – greater than 45 per cent – in the number of people relying on open defecation. The proportion of the population using at least basic sanitation services rose by more than 30 per cent between 2000 and 2017 in Cabo Verde, Cambodia, India, Indonesia, Lesotho, Mauritania, the Federated States of Micronesia, Nepal and Viet Nam.

89. There has also been impressive progress in some States in access to safer drinking water. Use of basic water services rose by more than 30 per cent between 2000 and 2017 in Afghanistan, the Lao People's Democratic Republic, Mali, Mauritania, Mozambique, Myanmar and Somalia.<sup>47</sup> Rural access to basic water services in Paraguay improved rapidly, from 53 per cent in 2000 to 99 per cent in 2017. These examples of progress improve human health and well-being, and fulfil human rights.<sup>48</sup>

## 5. Non-toxic environments in which to live, work and play

90. Toxic substances pose a direct threat to the rights to life, health, safe food and water, adequate housing, and the right to a safe, clean, healthy and sustainable environment. Pollution kills at least 9 million people annually.<sup>49</sup> The burden of toxic substances often falls most heavily on vulnerable and marginalized populations.

91. Important global treaties that prohibit, phase out or limit the use of certain toxic substances include the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Stockholm Convention on Persistent Organic Pollutants, Rotterdam Convention, the Minamata Convention on Mercury and the Vienna Convention for the Protection of the Ozone Layer (including the Montreal Protocol on Substances that Deplete the Ozone Layer and associated amendments). The implementation of obligations relating to these treaties constitute good practices in realizing the right to a healthy and sustainable environment.

92. Human biomonitoring is an important good practice because it measures concentrations of toxic substances and their metabolites in bodily fluids, faeces, hair, teeth and nails. Biomonitoring data reveal levels of exposure and trends, help researchers to understand health effects and assist in developing and evaluating policies to reduce exposure. Ethical standards must be applied to protect human rights. Canada, Denmark, France, Germany, Norway, Spain and the United States have national biomonitoring programmes.<sup>50</sup>

93. The European Union has a relatively strong regulatory framework for toxic substances. Its main legislation governing toxic chemicals, the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) regulation, adopts a hazard-based approach to chemical management. The European Union prohibits the use of carcinogens, mutagens and reproductive toxicants in cosmetics and personal care products.

94. Sweden and Norway are international leaders in chemical regulation to reduce the risk of damage to health and the environment. Sweden has developed national objectives and timelines for phasing out mercury, lead, carcinogens, mutagens, substances that harm

<sup>46</sup> Implementing Integrated Water Resources Management in the Atlantic and Indian Ocean Small Island Developing States; see [www.thegef.org/news/life-aquatic-small-islands-atlantic-indian-oceans-working-together-fight-tough-water-challenges](http://www.thegef.org/news/life-aquatic-small-islands-atlantic-indian-oceans-working-together-fight-tough-water-challenges).

<sup>47</sup> *Progress on household drinking water, sanitation, and hygiene 2000-2017: Special focus on inequalities*, UNICEF and World Health Organization, 2019.

<sup>48</sup> *Ibid.*

<sup>49</sup> See [www.thelancet.com/commissions/pollution-and-health](http://www.thelancet.com/commissions/pollution-and-health).

<sup>50</sup> *Human biomonitoring: facts and figures*, World Health Organization Regional Office for Europe, Copenhagen, 2015.

reproduction, and persistent and bioaccumulative substances. Norway has a priority list of more than 30 substances and groups of substances and reports on progress in reducing emission levels.<sup>51</sup>

95. Viet Nam has strengthened its environmental regulatory system, as highlighted by the inclusion of the right to a healthy environment in the Constitution (2013) and a new law on environmental protection (2014). In 2016, following massive discharges of toxic substances into the ocean that killed large quantities of fish and shellfish, the Ministry of Natural Resources and Environment fined the Formosa Steel company \$500 million for pollution exceeding permitted levels and required the company to carry out environmental remediation of damaged areas.

96. Plastic pollution is a huge global concern because of its impact on humans and biodiversity. The European Union has enacted the most comprehensive legislation, Directive (EU) 2019/904, to reduce plastic waste. Banned items include plastic cutlery, plates, stirrers, straws, expanded polystyrene (foam) food and beverage containers, and balloon sticks. Extended producer responsibility rules cover additional plastic products and packaging. By 2029, 90 per cent of single-use plastic wastes must be collected for recycling.

97. Germany has an advanced waste management system, protecting human health, human rights and the environment through strong legislation and regulations, strong institutions to implement, monitor and enforce rules, adequate financing through the application of the “polluter pays” principle, and use of the best available technologies. In 2017, 68 per cent of municipal waste in Germany was recycled, the highest rate in the world.<sup>52</sup>

98. Albania, Bahrain, Burkina Faso, Kenya, Montenegro, Rwanda, Samoa, Senegal and Uzbekistan have banned plastic bags, thereby reducing plastic pollution and animal deaths, and preventing clogged drains, which can contribute to flooding and malaria. These policies also improve air quality, as plastic bags are no longer disposed of by burning.

99. Perverse subsidies are government subsidies that provide financial support for activities that cause environmental harm. For example, in most States, taxes are lower on diesel fuel than gasoline despite the higher levels of toxic emissions from diesel. The United Kingdom was the first State member of the European Union to impose higher fuel excise duties on diesel fuel than regular gasoline.<sup>53</sup>

100. Taxes can be used effectively to reduce environmental threats. Pollution fees are widely used. States that levy water effluent charges include France, Germany, Malaysia, the Netherlands and the Philippines. Studies show that water pollution taxes lead to a significant decline in pollution levels.<sup>54</sup> Air emission charges are used in many States, including Finland, France, Germany, Japan, the Netherlands, Norway, Sweden and the United States.

101. The restoration of polluted or contaminated areas is also an important activity in ensuring a non-toxic environment. Pursuant to a federal law passed in 1999 and most recently amended in 2019, the Russian Federation is implementing a wide range of actions to protect Lake Baikal and the surrounding region, including the closure of a pulp and paper mill, the rehabilitation of polluted land, a reduction in the volume of polluted wastewater entering the lake, and increasing the amount of solid waste managed properly. To ensure implementation of and compliance with the legislation on environmental protection in the Lake Baikal watershed, as well as to protect the constitutional right of citizens to a favourable environment, the Baikal Interregional Environmental Prosecutor’s Office was opened in 2017.

102. It is essential that Governments enforce environmental laws when polluters violate standards. Lack of adequate environmental enforcement is a global problem. In 2019,

<sup>51</sup> See [www.environment.no/topics/hazardous-chemicals/list-of-priority-substances/](http://www.environment.no/topics/hazardous-chemicals/list-of-priority-substances/).

<sup>52</sup> See [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Municipal\\_waste\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Municipal_waste_statistics).

<sup>53</sup> See European Environment Agency, Transport fuel prices and taxes in Europe, at <https://www.eea.europa.eu/data-and-maps/indicators/fuel-prices-and-taxes/assessment-4>.

<sup>54</sup> Organization for Economic Cooperation and Development, Environmental Taxation: A Guide for Policymakers, 2011.

Ethiopia shut down four tanneries over toxic waste emissions.<sup>55</sup> Myanmar temporarily suspended operations at two tin mining sites and 17 factories for environmental non-compliance.

## 6. Healthy ecosystems and biodiversity

103. Humanity depends on nature for a vast range of products and ecological services, from food, fibre and medicine to pollination, clean air, water and soil. Human rights may be jeopardized by lack of access to nature's bounty or by actions taken to protect nature that fail to take rights into consideration (see A/HRC/34/49). Globally, wildlife populations have declined by 60 per cent since 1970, and as many as 1 million species are at risk of extinction. The decline or disappearance of a particular species could have a devastating impact on an indigenous community and their rights. The creation of a new protected area without the consultation and consent of indigenous peoples or local communities could, however, violate their rights (see A/71/229).

104. International environmental law establishes norms and standards for the protection of the diversity and abundance of life on Earth through global treaties, including the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on Wetlands of International Importance especially as Waterfowl Habitat, the Convention for the Protection of the World Cultural and Natural Heritage, the United Nations Convention on the Law of the Sea and International Convention for the Regulation of Whaling. For example, the Aichi Biodiversity Targets set pursuant to the Convention on Biological Diversity aim at protecting 17 per cent of representative ecosystems on land and 10 per cent in the oceans by 2020. Regional environmental treaties are also important.

105. A growing number of constitutions incorporate duties relating to the protection of wildlife and nature, including those of Bhutan, the Plurinational State of Bolivia, Ecuador and Namibia. In Bhutan, the Constitution requires 60 per cent of land area to be maintained under forest cover for all time. The Constitutions of the Plurinational State of Bolivia and Ecuador refer to the rights of non-human species, while that of Ecuador contains comprehensive provisions relating to the rights of *Pachamama* or Mother Earth. Recognizing the rights of nature could reduce environmental harm, potentially benefiting human rights.

106. At the legislative level, almost all States have specific laws protecting wildlife and wildlife habitat, and managing activities that could harm or overexploit other species, such as fishing, hunting, mining, agriculture and forestry.

107. The States that protect at least 25 per cent of their land include Andorra, Austria, the Bahamas, Belize, Benin, Bhutan, the Plurinational State of Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Cambodia, the Congo, Costa Rica, Croatia, the Dominican Republic, France, Germany, Greece, Guinea, Japan, Luxembourg, Malta, Monaco, Morocco, Namibia, New Zealand, Nicaragua, Palau, Poland, Sao Tome and Principe, Senegal, Seychelles, Slovakia, Slovenia, Spain, Sri Lanka, Togo, Trinidad and Tobago, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the Bolivarian Republic of Venezuela, Zambia and Zimbabwe.<sup>56</sup> In total, over 15 per cent of the world's land – more than 25 million square kilometres (the size of North America) – is now protected, which should help to conserve biodiversity.<sup>57</sup>

108. Sixteen States have protected at least 25 per cent of their marine territory: Australia, Belgium, Brazil, Chile, France, Gabon, Germany, Jordan, Lithuania, Monaco, the Netherlands, New Zealand, Palau, Slovenia, the United Kingdom and the United States.<sup>58</sup>

109. Laws that recognize the land rights of indigenous peoples and local communities have recently been passed by Kenya (the Community Land Act of 2016), Mali (Agricultural Land Law of 2017) and Zambia (Forest Act of 2015). Indigenous peoples and local communities

<sup>55</sup> A/HRC/WG.6/33/ETH/1, para. 38.

<sup>56</sup> See <https://data.worldbank.org/indicator/ER.LND.PTLD.ZS>.

<sup>57</sup> James E.M. Watson et al., "The performance and potential of protected areas", *Nature*, vol. 515, pp. 67–73.

<sup>58</sup> See <https://data.worldbank.org/indicator/ER.MRN.PTMR.ZS>.

are more likely to invest in the good management of forests, soil and water if they have clear user rights and security against eviction. They are more likely to invest in improving yields on existing land and less likely to extend cultivation into marginal or forest areas. Forests that are legally owned and/or designated for use by indigenous peoples and local communities deliver a wide range of ecological and social benefits, including lower rates of deforestation and forest degradation, greater investments in forest restoration and maintenance, improved biodiversity conservation, lower carbon emissions and more carbon storage, reduced conflict, and poverty reduction.<sup>59</sup>

110. The Maya Biosphere Reserve in Guatemala is one of the world's most biodiverse areas. To help to conserve the reserve, the Government gave nine local communities land concessions so they can make a sustainable living from the forest. The concessions have generated more than \$5 million in annual revenue, as well as jobs for local community members. The forest concessions have had a near-zero deforestation rate for the past 14 years. According to research, there is a positive relationship between socioeconomic progress (income, investments, savings, capitalization of community enterprises, and asset building at the household and enterprise levels) and conservation of the concession areas.<sup>60</sup>

111. In Kenya, the Green Belt Movement, for which Wangari Maathai won a Nobel Peace Prize in 2004, has planted more than 51 million trees. This grass-roots organization sponsors 4,000 tree nurseries that produce more than eight million native seedlings annually. More than 30,000 women received training in forestry, beekeeping, food processing and other trades, enabling them to earn a livelihood while protecting local lands and ecosystems. Similar movements now exist in Uganda, the United Republic of Tanzania and other African States.

112. Mauritius has established community-based programmes aimed at restoring important ecosystems, including coral reefs and mangrove forests. At least five vulnerable coastal communities have participated in training programmes and created coral nurseries. Mangrove forests in Mauritius that have been rehabilitated are now protected by the Fisheries and Marine Resources Act.

## IV. Conclusions

113. **In the present report, the Special Rapporteur has summarized many good practices in implementing the human right to a safe, clean, healthy and sustainable environment, drawn from more than 175 States.<sup>61</sup> A remarkably diverse array of actions can deliver on the imperatives of cleaner air, improved access to safe water and adequate sanitation, and sustainably produced food, healthy environments and a safe climate. This is true even in difficult circumstances, such as in States or communities plagued by poverty, conflict or natural disasters. The most important beneficiaries of the good practices highlighted in the report are the individuals and communities who are most vulnerable to the adverse effects of environmental harm and who lack access to basic environmental services.**

114. **Protecting the environment contributes to the fulfilment of human rights, and protecting human rights contributes to safeguarding the environment. While in some States some aspects of the right to a safe, clean, healthy and sustainable environment are subject to progressive realization, all States must dedicate the maximum available resources to comply with their human rights obligations in addressing environmental challenges.**

<sup>59</sup> See *Global Assessment Report on Biodiversity and Ecosystem Services*, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 2019.

<sup>60</sup> Dietmar Stoian et al., "Forest concessions in Petén, Guatemala: A systematic analysis of the socioeconomic performance of community enterprises in the Maya Biosphere Reserve", Center for International Forestry Research, 2019.

<sup>61</sup> See also "Additional Good Practices in the Implementation of the Right to a Safe, Clean, Healthy and Sustainable Environment", available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx).

115. The Special Rapporteur hopes that these concrete examples of good practices will inspire States to accelerate their efforts to recognize, respect, protect and fulfil the right to a safe, clean, healthy and sustainable environment. The adoption of a resolution recognizing the right to a safe, clean, healthy and sustainable environment would be a positive catalyst to accelerate efforts to ensure the enjoyment of this right. Indeed, this was precisely the effect witnessed in many States following the adoption by the General Assembly of its resolution 64/292 and by the Human Rights Council of its resolution 15/9 on the rights to water and sanitation in 2010. A rights-based approach is not only helpful but even essential to stimulating the many urgent actions needed to achieve the Sustainable Development Goals as outlined in the 2030 Agenda for Sustainable Development.

116. Ultimately, however, it must be emphasized that humanity faces a daunting and unprecedented global environmental crisis of its own making. Despite the many good practices, they are not nearly enough. There is much, much more work to be done to transform today's unjust and unsustainable society into an ecological civilization where human rights are universally respected, protected and fulfilled.

## Annex I

### Contributors to the global online researchathon

The Special Rapporteur thanks the following contributors to the global online researchathon on good practices related to the implementation of a safe, clean, healthy and sustainable environment:

Adam Cassidy  
Adriana Giunta  
Alexandra Wenzel  
Alex Pan  
Alfred Brownell  
Allison McMahon  
Amy Auguston  
Andy White  
Anita Tran  
Annabel Anderson  
Annie Renouf  
Anonymous  
Anton Strukoff  
Arif Nahumbang  
Bach Dinh Dang  
Balsher Singh Sidhu  
Bassam Javed  
Bell Knowles  
Brayden Pelham  
Calder Tsuyuki-Tomlinson  
Candice Kong (Xiaowen)  
Carlos Camacho  
Christine Ramos  
Claudia Ituarte-Lima  
Claudia Kobetitch  
Commission on Human Rights, Philippines  
Dany Channraksmeychhoukroth  
David Hunter  
Denby McDonnell  
Dylan Bell  
Dylan Thomason  
Edyta Sysło  
Eliza Bethune  
Erica Sheeran  
Eric Quetglas Larrauri  
Eti Koerniati  
Franziska Müller  
Gabrielle Mercer  
George Andy Pantanosas  
Grace Vegesana  
Hannah Edward  
Handika Rahmawan  
Hassan Hasan Abdulla Slais  
Heather Park  
Helmizan Sakrani  
Heta-Elena Heiskanen  
Holy Greata  
Imranul Laskar  
James Long  
Jan van de Venis  
Jana Sobotová  
Joshua Kuepfer  
Julia Niebles

Julia Park  
Justin Dittmeier  
Kate Meagher  
Katherine Dullea  
Kynan Pacunana  
Laura Castrejon-Violante  
Lauren Johnson  
Leonardo Amerigo Marchetti  
Lindsay Robbins  
Lynda Collins  
Madina Tauyekelova  
Malinda Reed  
Mara Alisa Andrade  
Marc Tucker  
Marek Prtyi  
Margarida Marcelino  
Maria del Mar Requena Quesada  
Maria Ligaya V. Itliong-Rivera  
Maria Requena  
Marie-Anne Cohendet  
Marina Dowd  
Maritess Filomena Rana-Bernales  
Michel Prieur  
Minnie Cheung  
Mirjana Drenovak-Ivanović  
Misrak Tekle Yacob  
Mochamad Felani Budi Hartanto  
Murad Madani  
Nani Indrawati  
Naomi Luhde-Thompson  
Nimesha Perera  
Olga Generalova-Kutuzova  
Paraskevi Batsikas  
Passent Moussa  
Patricia Madrigal Cordero  
Petru Botnaru  
Plamen Peev  
Qaiser Imran  
Raphaël Roman  
Rivkah Gardner-Frolick  
Robert-Ian Greene  
Sabina Usoltseva  
San Sophany  
Sean Hansen  
Shannon Johnson  
Sonia Marcantonio  
Sophie Maher  
Tasimran (Simran) Thandi  
Teny Karnila  
Tessa Marsden  
Theadora Mills  
Thitat Chavisschindha  
Tori Cooper  
Ulziilkham Enkhbaatar  
Yahe Li  
Yatman Setiawan  
Yelyzaveta Aleksyeyeva  
Žaneta Mikosa  
Zara Bending

## Annex II

## Legal recognition of the right to a healthy environment

	<i>National Constitution</i>	<i>International treaty*</i>	<i>National legislation</i>
Afghanistan	N	N	N
Albania	N	Y	N
Algeria	Y	Y	N
Andorra	N	N	N
Angola	Y	Y	Y
Antigua and Barbuda	N	N	N
Argentina	Y	Y	Y
Armenia	N	Y	Y
Australia	N	N	N
Austria	N	Y	N
Azerbaijan	Y	Y	Y
Bahamas	N	N	N
Bahrain	N	Y	N
Bangladesh	Yi	N	N
Barbados	N	N	N
Belarus	Y	Y	Y
Belgium	Y	Y	Y
Belize	N	N	N
Benin	Y	Y	Y
Bhutan	N	N	Y
Bolivia (Plurinational State of)	Y	Y	Y
Bosnia and Herzegovina	N	Y	Y
Botswana	N	Y	N
Brazil	Y	Y	Y
Brunei Darussalam	N	N	N
Bulgaria	Y	Y	Y
Burkina Faso	Y	Y	Y
Burundi	Y	Y	N
Cambodia	N	N	N
Cabo Verde	Y	Y	Y
Cameroon	Y	Y	Y

	<i>National Constitution</i>	<i>International treaty*</i>	<i>National legislation</i>
Canada	N	N	N
Central African Republic	Y	Y	Y
Chad	Y	Y	Y
Chile	Y	N	Y
China	N	N	N
Colombia	Y	Y	Y
Comoros	Y	Y	Y
Congo	Y	Y	N
Costa Rica	Y	Y	Y
Côte d'Ivoire	Y	Y	Y
Croatia	Y	Y	Y
Cuba	Y	N	Y
Cyprus	Yi	Y	Y
Czechia	Y	Y	Y
Democratic People's Republic of Korea	N	N	N
Democratic Republic of the Congo	Y	Y	Y
Denmark	N	Y	N
Djibouti	N	Y	Y
Dominica	N	N	N
Dominican Republic	Y	N	Y
Ecuador	Y	Y	Y
Egypt	Y	Y	N
El Salvador	Yi	Y	Yi
Equatorial Guinea	N	Y	N
Eritrea	N	Y	Y
Estonia	Yi	Y	Yi
Eswatini	N	Y	N
Ethiopia	Y	Y	N
Fiji	Y	N	N
Finland	Y	Y	Y
France	Y	Y	Y
Gabon	Y	Y	Y
Gambia	N	Y	Y

	<i>National Constitution</i>	<i>International treaty*</i>	<i>National legislation</i>
Georgia	Y	Y	Y
Germany	N	Y	N
Ghana	Yi	Y	N
Greece	Y	Y	Y
Grenada	N	N	N
Guatemala	Yi	Y	Y
Guinea	Y	Y	N
Guinea-Bissau	N	Y	Y
Guyana	Y	Y	N
Haiti	N	N	Y
Honduras	Y	Y	Y
Hungary	Y	Y	Y
Iceland	N	Y	N
India	Yi	N	Y
Indonesia	Y	N	Y
Iran (Islamic Republic of)	Y	N	N
Iraq	Y	Y	N
Ireland	Yi	Y	N
Israel	N	N	N
Italy	Yi	Y	N
Jamaica	Y	N	N
Japan	N	N	N
Jordan	N	Y	N
Kazakhstan	N	Y	Y
Kenya	Y	Y	Y
Kiribati	N	N	N
Kuwait	N	Y	N
Kyrgyzstan	Y	Y	Y
Lao People's Democratic Republic	N	N	N
Latvia	Y	Y	Y
Lebanon	N	Y	Y
Lesotho	N	Y	Y
Liberia	Yi	Y	Y
Libya	N	Y	N

	<i>National Constitution</i>	<i>International treaty*</i>	<i>National legislation</i>
Liechtenstein	N	N	N
Lithuania	Yi	Y	Y
Luxembourg	N	Y	N
Madagascar	N	Y	Y
Malawi	Y	Y	Y
Malaysia	Yi	N	N
Maldives	Y	N	N
Mali	Y	Y	N
Malta	N	Y	N
Marshall Islands	N	N	N
Mauritania	Y	Y	Y
Mauritius	N	Y	N
Mexico	Y	Y	Y
Micronesia (Federated States of)	N	N	N
Monaco	N	N	Y
Mongolia	Y	N	Y
Montenegro	Y	Y	Y
Morocco	Y	N	Y
Mozambique	Y	Y	Y
Myanmar	N	N	N
Namibia	Yi	Y	N
Nauru	N	N	N
Nepal	Y	N	N
Netherlands	N	Y	N
New Zealand	N	N	N
Nicaragua	Y	Y	Y
Niger	Y	Y	Y
Nigeria	Yi	Y	Y
North Macedonia	Y	Y	Y
Norway	Y	Y	Y
Oman	N	N	N
Pakistan	Yi	N	N
Palau	N	N	Y
Panama	Yi	Y	Y

	<i>National Constitution</i>	<i>International treaty*</i>	<i>National legislation</i>
Papua New Guinea	N	N	N
Paraguay	Y	Y	Y
Peru	Y	Y	Y
Philippines	Y	N	Y
Poland	N	Y	N
Portugal	Y	Y	Y
Qatar	N	Y	N
Republic of Korea	Y	N	Y
Republic of Moldova	Y	Y	Y
Romania	Y	Y	Y
Russian Federation	Y	N	Y
Rwanda	Y	Y	Y
Saint Kitts and Nevis	N	Y	N
Saint Lucia	N	N	N
Saint Vincent and the Grenadines	N	Y	N
Samoa	N	N	N
San Marino	N	N	N
Sao Tome and Principe	Y	Y	Y
Saudi Arabia	N	Y	Y
Senegal	Y	Y	Y
Serbia	Y	Y	Y
Seychelles	Y	Y	N
Sierra Leone	N	Y	N
Singapore	N	N	N
Slovakia	Y	Y	Y
Slovenia	Y	Y	Y
Solomon Islands	N	N	N
Somalia	Y	Y	N
South Africa	Y	Y	Y
South Sudan	Y	N	N
Spain	Y	Y	Y
Sri Lanka	Yi	N	N
Sudan	Y	Y	N
Suriname	N	Y	N

	<i>National Constitution</i>	<i>International treaty*</i>	<i>National legislation</i>
Sweden	N	Y	N
Switzerland	N	Y	N
Syrian Arab Republic	N	Y	N
Tajikistan	N	Y	Y
Thailand	Y	N	Y
Timor-Leste	Y	N	Y
Togo	Y	Y	Y
Tonga	N	N	N
Trinidad and Tobago	N	N	N
Tunisia	Y	Y	Y
Turkey	Y	N	N
Turkmenistan	Y	Y	Y
Tuvalu	N	N	N
Uganda	Y	Y	Y
Ukraine	Y	Y	Y
United Arab Emirates	N	Y	N
United Kingdom of Great Britain and Northern Ireland	N	N	N
United Republic of Tanzania	Yi	Y	Y
United States of America	N	N	N
Uruguay	N	Y	Y
Uzbekistan	N	N	Y
Vanuatu	N	N	N
Venezuela (Bolivarian Republic of)	Y	N	Y
Viet Nam	Y	N	Y
Yemen	N	Y	Y
Zambia	N	Y	Y
Zimbabwe	Y	Y	Y
	110	126	101

Y = Yes, Yi= implicit, N = No

\* Includes the African Charter, the San Salvador Protocol, the Aarhus Convention, the Arab Charter and the Escazú Agreement.



# General Assembly

Distr.: General  
15 July 2020

Original: English

---

## Seventy-fifth session

Item 72 (b) of the preliminary list\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the 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 R. Boyd, in accordance with Human Rights Council resolution [37/8](#).

---

\* [A/75/50](#).



## **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 R. Boyd**

### **Human rights depend on a healthy biosphere**

#### *Summary*

In the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, discusses the need for urgent action to conserve, protect and restore the biosphere on which all species depend, including *Homo sapiens*. He illustrates the devastating effects of coronavirus disease (COVID-19) and the global nature emergency on the enjoyment of human rights, and the crucial role of human rights in catalysing action to safeguard nature. The Special Rapporteur clarifies the obligations of States and the responsibilities of businesses and civil society organizations and makes practical recommendations to conserve, protect and restore healthy ecosystems and biodiversity, ensure sustainable use and distribute the benefits of nature equitably. He emphasizes that healthy ecosystems and biodiversity are vital elements of the right to a healthy environment.

The Special Rapporteur has prepared an annex on good practices related to conserving, protecting and restoring ecosystems and biodiversity, available on the website of the Office of the United Nations High Commissioner for Human Rights.<sup>a</sup> The good practices demonstrate that effective actions are available to simultaneously protect human rights and protect nature.

---

<sup>a</sup> Available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/Annualreports.aspx).

## Contents

	<i>Page</i>
I. Human rights depend on a healthy biosphere .....	4
A. Coronavirus disease pandemic and other zoonotic diseases .....	5
B. Global nature emergency: undermining the foundations of life on Earth .....	6
C. Causes of the global nature emergency .....	6
D. Dire warnings from scientists .....	7
E. A legacy of State failures .....	8
F. Transformative changes required .....	9
II. Effects of the global nature emergency on the enjoyment of human rights .....	10
A. Right to a healthy environment .....	10
B. Right to life .....	11
C. Right to health .....	12
D. Right to food .....	12
E. Rights to water and sanitation .....	13
F. Rights of the child .....	13
G. Vulnerable populations .....	14
III. Human rights obligations relating to healthy ecosystems and biodiversity .....	16
A. State obligations .....	17
B. Responsibilities of businesses .....	20
C. Responsibilities of conservation organizations .....	20
IV. Good practices in conserving, protecting and sustainably using of biodiversity .....	21
V. Conclusions and recommendations .....	21
A. Recovering from coronavirus disease and preventing future pandemics .....	21
B. Accelerating action to protect and conserve nature .....	22
C. Respecting the rights of indigenous peoples, peasants and local communities .....	25

## I. Human rights depend on a healthy biosphere

1. Earth is the only planet in the universe known to support life. On this unique and miraculous blue-green planet, evolution has produced a mind-boggling diversity of life, with millions of species, from elephants, redwood trees and blue whales to axolotls, butterflies and cacti. Humans share DNA with all species, providing compelling evidence that nature should be understood as a community to which we belong rather than a mere commodity for us to exploit.

2. Biological diversity includes ecosystems, species and differences in genes within a single species. An ecosystem is a group of organisms together with the physical environment where they live. The biosphere (or nature) is the sum of all ecosystems, the zone of life on Earth.

3. Nature's contributions to people are immense and irreplaceable. There are many compelling reasons to protect, conserve and sustainably use biodiversity, based on a wide spectrum of values: ecological, social, economic, scientific, educational, cultural, recreational and aesthetic. While some speak of natural capital and ecosystem services, others refer to nature's gifts and intrinsic value.<sup>1</sup> All human rights ultimately depend on a healthy biosphere. Without healthy, functioning ecosystems, which depend on healthy biodiversity, there would be no clean air to breathe, safe water to drink or nutritious food to eat. Plants, on land and in water, produce oxygen through photosynthesis. One type of phytoplankton, *Prochlorococcus*, is so small that millions can fit in a drop of water, yet the tiny organisms generate countless tons of oxygen. A teaspoon of healthy soil contains billions of microorganisms – algae, bacteria, fungi, nematodes and protozoa – that process organic matter into rich, dark humus to feed plants and help to protect them from pests and pathogens.

4. Healthy ecosystems also regulate the Earth's climate, filter air and water, recycle nutrients and mitigate the impact of natural disasters. Wetlands remove pollutants, shield coastlines, store carbon, absorb water and contribute to the food supply (e.g., rice, fish and seaweed). Marine and terrestrial ecosystems absorb 60 per cent of the carbon dioxide emissions produced by humans, slowing the pace of climate change. Healthy ecosystems also provide a renewable supply of timber, fibre, food, fish and other goods. Insects, bats and birds pollinate more than 75 per cent of crops, including fruits, vegetables, almonds, cocoa and coffee.

5. The vast majority of terrestrial biodiversity is found in the world's forests.<sup>2</sup> Forests are home to more than 60,000 different tree species, 80 per cent of amphibian species, 75 per cent of bird species and 68 per cent of mammal species. More than one billion persons depend on forests for their livelihoods.<sup>3</sup>

6. Billions of persons rely on natural medicines for their health care. More than half of prescription drugs and 70 per cent of cancer-fighting drugs are natural or derived from nature. Spending time in nature provides people with physical, mental, emotional and spiritual benefits.

7. Nature's contributions to people affect almost every aspect of life and are essential to fulfilling almost all of the Sustainable Development Goals. Although many believe that it is impossible or unwise to place an economic value on nature,

---

<sup>1</sup> Unai Pascual and others, "Valuing nature's contributions to people: the IPBES approach", *Current Opinion Environmental Sustainability*, vols. 26–27 (2017).

<sup>2</sup> James E.M. Watson and others, "The exceptional value of intact forest ecosystems", *Nature Ecology and Evolution*, vol. 2, No. 4 (April 2018).

<sup>3</sup> Food and Agriculture Organization of the United Nations (FAO) and United Nations Environment Programme (UNEP), *The State of the World's Forests 2020: Forests, Biodiversity and People* (Rome, 2020).

economists have estimated the annual value of ecosystem goods and services to be \$125 trillion.<sup>4</sup>

8. To prepare the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, held consultations in Geneva on 3 March 2020. He organized a series of online consultations on healthy ecosystems and human rights, enabling people throughout the world to participate. A call for inputs on healthy ecosystems and human rights was circulated in March 2020. The Special Rapporteur is grateful for the submissions from Austria, Colombia, Croatia, Cuba, Ecuador, Finland, Germany, Ghana, Indonesia, Ireland, Italy, Kazakhstan, Kyrgyzstan, Maldives, Mexico, Monaco, North Macedonia, Panama, Singapore, Slovakia, Slovenia, Spain, Sweden, Togo, the United Kingdom of Great Britain and Northern Ireland and the European Union, as well as more than 40 insightful submissions from indigenous peoples, national human rights institutions, the United Nations Development Programme, civil society organizations and academics.<sup>5</sup>

9. The present report, on healthy ecosystems and biodiversity, is the third in a series of thematic reports of the Special Rapporteur clarifying the substantive elements of the right to a safe, clean, healthy and sustainable environment, following a report on clean air (A/HRC/40/55) and another on safe climate (A/74/161). Future reports will address clean water and adequate sanitation, healthy and sustainably produced food and non-toxic environments in which to live, work, study and play.

## A. Coronavirus disease pandemic and other zoonotic diseases

10. Human damage to the biosphere is having major impacts on health, livelihoods and rights. The most striking example imaginable is the coronavirus disease (COVID-19) pandemic, caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) plaguing the world in recent months. There is strong scientific evidence that the virus originated in bats, was transferred to another wildlife species, possibly pangolins, and then infected humans.<sup>6</sup> COVID-19 has already caused more than 600,000 deaths, millions of illnesses and massive social and economic disruption. The pandemic illustrates the interconnectedness of human rights: to life, health, food, water, freedom of association, an adequate standard of living and a healthy, sustainable environment.

11. COVID-19 is the latest emerging infectious disease to jump from another animal species to humans. More than 70 per cent of emerging infectious diseases in recent decades have been zoonoses, including HIV/AIDS, Ebola, severe acute respiratory syndrome, Middle East respiratory syndrome, avian influenza, Nipah virus, Marburg virus, Zika virus and West Nile virus. The growing risk of emerging infectious diseases is caused by a perfect storm of human actions that damage ecosystems and biodiversity, such as deforestation, land clearing and conversion for agriculture, the wildlife trade, the expanding human population, settlements and infrastructure, intensified livestock production and climate change.<sup>7</sup> Such activities elevate the risk

<sup>4</sup> Monique Grooten and Rosamunde Almond, eds., *Living Planet Report 2018: Aiming Higher* (Gland, Switzerland, World Wildlife Fund, 2018).

<sup>5</sup> Submissions are available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthyEcosystems.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthyEcosystems.aspx).

<sup>6</sup> Rui Dong and others, "Analysis of the hosts and transmission paths of SARS-CoV-2 in the COVID-19 outbreak", *Genes*, vol. 11, No. 6 (June 2020).

<sup>7</sup> Bryony A. Jones and others, "Zoonosis emergence linked to agricultural intensification and environmental change", *Proceedings of the National Academy of Science*, vol. 110, No. 21 (21 May 2013).

of pathogens spilling over from wild and domestic animals to humans.<sup>8</sup> Unprecedented levels of international air travel and trade accelerate the spread of the diseases.

## **B. Global nature emergency: undermining the foundations of life on Earth**

12. Instead of treating the Earth – this unique, life-supporting and irreplaceable home – with care, respect and reverence, humans are inflicting catastrophic damage on ecosystems and biodiversity, undermining nature’s extraordinary contributions to human well-being and prosperity.

13. In 2019, in the most comprehensive assessment of the state of nature undertaken, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services summarized the destruction of nature by human activities as follows:<sup>9</sup>

(a) Wildlife populations (including amphibians, birds, fish and mammals) have plummeted an average of 60 per cent since 1970;

(b) The rate of extinction is hundreds of times higher than the average over the past 10 million years and is accelerating, with 1 million species at risk;

(c) Nearly three quarters of the Earth’s land surface has been altered significantly;

(d) Two thirds of the Earth’s ocean realm is experiencing adverse impacts, including acidification, deoxygenation and a loss of sea ice;

(e) More than half of the world’s accessible freshwater flows is appropriated for human use;

(f) More than 85 per cent of the planet’s wetlands has been destroyed;

(g) 420 million hectares of forest have been lost since 1990 through conversion to other land uses;

(h) The global biomass of large predatory fish targeted by fisheries has fallen by two thirds over the past hundred years.

14. Despite conservation efforts, the decline in nature’s diversity and abundance during the past 50 years is unprecedented in human history. Scientists believe that humans are causing the sixth mass extinction in the history of life on Earth.<sup>10</sup>

## **C. Causes of the global nature emergency**

15. The human activities directly responsible for the rapid decline in ecosystem health and biological diversity are, in order of global importance, changes in land and sea use (e.g., conversion of forests to agriculture), direct exploitation of species (e.g., fishing, hunting, poaching, illegal wildlife and the timber trade), climate change, pollution and invasive species. Climate change is a risk multiplier that exacerbates

<sup>8</sup> UNEP and International Livestock Research Institute, *Preventing the Next Pandemic: Zoonotic Diseases and How to Break the Chain of Transmission* (Nairobi, 2020).

<sup>9</sup> See IPBES/7/10/Add.1.

<sup>10</sup> Gerardo Ceballos, Paul R. Ehrlich and Peter H. Raven, “Vertebrates on the brink as indicators of biological annihilation and the sixth mass extinction”, *Proceedings of the National Academy of Sciences*, vol. 17, No. 24 (16 June 2020).

the impact of the other drivers, with potentially devastating short-term impacts on coral reefs, tropical forests and Arctic ecosystems.<sup>11</sup>

16. The five direct drivers are propelled by an array of underlying root causes – indirect drivers of change – including production and consumption patterns, human population growth, trade, technological innovations and societal values. In the past 50 years, the human population has doubled, the global economy has quadrupled and global trade has grown by a factor of 10, sending demand for energy and materials skyrocketing. Wealthy people are disproportionately responsible for overconsumption and pressure on nature.

17. Agriculture is the largest single factor in the destruction of ecosystems and the decline in biological diversity. Deforestation is driven by the demand for beef, soy (mostly for livestock feed) and palm oil, as well as the expansion of subsistence agriculture.<sup>12</sup>

#### D. Dire warnings from scientists

18. Governments must heed the warnings of scientists in order to take effective and equitable action to protect nature and prevent catastrophic impacts on human rights. In this regard, COVID-19 offers valuable lessons. Epidemiologists highlighted the dangers posed by coronaviruses at least as early as 1998.<sup>13</sup> In 2008, scientists urged governments to increase attention to emerging infectious diseases, emphasizing zoonoses, and recommended conserving areas with high biodiversity, which would “have added value in reducing the likelihood of future zoonotic disease emergence”.<sup>14</sup> In 2013, scientists warned that “accelerated transmission of bat and animal coronaviruses to humans can be expected to continue and possibly escalate”.<sup>15</sup> In 2015, experts convened by the World Health Organization (WHO) identified seven emerging zoonoses demanding urgent research because of their potential to cause public health emergencies, including “highly pathogenic coronaviruses”.<sup>16</sup> In 2018, scientists published a paper entitled “Bats, coronaviruses and deforestation”.<sup>17</sup> Governments failed to respond to those warnings.

19. Similarly, scientists have warned society of the downward spiral of ecosystems and biodiversity for more than 50 years, since Rachel Carson wrote *Silent Spring*, in 1962. In 1992, more than 1,700 scientists warned, “Human activities ... put at serious risk the future that we wish for human society and the plant and animal kingdoms, and may so alter the living world that it will be unable to sustain life in the manner that we know”.<sup>18</sup> In 2005, it was concluded in the Millennium Ecosystem Assessment that humans were having potentially irreversible impacts on ecosystems and

<sup>11</sup> See IPBES/7/10/Add.1.

<sup>12</sup> Navin Ramankutty and others, “Trends in global agricultural land use: implications for environmental health and food security”, *Annual Review of Plant Biology*, vol. 69 (2018).

<sup>13</sup> David Quammen, *Spillover: Animal Infections and the Next Human Pandemic* (New York, W.W. Norton and Company, 2012), p. 512.

<sup>14</sup> Kate E. Jones and others, “Global trends in emerging infectious diseases”, *Nature*, vol. 451, No. 7181 (21 February 2008).

<sup>15</sup> Rachel L. Graham, Eric F. Donaldson and Ralph S. Baric, “A decade after SARS: strategies for controlling emerging coronaviruses”, *Nature Reviews Microbiology*, vol. 11, No. 12 (December 2013).

<sup>16</sup> World Health Organization (WHO), “Blueprint for research and development preparedness and response to public health emergencies due to highly infectious pathogens”, paper presented at the Experts Workshop on Prioritization of Pathogens, Geneva, 8–9 December 2015.

<sup>17</sup> Aneta Afelt, Roger Frutos and Christian Devaux, “Bats, coronaviruses, and deforestation: toward the emergence of novel infectious diseases?”, *Frontiers of Microbiology*, vol. 9, No. 702 (April 2018).

<sup>18</sup> Union of Concerned Scientists, “World scientists warning to humanity”, 16 July 1992.

biodiversity, on a scale unprecedented in human history.<sup>19</sup> In 2017, more than 15,000 scientists from 184 States observed that “humanity has generally failed to make sufficient progress in solving these foreseen environmental challenges, and alarmingly, most of them are getting far worse”.<sup>20</sup>

20. In 2019, the United Nations Environment Programme (UNEP) concluded that the ongoing destruction of nature was “compromising planetary integrity and Earth’s capacity to meet human needs”.<sup>21</sup> According to Robert Watson, former Chair of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, we are eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide. According to the Intergovernmental Science-Policy Platform, the current negative trends in biodiversity and ecosystems will undermine progress towards 80 per cent of the targets of Sustainable Development Goals related to poverty, hunger, health, water, cities, climate, oceans and land.

## E. A legacy of State failures

21. States have created hundreds of treaties and declarations pledging to protect nature. The most important, the Convention on Biological Diversity of the United Nations (1992) has three overarching objectives: conservation, sustainable use and the equitable sharing of benefits. Other cornerstones of international protection for nature include the Convention on International Trade in Endangered Species of Wild Fauna and Flora; the World Charter for Nature; the United Nations Framework Convention on Climate Change; the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa; the Convention on the Conservation of Migratory Species of Wild Animals; the Convention on Wetlands of International Importance especially as Waterfowl Habitat; and the Convention for the Protection of the World Cultural and Natural Heritage.

22. In 2002, parties to the Convention on Biological Diversity pledged “to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national level as a contribution to poverty alleviation and to the benefit of all life on Earth”.<sup>22</sup>

23. In 2010, parties to the same convention agreed on a long-term vision of living in harmony with nature by 2050. States established the Aichi Biodiversity Targets, comprising five strategic goals and 20 targets to be achieved by 2020.<sup>23</sup>

24. In 2015, nations pledged to achieve 17 Goals through the 2030 Agenda for Sustainable Development. The deadline of 2020 was set in some targets pursuant to Goals 14 (life under water) and 15 (life on land), including to sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts (14.2), to ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services (15.1), to halt deforestation (15.2) and to halt the loss of biodiversity (15.5).

<sup>19</sup> Millennium Ecosystem Assessment, *Ecosystems and Human Well-Being: Synthesis* (Washington, D.C., Island Press, 2005).

<sup>20</sup> William J. Ripple and others, “World scientists warning to humanity: a second notice”, *Bioscience*, vol. 67, No. 12 (December 2017).

<sup>21</sup> UNEP, Global Environmental Outlook: *GEO 6 – Healthy Planet, Healthy People* (Nairobi, 2019), pp. 4 and 8.

<sup>22</sup> See UNEP/CBD/COP/6/20, annex I, decision VI/26, para. 11 (Strategic Plan for the Convention on Biological Diversity).

<sup>23</sup> See UNEP/CBD/COP/10/27, annex II, decision X/2 (Strategic Plan for Biodiversity 2011–2020).

25. States have failed to meet any of the Goals that they had established for protecting and conserving ecosystems and biodiversity. None of the 2010 targets of the Convention on Biological Diversity, 2020 Aichi targets or 2020 commitments of the Sustainable Development Goals have been achieved,<sup>24</sup> although there has been modest progress. As at July 2020, 15.2 per cent of the world's terrestrial areas and 7.4 per cent of its oceans are protected.<sup>25</sup> Some species threatened with extinction, from bald eagles to humpback whales, have recovered. However, modest progress towards protecting specific places and species has been overwhelmed by exponential growth in human impacts on nature.

26. States have not responded with appropriate urgency to the increasingly dire warnings issued by the world's leading scientists. On the contrary, States encourage damage to ecosystems and biodiversity, providing more than \$500 billion annually in subsidies that harm nature, more than five times what they spend to protect biodiversity.<sup>26</sup> Efforts to protect nature are undermined by prioritizing economic growth, trade and corporate profits over environmental protection and addressing weaknesses in the rule of law (e.g., corruption and weak institutions), poverty, armed conflict, limited civic space, the criminalization of human rights defenders and the failure to recognize the rights of indigenous peoples and local communities.

27. There is a huge implementation and enforcement gap, acknowledged by States, as actions fall short of commitments made through treaties and legislation.<sup>27</sup> A Peruvian civil society organization concluded that the laws, norms and decrees are dead letters because they are not complied with, while a civil society organization in the Philippines observed that governments turn a blind eye to corporate activities that are detrimental to ecosystems and biodiversity. The overall impact of humanity continues to increase, intensifying pressure on the planet's life-support systems and reflecting our dysfunctional relationship with nature.

## F. Transformative changes required

28. Humanity must re-evaluate its fundamental relationship with nature or endure devastating human rights violations. In 2019, scientists united in their calls for urgent and transformative change.<sup>28</sup> As stated by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, "Goals for conserving and sustainably using nature and achieving sustainability ... may only be achieved through transformative changes across economic, social, political and technological factors".<sup>29</sup> According to UNEP, "Urgent action at an unprecedented scale is necessary to arrest and reverse this situation, thereby protecting human and environmental health and maintaining the current and future integrity of global ecosystems".<sup>30</sup> The Food and Agriculture Organization of the United Nations concluded, "Transformational change is needed in the way we manage our forests and their biodiversity, produce and consume our food and interact with nature".<sup>31</sup>

<sup>24</sup> *The Sustainable Development Goals Report 2020* (United Nations publication, Sales No. E.20.I.7).

<sup>25</sup> UNEP and others, *Protected Planet Digital Report* (2020).

<sup>26</sup> Organization for Economic Cooperation and Development (OECD), "A comprehensive overview of global biodiversity finance", April 2020.

<sup>27</sup> See, for example, submissions from Argentina, Italy and Slovakia.

<sup>28</sup> Sandra Diaz and others, "Pervasive human-driven decline of life on Earth points to need for transformative change", *Science*, vol. 366, No. 6471 (13 December 2019).

<sup>29</sup> See IPBES/7/10/Add.1.

<sup>30</sup> UNEP, *Global Environmental Outlook: GEO6 – Summary for Policymakers* (Nairobi, 2019), p. 4.

<sup>31</sup> FAO and UNEP, *The State of the World's Forests 2020*.

29. Transformative change requires rethinking the goals of society, what makes us happy and what it means to live a good life, how we generate and use energy, the food that we eat and how we produce it, the way that we manufacture goods, how we design our cities and how we can reduce and eliminate waste. The Sustainable Development Goals, as well as the vision of the Convention on Biological Diversity of living in harmony with nature by 2050, embody a vision of a transformed world.

30. Scientists estimate that, unless we begin to make transformative changes in the next 10 years, it could take millions of years for biodiversity on Earth to recover, forcing future generations to live in a biologically impoverished world.<sup>32</sup> However, it is not too late. As the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services concluded, “Acting immediately and simultaneously on the multiple indirect and direct drivers has the potential to slow, halt and even reverse some aspects of biodiversity and ecosystem loss”.<sup>33</sup>

## II. Effects of the global nature emergency on the enjoyment of human rights

31. Damage to the biosphere is having a major impact on a wide range of human rights and could have catastrophic impacts in the future. Among the human rights being threatened and violated are the rights to a healthy environment, life, health, food, water, sanitation, an adequate standard of living, development and culture.

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

32. The right to a safe, clean, healthy and sustainable environment is legally protected by more than 80 per cent of Member States through constitutions, legislation, court decisions and regional treaties.<sup>34</sup>

33. Healthy ecosystems and biodiversity are substantive elements of the right to a healthy environment, as recognized by regional tribunals, national laws and national jurisprudence. The Inter-American Court of Human Rights emphasized that “the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas”.<sup>35</sup> In 2020, the Inter-American Court ruled that indigenous peoples’ right to a healthy environment had been violated by the degradation of the forests and biodiversity in their region.<sup>36</sup>

34. Many laws that protect biodiversity incorporate the right to a healthy environment, such as, in Spain, the Law on Natural Heritage and Biodiversity of 2007. In South Africa biodiversity legislation of 2004 specified that, to fulfil the right to a healthy environment, the State must “manage, conserve and sustain South Africa’s biodiversity and its components and genetic resources”.<sup>37</sup> Croatia observed that recognition of the right to a healthy and sustainable environment “contributed to

<sup>32</sup> Eric Dinerstein and others, “A global deal for nature: guiding principles, milestones and targets”, *Science Advances*, vol. 5, No. 4 (April 2019).

<sup>33</sup> IPBES/7/10/Add.1, para. C4.

<sup>34</sup> [A/HRC/43/53](#), annex II.

<sup>35</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 15 November 2017, para. 62.

<sup>36</sup> Inter-American Court of Human Rights, *Indigenous Communities of the Lhaka Honhat Association v. Argentina*, Judgment, 6 February 2020.

<sup>37</sup> South Africa, National Environmental Management: Biodiversity Act 2004, Act No. 10 of 2004, *Government Gazette*, vol. 467, No. 26436 (7 June 2004), sect. 3; and Spain, Law No. 42 of 13 December 2008 on National Heritage and Biodiversity, art. 1.

protecting, conserving and restoring biodiversity and healthy ecosystems by positioning nature protection high on the political agenda”.

35. Courts in all regions of the world have determined that the failure of States to take adequate action to protect healthy ecosystems and biodiversity can violate the right to a healthy environment. As explained by the Supreme Court of Justice of Colombia in 2020, the right to a healthy environment obliges States to adopt regular and effective measures that contribute to the proper functioning, maintenance and conservation of the fauna and flora that make up the ecosystem.<sup>38</sup>

36. Violations of the right to a healthy environment found in prominent court decisions have included damaging the habitat of an endangered species (Costa Rica, Greece and India); water pollution caused by mining (Chile, Colombia and the state of Montana, United States of America); deforestation (Brazil, Colombia, Mexico and Philippines); extensive air, water and soil pollution (Argentina, India and Philippines); cyanide use in gold mining (Turkey); shrimp farming in coastal wetlands (Peru); tourism development in mangrove forests (Mexico); hydroelectric projects in sensitive ecosystems (Brazil, Ecuador and Finland); real estate development in biodiversity-rich areas (Hungary, Macedonia, Slovenia and South Africa); and an agricultural project in a protected forest (Uganda).<sup>39</sup>

## B. Right to life

37. In 2018, the Human Rights Committee stated, “Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.<sup>40</sup> Damage to ecosystems and declining biodiversity jeopardize the right to life. For example, the removal of coastal mangroves increases the risk of death from storms. When a major cyclone hit India in 1999, deaths were significantly higher in coastal villages where mangroves had been removed than in villages protected by healthy mangrove forests.<sup>41</sup>

38. Deforestation increases the frequency and severity of flood-related disasters, negatively affecting millions of persons, causing large numbers of deaths and inflicting trillions of dollars of damage.<sup>42</sup>

39. Measures taken in the name of conservation efforts can also violate the right to life. For example, militarized conservation personnel have killed people in Africa. In many countries, the designation of national parks and other protected areas has led to indigenous peoples and local communities being displaced and denied access to traditional territories used for food, water, culture and livelihoods.

<sup>38</sup> Supreme Court of Justice, Colombia, STC No. 3872-2020, 18 June 2020 (Parque Isla Salamanca).

<sup>39</sup> For example, Supreme Court of Colombia, *Demanda Generaciones Futuras v. Minambiente*, STC No. 4360-2018, decision of 5 April 2018; Supreme Court of Mexico, First Chamber, *Amparo en Revisión*, No. 307/2016, decision of 14 November 2018. Other cases are discussed in, David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, UBC Press, 2012).

<sup>40</sup> Human Rights Committee, general comment, No. 36 (2018) on the right to life.

<sup>41</sup> Saudamini Das and Jeffrey R. Vincent, “Mangroves protected villages and reduced death toll during Indian super cyclone”, *Proceedings of the National Academy of Sciences*, vol. 106, No. 18 (5 May 2009).

<sup>42</sup> Corey J.A. Bradshaw and others, “Global evidence that deforestation amplifies flood risk and severity in the developing world”, *Global Change Biology*, vol. 13, No. 11 (November 2007).

### C. Right to health

40. The World Health Organization recognizes that biodiversity is “a key environmental determinant of human health”.<sup>43</sup> Healthy ecosystems provide a buffer against emerging infectious diseases. Changes to the landscape, such as deforestation, contribute to emergence of disease in wildlife, domestic animals and people. Forest fragmentation in North America has increased the risk of Lyme disease. Nipah virus has been linked to the intensification of pig farming in Malaysia. Deforestation contributed to the Ebola outbreak in West Africa.

41. Healthy ecosystems are a vital source of medicines and medical insights. The loss of biodiversity means lost opportunities for life-saving and life-changing medical breakthroughs. Only a small fraction of the world’s plant and animal species have been studied thoroughly for their pharmacological or medical benefits. Researchers studying obscure species, including the southern gastric-brooding frog, the cone snail, the Pacific yew tree and the rosy periwinkle of Madagascar, have produced prescription drugs and other health benefits for humanity.<sup>44</sup>

42. As was noted in the submission of Germany, local populations and indigenous peoples, in particular in developing countries, often rely on traditional medicine, which depends on a wide range of wild plant and animal species. Illegal harvesting, trade in many of those species and the loss of suitable habitats is affecting health-care systems negatively for millions of persons and thus their right to health.

### D. Right to food

43. Biodiversity protects the right to food by making agricultural systems more resilient. It also plays a vital role in efforts towards increasing food production while decreasing negative environmental impacts.

44. Every year, millions of hectares of land lose their capacity to grow food owing to erosion, salinization and contamination. Estimates of the number of persons whose right to food is affected by land degradation range from 1.3 to 3.2 billion.<sup>45</sup> Genetic diversity protects crops from diseases, contributing to food security. However, the genetic diversity of crop and livestock species, as well as that of their wild relatives, is declining, threatening food security and the resilience of ecosystems.<sup>46</sup>

45. In recent decades, agricultural output has expanded substantially, imposing immense costs on ecosystems and biodiversity. Degraded ecosystems lose their ability to produce clean water, protect against hazards such as flooding and provide habitat for species, including pollinators and soil organisms. Pesticides jeopardize the right to food by harming pollinators and contaminating soils. Land-grabbing and the financialization of agriculture threaten the rights of small-scale farmers and their communities.

46. Fisheries worldwide are overexploited, plagued by illegal, unreported and unregulated catches and heavily subsidized. Ocean-grabbing involves powerful

<sup>43</sup> WHO and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health – A State of Knowledge Review* (2015), p. 1.

<sup>44</sup> Eric Chivian and Aaron Bernstein, eds., *Sustaining Life: How Human Health Depends on Biodiversity* (New York, Oxford University Press, 2008).

<sup>45</sup> Luca Montanarella, Robert Scholes and Anastasia Brainich, eds., *The IPBES Assessment Report on Land Degradation and Restoration* (Bonn, Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, 2018).

<sup>46</sup> Julie Bélanger and Dafydd Pilling, eds., *The State of the World’s Biodiversity for Food and Agriculture* (Rome, FAO Commission on Genetic Resource for Food and Agriculture, 2019).

economic actors taking over fisheries to the detriment of the rights of small-scale fishers and their communities. For example, industrial fisheries for fishmeal and fish oil are undermining the livelihoods of local fishers in the Gambia, Mauritania and Senegal.<sup>47</sup> Climate change, pollution and other pressures worsen the outlook for fisheries.<sup>48</sup>

## E. Rights to water and sanitation

47. Ecosystems are the source of all water relied on by people. Where water is polluted, contaminated or overexploited, the right to adequate quantities of clean water is jeopardized. Sanitation systems worldwide rely on ecosystems as an essential element of wastewater treatment because ecosystems purify polluted water.

48. As stated by South Africa, “Water is South Africa’s lifeblood. It influences the well-being of the country’s people, and water shortages, or a decline in water quality, will hamper economic development and compromise basic human rights in the country. Water is intrinsically linked with the ecosystems through which it passes; deteriorating ecosystems will adversely affect the quantity and quality of water. Over half of the ecosystems associated with our rivers and fresh water supply are seriously degraded”.<sup>49</sup>

## F. Rights of the child

49. The failure of States to prevent the degradation of an ecosystem or the extinction of a species could violate children’s rights to life, health, culture and a healthy environment. The United Nations High Commissioner for Human Rights stated that “all children should enjoy (...) the certainty that the biodiversity of the natural world will remain for future generations”.<sup>50</sup>

50. The Committee on the Rights of the Child is concerned about the decline of nature. In concluding observations about the Lao People’s Democratic Republic, the Committee warned of “deforestation and the unrestrained construction of dams, which leads to forced displacement, degradation of biodiversity and erosion of riverbanks, severely affecting the life and subsistence possibilities of people in the area”.<sup>51</sup> The Committee also expressed concerns about the impacts of biodiversity loss on children and their rights in Seychelles.<sup>52</sup>

51. The voices of children themselves are essential. They submitted the following ideas for the present report: give young people opportunities to take action to support biodiversity and ecosystems; stop cutting down and burning forests; respect for nature is essential; pass laws to ensure that the oceans are cleaned, pollution is reduced, animals are protected and life is sustained; and there is no point in asking young people for their opinion and input if it does not influence the final decision.<sup>53</sup>

<sup>47</sup> Submission from Greenpeace.

<sup>48</sup> Nerilie Abram and others, “Summary for policymakers”, in Hans-Otto Pörtner and others, eds., *IPCC Special Report on the Ocean and Cryosphere in a Changing Climate* (Intergovernmental Panel on Climate Change, 2019).

<sup>49</sup> See official response of South Africa to the Special Rapporteur’s questionnaire for the report on biodiversity, 2016, question No. 3. Available at <https://www.ohchr.org/Documents/Issues/Environment/Biodiversity/SouthAfrica.pdf>.

<sup>50</sup> A/HRC/43/30, 2020, paras. 2 and 48.

<sup>51</sup> CRC/C/LAO/CO/3-6, para. 36.

<sup>52</sup> CRC/C/SYC/CO/2-4.

<sup>53</sup> Submission from Children’s Environmental Rights Initiative.

## G. Vulnerable populations

52. The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services observed that “Areas of the world projected to experience significant negative effects from global changes in climate, biodiversity, ecosystem functions and nature’s contributions to people are also home to large concentrations of indigenous peoples and many of the world’s poorest communities. Because of their strong dependency on nature and its contributions for subsistence, livelihoods and health, those communities will be disproportionately hard hit by those negative changes”.<sup>54</sup> Exacerbating the injustice is the fact that, while indigenous peoples and local communities who are materially, culturally and spiritually dependent on their traditional lands bear an unfair share of the costs imposed by activities that damage nature, they rarely enjoy a fair share of the economic benefits.<sup>55</sup> An example from Indonesia is the decline in indigenous peoples’ livelihood from forest honey, caused by the replacement of native forests with palm oil plantations. The decline in biological diversity is matched by the erosion of cultural diversity, exemplified by the extinction of many indigenous languages.

53. An example of the impacts of deteriorating ecosystem health on the rights of indigenous peoples is the bioaccumulation of toxic substances in the food chain, undermining the ability of indigenous hunters and fishers to secure healthy food for their families and communities. In Colombia, Peru and many other States, mercury from illegal mining contaminates rivers and watersheds.

54. A lack of formal land and tenure rights makes indigenous peoples and local communities, peasants, Afrodescendants, women and the poor susceptible to displacement through actions ranging from land-grabbing and industrial resource extraction to the creation of new parks. The Special Rapporteur received many examples of indigenous peoples and local communities struggling to defend their lands and waters from industrial activities that damage ecosystems and biodiversity. Examples include the Bunong indigenous communities in Cambodia, the Maya in Belize, the Wapichan in Guyana and the Dayak communities in Indonesia.

55. Many conservation initiatives have violated the rights of indigenous peoples and local communities, including the creation of parks and protected areas without their participation or free, prior and informed consent.<sup>56</sup> Examples include the eviction of the Batwa from Kahuzi-Biega National Park, in the Democratic Republic of the Congo, and the displacement of Ogiek peoples from the Mau Forest, in Kenya.

56. Ecosystem restoration can, surprisingly, have adverse effects on the rights of indigenous peoples and local communities. On the West Coast of North America, the reintroduction and recovery of sea otters caused a cascade of ecological changes. While the overall ecological and economic benefits outweighed the costs, declines in some fisheries (e.g., Dungeness crab and geoduck clam) adversely affected the livelihoods and access to food of indigenous peoples and local communities.<sup>57</sup>

57. Although at risk, indigenous peoples and local communities and peasants can make enormous contributions to the conservation, protection, restoration and sustainable use of ecosystems and biodiversity, when empowered to do so, through recognition of their rights. Thanks to their traditional knowledge, customary legal

<sup>54</sup> IPBES/7/10/Add.1.

<sup>55</sup> See discussion on rights of local communities with close connections to their traditional lands, [A/HRC/34/49](#), paras. 53–58.

<sup>56</sup> [A/71/229](#).

<sup>57</sup> Edward J. Gehr and others, “Cascading social-ecological costs and benefits triggered by a recovering keystone predator”, *Science*, vol. 368, No. 6496 (12 June 2020).

systems and cultures, they have proved effective at conserving nature.<sup>58</sup> At least a quarter of the global land area, including some of the most ecologically intact forests and many biodiversity hotspots, is traditionally owned, managed, used or occupied by indigenous peoples.<sup>59</sup> In addition, a diverse array of local communities, including farmers, fishers, herders, hunters, ranchers and forest users, manages significant areas of land and water under various title and tenure systems. Supporting their efforts to conserve and protect those lands, many of which are critical to global biodiversity, would result in less poverty, lower rates of deforestation and better protection of the biodiversity and ecosystem functions on which these communities depend.

58. Understanding gender differences in vulnerability, roles and capacity is essential for designing fair and effective actions to conserve, protect, restore, sustainably use and equitably benefit from healthy ecosystems and biodiversity.<sup>60</sup> Women's roles as land managers, farmers, fishers, scientists and entrepreneurs may be constrained by their having less access to information, less decision-making authority, limited financial and other resources and limited ownership of land. Deforestation, the loss of biodiversity and ecosystem degradation can perpetuate gender inequalities by increasing the amount of time spent by women and girls to obtain food, water, firewood and fodder. Women are leaders and vital agents of change, using their knowledge and resources to protect, restore and steward nature.<sup>61</sup> According to UNEP, "women often have a more specialized knowledge of various local and neglected species".<sup>62</sup>

59. Persons with disabilities could be disproportionately affected by the deterioration of nature, but could also contribute to conserving, protecting and sustainably using it. Damage to ecosystems and biodiversity could exacerbate the challenges that persons with disabilities face in securing access to natural green spaces and clean water. Land degradation and extreme weather events that cause migration pose additional difficulties related to mobility. The Committee on the Rights of Persons with Disabilities has emphasized that States must address the needs of persons with disabilities when designing and implementing disaster risk reduction measures.<sup>63</sup>

60. Small island developing States are particularly vulnerable to biodiversity loss, as their limited areas are susceptible to the combined impacts of land conversion, overexploitation, climate change, pollution and invasive species.

61. Individuals and communities working to safeguard human rights and protect nature from destruction and exploitation put themselves at grave risk in many States. Human rights defenders, environmentalists, indigenous peoples and others face murder, violence, harassment, intimidation and criminalization because of their work. Despite the Declaration on the Right and Responsibility of Individuals, Groups and

<sup>58</sup> Stephen T. Garnett and others, "A spatial overview of the global importance of indigenous lands for conservation", *Nature Sustainability*, vol. 1, No. 7 (July 2018); and Allen Blackman and others, "Titling indigenous communities protects forests in the Peruvian Amazon", *Proceedings of the National Academy of Sciences of the United States of America*, vol. 114, No. 16 (April 2017).

<sup>59</sup> FAO and UNEP, *The State of the World's Forests 2020*.

<sup>60</sup> Claudia Ituarte-Lima, "Women's courageous roles as guardians of the Earth's ecosystems", in Claudia Ituarte-Lima and Maria Schultz, eds., *Human Right to a Healthy Environment for a Thriving Earth: Handbook for Weaving Human Rights, SDGs, and the Post 2020 Global Diversity Framework* (Stockholm, SwedBio and others, 2018).

<sup>61</sup> United Nations Entity for Gender Equality and the Empowerment of Women, *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development* (New York, 2018).

<sup>62</sup> UNEP, Biodiversity for the well-being of women, newsletter, No. 6, August 2013.

<sup>63</sup> CRPD/C/SYC/CO/1.

Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, as well as civil society initiatives (e.g., Defend the Defenders, Not1More and the Zero Tolerance Initiative), violence continues, exemplified by the 2020 murder of two Mexican men, Homero Gómez González and Raúl Hernández Romero, working to protect monarch butterflies and their forest habitat.<sup>64</sup>

### III. Human rights obligations relating to healthy ecosystems and biodiversity

62. There is growing recognition of the linkages between human rights and the health of the biosphere. It is acknowledged in recent United Nations declarations that indigenous peoples and peasants have rights “to the conservation and protection of the environment and the productive capacity of their lands”.<sup>65</sup> In the Human Rights Council’s universal periodic review process, damage to ecosystems and biodiversity is receiving greater attention. The universal periodic review of Argentina included a recommendation to “strengthen measures to combat the negative effect of the economic activities on the environment and biodiversity”.<sup>66</sup> Similarly, recommendations were made that Brazil reduce deforestation, respect the rights of indigenous peoples and protect the environment and biodiversity when authorizing economic activities.<sup>67</sup> The United Arab Emirates was urged to “protect biodiversity and stop disastrous environmental impacts, such as threats to the security of migrant birds, the destruction of live coral cover, the change of natural water flow and the destruction of natural seabed when constructing man-made islands”.<sup>68</sup> It was highlighted in reviews of Indonesia, Madagascar, Malaysia and Solomon Islands that protecting rainforests was essential to realizing economic, social and cultural rights.<sup>69</sup>

63. Treaty bodies are also increasingly highlighting the human rights impacts of damage to ecosystems and biodiversity. The adverse impacts of deforestation on human rights were mentioned in concluding observations by the Committee on the Elimination of All Forms of Discrimination against Women (Côte d’Ivoire and Guyana),<sup>70</sup> the Committee on the Rights of the Child (Gabon, Guinea and Haiti),<sup>71</sup> the Committee on Economic, Social and Cultural Rights (Argentina, Brazil and Colombia),<sup>72</sup> and the Committee on the Elimination of Racial Discrimination (Paraguay).<sup>73</sup> The Committee on the Rights of the Child expressed concern that the oil and gas industry of the Russian Federation is having negative impacts on indigenous peoples, including children, through deforestation and pollution and “by endangering the species that are crucial to their livelihoods”.<sup>74</sup> The Committee on the Elimination of Racial Discrimination urged Suriname to respect indigenous peoples’ human rights by completing adequate social, cultural and environmental impact assessments for developments proposed in their ancestral territories, pursuant to the

<sup>64</sup> See BBC News, “Mexico violence: why were two butterfly activists found dead?”, 14 February 2020.

<sup>65</sup> See United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 18; and United Nations Declaration on the Rights of Indigenous Peoples, art. 29.

<sup>66</sup> [A/HRC/37/5](#).

<sup>67</sup> [A/HRC/36/11](#).

<sup>68</sup> [A/HRC/38/14](#).

<sup>69</sup> [A/HRC/21/7](#) (Indonesia), [A/HRC/28/13](#) (Madagascar), [A/HRC/25/10](#) (Malaysia) and [A/HRC/32/14](#) (Solomon Islands).

<sup>70</sup> [CEDAW/C/CIV/4](#) (Côte d’Ivoire) and [CEDAW/C/GUY/CO/9](#) (Guyana).

<sup>71</sup> [CRC/C/GAB/CO/2](#) (Gabon), [CRC/C/GIN/CO/3-6](#) (Guinea) and [CRC/C/HTI/CO/2-3](#) (Haiti).

<sup>72</sup> [E/C.12/ARG/CO/3](#) (Argentina), [E/C.12/BRA/CO/2](#) (Brazil) and [E/C.12/COL/CO/6](#) (Colombia).

<sup>73</sup> [CERD/C/PRY/CO/4-6](#) (2016).

<sup>74</sup> [CRC/C/RUS/CO/4-5](#) (2014).

Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding Developments Proposed to Take Place on, or which are Likely to Impact On, Sacred Sites and On Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities, developed under the Convention on Biological Diversity.<sup>75</sup>

64. The former Special Rapporteur on human rights and the environment, John Knox, dedicated a report to the issue of biodiversity and human rights, also highlighting the issue in his country reports.<sup>76</sup> He concluded, “the degradation and loss of biodiversity undermine the ability of human beings to enjoy their human rights” and outlined the obligations of States to protect against such harms.

65. Other Special Rapporteurs have begun to address biodiversity and human rights. The Special Rapporteur on the rights of indigenous peoples called for the full recognition of their rights in all activities related to the conservation and sustainable use of biodiversity, in particular actions to protect forests and establish new protected areas in their territories.<sup>77</sup> The Special Rapporteur in the field of cultural rights praised the efforts of Botswana to protect its rich biodiversity, but emphasized the importance of respecting the rights, knowledge and practices of indigenous peoples and local communities.<sup>78</sup> The Special Rapporteur on the right to food noted the importance of agricultural biodiversity in contributing to food security.<sup>79</sup> The Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes warned that chemical contamination of the Arctic threatens the rights of indigenous peoples and local communities and criticized the legacy of toxic contamination of marine and terrestrial ecosystems by the United States in the Marshall Islands.<sup>80</sup>

## A. State obligations

66. The current and foreseeable adverse effects of the global nature crisis on the enjoyment of a wide range of rights give rise to extensive duties of States to take immediate actions to prevent those harms.<sup>81</sup> They are legally enforceable obligations, not policy options or mere aspirations, reflecting existing commitments pursuant to international human rights law. The Human Rights Committee stated that “obligations of States under international environmental law should inform their human rights obligations”.<sup>82</sup> States should apply a rights-based approach to all aspects of conserving, protecting, restoring, using and benefitting from healthy ecosystems and biodiversity. Applying a rights-based approach clarifies the obligations of States and businesses; catalyses ambitious action; highlights the plight of the poorest and most vulnerable; and empowers people to become involved in designing and implementing solutions.

67. A critical factor in the global nature crisis is that States and businesses have repeatedly failed to fulfil their commitments and have not been held accountable because of the weak enforcement mechanisms in international environmental law. International and domestic human rights law offer treaty bodies, courts, commissions and processes for ensuring accountability.

<sup>75</sup> CERD/C/SUR/CO/13-15.

<sup>76</sup> A/HRC/34/49, A/HRC/34/49/Add.1 (Madagascar) and A/HRC/37/58/Add.1 (Uruguay).

<sup>77</sup> A/71/229.

<sup>78</sup> A/HRC/31/59/Add.1.

<sup>79</sup> A/HRC/16/49.

<sup>80</sup> A/HRC/39/48/Add.2 (Denmark) and A/HRC/21/48/Add.1 (Marshall Islands).

<sup>81</sup> A/HRC/25/53.

<sup>82</sup> Human Rights Committee, general comment, No. 36, para. 62.

68. The framework principles on human rights and the environment clarify three categories of State obligations: procedural, substantive and special obligations towards those in vulnerable situations.<sup>83</sup>

69. States have procedural obligations to:

(a) Provide the public with accessible, affordable and understandable information regarding the causes and consequences of the global nature emergency, including incorporating the importance of a healthy biosphere as a required element of the educational curriculum at all levels;

(b) Ensure an inclusive, equitable and gender-based approach to public participation in all actions related to the conservation, protection, restoration and sustainable use of nature, with a particular emphasis on empowering the most directly affected populations;<sup>84</sup>

(c) Enable affordable and timely access to justice and effective remedies for all, to hold States and businesses accountable for fulfilling their obligations to conserve, protect and restore nature;

(d) Assess the potential environmental, social, cultural and human rights impacts of all plans, policies and proposals that could damage, destroy or diminish healthy ecosystems and biodiversity;

(e) Implement human rights safeguards in the design and use of biodiversity financing mechanisms (e.g., payments for ecosystem services and debt for nature swaps);

(f) Integrate gender equality into all actions to conserve, protect, restore, use and equitably share the benefits of nature, including the development and implementation of National Biodiversity Strategic Action Plans required under the Convention on Biological Diversity, empowering women to play leadership roles;

(g) Respect the rights of indigenous peoples and local communities and peasants in all actions to conserve, protect, restore, sustainably use and equitably share the benefits of healthy ecosystems and biodiversity, including respect for traditional knowledge, customary practices and indigenous peoples' right to free, prior and informed consent;

(h) Provide strong protection for environmental human rights defenders working on nature-related issues. States must vigilantly protect defenders from intimidation, criminalization and violence; diligently investigate, prosecute and punish the perpetrators of those crimes; and address the root causes of social-environmental conflict.<sup>85</sup>

70. With respect to substantive obligations, States must not violate the right to a healthy environment or other human rights related to healthy ecosystems and biodiversity through their own actions; must protect those rights from being violated by third parties, in particular businesses; and must establish, implement and enforce laws, policies and programmes to fulfil these rights.<sup>86</sup> These substantive obligations are informed by specific commitments in the Convention on Biological Diversity, including to:

(a) Monitor and report on state of biodiversity and threats to biodiversity;

---

<sup>83</sup> [A/HRC/37/59](#), annex.

<sup>84</sup> See [CBD/COP/DEC/14/8](#), annex II, decision 14/8 (Protected areas and other effective area-based conservation measures).

<sup>85</sup> [A/HRC/25/55](#) and [A/71/281](#).

<sup>86</sup> [E/1991/23](#).

- (b) Adopt and implement national biodiversity plans;
- (c) Mainstream biodiversity into other policy areas (e.g., health and finance);
- (d) Create protected areas and establish other effective conservation measures;
- (e) Establish rules to ensure the sustainable use of biodiversity;
- (f) Enact legislation to protect threatened species;
- (g) Restore degraded ecosystems;
- (h) Prevent the spread of invasive species;
- (i) Provide incentives for conservation and sustainable use.<sup>87</sup>

71. States must implement and enforce existing laws and policies and amend or create new laws for emerging challenges (e.g., plastic pollution). They should apply the precautionary principle in all decisions that could harm ecosystems and biodiversity.<sup>88</sup> States also must avoid direct and indirect discrimination and retrogressive measures. As noted in the framework principles, “Indirect discrimination may arise, for example, when measures that adversely affect ecosystems, such as mining and logging concessions, have disproportionately severe effects on communities that rely on the ecosystems”.

72. States have particular obligations to indigenous peoples and local communities and peasants. The top priority involves recognizing their land titles, tenures and rights, acknowledging the existence of different customs and systems, including collective ownership and governance models. As the Inter-American Court confirmed, States must ensure the effective participation of indigenous peoples in the creation of protected areas, their continued access to and use of traditional territories, including those within the protected areas (for hunting, fishing, gathering, cultivation and cultural activities consistent with sustainable use) and a fair share of the benefits arising from conservation initiatives.<sup>89</sup> States are obligated to prevent human rights abuses – evictions, displacement, beatings, torture and murder – arising from exclusionary and militarized conservation. States must “take appropriate measures to promote and protect the traditional knowledge, innovation and practices of peasants and other people working in rural areas, including traditional agrarian, pastoral, forestry, fisheries, livestock and agroecological systems relevant to the conservation and sustainable use of biological diversity”.<sup>90</sup>

73. States are obliged to ensure that activities within their jurisdiction or control do not cause serious harm to the environment or peoples of other States or to areas beyond the limits of national jurisdiction.<sup>91</sup> Given the evidence regarding of increasing degradation of the biosphere, this well-established “no harm” rule of customary international law is being jeopardized by land conversion, overexploitation, climate change, pollution and invasive species.

74. States have an obligation to cooperate internationally to achieve a healthy biosphere, through sharing information, transferring clean technologies, building capacity, increasing research, honouring international commitments and ensuring just

<sup>87</sup> Convention on Biological Diversity, arts. 5–14.

<sup>88</sup> Human Rights Committee, general comment No. 36, para. 62.

<sup>89</sup> Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, Judgment, 25 November 2015, para. 181.

<sup>90</sup> United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 20.

<sup>91</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14; and Inter-American Court of Human Rights, Advisory Opinion OC-23/17, para. 101.

and sustainable outcomes for vulnerable and marginalized communities. Wealthy States must contribute their fair share towards the costs of conserving, protecting and restoring healthy ecosystems and biodiversity in low-income countries, in accordance with the principle of common but differentiated responsibilities.<sup>92</sup> Financial assistance to low-income countries should consist of grants, not loans. It violates basic principles of justice to force poor countries to pay for the costs of protecting nature when high levels of consumption in wealthy countries are a driver of the problem.

## **B. Responsibilities of businesses**

75. Businesses are a major contributor to the destruction of ecosystems and the loss of biodiversity, through deforestation, land-grabbing, extracting, transporting and burning fossil fuels, industrial agriculture, intensive livestock operations, industrial fisheries, large-scale mining and the commodification of water and nature. Businesses have outsourced many activities that damage ecosystems and biodiversity from high-income nations to low-income nations, exploiting environmental standards that are lower or not enforced.

76. Businesses must adopt human rights policies, conduct human rights due diligence, establish transparent and effective grievance mechanisms, remedy human rights violations for which they are directly responsible and work to influence other actors to respect human rights where relationships of leverage exist. All businesses should comply with the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework as they apply to activities carried out by the business, its subsidiaries or its supply chain that could damage or degrade the biosphere. Businesses should prioritize respect for the rights of indigenous peoples and local communities and peasants and refuse to seek or exploit concessions in protected areas.

77. Businesses should reduce adverse impacts on ecosystems and biodiversity from their own activities, subsidiaries and suppliers; reduce adverse impacts on nature from the use of their products and services; and publicly disclose their adverse impacts on nature. In addition, businesses should support, rather than oppose, laws and policies intended to effectively conserve, protect, restore and ensure the sustainable use of ecosystems and biodiversity.

## **C. Responsibilities of conservation organizations**

78. Thousands of conservation organizations across the world, from small community groups to huge multinational organizations, are working hard to conserve, protect and restore the natural wonders of this beautiful planet. However, disturbing situations have occurred in which large conservation organizations have been involved directly, or were complicit, in actions that attempted to protect nature, but resulted in human rights abuses, from the eviction and displacement of indigenous peoples and local communities to the killings of persons by militarized park rangers. Such actions are unacceptable.

79. Large conservation organizations must do much more to respect human rights in their work. Despite expressing strong commitments to human rights, implementation often falls short. In accordance with the Guiding Principles on Business and Human Rights, they should adopt human rights policy commitments, conduct human rights due diligence and enable the remediation of any adverse human

---

<sup>92</sup> Convention on Biological Diversity, arts. 8 (m) and 9 (e).

rights impacts that they cause or to which they contribute, including through effective grievance mechanisms that they have established, in which they participate or for which they are directly responsible.<sup>93</sup> Large conservation organizations should also work to influence other actors to respect human rights where relationships of leverage exist. The Conservation Initiative on Human Rights was a good step, but it could be improved by broadening its membership and convening a regular forum, in partnership with indigenous peoples and local communities, on conservation and human rights, perhaps involving UNEP, the International Union for Conservation of Nature, the Office of the United Nations High Commissioner for Human Rights and the Convention on Biological Diversity secretariat.

#### **IV. Good practices in conserving, protecting and sustainably using of biodiversity**

80. Many inspiring examples exist of good practices in the conservation, protection and sustainable use of biodiversity, including constitutional protection for nature (e.g., Brazil, Croatia, Ecuador, Namibia and Norway), the High Ambition Coalition for Nature and People (led by Costa Rica and France), the European Green Deal and Biodiversity Strategy for 2030, the Great Green Wall, the African Forest Landscape Restoration Initiative, recognition of the rights of nature and countless innovative practices at the community level. The implementation of good practices in protecting ecosystems and biodiversity not only ensures a healthy biosphere and protects human rights, but also promises immense economic benefits, measured in the trillions of dollars. Those good practices are reported separately.<sup>94</sup>

#### **V. Conclusions and recommendations**

81. **It is not too late to respond to the global nature emergency, but time is running out. The ongoing failure to conserve, protect and sustainably use the Earth's ecosystems has catastrophic consequences for the enjoyment of a sweeping range of human rights. With COVID-19, humanity has paid a terrible price for ignoring scientists' warnings. We must not make the same mistake with the risks posed by future pandemics, biodiversity loss and climate change.**

82. **Transforming society to achieve a good quality of life for all in harmony with nature requires scaling up biodiversity conservation, large-scale restoration of degraded ecosystems, a rapid clean energy transition, shifting to a circular economy, decreased material consumption by wealthy individuals and reforming supply chains to reduce environmental impacts. Employing a rights-based approach could serve as a catalyst for accelerated action. History demonstrates – through the progress achieved by abolitionists, suffragettes, civil rights activists and indigenous peoples – the powerful role of human rights in sparking transformative societal changes.**

##### **A. Recovering from coronavirus disease and preventing future pandemics**

83. **A rights-based approach must be applied to the investment of trillions of dollars in economic recovery, ensuring that investments advance human rights, prevent future pandemics, alleviate climate change and biodiversity loss, provide**

<sup>93</sup> [A/HRC/44/32](#).

<sup>94</sup> See [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthyEcosystems.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthyEcosystems.aspx).

a just transition for vulnerable workers and communities and accelerate progress to achieve the Sustainable Development Goals. Encouraging examples include the European Green Deal, worth €750 billion; the Green New Deal in South Korea; and the allocation by New Zealand of \$NZ 1.1 billion for nature-based jobs.

84. Environmental laws and regulations must not be weakened, nor enforcement relaxed. Financial support should be made conditional on businesses committing to protect the rights of indigenous peoples and local communities, prevent deforestation and land conversion and reduce greenhouse gas emissions at a rate consistent with Intergovernmental Panel on Climate Change guidance. Sectors that damage ecosystems and biodiversity, including fossil fuels, mining and industrial agriculture, should not receive subsidies.

85. 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 fulfils 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).

## **B. Accelerating action to protect and conserve nature**

86. The post-2020 global biodiversity framework should explicitly endorse a rights-based approach to achieving rapid and ambitious progress in the protection, conservation and sustainable use of biodiversity. Scientists, civil society and a growing number of States have endorsed the ambitious goal of protecting 30 per cent of the planet’s lands and waters by 2030, resulting in its inclusion in the draft post-2020 framework. While achieving that target could have enormous benefits for human rights by protecting nature’s contributions to people, the processes of identifying, designating and managing additional protected and conserved areas must be carried out in partnership with indigenous peoples and local communities in order to safeguard their rights. Protecting and restoring ecological linkages between protected and conserved areas is also vital.<sup>95</sup>

<sup>95</sup> Santiago Saura and others, “Protected area connectivity: shortfalls in global targets and country-level priorities”, *Biological Conservation*, vol. 219 (March 2018).

87. **Protected and conserved areas are one of the key actions for maintaining healthy ecosystems and biodiversity.<sup>96</sup> When governed and managed equitably and effectively, they also support human rights, contributing to health, well-being, food and water security, disaster risk reduction, climate mitigation and adaptation and local livelihoods.<sup>97</sup> Well-managed marine protected areas protect and restore biodiversity, increasing yields in adjacent fisheries. In marine protected areas, species richness is 21 per cent higher and the biomass of fish is six times greater than in adjacent unprotected areas.<sup>98</sup>**

88. **The post-2020 global biodiversity framework should:**

(a) **Recognize that all persons have the right to a safe, clean, healthy and sustainable environment;**

(b) **Prioritize the rights and roles of indigenous peoples and local communities;**

(c) **Include a commitment from wealthy States to mobilize at least \$100 billion annually to assist low-income States in conserving, protecting, restoring and ensuring the sustainable use of nature, matching their climate finance commitment;**

(d) **Prioritize actions that achieve multiple benefits for human rights concurrently (e.g., ecological restoration initiatives that reduce poverty, improve food security, protect nature and address climate change);**

(e) **Require a rights-based approach to implementing and developing National Biodiversity Strategy and Action Plans;**

(f) **Address both the direct and indirect drivers of harm to ecosystems and biodiversity;**

(g) **Highlight the need for urgent action to protect environmental human rights defenders;**

(h) **Require emergency management actions for species whose continued survival is in jeopardy.**

89. **States should address the decline of nature and the threat of climate change simultaneously, by:**

(a) **Prioritizing nature-based climate solutions, with appropriate safeguards to protect human rights, providing up to one third of the climate mitigation required by 2030 and major advances in adaptation. Key actions include conservation of oceans, forests, wetlands (in particular peatlands and mangroves), reforestation, ecological restoration and agroecology practices that improve soils' carbon content;**

(b) **Protecting hotspots with high biodiversity and high carbon storage. Priorities identified by scientists include subtropical humid forests, temperate steppe and boreal coniferous forests, temperate and tropical rainforests, with a geographical focus on Central America; the northern Andes; the western**

<sup>96</sup> Claudia L. Gray and others, "Local biodiversity is higher inside than outside terrestrial protected areas worldwide", *Nature Communications*, vol. 7, No. 12306 (2016).

<sup>97</sup> Robin Naidoo and others, "Evaluating the impacts of protected areas on human well-being across the developing world", *Science Advances* 2019, vol. 5, No. 4 (April 2019).

<sup>98</sup> Enric Sala and Sylvaine Giakoumi, "No-take marine reserves are the most effective protected areas in the ocean", *International Council for the Exploration of the Sea Journal of Marine Science*, vol. 75, No. 3 (May–June 2018).

**Amazon Basin; south-eastern Brazil; Central Africa, including the Congo Basin; Southeast Asia; southern Japan; the Himalayas; and New Guinea;<sup>99</sup>**

**(c) Introducing, implementing and enforcing laws and policies to end deforestation and the conversion of forests into agricultural land and to eliminate those destructive activities from global supply chains.**

**90. To protect human rights, healthy ecosystems and biodiversity, States should:**

**(a) Support a United Nations resolution recognizing the right to a safe, clean, healthy and sustainable environment;**

**(b) Strengthen the environmental rule of law by reducing and eliminating corruption, strengthening institutions, building knowledge and implementation capacity, ensuring judicial independence;**

**(c) Redirect \$500 billion in subsidies to agriculture, energy, mining and other industries that damage nature into subsidies that protect and restore nature, including regenerative agriculture, agroecology, organic farming, soil restoration and reforestation;<sup>100</sup>**

**(d) Redirect \$22.2 billion in subsidies that contribute to overfishing and damage to marine ecosystems, to restore marine and freshwater ecosystems and assist small-scale fisheries;<sup>101</sup>**

**(e) Strengthen practical measures to support environmental human rights defenders, including: effective and timely remedies in cases where indigenous peoples and local communities and other defenders face threats, criminalization and/or any form of violence and revoking illegally issued land concessions and agricultural or other development permits on lands customarily owned, used or occupied by indigenous peoples and local communities;**

**(f) Legislate due diligence standards for businesses in all sectors to identify and prevent adverse impacts on human rights, ecosystems, biodiversity, indigenous peoples and local communities and environmental human rights defenders both at the firm level and throughout supply chains, including access to remedies for affected rights holders and substantial penalties for non-compliance;**

**(g) Amend environmental impact legislation to require the integration of human rights impact assessments into reviews of proposed projects, policies and plans, including budgets and trade agreements;**

**(h) Ensure that the educational curriculum, at all levels from kindergarten to university, emphasizes the importance of a healthy biosphere for life on Earth and the enjoyment of human rights;**

**(i) Integrate environmental sustainability into dietary guidelines that are predominantly plant based, where feasible, and reduce food waste;**

**(j) Ensure that the proposed agreement on the conservation and sustainable use of marine biodiversity beyond areas of national jurisdiction includes appropriate consideration of human rights;**

---

<sup>99</sup> FAO and UNEP, *The State of the World's Forests 2020*.

<sup>100</sup> OECD, "A comprehensive overview of global biodiversity finance".

<sup>101</sup> U. Rashid Sumaila and others, "Updated estimates and analysis of global fisheries subsidies", *Marine Policy*, vol. 109 (November 2019).

(k) **Strengthen laws and policies to conserve all wetlands and allow only sustainable uses, following guidance from the Convention on Wetlands of International Importance.**

### **C. Respecting the rights of indigenous peoples, peasants and local communities**

91. **Disregard for the rights of indigenous peoples, peasants and local communities by States, businesses and conservation organizations must end. Respect for human rights must be placed at the core of all conservation, preservation, restoration and sustainable use actions, together with a shared vision of safeguarding biological and cultural diversity for present and future generations, as urged by the Special Rapporteur on the rights of indigenous peoples.**<sup>102</sup>

92. **States should:**

(a) **Prioritize the legal recognition of the title, tenure and rights of indigenous peoples, Afrodescendants, peasants and local communities, empowering those who depend directly on nature for their livelihoods to engage in long-term, sustainable agricultural, harvesting and conservation practices based on traditional knowledge, customary laws and stewardship responsibilities;**

(b) **Ensure access to land, water, wildlife, plants, medicines and sacred sites, subject to conservation measures established through inclusive consultation processes and where required, the free, prior and informed consent of indigenous peoples;**

(c) **Provide swift, fair and effective redress for past violations of the rights of indigenous peoples and local communities, such as displacement and relocation, related to the creation of parks and protected areas, through mechanisms ranging from reconciliation processes to compensation;**

(d) **Place indigenous peoples and local communities at the forefront of efforts to identify, designate and manage new areas important for cultural and biological diversity, including indigenous protected and conserved areas,<sup>103</sup> indigenous and community conserved areas,<sup>104</sup> sacred sites and other effective area-based conservation measures;<sup>105</sup>**

(e) **Engage indigenous peoples and local communities to manage or co-manage conserved and protected areas within their territories, including adequate legal, financial and other resources;**

(f) **Redirect financial flows for conservation to indigenous peoples and local communities involved in protecting and sustainably using biodiversity;**

<sup>102</sup> See [A/71/229](#).

<sup>103</sup> Indigenous protected and conserved areas are lands and waters where indigenous governments have the primary role in protecting and conserving ecosystems through indigenous laws, governance and knowledge systems.

<sup>104</sup> Indigenous and community conserved areas are territories containing significant biodiversity and cultural values, conserved by indigenous peoples and local communities through customary laws or other effective means.

<sup>105</sup> Other effective area-based conservation measures relate to geographically defined areas, other than protected areas, that are governed and managed to achieve positive long-term outcomes for the conservation of healthy ecosystems and biodiversity and, where applicable, cultural, spiritual, socioeconomic and other locally relevant values.

(g) **Ratify the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity and enact legislation to implement it to ensure that monetary and non-monetary benefits from the commercial use of genetic resources are shared fairly.**

93. **Protecting and restoring nature to safeguard human rights will require major expenditures, but the expected return on investments is outstanding. The cost of working with indigenous peoples and local communities to effectively protect 30 per cent of all lands and waters by 2030 is an estimated \$100–\$140 billion per year, while the ensuing economic benefits are estimated in the hundreds of billions.<sup>106</sup> The Global Commission on Adaptation reported that the total net benefit of protecting mangroves alone will be \$1 trillion by 2030. The cost of implementing a “One Health” approach to prevent zoonoses will be substantial, but far lower than that of future pandemics.<sup>107</sup>**

94. **If we fail to employ a rights-based approach to protecting the biosphere, future generations will live in an ecologically impoverished world, deprived of nature’s critical contributions to human well-being, ravaged by increasingly frequent pandemics and riven by deepening environmental injustices. If we place human rights and nature at the heart of sustainable development and succeed in transforming society, humans could attain a just and sustainable future in which people live happy, healthy and fulfilling lives in harmony with nature on this planet.**

---

<sup>106</sup> Anthony Waldron and others, “Protecting 30 per cent of the planet for nature: costs, benefits and economic implications”, working paper (Washington, D.C., Campaign for Nature, 2020).

<sup>107</sup> World Bank, “People, pathogens and our planet: the economics of One Health”, Report No. 69145-GLB, vol. 2 (Washington, D.C., 2012).



# General Assembly

Distr.: General  
19 January 2021

Original: English

---

## Human Rights Council

### Forty-sixth session

22 February–19 March 2021

Agenda item 3

**Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development**

## **Human rights and the global water crisis: water pollution, water scarcity and water-related disasters**

### **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment\***

#### *Summary*

In the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, describes safe and sufficient water as one of the substantive components of the right to a safe, clean, healthy and sustainable environment. He describes the causes and consequences of the global water crisis, focusing on the negative impacts of water pollution, water scarcity and water-related disasters on the enjoyment of many human rights, with disproportionate effects upon vulnerable and marginalized groups. He highlights procedural and substantive State obligations related to ensuring safe and sufficient water. He identifies good practices that have helped to reduce or prevent water pollution, alleviate water scarcity, reduce risks associated with water-related disasters and protect or restore aquatic ecosystems. The Special Rapporteur provides a seven-step process for States to employ a rights-based approach to water governance, as well as recommendations for actions. Finally, he urges businesses, in order to fulfil their rights-related responsibilities, to contribute to and support efforts to ensure safe and sufficient water for all.

---

\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Water is essential for life and well-being

1. Water is the lifeblood of human beings, and life on Earth. Humans are 70 per cent water, and our brains 85 per cent. Many people, particularly indigenous peoples, consider water to be sacred.
2. Although water covers most of the planet's surface, the amount of fresh water is surprisingly limited. Accessible fresh water represents less than 1 per cent of the Earth's water (97 per cent is salt water and 2 per cent is locked up in glaciers and polar ice caps). Groundwater, unseen and underappreciated, constitutes 98 per cent of the planet's unfrozen fresh water.
3. Aquatic ecosystems – wetlands, rivers, lakes, springs and aquifers – help to sustain the global hydrological, carbon and nutrient cycles. These ecosystems are among the world's most biologically diverse environments and contribute to sustaining life by purifying polluted water, buffering flood flows, shielding coastlines, controlling erosion, storing carbon and replenishing groundwater.
4. People depend on fresh water for drinking, cooking, cleaning, sanitation, growing food, fishing, generating energy, navigation, recreation and tourism. Safe, sufficient water and healthy aquatic ecosystems are essential for protecting health, achieving food security and ending poverty. Balancing human needs for water with the health of aquatic ecosystems is one of the key challenges of the twenty-first century.
5. The Special Rapporteur on the human rights to safe drinking water and sanitation has done outstanding work in defining the scope and content of these rights, as well as related State obligations, good practices, and ongoing challenges.<sup>1</sup> The present report takes a broader approach, focusing on the human rights implications and obligations related to water pollution, water scarcity, water-related disasters, and damage to healthy freshwater ecosystems.
6. To prepare the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, circulated a call for inputs in September 2020. The Special Rapporteur is grateful for the submissions received from Armenia, Brunei Darussalam, Chile, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Ecuador, Egypt, El Salvador, Haiti, the Islamic Republic of Iran, Italy, Mauritius, Mexico, Monaco, Qatar, Romania, the Russian Federation, Saudi Arabia, Singapore, Switzerland and the United Kingdom of Great Britain and Northern Ireland, and from the European Union, as well as for the more than 60 insightful submissions from indigenous peoples, national human rights institutions, United Nations agencies, civil society, business associations, academics and individuals, including youth.<sup>2</sup> The Special Rapporteur organized a series of online consultations in September, engaging people throughout the world. He also hosted meetings with UN-Water<sup>3</sup> and with Sanitation and Water for All.<sup>4</sup>
7. The present report, on safe, sufficient water and healthy freshwater ecosystems, is the fourth in a series of thematic reports clarifying the substantive elements of the right to a safe, clean, healthy and sustainable environment, following the reports on clean air (A/HRC/40/55), a safe climate (A/74/161) and healthy ecosystems and biodiversity (A/75/161). Future reports will address healthy and sustainably produced food, and non-toxic environments in which people can live, work and play.

---

<sup>1</sup> See [www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx](http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/SRWaterIndex.aspx).

<sup>2</sup> The submissions are available at [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/EnvironmentWater.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/EnvironmentWater.aspx).

<sup>3</sup> See [www.unwater.org](http://www.unwater.org).

<sup>4</sup> See [www.sanitationandwaterforall.org/about/about-us](http://www.sanitationandwaterforall.org/about/about-us).

## II. The global water crisis

8. Instead of treating water – this unique, life-supporting and indispensable substance – with care, respect and reverence, humans are polluting surface water and groundwater, using too much water, destroying wetlands and inflicting catastrophic damage on freshwater ecosystems, thus undermining water’s extraordinary contributions to human health, well-being and prosperity. A Brazilian indigenous organization has observed that “words are lacking to describe the scale of destruction”.<sup>5</sup> In 2020, for the eighth consecutive year, the World Economic Forum listed water crises among the top five risks to the global economy.<sup>6</sup>

9. The Special Rapporteur heard devastating stories from all over the world from people forced to drink dangerously polluted or salty water, deprived of water by extractive industries, no longer able to grow their own food or harvest fish, their cultures imperilled by ill-conceived projects ranging from dams and mines to monoculture plantations and fracking, and compelled to migrate by floods, droughts or other water-related disasters. He received numerous accounts of environmental human rights defenders suffering violence, intimidation or criminalization for their courageous efforts to protect water.

10. Despite progress in improving access to clean water and improved sanitation, billions of people remain unserved or underserved. Over 2 billion people lack access to safely managed drinking water (accessible on premises, available when needed and free from contamination). Worse yet, 785 million people lack even basic water services (access to an improved source, e.g. piped water, a borehole, a dug well or a protected spring).<sup>7</sup>

11. Over 4 billion people – half the global population – lack access to safely managed sanitation, meaning their excreta is untreated, threatening human and ecosystem health.<sup>8</sup> Of those people, 673 million have no access to toilets, forcing them to practise open defecation. An estimated 367 million children attend schools without toilets. Only one in four people in least developed countries enjoy access to soap and water in their homes for handwashing purposes.<sup>9</sup> The consequences for health and human rights during the coronavirus disease (COVID-19) pandemic have been catastrophic.

12. Waterborne disease causes nearly 2 million preventable deaths worldwide annually, with the greatest burden falling on children under 5 years of age.<sup>10</sup> Water-related diseases are closely linked to poverty, and disproportionately affect vulnerable groups.

13. Water pollution is worsening in many parts of the world, adversely affecting the quality and quantity of water available to meet human needs and sustain ecosystems.<sup>11</sup> Roughly 80 per cent of wastewater is discharged into the environment untreated, contaminating surface water, groundwater, soil, and the oceans.<sup>12</sup> Wastewater includes effluent from industry, agriculture, households and institutions, as well as urban run-off. The health and environmental costs of water pollution from agriculture alone are hundreds of billions of dollars annually.<sup>13</sup> Even in States with advanced wastewater treatment facilities, challenges remain, including pharmaceuticals, personal care products and microplastics.<sup>14</sup>

<sup>5</sup> Submission from Instituto Shirley Djukurnã Krenak.

<sup>6</sup> World Economic Forum, *The Global Risks Report 2020*.

<sup>7</sup> United Nations Children’s Fund (UNICEF) and World Health Organization (WHO), *Progress on Household Drinking Water, Sanitation and Hygiene 2000–2017: Special Focus on Inequalities* (2019).

<sup>8</sup> United Nations Children’s Fund (UNICEF) and WHO, *State of the World’s Sanitation: An Urgent Call to Transform Sanitation for Better Health, Environments, Economies and Societies* (2020).

<sup>9</sup> UN-Water, *Sustainable Development Goal 6: Synthesis Report on Water and Sanitation – 2018*.

<sup>10</sup> WHO, *Safer Water, Better Health* (2019 update).

<sup>11</sup> United Nations Environment Programme, *A Snapshot of the World’s Water Quality: Towards a Global Assessment* (2016).

<sup>12</sup> World Bank Group, *Quality Unknown: The Invisible Water Crisis* (2019).

<sup>13</sup> Javier Mateo-Sagasta, Sara Marjani Zadeh and Hugh Turrall (eds.), *More People, More Food, Worse Water? A Global Review of Water Pollution from Agriculture* (2018).

<sup>14</sup> UNICEF and WHO, *State of the World’s Sanitation: An Urgent Call to Transform Sanitation for Better Health, Environments, Economies and Societies*.

14. Water scarcity is the shortage of fresh water available to meet people's basic needs, fulfil their rights to water and sanitation and maintain healthy ecosystems. It can be caused by physically limited supplies, overuse by people and businesses, deteriorating water quality, poor planning, climate change, and mismanagement. Water shortages now affect more than 3 billion people, while 1.5 billion people are suffering severe water scarcity or even drought.<sup>15</sup> As many as 700 million people are at risk of being displaced by intense water scarcity by 2030.

15. Global water use is six times higher than it was 100 years ago and continues to increase by 1 per cent per year, twice as fast as the human population grows. More than half of the world's accessible freshwater flows are appropriated for human use. Agriculture accounts for roughly 70 per cent of freshwater use globally, industry 19 per cent and households 12 per cent.<sup>16</sup>

16. The diversity and abundance of life in freshwater ecosystems have suffered precipitous declines. Populations of mammals, amphibians, fish, birds and reptiles that depend on a freshwater habitat have crashed by an average of 84 per cent since 1970.<sup>17</sup> One in three freshwater species is at risk of extinction. Over the past century, 85 per cent of the world's wetlands have been destroyed.<sup>18</sup> Human pressures on aquatic ecosystems include water extraction, pollution, habitat destruction, flow modifications, fragmentation from dams and other infrastructure, over-exploitation of species and the introduction of invasive species.

17. Three quarters of all the natural disasters in the last twenty years were water-related, including floods, extreme weather events, landslides and droughts. Between 2001 and 2018, floods and droughts caused 166,000 deaths, affected 3 billion people and cost \$700 billion.<sup>19</sup> Human-caused disasters, such as tailings dam collapses, add to this terrible toll.

18. Inequality is a striking element of the global water crisis. While some people and communities struggle to survive on a few litres per day, businesses and people in wealthy States consume vast quantities of water. For example, the per capita water footprint in Switzerland is 4,200 litres per day, including water used to grow or make products imported from other States. A remarkable 82 per cent of the Swiss water footprint occurs outside Switzerland, including foods produced in water-scarce regions.<sup>20</sup>

19. Climate change is exacerbating the risks, consequences and inequities associated with water pollution, water scarcity and water-related disasters.<sup>21</sup> Increasing global temperatures inevitably impact the hydrological cycle. Extreme precipitation events are more intense and frequent, increasing flood risks. Heatwaves are occurring more often and lasting longer, exacerbating water scarcity. Sea level rise can cause saltwater intrusion, making groundwater in coastal aquifers unfit for domestic or agricultural use. Sanitation systems are vulnerable to flooding from storms and sea level rise or have less water for flushing and conveying sewage. Small island developing States are particularly vulnerable to climate change and water-related disasters, and many are experiencing increased water stress. Climate change is used to justify renewed interest in hydropower projects, despite their potentially adverse effects on human rights and ecosystem health.

20. Concerns have been raised about water wars – conflicts ignited by scarcity, allocation and pollution issues. To date, most disputes about water have been resolved peacefully. However, increasing human demands, decreasing availability, and the intensifying impacts of climate change increase the risk of violent conflict. All 15 of the world's most war-torn countries are facing moderate to severe drought.

<sup>15</sup> Food and Agriculture Organization of the United Nations (FAO), *The State of Food and Agriculture 2020: Overcoming Water Challenges in Agriculture*.

<sup>16</sup> UN-Water, *Sustainable Development Goal 6: Synthesis Report on Water and Sanitation – 2018*.

<sup>17</sup> World Wildlife Fund, *Living Planet Report 2020: Bending the Curve of Biodiversity Loss*.

<sup>18</sup> IPBES/7/10/Add.1: see <https://ipbes.net/events/ipbes-7-plenary>.

<sup>19</sup> UNESCO and UN-Water, *United Nations World Water Development Report 2020: Water and Climate Change*.

<sup>20</sup> Submission by Switzerland.

<sup>21</sup> UNESCO and UN-Water, *United Nations World Water Development Report 2020: Water and Climate Change*.

21. To summarize, the world faces a water crisis and it is getting worse. Human use of water, water pollution and the degradation of aquatic ecosystems continue to accelerate because of population growth, economic growth, the climate emergency, land-use change, extractivism, inefficient use of water, and weak planning, regulation and enforcement.

22. The Sustainable Development Goals represent society's ambitious effort to tackle the interconnected water, climate and biodiversity crises in a holistic, urgent and systemic way. The Goals envisage "a world of universal respect for human rights and human dignity".<sup>22</sup> However, the global water crisis undermines efforts to achieve the Goals, exacerbating poverty (see Goal 1), threatening food security (see Goal 2), jeopardizing human health (see Goal 3), worsening the decline of biodiversity (see Goals 13 and 14) and sabotaging the global economy. Safe and sufficient water is also connected to specific targets: including reducing waterborne diseases (see target 3.3), preventing water-related disasters (see target 11.5), and climate change adaptation (see target 13.2). As the High-level Panel on Water observed, "Water is the common currency which links nearly every Sustainable Development Goal, and it will be a critical determinant of success."<sup>23</sup>

23. The present report focuses on human rights and Sustainable Development Goal 6, which goes well beyond universal provision of safe drinking water, sanitation and hygiene. The targets for Goal 6 also address: improved water quality through reducing pollution, increased water-use efficiency and decreased scarcity, integrated water resources management, protecting and restoring water-related ecosystems, international cooperation and capacity-building, and public participation in water management.

24. A serious lack of financial, institutional and human capacity is constraining progress on Sustainable Development Goal 6. Over 80 per cent of States have insufficient financial resources to meet national water, sanitation and hygiene targets.<sup>24</sup> Laws, regulations, standards and policies, as well as their implementation and enforcement, are inadequate in many countries, including those where pressures on water are greatest.

### III. Impacts of the global water crisis on human rights

25. Water pollution, water scarcity and water-related disasters have major impacts on a wide range of human rights, including the rights to life, health, water, sanitation, food, a healthy environment, education, an adequate standard of living, development and culture, and on the rights of the child. The Committee on Economic, Social and Cultural Rights has observed that "water is indispensable for leading a life in human dignity".<sup>25</sup>

#### A. Right to life

26. Although water is essential to life, contaminated water and water scarcity can cause death. Nearly 2 million deaths could be prevented annually with safe and sufficient water.<sup>26</sup> This includes hundreds of thousands of preventable deaths of children aged 5 and under, mostly in low-income countries.

#### B. Right to health

27. Contaminated water and poor sanitation are linked to cholera, diarrhoea, dysentery, soil-transmitted helminth infections, hepatitis A and typhoid. In 2017, over 220 million people required treatment for schistosomiasis – a disease caused by parasitic worms, contracted through exposure to infested water.<sup>27</sup> Unsafe use of wastewater and sludge in

<sup>22</sup> General Assembly resolution 70/1.

<sup>23</sup> High-level Panel on Water, "Making every drop count", 14 March 2018, p. 15.

<sup>24</sup> WHO and UN-Water, *National Systems To Support Drinking-Water, Sanitation And Hygiene: Global Status Report 2019*.

<sup>25</sup> General comment No. 15 (2002) on the right to water.

<sup>26</sup> WHO, *Safer Water, Better Health* (2019 update).

<sup>27</sup> See [www.who.int/health-topics/schistosomiasis#tab=tab\\_1](http://www.who.int/health-topics/schistosomiasis#tab=tab_1).

agriculture causes foodborne illnesses. Waterborne illness caused by recreational activities afflicts hundreds of millions of people annually.

28. The Committee on Economic, Social and Cultural Rights has expressed concerns about waterborne diseases caused by pollution from industry, agriculture and sewage.<sup>28</sup> The Committee also criticized the effects of hydraulic fracturing for oil and gas (i.e. fracking) on water quality.<sup>29</sup> Polluted water is a significant source of exposure to endocrine-disrupting chemicals, which harm reproductive health.<sup>30</sup>

29. Lack of water security harms mental health, through psychological effects such as fear, victimization, low self-esteem, anxiety, shame, anger and depression. Girls whose mothers experience psychological symptoms such as depression related to water insecurity miss school more often.<sup>31</sup> Individuals who experience droughts and floods endure psychological distress, characterized by post-traumatic stress disorder symptoms, depression, and anxiety.

30. Another major health concern is antimicrobial resistance, which occurs when medicines no longer work effectively against targeted microbes (e.g. bacteria and viruses). Hundreds of millions of doses of antimicrobials are used annually for infections that could be prevented with better sanitation. Wastewater containing resistant bacteria spreads antimicrobial resistance. To safeguard both human and ecosystem health, antimicrobials must be used more sparingly.<sup>32</sup>

### C. Rights to water and sanitation

31. Fulfilling the right to water requires ensuring safe and sufficient water for personal and domestic use.<sup>33</sup> Pollution and pathogens can prevent water from being safe for human consumption. In 2019, the World Health Organization (WHO) warned that 2 billion people drank water contaminated by faeces on a daily basis.<sup>34</sup> Scarcity and water-related disasters such as floods can increase costs and impede access to adequate sanitation facilities. The lack of access to safe and sufficient water for household use is usually caused by poverty, inequality, and the failure of governments to prioritize water allocation for basic needs and human dignity, not by scarcity per se.

### D. Right to food

32. Safe and sufficient water is vital for realizing the right to food, particularly for poor and marginalized people engaged in subsistence or small-scale farming and fishing. As salinity in water and soil increases due to more intense droughts, storm surges and rising volumes of water extraction, agricultural yields fall, causing the world to lose enough food each year to feed 170 million people. Nearly 220,000 hectares of farmland in low-lying coastal areas of India and Bangladesh have been rendered unproductive due to salinity ingress in recent years.<sup>35</sup>

33. The increasing frequency and severity of droughts, attributed to climate change, present a major threat to the right to food. Water shortages related to reduced rainfall are particularly problematic for small-scale farmers who do not have access to water for

<sup>28</sup> See E/C.12/UZB/CO/2.

<sup>29</sup> See E/C.12/ARG/CO/4.

<sup>30</sup> A. Gonsioroski, V.E. Mourikes and J.A. Flaws, "Endocrine disruptors in water and their effects on the reproductive system", *International Journal of Molecular Sciences*, vol. 21, No. 6 (2020), p. 1929.

<sup>31</sup> C. E. Cooper-Vince et al., "Household water insecurity, missed schooling, and the mediating role of caregiver depression in rural Uganda", *Global Mental Health*, vol. 4 (August 2017).

<sup>32</sup> UNICEF and WHO, *State of the World's Sanitation: An Urgent Call to Transform Sanitation for Better Health, Environments, Economies and Societies*.

<sup>33</sup> See General Assembly resolution 64/292 and A/HRC/24/44.

<sup>34</sup> WHO, *Drinking water factsheet* (2019).

<sup>35</sup> United Nations Office for South-South Cooperation, "Water farming for climate-resilient agriculture and disaster preparedness in India and Bangladesh", *Good Practices in South-South and Triangular Cooperation for Sustainable Development* (September 2020), vol. 3.

irrigation. About 11 per cent of cropland and 14 per cent of pastureland experience recurring droughts, while more than 60 per cent of irrigated cropland is highly water-stressed. The Food and Agriculture Organization of the United Nations concludes that “water shortages and scarcity in agriculture must be addressed immediately and boldly if our pledge to commit to achieve the Sustainable Development Goals is to be taken seriously”.<sup>36</sup>

34. Flooding is a natural disaster, exacerbated by human activities, that can jeopardize the right to food. For example, floods can destroy crops, wash away topsoil, and submerge large areas of cultivable land. This threatens the livelihoods and food security of farmers and their families, who may face poverty, unemployment and migration.

## **E. Right to a safe, clean, healthy and sustainable environment**

35. The right to a safe, clean, healthy and sustainable environment is legally protected by more than 80 per cent of States through constitutions, legislation, court decisions and regional treaties.<sup>37</sup> Safe, sufficient water and healthy aquatic ecosystems are substantive elements of the right to a healthy environment, as recognized by regional tribunals, national laws and national jurisprudence. For example, constitutional recognition of the right to a healthy environment in Costa Rica was a catalyst for the development of stronger laws, regulations and policies to tackle water pollution, such as a law prohibiting open-pit mining, as well as court decisions requiring public and private actors to take actions to prevent violations of this right.<sup>38</sup>

36. The Inter-American Court of Human Rights has emphasized that “the right to a healthy environment, unlike other rights, protects the components of the environment, such as forests, rivers and seas”.<sup>39</sup> In 2020, the Inter-American Court ruled that indigenous peoples’ rights to a healthy environment and to water had been violated by illegal logging and cattle-raising, and ordered Argentina to prepare, within a maximum period of one year, a study establishing actions to be implemented for the conservation of water and to prevent and remedy its contamination.<sup>40</sup> The African Commission on Human and Peoples’ Rights, in a case involving water contamination by the oil industry, stated that the right to a healthy environment “requires the State to take reasonable and other measures to prevent pollution and ecological degradation”.<sup>41</sup> The European Court of Human Rights has ruled that water pollution can violate several human rights, including the right “to the enjoyment of a healthy and protected environment”.<sup>42</sup>

37. Many national courts have determined that the failure of States to take adequate action to prevent water pollution, ensure clean water and protect aquatic ecosystems can violate the right to a healthy environment. Two leading examples are decisions from the Supreme Court of Argentina and the Supreme Court of the Philippines. In both cases, initiated by concerned citizens, the courts employed independent scientific experts to inform their judgments, imposed extensive duties upon multiple government agencies, and established innovative measures to ensure compliance with their orders.

38. In response to a lawsuit asserting that chronic water pollution in Manila Bay violated the right to a healthy environment, the Supreme Court of the Philippines ordered 13 responsible agencies to implement the following actions: install and operate sewage treatment facilities, clean up hazardous and toxic wastes, prevent pollution and wastes from ships, develop adequate facilities and programmes for the proper disposal of solid waste, revitalize marine life by reintroducing indigenous species, require septic tank and sludge companies to use adequate treatment facilities, prevent illegal fishing, establish comprehensive environmental education programmes, and allocate a budget sufficient to

<sup>36</sup> FAO, *The State of Food and Agriculture 2020: Overcoming Water Challenges in Agriculture*, p. vi.

<sup>37</sup> A/HRC/43/53, annex II.

<sup>38</sup> Submission by Costa Rica.

<sup>39</sup> Inter-American Court of Human Rights, *Advisory Opinion OC-23/17*, 15 November 2017, para. 62.

<sup>40</sup> Inter-American Court of Human Rights, *Indigenous Communities of the Lhaka Honhat Association v. Argentina*, judgment of 6 February 2020.

<sup>41</sup> *Social and Economic Rights Action Centre v. Nigeria*, communication No. 155/96 (2001), para. 52.

<sup>42</sup> *Tătar v. Romania* (application No. 67021/01), 27 January 2009.

carry out the restoration plan. In its conclusion, the Court stated that State agencies “cannot escape their obligation to future generations of Filipinos to keep the waters of Manila Bay as clean and clear as humanly possible. Anything less would be a betrayal of the trust reposed in them.”<sup>43</sup>

39. In a similar case involving the highly contaminated Matanza-Riachuelo watershed in Buenos Aires, the Supreme Court of Argentina found that the right to a healthy environment was violated by water pollution, and issued a comprehensive ruling which identified three objectives: improved quality of life for inhabitants of the watershed, restoration of the environment, and prevention of future injury to human or ecosystem health. Accordingly, the Court ordered the following actions:

- (a) Inspections of all polluting enterprises and implementation of industrial wastewater treatment;
- (b) Closure of all illegal dumps, improvements to landfills, and clean-up of the riverbanks;
- (c) Improvements to the drinking-water, sewage treatment and stormwater infrastructure;
- (d) Development of a regional environmental health plan, including contingencies for emergencies;
- (e) Supervision, by the federal Auditor-General, of the budget allocation for implementing the clean-up plan;
- (f) Forming a committee of non-governmental organizations involved in the litigation to monitor compliance with the Court’s decision;
- (g) Ongoing judicial oversight of the implementation of the plan.<sup>44</sup>

40. These cases illustrate the fact that courts will require governments to take specific actions in order to protect the right to a healthy environment from the deleterious effects of long-term water pollution. Although implementation in both cases has faced challenges, substantial improvements have been made, and courts continue to supervise progress.<sup>45</sup>

41. Other prominent court decisions based on violations of the right to a healthy environment have involved water pollution caused by mining (in Chile, Colombia, Peru, South Africa, Turkey, and Montana in the United States of America); pollution caused by industrial effluent and inadequately treated wastewater (in Argentina, Greece and India); damage to wetlands from proposed development (Mexico); and hydroelectric projects in sensitive ecosystems (in Brazil, Ecuador and Finland).<sup>46</sup>

42. In a recent decision involving water pollution, the Supreme Court of Mexico found that the Government had not taken all possible measures, to the maximum of available resources, to prevent and control processes of water degradation, to carry out monitoring to ensure that the wastewater discharges complied with current regulations in quantity and quality, or to carry out the necessary corrective actions to clean up the water. The Court concluded that it was indispensable that the State monitor compliance with environmental norms and, if necessary, sanction or limit the actions of private individuals, otherwise the human right to a healthy environment would be void of content.<sup>47</sup>

<sup>43</sup> *Concerned Residents of Manila Bay et al. v. Metropolitan Manila Development Authority et al.* (2008), General Register Nos. 171947-48, Supreme Court.

<sup>44</sup> *Beatriz Silvia Mendoza and others v. National Government and others*, Supreme Court of Justice, File M. 1569, 8 July 2008.

<sup>45</sup> Andrés Napoli, “Riachuelo: a 10 años del fallo de la Corte Suprema de Justicia, aún mucho por hacer”, *Informe Ambiental Anual 2019*.

<sup>46</sup> For example, Supreme Court of Colombia, *Demanda Generaciones Futuras v. Minambiente*, STC No. 4360-2018, 5 April 2018; and Supreme Court of Mexico, First Chamber, Amparo en Revisión No. 307/2016, 14 November 2018. Other cases are discussed in David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (2012).

<sup>47</sup> Amparo en Revisión No. 641-2017, Supreme Court of Justice, 18 October 2017.

## F. Rights of children

43. Every day, more than 700 children under the age of 5 die from water- and sanitation-related diseases.<sup>48</sup> By 2040, almost 600 million children will live in regions with extremely limited water resources.<sup>49</sup> Water-related disasters threaten the physical and mental health of youth. Globally, over 500 million children live in extremely high-risk flood zones; 160 million live in areas of high or extremely high drought severity, and 115 million are at high risk from tropical cyclones.<sup>50</sup>

44. The Committee on the Rights of the Child has warned States about the dangers posed by water pollution for children's health, mentioning specifically agrochemicals, illegal mining and inadequate sewage treatment.<sup>51</sup> Children are particularly susceptible to diseases related to water pollution. Early exposure of children to nitrates in water contaminated by agricultural fertilizer run-off stunts their growth and affects brain development, impacting their health in ways that have lifelong consequences. Roundworm, whipworm and hookworm diseases occur through exposure to soil contaminated with faeces, and can affect the nutritional status, growth and cognitive development of children.

45. It is imperative to listen to children's voices. Children submitted the following comments for the present report: "Make sure that the global water situation doesn't get worse, because every child has the right to grow up with access to clean water"; "Children should have the right to rivers with sufficient water, free of litter or harmful substances"; "Ensure clean water for the entire population, especially the most needy"; "Stop pumping sewage into the sea"; and "I want world leaders to take immediate action to save the planet – pass laws to ensure the oceans are clean, pollution is reduced, animals are protected, and life is sustained".<sup>52</sup>

## G. Vulnerable populations

46. States should give special attention to other vulnerable or marginalized groups whose rights may be jeopardized by water pollution and scarcity, including women, indigenous peoples, minority groups, refugees, persons with disabilities, older persons, and people living in poverty. These groups have fewer resources to deal with water pollution and scarcity and tend to be seriously affected. Persons with disabilities and older persons may have less resilient health, increasing the risk of illness or premature mortality caused by contaminated water. Poverty, discrimination and vulnerability are closely related and often intersect. The Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination have highlighted the importance of protecting vulnerable groups from water pollution from mining, agrochemicals, and inadequate wastewater treatment.<sup>53</sup> Special Rapporteurs also have expressed concerns about the impacts of water pollution on vulnerable populations.<sup>54</sup>

47. Concerns about the human rights implications of water scarcity have been raised by treaty bodies and special procedures.<sup>55</sup> The Committee on Economic, Social and Cultural Rights recognized that a regional water crisis caused increased prevalence of diseases, food shortages, and migration, with wide-ranging implications for human rights.<sup>56</sup> The Committee

<sup>48</sup> WHO, *Safer Water, Better Health* (2019 update).

<sup>49</sup> UNICEF, *Thirsting for a Future: Water and Children in a Changing Climate* (2017).

<sup>50</sup> UNICEF, *Unless We Act Now: The Impact of Climate Change on Children* (2015).

<sup>51</sup> See CRC/C/PHL/CO/3-4, CRC/C/BRA/CO/2-4, CRC/C/ISR/CO/2-4, CRC/PRK/CO/4 and CRC/C/GEO/CO/3.

<sup>52</sup> Submission from Children's Environmental Rights Initiative.

<sup>53</sup> See CEDAW/C/SUR/CO/4-6, CEDAW/C/GUY/CO/9, E/C.12/URY/CO/5, E/C.12/TGO/CO/1, E/C.12/MDA/CO/2, E/C.12/ROU/CO/3-5, E/C.12/MNG/CO/4, E/C.12/VNM/CO/2-4 and CERD/C/NER/CO/15-21.

<sup>54</sup> See A/HRC/28/64/Add.2, A/HRC/43/53/Add.1, A/HRC/39/48/Add.1 and A/HRC/15/22/Add.2.

<sup>55</sup> See E/C.12/ISR/CO/4, CERD/C/SLV/CO/18-19, CRC/C/GTM/CO/3-4, CEDAW/C/HND/CO/7-8, CEDAW/C/PRY/CO/6 and CEDAW/C/PER/CO/7-8.

<sup>56</sup> See E/C.12/IRQ/CO/4.

on the Elimination of Discrimination against Women expressed concerns about the disproportionate impacts on women of water scarcity caused or exacerbated by industrial agriculture, hydroelectric projects and climate change, as well as about the dangers faced by women serving as environmental human rights defenders to protect water.<sup>57</sup> The Independent Expert on human rights and international solidarity expressed concerns about increasingly frequent droughts, linked to climate change, exacerbating water scarcity and jeopardizing food production.<sup>58</sup>

48. Women are often primarily responsible for providing, using and managing household water, in both rural and urban settings. Without safe, sufficient water (as well as adequate sanitation and hygiene facilities), it is harder for women and girls to lead healthy, dignified and productive lives. Girls and women from minority ethnic groups may suffer multiple forms of exclusion and oppression. Women also suffer disproportionately from the impacts of climate-related disasters, for example flooding, as they have to travel greater distances to secure water, heightening their risks of being subjected to violence. They spend more time caring for people afflicted by waterborne diseases. Yet women often are less involved in water planning, policymaking and decision-making. These inequalities based on gender create vast divides between men and women in their ability to access, manage and benefit from water, sanitation and hygiene.

49. Nevertheless, women can be key actors in changing the way water is used, allocated and managed, despite economic, legal, institutional and cultural barriers. Investments in safe, sufficient water and adequate sanitation increase educational opportunities for girls and facilitate access to employment opportunities for women.

50. In many countries, indigenous peoples, people of African descent and local communities have borne an unfair burden of water pollution related to industrial activities. The Committee on the Elimination of Racial Discrimination has reported on the devastating impacts of water pollution on indigenous peoples.<sup>59</sup> The Special Rapporteur on the rights of indigenous peoples has called upon States to “recognize and respect community water management systems and guarantee access to the resource. All necessary measures should be taken to prevent or reverse the serious impact of water pollution on the well-being and rights of indigenous peoples to food, health and a healthy environment.”<sup>60</sup> States have often failed to recognize the land and water rights and tenures that are needed by these communities in order to secure their human rights.<sup>61</sup> Community-based water rights receive less attention than land rights, customary law and traditional knowledge are undervalued, and stewardship responsibilities are not recognized by States. In Australia, the cultural rights of indigenous peoples are being devastated by climate change and by water infrastructure such as dams and levees that have destroyed sacred sites.<sup>62</sup>

51. Achieving Sustainable Development Goal 6 will be challenging for States grappling with water scarcity, especially low-income States and small island States. Many of these States face naturally limited water supplies, growing populations, increasing urbanization, inadequate drinking water and wastewater infrastructure, and insufficient financial, human and institutional capacity. These challenges are exacerbated by extreme weather events, droughts and floods, which climate change is making more intense.

<sup>57</sup> See CEDAW/C/HND/CO/7-8.

<sup>58</sup> See A/HRC/38/40/Add.1.

<sup>59</sup> See CERD/C/CAN/CO/21-23 and CERD/C/GTM/CO/12-13.

<sup>60</sup> See A/HRC/42/37/Add.1.

<sup>61</sup> Rights and Resources Initiative and Environmental Law Institute, *Whose Water? A Comparative Analysis of National Laws and Regulations Recognizing Indigenous Peoples', Afrodescendants' and Local Communities' Water Tenure* (August 2020).

<sup>62</sup> Submission from Dharriwaa Elders Group.

## IV. Human rights obligations relating to clean, safe and sufficient water

52. The human rights obligations related to water pollution and scarcity have been described by the Human Rights Council, special procedures, and treaty bodies. These experts have reached two common conclusions. First, water pollution and scarcity threaten a broad range of human rights, including the rights to water, sanitation and a healthy environment. Second, as a result, States have extensive human rights obligations. These are legally enforceable obligations, not policy options or mere aspirations, reflecting existing commitments pursuant to international human rights law.<sup>63</sup> Experts observe that “the human rights system offers opportunities to streamline global and national water governance, and to provide coherence, both in terms of environmental sustainability and in terms of human development”.<sup>64</sup>

### A. State obligations

53. States should apply a rights-based approach to all aspects of allocating, using, conserving, protecting and restoring water. Applying a rights-based approach clarifies the obligations of States and businesses, emphasizes the need for capacity-building, catalyses ambitious action, prioritizes improving conditions for the poorest and most vulnerable, and empowers people to become involved in designing and implementing solutions.

54. The framework principles on human rights and the environment clarify three categories of State obligations: procedural obligations, substantive obligations, and special obligations towards those in vulnerable situations.<sup>65</sup> States have procedural obligations to:

(a) Incorporate water in the educational curriculum at all levels and provide the public with accessible, affordable information about the intrinsic value of water, the importance of safe, sufficient water and healthy freshwater ecosystems, and the causes and consequences of water pollution, water scarcity and water-related disasters;

(b) Ensure an inclusive, equitable and gender-based approach to public participation in all planning and actions related to the allocation, conservation and sustainable use of water;

(c) Enable affordable and timely access to justice and effective remedies for all, to hold States and businesses accountable for fulfilling their obligations and responsibilities related to safe, sufficient water and healthy freshwater ecosystems;

(d) Assess the potential environmental, social, health, cultural and human rights impacts of all plans, policies, projects and proposals that could pollute, waste, damage, destroy or diminish water and freshwater ecosystems;<sup>66</sup>

(e) Integrate gender equality into all plans and actions to allocate, use, conserve, protect, restore and equitably share the benefits of safe, sufficient water and healthy freshwater ecosystems, empowering women to play leadership roles in water governance;

(f) Respect the rights of indigenous peoples, local communities, Afrodescendants and peasants in all actions related to water and healthy aquatic ecosystems, including legal recognition of traditional knowledge, customary laws, collective ownership, and indigenous peoples’ right to free, prior and informed consent;

(g) Provide strong protection for environmental human rights defenders working on water-related issues. States must vigilantly protect defenders from intimidation, criminalization and violence, diligently investigate, prosecute and punish the perpetrators of

<sup>63</sup> See A/HRC/25/53.

<sup>64</sup> Cap-Net and United Nations Development Programme, *Climate Change Adaptation and Integrated Water Resources Management*, p. 23.

<sup>65</sup> A/HRC/37/59, annex.

<sup>66</sup> See A/74/197.

those crimes, and address the root causes of conflict generated by environmental degradation or threats of environmental degradation.<sup>67</sup>

55. With respect to substantive obligations, States must not violate the right to a healthy environment or other human rights related to water through their own actions, must protect those rights from being violated by third parties, in particular businesses, and must establish, implement and enforce laws, policies and programmes to fulfil these rights.<sup>68</sup>

56. In its general comment No. 15 (2002) on the right to water, the Committee on Economic, Social and Cultural Rights identified substantive obligations related to preventing water pollution and scarcity. The Committee wrote that States must take steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions, ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes and monitor and combat situations where aquatic ecosystems serve as a habitat for vectors of diseases.<sup>69</sup> The Committee also wrote that States must refrain from unlawfully diminishing or polluting water and must adopt necessary and effective legislative and other measures to restrain third parties from polluting and inequitably extracting water.<sup>70</sup> Examples of violations of State obligations include “pollution and diminution of water resources affecting human health”, “failure to enact or enforce laws to prevent the contamination and inequitable extraction of water”, and “failure to adopt or implement a national water policy”.<sup>71</sup>

57. The Committee summarized the substantive obligations of States to ensure safe, sufficient water and healthy freshwater ecosystems:

States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies and programmes may include: (a) reducing depletion of water resources through unsustainable extraction, diversion and damming; (b) reducing and eliminating contamination of watersheds and water-related ecosystems by substances such as radiation, harmful chemicals and human excreta; (c) monitoring water reserves; (d) ensuring that proposed developments do not interfere with access to adequate water; (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity; (f) increasing the efficient use of water by end users; (g) reducing water wastage in its distribution; (h) response mechanisms for emergency situations; and (i) establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.<sup>72</sup>

58. During the universal periodic review, States have been urged to develop comprehensive strategies to reduce water pollution.<sup>73</sup> In the context of safe and sufficient water, a rights-based approach demands “that States prioritize addressing the most urgent and serious impacts on human rights, whether they stem from domestic, industrial or agricultural water contamination”.<sup>74</sup> States have particular obligations to indigenous peoples, local communities, peasants, women, children, minorities, persons with disabilities, older persons and other potentially disadvantaged or vulnerable communities.

59. Sixty per cent of the world’s fresh water is in ecosystems shared by two or more States. States have an obligation to cooperate internationally to ensure that transboundary rivers, lakes and aquifers are managed in an equitable and sustainable manner, by sharing information, transferring technologies, building capacity, increasing research, honouring

<sup>67</sup> See A/HRC/25/55 and A/71/281.

<sup>68</sup> See E/1991/23-E/C.12/1990/8.

<sup>69</sup> Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water, para. 8.

<sup>70</sup> *Ibid.*, paras. 21 and 23.

<sup>71</sup> *Ibid.*, para. 44.

<sup>72</sup> *Ibid.*, para. 28.

<sup>73</sup> See A/HRC/29/17, A/HRC/33/4 and A/HRC/40/6.

<sup>74</sup> See A/68/264.

international commitments and ensuring just and sustainable outcomes for vulnerable and marginalized communities. States are obliged to ensure that activities within their jurisdiction or control do not cause serious harm to the environment, including waterbodies, or to peoples of other States or to areas beyond the limits of national jurisdiction.<sup>75</sup>

60. Wealthy States must contribute more towards the costs of securing safe, sufficient water and healthy aquatic ecosystems in low-income countries. To avoid exacerbating debt problems, water-related financial assistance to low-income countries should consist of grants, not loans. The global amount of official development assistance dedicated to drinking water, sanitation, wastewater treatment, water conservation and management, agricultural water use and flood protection in 2018 was only \$9.4 billion, far below what is urgently needed. These funds must be increased, targeted, effective and sustainable.<sup>76</sup>

61. Human rights demand that States prioritize action to improve the lives and livelihoods of the most disadvantaged people. There are seven key steps, detailed below, that States must take to apply a rights-based approach to water governance: (a) prepare a state-of-the-water assessment that includes information on water quality, sources of pollution, water supply, users of water, related land-use activities, and impacts on human rights, human health and ecosystem health, with a particular focus on vulnerable and marginalized groups; (b) conduct a legal mapping initiative to ensure that the human rights to water, sanitation and a healthy environment are incorporated in water and wastewater laws, regulations, standards and policies, and ensure that these instruments prioritize human rights in allocation decisions and identify and correct gaps and weaknesses; (c) develop or revise water-related plans to incorporate a rights-based approach; (d) implement water-related plans and enforce water-related laws, regulations and standards; and (e) evaluate progress and, if necessary, strengthen actions to ensure that human rights are fulfilled.<sup>77</sup> Two additional actions must be taken at every step of the process: (f) building human, financial and institutional capacity; and (g) informing and engaging the public, particularly women and vulnerable and marginalized groups.

## 1. State-of-the-water assessment

62. States must monitor water quality, water quantity, water distribution, access to safely managed water and sanitation, and risks. States also require information on the main users and polluters of water (agricultural, industrial, commercial and institutional, and households). This information should be synthesized into a public state-of-the-water assessment.

63. Monitoring is a prerequisite to fulfilling a State's obligation to provide information to the public and is essential to effective and equitable policymaking. For example, analysis of wastewater sources and their relative health and environmental risks enables States to identify pollution hotspots and prioritize enforcement actions and investments in pollution control. Monitoring is also important for assessing the status of groundwater and aquatic ecosystems and the need for protection or restoration. Unfortunately, fewer than half of States have comparable data available on progress towards the targets under Sustainable Development Goal 6.<sup>78</sup>

64. The use of Earth-observation satellites, citizen science, private sector data, and new technologies (e.g. remote sensors), can address data gaps and improve information quality. States can benefit from several United Nations-led monitoring mechanisms for Sustainable Development Goal 6: the Global Expanded Water Monitoring Initiative, the Joint Monitoring Programme for Water Supply, Sanitation and Hygiene and the Global Analysis and Assessment of Sanitation and Drinking Water.

<sup>75</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010; and Inter-American Court of Human Rights, Advisory Opinion OC-23/17, 15 November 2017, para. 101.

<sup>76</sup> WaterAid, "Raising the high-water mark for WASH aid" (2020).

<sup>77</sup> Cap-Net et al., *Human Rights-based Approach to Integrated Water Resources Management: Training Manual and Facilitator's Guide* (2017).

<sup>78</sup> UN-Water, *Sustainable Development Goal 6: Synthesis Report on Water and Sanitation – 2018*.

## 2. Legal mapping and strengthening initiative

65. A legal mapping and strengthening initiative reviews current water- and wastewater-related laws, regulations, standards and policies in order to identify gaps and weaknesses and to ensure that a rights-based approach is always included. Commitments related to international treaties (e.g. the United Nations water conventions, the Ramsar Convention) are relevant. All States should incorporate the right to a healthy environment, as well as the rights to water and sanitation, in national constitutions and legislation. To effectively limit water pollution, ameliorate water scarcity and protect freshwater ecosystems, regulations must target all sectors and all regions, prioritizing the most urgent challenges, which often affect vulnerable and marginalized populations.

66. States must “establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights”.<sup>79</sup> All States should enact and enforce national standards for drinking water quality and wastewater effluent quality, while banning particularly hazardous substances. Regulations should also set standards for improving the collection, treatment and reuse of wastewater, agricultural run-off and urban run-off, and improving sludge management. National standards must take into consideration the best interests of children.<sup>80</sup> States should follow the United Nations Environment Programme Framework for Freshwater Ecosystem Management, and guidance from WHO on standards for drinking water quality and safe use of wastewater, excreta and greywater. Clear standards increase accountability. While the majority of States have established standards for drinking water quality, in many States water quality does not meet those standards, pointing to implementation problems.<sup>81</sup>

67. Laws and policies should require application of the precautionary, prevention, polluter pays, sustainable development, equity, non-regression and intergenerational solidarity principles in all decisions involving potential impacts on water quality, water quantity and the health of freshwater ecosystems.<sup>82</sup>

68. In laws and policies, States must prioritize water for personal and domestic uses (to fulfil the rights to water and sanitation) and for small-scale agriculture (to fulfil the right to food).<sup>83</sup> In order to fulfil the right to a healthy environment, States must also legislate and prioritize environmental flows, allocating safe, sufficient and timely flows of water to freshwater ecosystems.

69. A final legislative imperative is recognizing the rights of indigenous peoples, Afrodescendants, peasants, local communities and women to use, protect and govern water. These rights, associated rights related to land titles and tenures, customary laws, customary governance systems, and the value of traditional ecological knowledge should be explicitly incorporated in legislation.<sup>84</sup>

## 3. Develop or revise water plans to incorporate a rights-based approach

70. It is imperative that human rights be placed at the centre of all water- and wastewater-related plans. This is the best way to ensure that marginalized and vulnerable groups are involved in planning and decision-making, and that their rights are prioritized in all decisions related to water use and conservation. For many practitioners in the water sector, particularly those with a technical background, the need to integrate human rights into processes and plans will be new and unfamiliar. Equity training is essential.<sup>85</sup>

<sup>79</sup> A/HRC/37/59, annex, framework principle 11.

<sup>80</sup> Convention on the Rights of the Child, art. 3 (1).

<sup>81</sup> WHO, *A Global Overview of National Regulations and Standards for Drinking-Water Quality* (2018).

<sup>82</sup> Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 62. See also A/HRC/12/24/Add.1.

<sup>83</sup> Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water.

<sup>84</sup> Rights and Resources Initiative and Environmental Law Institute, *Whose Water? A Comparative Analysis of National Laws and Regulations Recognizing Indigenous Peoples', Afrodescendants' and Local Communities' Water Tenure*.

<sup>85</sup> WHO, *A Guide to Equitable Water Safety Planning: Ensuring No One Is Left Behind* (2019).

71. Among the plans that should incorporate a rights-based approach are water safety plans, integrated water resources management, and disaster risk reduction plans. Implementing a rights-based approach offers the added benefit of integrating these often siloed plans. Water safety plans apply a proactive, comprehensive risk assessment and risk management approach to ensure the safety and security of drinking-water supplies.<sup>86</sup> Historically, however, they have not applied a rights-based approach. This must change.<sup>87</sup> Water safety plans increase societal resilience by addressing the anticipated impacts of climate change, the potential for flood damage, the sufficiency of source water and alternative supplies, the availability and reliability of power supplies, and emergency plans.<sup>88</sup> Fewer than half of States currently have water safety plans.<sup>89</sup>

72. Integrated water resources management, a key aspect of Sustainable Development Goal 6, is a process that promotes the coordinated development and management of aquatic and terrestrial ecosystems in order to maximize economic and social welfare in an equitable manner without compromising ecosystem sustainability. Incorporating human rights into integrated water resources management will ensure that decisions about water allocation prioritize human rights. As the United Nations Development Programme recently noted, “integrated water resources management and human rights are interconnected. Integrated water resources management is a cornerstone of water governance, and water governance is, in turn, essential for the realization of human rights.”<sup>90</sup>

73. The Sendai Framework for Disaster Risk Reduction includes the following priority areas: understanding disaster risks, strengthening disaster risk governance to manage risks, investing in disaster risk reduction for resilience, and enhancing disaster preparedness for effective responses to enable building back better in recovery, rehabilitation and reconstruction. Because so many disasters involve water, it is essential to increase the resilience of water infrastructure and aquatic ecosystems. The Intergovernmental Panel on Climate Change defines resilience as “the capacity of social, economic and environmental systems to cope with a hazardous event or trend or disturbance, responding or reorganizing in ways that maintain their essential function, identity and structure while also maintaining the capacity for adaptation, learning and transformation”.<sup>91</sup>

#### 4. Implement water-related plans and enforce laws, regulations and standards

74. Implementation is a major challenge. Most States have laws and policies that are intended to achieve safe and sufficient water but experience a large gap between words on paper and actions on the ground. Environmental laws, regulations and standards are useless if they are not implemented and enforced. States must ensure the effective enforcement of their environmental standards against public and private actors.<sup>92</sup> Sufficient human and financial resources must be allocated to government agencies responsible for enforcing water and wastewater laws, regulations and standards.

75. The principle of progressive realization acknowledges that while the right to a healthy environment may not be fulfilled immediately, States are obligated to move as expeditiously and effectively as possible towards the goal of full realization, applying the maximum available resources. Some obligations, such as non-discrimination and non-regression, are immediate.

76. Accountability mechanisms are essential. States must ensure that people have access to remedies, through judicial or similar processes, when their right to a healthy environment, including safe, sufficient water and healthy freshwater ecosystems, is being threatened or

<sup>86</sup> WHO and International Water Association, *Water Safety Plan Manual* (2009).

<sup>87</sup> WHO, *A Guide to Equitable Water Safety Planning: Ensuring No One Is Left Behind*.

<sup>88</sup> WHO, *Climate-resilient Water Safety Plans: Managing Health Risks Associated with Climate Variability and Change* (2017).

<sup>89</sup> WHO, *Global Status Report on Water Safety Plans: A Review of Proactive Risk Assessment and Risk Management Practices to Ensure the Safety of Drinking Water* (2017).

<sup>90</sup> Cap-Net and United Nations Development Programme, *Climate Change Adaptation and Integrated Water Resources Management*, p. 23.

<sup>91</sup> Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C* (2018).

<sup>92</sup> A/HRC/37/59, annex, framework principle 12.

violated or when other human rights obligations related to water are not being fulfilled. In many States, efforts to improve the environmental rule of law (e.g. strengthening institutions, reducing corruption) are needed to enable effective implementation and enforcement.

## 5. Evaluate progress

77. An essential step towards ensuring safe, sufficient water and healthy freshwater ecosystems is to evaluate progress (or the lack thereof) on a regular basis and revise laws, regulations, plans and policies accordingly. A particular focus should be on the extent to which conditions are improving for vulnerable and marginalized populations, which requires directly engaging them in the evaluation process.

## 6. Build capacity

78. The lack of human, institutional and financial capacity is a major reason why the world is not on track to achieve Sustainable Development Goal 6 by 2030. It is estimated that achieving the safe drinking water and sanitation goals would cost \$114 billion per year until 2030.<sup>93</sup> This sounds like a large sum, but is a drop in the bucket compared to the size of the global economy. The cost of achieving the broader Goal 6 targets will be substantially larger. However, it is essential to emphasize that investments in water produce major net benefits, through reduced health-care costs, higher labour productivity and higher labour participation. WHO estimates \$4 to \$5 in benefits for every dollar invested in water.<sup>94</sup> The world needs to triple its investments in water and sanitation in order to meet Goal 6 by 2030.<sup>95</sup> Subsidies need to be smart, targeted and effectively implemented, prioritizing services for poor and marginalized communities.

79. States must ensure that responsible agencies and local authorities have the necessary financial, human and other resources to fulfil their duties effectively. Institutional development and capacity-building are essential to ensure that laws and policies can be implemented and enforced. Agencies managing activities that potentially use, pollute or harm water systems must be sufficiently independent from businesses to avoid bias, regulatory capture, or interference. Empowering indigenous peoples, Afrodescendants, peasants and local communities to play key roles in water governance is an important element of a rights-based approach.

## 7. Inform, engage and empower the public

80. Education is vital to empowering all persons to be responsible stewards of water, and to developing a strong ethic towards this irreplaceable, life-giving substance. States must take steps to ensure inclusive and accessible communication with people who speak different languages, lack television, radio or Internet access, have lower literacy levels or have disabilities. A rights-based approach prioritizes engaging and empowering potentially marginalized and vulnerable populations so they can play an active role in policymaking and decision-making about water. Dedicated investments in women's empowerment are vital, as evidence shows that involving women in water projects makes the projects more sustainable, more effective and up to seven times as efficient.<sup>96</sup>

## B. Responsibilities of businesses

81. Businesses are a major contributor to water pollution, water overuse, and degradation of freshwater ecosystems, through deforestation, the damming of rivers, the extracting, transporting and burning of fossil fuels, industrial agriculture, intensive livestock operations, industrial fisheries, the fashion and textile industries, large-scale mining, and the commodification of water and nature. Businesses have outsourced many activities that pollute, overuse water and damage freshwater ecosystems from high-income nations to low-

<sup>93</sup> G. Hutton and M. Varughese, *The Costs of Meeting the 2030 Sustainable Development Goal Targets on Drinking Water, Sanitation, and Hygiene* (World Bank Group, 2016).

<sup>94</sup> See [www.who.int/water\\_sanitation\\_health/monitoring/economics/en/](http://www.who.int/water_sanitation_health/monitoring/economics/en/).

<sup>95</sup> See [www.unwater.org/water-facts/financing/](http://www.unwater.org/water-facts/financing/).

<sup>96</sup> See [www.watergovernance.org/focus-area-post/gender/](http://www.watergovernance.org/focus-area-post/gender/).

income nations, exploiting environmental and human rights standards that are lower or not enforced.

82. Businesses must adopt human rights policies, conduct human rights due diligence, establish transparent and effective grievance mechanisms, remedy human rights violations for which they are directly responsible, and work to influence other actors to respect human rights where relationships of leverage exist. All businesses should comply with the Guiding Principles on Business and Human Rights as they apply to activities carried out by the business, its subsidiaries or its supply chains. Businesses should prioritize respect for the rights of indigenous peoples, local communities and peasants and avoid projects or activities that could jeopardize human rights related to safe, sufficient water and the health of freshwater ecosystems.

83. Businesses should reduce water pollution, water use, and damage to freshwater ecosystems from their own activities, subsidiaries and suppliers, reduce use of and adverse impacts on water from the use of their products and services, and publicly disclose their use of and adverse impacts on water. In addition, businesses should support, rather than oppose, laws and policies intended to fulfil human rights and to effectively conserve, protect, restore and ensure the sustainable use of water and freshwater ecosystems.

## V. Good practices

84. There are countless examples of good practices in making progress towards safe, sufficient water and healthy freshwater ecosystems, although implementation gaps are ubiquitous. At the international level, there are global treaties such as the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (and the associated Protocol on Water and Health) and the Convention on the Law of the Non-navigational Uses of International Watercourses. There are regional agreements for transboundary cooperation (e.g. the Boundary Waters Treaty, between Canada and the United States of America; the Guarani Aquifer Agreement, of 2010, involving Argentina, Brazil, Paraguay and Uruguay; and the agreement for the management of the Stampriet Transboundary Aquifer System reached by Botswana, Namibia and South Africa). The Water Framework Directive, of the European Union, requires all European surface water and groundwater to achieve “good ecological status”. A water education curriculum focused on Africa has been developed by the United Nations Educational, Scientific and Cultural Organization (UNESCO).

85. At the national level, good practices include constitutional protection for water (e.g. in Brazil, Croatia, Ecuador, Egypt, Slovenia and Uruguay), strong laws (e.g. the National Water Act, in South Africa), policies that empower women (e.g. the Rural Water Supply Policy, in Nepal), innovative approaches to conserving water and recycling wastewater (e.g. in Singapore), and legal developments that recognize the rights of rivers, lakes and watersheds (in Bangladesh, the Plurinational State of Bolivia, Colombia, Ecuador, India and New Zealand). Details of these and other good practices are reported separately.<sup>97</sup>

## VI. Conclusions and recommendations

**86. Water is life, and yet pollution and scarcity are worsening. Water-related disasters are increasingly frequent and severe. Freshwater ecosystems are rapidly deteriorating. Given the devastating impacts of the global water crisis on people’s lives, health and human rights, remedial actions must be taken rapidly and systematically, with priority placed on improving conditions for the most vulnerable. Fulfilling the rights to water, sanitation and a healthy environment is essential for achieving Sustainable Development Goal 6 and other Sustainable Development Goals, including those on ending poverty, healthy lives for all, sustainable cities, flourishing biodiversity, and effective action to address climate change. Yet States are not on track to meet Goal 6. According to the Secretary-General of the United Nations, Antonio Guterres, “If we**

<sup>97</sup> See [www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthyEcosystems.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthyEcosystems.aspx).

remain off track to deliver on Sustainable Development Goal 6 then we jeopardize the entire 2030 Agenda for Sustainable Development.”<sup>98</sup>

87. Water pollution, water scarcity, damage to freshwater ecosystems and adverse effects from water-related disasters are preventable problems. The solutions – rights-based water and wastewater laws, standards, and policies, capacity-building programmes, increased investments, improved technologies, and accountability mechanisms – are known. Investment in sustainable water governance and infrastructure must be scaled up substantially. According to the Organization for Economic Cooperation and Development, transformation to a water-secure world by 2030 requires additional annual investments of up to \$500 billion.<sup>99</sup> However, the benefits of safe, sufficient water and healthy aquatic ecosystems for all of humanity are incalculable. Making the required investments is an obligation, not an option, in order to fulfil the human rights of present and future generations.

88. In order to respect, protect and fulfil water-related aspects of the right to a healthy environment, States must implement the seven steps of rights-based water governance outlined in paragraphs 61–80 above (capacity-building, public engagement and empowerment, monitoring, legal mapping and strengthening, development of rights-based plans, implementation and evaluation).

89. The right to a healthy environment requires States to prevent water pollution and depletion, prevent or mitigate water-related disasters and protect or restore aquatic ecosystems. As part of implementing the rights-based approach to ensuring safe, sufficient water and healthy aquatic ecosystems, States should take the following actions:

#### International actions

(a) Support United Nations resolutions recognizing the right to a safe, clean, healthy and sustainable environment;

(b) Increase transboundary cooperation by joining the United Nations water conventions (the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the Convention on the Law of the Non-navigational Uses of International Watercourses) and creating transboundary protected areas;

(c) Increase finance, capacity-building and technology transfer through higher levels of official development assistance, with increased focus on effective, rights-based water governance;

(d) Accelerate implementation of treaties that address water pollution, such as the Minamata Convention on Mercury and the Stockholm Convention on Persistent Organic Pollutants (including the addition to the latter treaty of new substances to be controlled, e.g. a group of toxic chemicals called per- and polyfluoroalkyl substances, or PFAS, that are contaminating water across the world);<sup>100</sup>

(e) Complete negotiations for a new United Nations treaty on businesses and human rights that imposes mandatory obligations on businesses to respect human rights, to conduct human rights due diligence and to ensure that victims have access to justice and effective remedies;

(f) Negotiate a comprehensive new treaty to deal with plastic waste, rooted in the principles of waste reduction (e.g. banning non-essential single-use plastics), polluter pays, precaution, and extended producer responsibility;

<sup>98</sup> UN-Water, *Sustainable Development Goal 6: Synthesis Report on Water and Sanitation – 2018*, p. 5.

<sup>99</sup> C.W. Sadoff et al., *Securing Water, Sustaining Growth: Report of the GWP-OECD Task Force on Water Security and Sustainable Growth* (2015).

<sup>100</sup> The European Union recently committed itself to phasing out the use of PFAS. See <https://ec.europa.eu/environment/pdf/chemicals/2020/10/Strategy.pdf>.

(g) Increase accountability by ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;

#### **Actions to maintain or improve water quality**

(h) Apply the waste management hierarchy to wastewater (prevent, reduce, reuse, recover, recycle), as recycling, reusing and recovering what was previously considered waste can alleviate water scarcity and provide many social, economic and environmental benefits;<sup>101</sup>

(i) Accelerate efforts to shift to a circular economy – which includes the safe reuse and recycling of water and wastewater, and redesigning products and processes to phase out water pollution;

(j) Enact stricter regulations and standards for wastewater discharge, impose fees on businesses that pollute water, and dedicate this revenue to protecting and restoring the health of freshwater ecosystems;

(k) Increase investment in wastewater infrastructure, including energy recovery and nutrient recycling;

(l) Apply ecosystem-based watershed management to protect the sources of water, both surface water and groundwater, to promote healthy forests, to reduce agricultural impacts on water bodies, to reduce flood risks, and to increase climate resilience;

(m) Use nature-based solutions such as restoring or constructing wetlands, requiring riparian buffer strips and creating protected areas (safeguarding water sources through protected areas provides all or a significant proportion of drinking water to dozens of the world's largest cities, including New York, Sydney, Vancouver, Nairobi and Tokyo);<sup>102</sup>

#### **Actions to prevent or alleviate water scarcity**

(n) Clarify, in legislation, priorities for access to water, with the highest priority accorded to fulfilling human rights to water, sanitation, livelihoods (including small-scale food production) and a healthy environment;

(o) Guarantee, in legislation, environmental flows for rivers and wetlands, ensuring that the quantity, timing and quality of freshwater flows are sufficient to sustain healthy aquatic ecosystems and the human livelihoods and well-being that depend on them;

(p) Shift economic activities to less water-consuming sectors and increase water-use efficiency in all sectors, with a particular focus on agriculture;

(q) Require users, especially businesses, to pay for water and for wastewater treatment, with safeguards to protect human rights by ensuring that access to water and sanitation is available and affordable to low-income individuals and communities;

(r) Safely use wastewater and sludge in agriculture, horticulture and aquaculture to conserve water, to support the right to food, to reduce the use of chemical fertilizers and to recover some of the cost of sanitation services;

(s) Require building construction and retrofits to incorporate measures such as rainwater harvesting, composting toilets, and low-flow fixtures, and establish regulations for water efficiency of appliances;

<sup>101</sup> World Water Assessment Programme, *The United Nations World Water Development Report 2017: Wastewater: the Untapped Resource* (Paris, UNESCO, 2017).

<sup>102</sup> WHO and Secretariat of the Convention on Biological Diversity, *Connecting Global Priorities: Biodiversity and Human Health: A State of Knowledge Review* (2015).

(t) Consider desalination as a last-resort option, due to high cost, high energy use and high environmental impacts, recognizing that it may be necessary in some water-scarce contexts;

**Actions to improve water governance**

(u) Increase access to information, public participation in decision-making and access to justice, with a particular emphasis on increasing the role of women in decision-making and governance at all levels;

(v) Recognize, in law, the land and water titles, tenures, rights and responsibilities of indigenous peoples, Afrodescendants, peasants and local communities, enabling them to apply customary laws, traditional ecological knowledge and their own governance systems to the sustainable stewardship of water;

(w) Enact legislation guaranteeing the free, prior and informed consent of indigenous peoples for all projects or programmes that could harm water in their territories;

(x) Avoid the privatization and commodification of water, which as the source of life must be treated as an invaluable and irreplaceable asset;

(y) Conduct assessments of the environmental, social, cultural and human rights impacts of proposed megaprojects that could use or pollute water;

**Actions to prevent water-related disasters and increase resilience**

(z) Increase the ambition of nationally determined contributions pursuant to the Paris Agreement;

(aa) Implement commitments under the Sendai Framework for Disaster Risk Reduction;

(bb) Carry out watershed and floodplain restoration, increase water storage using decentralized water retention systems, and build green infrastructure to reduce flood risks;

(cc) Reduce or eliminate construction in high-risk flood zones, and establish rights-based relocation programmes for people already living in these areas;

(dd) Ensure that drinking-water and wastewater infrastructure are built to incorporate risks related to floods and other extreme weather events;

**Actions to achieve water and climate co-benefits**

(ee) Reduce greenhouse gas emissions from water and wastewater management through demand management, reduced water loss in distribution systems, energy efficiency improvements and energy recovery;

(ff) Implement nature-based solutions, including conservation, restoration and rewetting of wetlands and peatlands, reforestation, riparian buffer strips and green roofs;<sup>103</sup>

(gg) Improve agricultural practices by shifting to less water-intensive and more drought-tolerant crops, using high-efficiency irrigation systems, reducing fertilizer run-off, safely using treated wastewater, and altering flooding regimes for rice paddies;

(hh) Prohibit activities such as fracking, tar sands extraction and coal mining, that pollute water and exacerbate the climate crisis;

(ii) Promote behavioural shifts (e.g. water conservation actions, predominantly plant-based diets, planting trees, and reducing food waste);

---

<sup>103</sup> World Water Assessment Programme and UN-Water, *The United Nations World Water Development Report 2018: Nature-based Solutions for Water* (Paris, UNESCO, 2018).

(jj) **Reduce discharges of untreated or inadequately treated wastewater, which produce powerful greenhouse gases including methane and nitrous oxide, properly treat faecal sludge, and recover nutrients (nitrogen and phosphorous) from wastewater;**

(kk) **Incorporate water issues in nationally determined contributions and national adaptation plans.**<sup>104</sup>

90. **In order to fulfil their responsibility to respect the human rights to water, sanitation and a healthy environment, businesses should:**

(a) **Make every effort to reduce water use, water pollution and damage to freshwater ecosystems from their facilities, products and supply chains;**

(b) **Accelerate the transition away from fossil fuels;**

(c) **Embrace the economic opportunities presented by water conservation, the construction of water and wastewater infrastructure, and ecosystem restoration;**

(d) **Support the incorporation of rights-based approaches in water and wastewater laws and policies;**

(e) **Contribute to and support efforts to shift towards the goal of a pollution-free circular economy.**

91. **As the High-level Panel on Water concluded in 2018, “Whoever you are, whatever you do, wherever you live, we urge you get involved, and contribute to meeting this great challenge: safe water and sanitation for all, and our water managed sustainably. Make every drop count. It’s time for action.”**

---

<sup>104</sup> Ingrid Timboe, Kathryn Pharr and John H. Matthews, *Watering the NDCs: National Climate Planning for 2020 and Beyond: How Water-Aware Climate Policies Can Strengthen Climate Change Mitigation and Adaptation Goals*.



# General Assembly

Distr.: General  
19 July 2021

Original: English

---

## Seventy-sixth session

Item 75 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the 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 R. Boyd, in accordance with Human Rights Council resolution [46/7](#).

---

\* [A/76/150](#).



**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 R. Boyd**

**Healthy and sustainable food: reducing the environmental impacts of food systems on human rights**

*Summary*

In the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, identifies healthy and sustainable food as one of the substantive elements of the right to a safe, clean, healthy and sustainable environment. He describes the catastrophic environmental and health consequences of industrial food systems, unhealthy diets and food waste and the associated consequences for the enjoyment of human rights, with disproportionate adverse effects on vulnerable and marginalized groups. He highlights procedural and substantive State obligations related to ensuring healthy and sustainable food, as well as the responsibilities of businesses. He identifies good practices that reduce greenhouse gas emissions and enhance carbon sinks, improve air and water quality, reduce water use, restore soil health, protect and revitalize biodiversity, decrease the use of pesticides, fertilizers and antibiotics and reduce the risk of zoonotic diseases. He emphasizes transformative actions that will concurrently contribute to progress on multiple Sustainable Development Goals, resulting in healthy, equitable and sustainable food systems.

---

## Contents

	<i>Page</i>
I. Vital importance of food . . . . .	4
II. Massive environmental impacts of food systems . . . . .	6
III. Impacts of unsustainable food systems on human rights . . . . .	9
IV. Human rights obligations related to healthy and sustainable food . . . . .	17
V. Good practices . . . . .	20
VI. Conclusion and recommendations . . . . .	21

## I. Vital importance of food

1. Food is essential for life, but today's food systems are major drivers of the climate emergency, biodiversity crisis, pervasive pollution, soil degradation, water depletion and the rising risk of infectious diseases that spill over into humans from wildlife and livestock. Four planetary boundaries (climate change, biodiversity loss, land-system change and the global nitrogen cycle), are already being exceeded, largely owing to agriculture, sabotaging the Earth's capacity to support humanity.<sup>1</sup> These catastrophic environmental impacts contribute to human rights violations and exacerbate inequalities. Transforming food systems to be healthy, just and sustainable is among the most important pathways to addressing the global environmental crisis.

2. The evolution of our species and our cultures was shaped by food. When we feed our children, food is love. When we share food with families, friends and neighbours, food is community. When we eat special foods to celebrate life's milestones and accomplishments, food is joy.

3. Food also plays a vital economic role, supporting the livelihoods of more than 2 billion people and representing roughly 10 per cent of the global economy, rising to more than half of gross domestic product (GDP) in some low-income countries.<sup>2</sup>

4. Enough food is produced annually to provide adequate nutrition for everyone, but a large portion is fed to livestock, wasted or used to manufacture non-food products such as biofuels. Some 2 billion people lack adequate access to safe, nutritious and sufficient food, including 720–811 million suffering from daily hunger.<sup>3</sup> The coronavirus disease (COVID-19) pandemic increased the number of hungry people by approximately 130 million.<sup>4</sup> Paradoxically, more than 2 billion people are overweight or obese.<sup>5</sup> Unhealthy diets are estimated to be the most significant risk factor for the global burden of disease.<sup>6</sup>

5. A painful truth is that industrially produced food appears to be cheap but is expensive. The hidden costs of hunger, unhealthy diets and unsustainable food production are a staggering \$12 trillion–\$20 trillion annually.<sup>7</sup> The problems with today's food systems have deep roots. Power imbalances, rooted in economic inequality, racism, patriarchy, neocolonialism and neoliberalism impede progress towards fulfilling the right to food and the right to a healthy and sustainable environment. There is a global trend in land ownership towards fewer, larger farms, contributing to the decline of rural communities. Large monoculture plantations have displaced traditional foods, knowledge and culture. A handful of huge corporations dominate trade in seeds, pesticides, fertilizers and farm machinery, wielding their

<sup>1</sup> See W. Steffen and others, "Planetary boundaries: guiding human development on a changing planet", *Science*, vol. 347, No. 6223, 1259855 (February 2015).

<sup>2</sup> See World Bank, 2020, "Agriculture, forestry, and fishing, value added (% of GDP)".

<sup>3</sup> See Food and Agriculture Organization of the United Nations (FAO), International Fund for Agricultural Development (IFAD), United Nations Children's Fund (UNICEF), World Food Programme (WFP) and World Health Organization (WHO), *The State of Food Security and Nutrition in the World 2021: Transforming Food Systems for Food Security, Improved Nutrition and Affordable Healthy Diets for All* (Rome, 2021).

<sup>4</sup> See United Nations, *The Impact of COVID-19 on Food Security and Nutrition* (June 2020).

<sup>5</sup> See World Health Organization (WHO), "Obesity and Overweight".

<sup>6</sup> See A. Afshin and others, "Health effects of dietary risks in 195 countries, 1990–2017: a systematic analysis for the Global Burden of Disease Study 2017", *The Lancet*, vol. 393, No. 10184, pp. 1958–1972 (April 2019).

<sup>7</sup> See Food and Land Use Coalition, *Growing Better: Ten Critical Transitions to Transform Food and Land Use, The Global Consultation Report of the Food and Land Use Coalition* (September 2019); Scientific Group of the United Nations Food Systems Summit, *The True Cost and True Price of Food*, draft paper for the United Nations Food Systems Summit 2021 (June 2021).

power to block public policies that support just, healthy and sustainable food systems.<sup>8</sup> Trade rules harm low-income States and farmers. Millions of food industry workers are unconscionably exploited, including migrant farm labourers, slaughterhouse employees and workers on plantations and factory trawlers enduring slave-like conditions.<sup>9</sup> Perversely, the very people whose livelihoods depend on agriculture and fisheries are among the most likely to experience hunger. Of the 740 million people living in extreme poverty, two thirds are agricultural workers and their families.<sup>10</sup> Diets in high-income countries include excessive animal protein and ultra-processed foods, contributing to deforestation and land-grabbing in the global South. Hundreds of billions of dollars in subsidies encourage unsustainable food production practices and predominantly benefit large rather than small producers, exacerbating inequality.

6. By mid-century, the human population could approach 10 billion, leading scientists to call for transformative changes to food systems, from production practices to diets, to attain just, healthy and sustainable outcomes.<sup>11</sup> For example, the International Assessment of Agricultural Knowledge, Science and Technology for Development stated that “the way the world grows its food will have to change radically to better serve the poor and hungry if the world is to cope with a growing population and climate change while avoiding social breakdown and environmental collapse”.<sup>12</sup>

7. Not all food systems contribute equally to environmental degradation and human rights violations. There is a vast diversity of production practices and an even wider range of diets. The use of water, pesticides, synthetic fertilizers, antibiotics and other inputs, as well as associated levels of pollution and environmental damage, varies extensively by type of food and production method. Meat and dairy generally use the most land and have the largest environmental impacts per calorie produced.

8. Transforming food systems is critical to fulfilling human rights and achieving multiple Sustainable Development Goals related to poverty, hunger, inequality, health, water, good work, sustainable production and consumption, climate action and biodiversity. The five targets for Goal 2 include ending hunger by 2030, doubling the incomes and productivity of small-scale producers, improving nutrition, producing food sustainably and preserving biodiversity and associated traditional knowledge.

9. The Special Rapporteurs on the right to food have done an outstanding job of addressing the multifaceted challenges that impede the full enjoyment of this right by all people.<sup>13</sup> The present report, prepared with input from past and present Special Rapporteurs on the right to food, focuses on the human rights implications and obligations related to the catastrophic environmental consequences caused by today’s food systems, particularly the industrial food system, represented by practices such

<sup>8</sup> See Jennifer Clapp, “The problem with growing corporate concentration and power in the global food system”, *Nature Food*, vol. 2 (2021).

<sup>9</sup> See International Labour Organization (ILO), *Global Estimates of Modern Slavery* (2017).

<sup>10</sup> See Food and Land Use Coalition, *Growing Better: Ten Critical Transitions to Transform Food and Land Use* (September 2019).

<sup>11</sup> See C. Mbow and others, “Food security”, in Intergovernmental Panel on Climate Change, *Special Report on Climate Change and Land: an IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems* (2019), chap. 5; Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services* (Bonn, Germany, 2019).

<sup>12</sup> See International Assessment of Agricultural Knowledge, Science and Technology for Development, “Agriculture – the need for change”, press release, 15 April 2008. Available at [http://www.db.zsintern.de/uploads/1523810120-Global\\_Press\\_Release\\_final.pdf](http://www.db.zsintern.de/uploads/1523810120-Global_Press_Release_final.pdf).

<sup>13</sup> See [www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx](http://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx).

as input-heavy monocultures, intensive livestock operations and large-scale fisheries and aquaculture.

10. To prepare the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, circulated a call for inputs in January 2021. The Special Rapporteur received submissions from Argentina, Cambodia, Dominican Republic, El Salvador, Guinea, Honduras, Ireland, Italy, Kenya, Lebanon, Mexico, Nepal, the Syrian Arabic Republic, Switzerland and the European Union, as well as from youth, academics, civil society, human rights institutions and the Food and Agriculture Organization of the United Nations (FAO).<sup>14</sup> In May 2021, the Special Rapporteur hosted an online consultation with representatives from the Committee on World Food Security, the Civil Society and Indigenous Peoples' Mechanism of the Committee on World Food Security, FAO, the International Panel of Experts on Sustainable Food Systems, the Office of the United Nations High Commissioner for Human Rights (OHCHR), Private Sector Mechanism of the Committee on World Food Security, the United Nations Environment Programme (UNEP), United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the World Food Programme and the World Wildlife Fund. The Special Rapporteur also co-hosted a consultation with FIAN International, to hear from women from across the world working to produce food in equitable and sustainable ways.

11. The present report on healthy and sustainable food is the fifth in a series of thematic reports addressing the substantive elements of the right to a safe, clean, healthy and sustainable environment, including clean air (A/HRC/40/55), a safe climate (A/74/161), healthy ecosystems and biodiversity (A/75/161) and safe and sufficient water (A/HRC/46/28). The present report is also timed to provide input into the United Nations Food Systems Summit. The final report in the series will address non-toxic environments in which people live, work, study and play.

## II. Massive environmental impacts of food systems

12. Today's food systems are trapped in a vicious cycle, threatened by the global environmental crisis and at the same time exacerbating this crisis by emitting greenhouse gases and destroying carbon sinks; polluting air and water; degrading soil; using excessive water; contributing to the collapse of biological diversity; and fuelling pandemic risks from zoonotic diseases.

13. Agriculture uses half of the planet's habitable land.<sup>15</sup> While livestock accounts for close to 80 per cent of agricultural land-use globally, including pastures, rangelands and land used to grow feed crops, livestock provide only 18 per cent of the world's calories.<sup>16</sup>

14. Food systems are responsible for 21–37 per cent of global greenhouse gas emissions.<sup>17</sup> Thirty-nine per cent of food-related emissions come from production (fertilizer use, manure management, methane from cattle and rice paddies, fuel for fishing boats and farm machinery, energy for fertilizer production and burning agricultural waste); 32 per cent from land-use change, especially deforestation; 18 per

<sup>14</sup> Submissions available at:

[www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthySustainableFood.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/HealthySustainableFood.aspx).

<sup>15</sup> See Navin Ramankutty and others, "Trends in global agricultural land use: implications for environmental health and food security", *Annual Review of Plant Biology*, vol. 69 (2018), pp. 789–815.

<sup>16</sup> See <https://ourworldindata.org/agricultural-land-by-global-diets>.

<sup>17</sup> See C. Mbow and others, "Food security", in *Special Report on Climate Change and Land* (see footnote 11).

cent from the supply chain (processing, transportation, packaging and retail); and 11 per cent from cooking and waste.<sup>18</sup>

15. Agriculture accounts for roughly 70 per cent of freshwater use globally, dwarfing all other human uses.<sup>19</sup> Nearly one third of this is used for raising livestock.<sup>20</sup>

16. Pesticides, synthetic fertilizers and animal wastes pollute water. Close to 80 per cent of the water pollution that causes eutrophication is due to agricultural runoff.<sup>21</sup> Approximately 700 dead zones are caused by eutrophication, with large impacts in the Gulf of Mexico, the Baltic Sea, the North Sea, the Bay of Bengal, the South China Sea and the East China Sea.<sup>22</sup> The health and environmental costs of agriculture-related water pollution are hundreds of billions of dollars annually.<sup>23</sup> In high-income States and large emerging economies, fertilizers are overused, but in low-income States, low fertilizer use suppresses yield growth and contributes to hunger and malnutrition.

17. Agriculture is responsible for surprisingly large contributions to air pollution, the largest environmental risk factor for premature death.<sup>24</sup> Over 90 per cent of global ammonia emissions come from agriculture, constituting a major source of fine particulate matter (PM2.5), with significant health impacts.<sup>25</sup> Livestock production and burning crop residues are important sources of emissions.

18. Soil is the foundation of 99 per cent of the food we eat.<sup>26</sup> Healthy soil stores water and carbon, increases biodiversity and preserves food security.<sup>27</sup> However, approximately 33 per cent of land is classified as degraded because of erosion, salinization, compaction, acidification and chemical pollution.<sup>28</sup> The large difference between soil formation rates and erosion rates from conventional agriculture means that we are essentially mining soil. Overgrazing is the number one cause of land degradation and desertification globally. Further loss of productive soils threatens food security, amplifying food-price volatility and potentially plunging millions of people into hunger and poverty.

19. More than 1 billion people depend on livestock for their livelihoods. Raising livestock can have adverse environmental impacts or positive impacts, depending on ecological contexts and production practices. Pastoralists whose animals graze on

<sup>18</sup> See M. Crippa and others, “Food systems are responsible for a third of global anthropogenic greenhouse gas emissions”, *Nature Food*, vol. 2 (2021), pp. 198–209.

<sup>19</sup> See United Nations, *Sustainable Development Goal 6, Synthesis Report on Water and Sanitation* (2018).

<sup>20</sup> See A.Y. Hoekstra and M.M. Mekonnen, “The water footprint of humanity”, *Proceedings of the National Academy of Sciences of the United States of America*, vol. 109, No. 9 (2012), pp. 3232–3237.

<sup>21</sup> See J. Poore and T. Nemecek, “Reducing food’s environmental impacts through producers and consumers,” *Science*, vol. 360, No. 6392 (2018), pp. 987–992.

<sup>22</sup> See United Nations, *The Second World Ocean Assessment: World Ocean Assessment II*, Vol. I (New York, 2021).

<sup>23</sup> See FAO, *More People, More Food, Worse Water? A Global Review of Water Pollution from Agriculture* (Rome, 2018).

<sup>24</sup> See Nina G.G. Domingo and others, 2021, “Air quality-related health damages of food”, *Proceedings of the National Academy of Sciences of the United States of America*, vol. 118, No. 20 (May 2021).

<sup>25</sup> See Despina Giannadaki and others, 2018, “Estimating health and economic benefits of reductions in air pollution from agriculture”, *Science of the Total Environment*, vols. 622–623 (May 2018), pp. 1304–1316.

<sup>26</sup> See [www.fao.org/soils-portal/soil-biodiversity/soil-conservation-and-agriculture/en/](http://www.fao.org/soils-portal/soil-biodiversity/soil-conservation-and-agriculture/en/).

<sup>27</sup> See Rattan Lal, “The Rights of Soil”, *Journal of Soil and Water Conservation*, vol. 74, No. 4 (2019), pp. 81A–86A.

<sup>28</sup> See FAO and Intergovernmental Technical Panel on Soils, *Status of the World’s Soil Resources: Main Report* (Rome, 2015).

lands unsuitable for growing crops are less impactful, while intensive livestock operations cause the largest environmental impacts. If cattle were their own nation, they would be the world's third-largest emitter of greenhouse gases. States with very high per capita meat consumption include the United States of America, Australia, Argentina, New Zealand, Spain, Brazil, Israel and Portugal. In many low-income States, increased consumption of animal products could improve dietary quality and health outcomes.

20. In Latin America, Africa and South-East Asia, the majority of tropical deforestation results from expanding agricultural land to produce commodities such as beef, soy and palm oil. Deforestation is responsible for 30 per cent of the zoonotic diseases that pose threats of pandemics.<sup>29</sup> Bushmeat, wildlife trade and intensified livestock production are also risk factors for zoonotic disease outbreaks.

21. The leading cause of biodiversity loss is agriculture. Agriculture and aquaculture are listed as major threats for 85 per cent of the species identified as threatened with extinction on the International Union for Conservation of Nature Red List.<sup>30</sup> Livestock today are so numerous that in total they outweigh all wild mammals on Earth by a 15-to-1 ratio.<sup>31</sup>

22. The wide diversity of traditional seeds and breeds is of paramount importance to small-scale farmers, peasants and Indigenous peoples, but is under threat. The industrial food system encourages the dominance of large monocultures that decrease agricultural biodiversity, reduce the resilience of food systems and jeopardize food security. While more than 6,000 plant species are cultivated for food, three crops – rice, wheat and maize – account for 60 per cent of all human calories.<sup>32</sup>

23. Industrial agriculture contaminates air, water, soil and the food chain with toxic substances – pesticides, herbicides, synthetic fertilizers and drugs – harming human and ecosystem health.<sup>33</sup> Indiscriminate use of pesticides decimated populations of bald eagles and peregrine falcons. Pesticide use is implicated in disturbing declines in populations of insects and insectivorous birds. Using diclofenac to treat livestock in India devastated vulture populations, as vultures were poisoned by eating carcasses of animals treated with the drug.

24. Fisheries are overexploited, heavily subsidized and plagued by illegal, unreported and unregulated catches. One third of fish populations are overfished while 60 per cent are being fished at capacity. The global biomass of large predatory fish targeted by fisheries has fallen by two thirds over the past century.<sup>34</sup> One third of freshwater fish are threatened with extinction owing to overexploitation, pollution and habitat destruction. Fishing has dire consequences for species caught incidentally or harmed by abandoned fishing gear, including sea turtles, sharks and whales. Over half of high seas fisheries would not be profitable without subsidies and forced labour.<sup>35</sup>

<sup>29</sup> See Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services Workshop on Biodiversity and Pandemics, Workshop Report* (Bonn, Germany, 2020).

<sup>30</sup> See <https://ourworldindata.org/environmental-impacts-of-food>.

<sup>31</sup> See Yinon M. Bar-On and others, 2018, "The biomass distribution on Earth", *Proceedings of the National Academy of Sciences*, vol. 115, No. 25 (May 2018), pp. 6506–6511.

<sup>32</sup> See FAO, 2020, "FAOSTAT: Food Balance Database, Food Supply – Crops Primary Equivalent".

<sup>33</sup> See A/HRC/34/48.

<sup>34</sup> See Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services* (see footnote 11).

<sup>35</sup> See Enric Sala and others, "The economics of fishing the high seas", *Science Advances* vol. 4, No. 6 (June 2018), eaat2504.

25. Aquaculture now produces more seafood than wild fisheries.<sup>36</sup> Environmental concerns about aquaculture include habitat destruction (e.g., mangroves); the use of harmful chemicals and veterinary drugs; the impact of escapees, parasites and diseases on wild fish; and unsustainable use of wild fish to feed farmed fish.

26. Industrial food systems rely heavily on plastic packaging. Inadequate waste management systems cause plastic to enter air, water and soil, where it breaks down into microparticles that harm wildlife, affect plant growth and ultimately contaminate food.<sup>37</sup> Gear abandoned by industrial fishing fleets is a major source of marine plastic pollution.

27. The foregoing environmental problems are exacerbated by food loss and waste. An estimated 30 per cent of all food produced is never eaten, wasting an enormous amount of resources and creating unnecessary environmental impacts.<sup>38</sup> In low-income States, losses occur early in the supply chain owing to inadequate storage, processing and transportation infrastructure. In high-income States, extensive waste occurs at the retail and consumer stages.

28. The negative environmental impacts of food systems are growing, driven by increasing wealth, population growth and the dominance of industrial agriculture. For example, synthetic fertilizer use has increased more than 800 per cent since 1960.<sup>39</sup> Meat production is five times higher than it was in 1961, with more than 70 billion animals slaughtered annually.<sup>40</sup>

### III. Impacts of unsustainable food systems on human rights

29. The environmental impacts caused primarily by industrial food systems interfere with the enjoyment of a wide range of human rights, including the rights to life, health, water, food, a healthy environment, development, an adequate standard of living, cultural rights, the rights of the child and Indigenous rights.

#### A. Right to life

30. Industrial food systems and unhealthy diets undermine the right to life. Increasing consumption of highly processed, nutrient-poor foods contributes to many non-communicable diseases, which are shortening human lifespans and cause 70 per cent of all deaths worldwide.<sup>41</sup> Unhealthy diets cause 10 million deaths annually.<sup>42</sup>

31. The World Health Organization (WHO) identified antimicrobial resistance as a major international health problem. Antimicrobial medicines play a key role in treating many diseases and infections (e.g., pneumonia, tuberculosis and salmonellosis). The misuse and overuse of antimicrobials in the livestock and aquaculture industries, accounting for 70 per cent–80 per cent of total consumption, is causing the emergence and spread of antimicrobial resistance, making these drugs

<sup>36</sup> See FAO, *The State of World Fisheries and Aquaculture 2020: Sustainability in Action* (Rome, 2020).

<sup>37</sup> See Dan Zhang, and others, “Plastic pollution in croplands threatens long-term food security”, *Global Change Biology*, vol. 26, No. 3356–3367 (April 2020).

<sup>38</sup> See UNEP, *Global Environment Outlook 6: Healthy Planet, Healthy People* (Cambridge University Press, Cambridge, United Kingdom, 2019).

<sup>39</sup> See <https://ourworldindata.org/environmental-impacts-of-food>.

<sup>40</sup> *Ibid.*

<sup>41</sup> See A/71/282.

<sup>42</sup> See Afshin, “Health effects of dietary risks in 195 countries, 1990–2017” (see footnote 6).

less effective in treating humans.<sup>43</sup> Antibiotics are widely used to stimulate faster growth and to treat entire herds/flocks rather than treating individual animals that are sick. Today, 700,000 premature deaths annually involve antimicrobial resistance, a figure that could jump to 10 million annually by 2050 unless key actions are taken now.<sup>44</sup>

32. The Committee on Economic, Social and Cultural Rights stated that food should be “free from adverse substances.”<sup>45</sup> Unfortunately, food can be a source of exposure to harmful bacteria, viruses, heavy metals, pesticides, growth hormones, microplastics and dioxins. WHO estimates that foodborne hazards cause 420,000 premature deaths annually, disproportionately affecting children under 5 (125,000 deaths) and people living in poverty.<sup>46</sup>

33. Emissions of ammonia from agriculture contribute to deadly fine particulate air pollution, causing, for example, 17,900 premature deaths annually in the United States.<sup>47</sup> Reducing these emissions by 50 per cent globally would save hundreds of thousands of lives per year.<sup>48</sup>

34. Agricultural pesticides cause both intentional and unintentional poisonings. Millions of suicide deaths since 1960 – mainly low-income farmers plagued by poverty, lack of access to land and other problems – have involved highly hazardous pesticides.<sup>49</sup> Current estimates of suicides committed using pesticides range from 110,000 to 168,000 annually. The number of premature deaths caused by unintentional acute pesticide poisoning was estimated as 11,000 annually.<sup>50</sup>

35. In a recent landmark decision, the Human Rights Committee determined that a State’s failure to properly regulate pesticide use, implement regulations and monitor the impacts of pesticides violated the right to life. The Committee concluded that pesticide spraying “poses a reasonably foreseeable threat to the authors’ lives given that such large-scale fumigation has contaminated the rivers in which the authors fish, the well water they drink and the fruit trees, crops and farm animals that are their source of food.”<sup>51</sup>

## B. Right to health

36. People’s health depends on access to safe, affordable food of adequate quantity and quality. Industrially produced foods often fail to meet these criteria, with the production and marketing of excessive amounts of meat, dairy and heavily processed

<sup>43</sup> See Thomas P. Van Boeckel and others, “Reducing antimicrobial use in food animals”, *Science*, vol. 357, No. 6358 (September 2017), pp. 1350–1352.

<sup>44</sup> See Interagency Coordination Group on Antimicrobial Resistance, *No Time to Wait: Securing the Future from Drug-Resistant Infections, report to the Secretary-General of the United Nations* (April 2019).

<sup>45</sup> E/C.12/1999/5, para. 10.

<sup>46</sup> See WHO, *WHO Estimates of the Global Burden of Foodborne Diseases* (2015).

<sup>47</sup> See Domingo and others, “Air quality-related health damages of food” (see footnote 24).

<sup>48</sup> Giannadaki and others, “Estimating health and economic benefits of reductions in air pollution from agriculture”.

<sup>49</sup> See E. Jørs, Dinesh Neupane and Leslie London, “Pesticide poisonings in low- and middle-income countries”, *Environmental Health Insights*, vol. 12, Nos. 1–3 (2018).

<sup>50</sup> See Wolfgang Boedeker and others, “The global distribution of acute unintentional pesticide poisoning: estimations based on a systematic review”, *BMC Public Health* vol. 20, No. 1 (2020), art. No. 1875 (2020).

<sup>51</sup> *Portillo Cáceres v. Paraguay*, 2019 (CCPR/C/126/D/2751/2016), para. 7.5.

foods and the under-production of whole grains, legumes, fresh fruits and vegetables.<sup>52</sup>

37. WHO estimates that foodborne hazards cause 600 million cases of illness annually.<sup>53</sup> The Committee on Economic, Social and Cultural Rights expressed concerns about waterborne diseases caused by agricultural pollution.<sup>54</sup> Water-related vector-borne diseases including malaria, schistosomiasis and Japanese encephalitis are also influenced by agricultural practices.

38. Pesticides used in agriculture have contributed to increased yields but are linked to cancer, stroke, congenital anomalies, adverse impacts on children's neurological development and neurodegenerative diseases including Parkinson's.<sup>55</sup> Non-lethal pesticide poisonings range from 30 million<sup>56</sup> to 385 million cases annually.<sup>57</sup> The Committee on Economic, Social and Cultural Rights expressed concerns about the serious health effects suffered by farming communities because of excessive agrochemical use and recommended that States ban all agrochemicals that adversely affect human and environmental health.<sup>58</sup>

39. Unsafe use of wastewater and sludge in agriculture causes foodborne and waterborne diseases. For example, water pollution caused by excessive fertilizer use creates favourable conditions for the growth of cyanobacteria, which can produce toxins. Humans exposed to cyanobacteria through drinking water and recreational activities may experience symptoms including stomach cramps, vomiting, diarrhoea, fever, sore throat, muscle and joint pain, headache and liver damage.<sup>59</sup>

40. Widespread fraud, such as mislabelling meat and fish products, also threatens the right to health. Studies indicate that 30 per cent of fish sold in restaurants and grocery stores are a different species from that advertised.<sup>60</sup> In Europe, horsemeat has been found in food products labelled as containing beef.

### C. Right to water

41. Safe and sufficient water is vital for realizing the right to food, particularly for poor and marginalized people engaged in subsistence or small-scale farming. However, industrial food production can threaten the right to water through privatization, water pollution and excessive use. In Chile, private water rights granted to agribusinesses to grow water-intensive avocado crops for export left local residents without adequate quantities of water.<sup>61</sup> In India and other nations, excessive use of water by corporations making soft drinks and bottled water caused water shortages for nearby communities.

<sup>52</sup> See Walter Willett and others, "Food in the Anthropocene: The EAT–Lancet Commission on Healthy Diets from Sustainable Food Systems", *The Lancet*, vol. 393, 10170 (January 2019), pp. 447–492.

<sup>53</sup> See WHO, *WHO Estimates of the Global Burden of Foodborne Diseases*.

<sup>54</sup> See E/C.12/UZB/CO/2.

<sup>55</sup> See WHO, *Preventing Disease Through Healthy Environments: a global assessment of the burden of disease from environmental risks* (2016).

<sup>56</sup> See Jørs, "Pesticide poisonings in low- and middle-income countries", *Environmental Health Insights* (see footnote 49).

<sup>57</sup> See Boedeker and others, "The global distribution of acute unintentional pesticide poisoning".

<sup>58</sup> See E/C.12/LKA/CO5.

<sup>59</sup> See WHO, *Toxic Cyanobacteria in Water: A Guide to their Public Health Consequences, Monitoring and Management*, chap. 3 (London, E and FN Spon, 1999). Available at [https://www.who.int/water\\_sanitation\\_health/resourcesquality/toxcyanbegin.pdf](https://www.who.int/water_sanitation_health/resourcesquality/toxcyanbegin.pdf).

<sup>60</sup> See Miguel Ángel Pardo and others, "Misdescription incidents in seafood sector", *Food Control*, vol. 62, pp. 277–283 (April 2016).

<sup>61</sup> See [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26177](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26177).

42. Some agrochemicals are toxic and persistent, meaning that they break down slowly in the environment. For example, the use of chlordecone, a highly persistent pesticide, on banana plantations in Guadeloupe and Martinique decades ago continues to contaminate drinking water today.

43. The Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Special Rapporteur on the human rights to safe drinking water and sanitation and the Special Rapporteur on toxics and human rights have raised concerns regarding the adverse impacts on water quality from agrochemicals, large-scale livestock production and industrial shrimp aquaculture.<sup>62</sup>

#### D. Right to food

44. The Human Rights Council observed that “environmental degradation, desertification and global climate change are exacerbating destitution and desperation, causing a negative impact on the realization of the right to food, in particular in developing countries”.<sup>63</sup>

45. The Committee on Economic, Social and Cultural Rights is concerned about land and resource grabbing, whereby Governments sell or lease large areas of land to investors, businesses and other States. Land-grabbing displaces people, and in particular Indigenous peoples and peasants, from the lands that they depend upon for food and livelihoods.<sup>64</sup> The Committee is also concerned that small-scale fishers are being deprived of their livelihoods by overfishing and ocean-grabbing by powerful economic actors. For example, foreign-owned industrial fisheries are undermining the livelihoods of local fishers in the Gambia, Mauritania, Morocco, the Philippines and Senegal.<sup>65</sup>

46. In many States, policies promoting export crops have reduced land available for communities to produce their own food and caused extensive pollution. Examples include large-scale monoculture soybean, palm oil and banana plantations.<sup>66</sup> In Guatemala, discharge of agrochemicals and waste from plantations caused major fish kills.<sup>67</sup> While these industries pose “a serious threat to the right to food of farmers, fishers and local communities”, they also provide a livelihood for millions of people.<sup>68</sup>

47. Some agrochemicals bioaccumulate, threatening the health of species at the top of the food chain, including humans. For example, Indigenous peoples living in the far north are exposed to toxic pesticides because of their consumption of marine mammals containing elevated concentrations of these chemicals.

<sup>62</sup> See E/C.12/URY/CO/5, A/HRC/33/49/Add.1, A/HRC/37/61/Add.1, A/HRC/39/48/Add.1 and A/HRC/40/56/Add.1.

<sup>63</sup> See Human Rights Council resolution 7/14.

<sup>64</sup> See E/C.12/HND/CO/2, E/C.12/UGA/CO/1, A/HRC/41/39/Add.2 and A/HRC/41/39/ADD.2/Corr.1, A/HRC/40/56/Add.2.

<sup>65</sup> See E/C.12/SEN/CO/3, E/C.12/PHL/CO/5-6, A/HRC/31/51/Add.2 See also <https://www.greenpeace.org/static/planet4-africa-stateless/2021/05/47227297-feeding-a-monster-enfinal-small.pdf>.

<sup>66</sup> See E/C.12/PRY/CO/4.

<sup>67</sup> See [www.ohchr.org/Documents/Issues/Environment/SREnvironment/food-systems/CSOs/Plataforma-Internacional-contr-la-Impunidad.docx](http://www.ohchr.org/Documents/Issues/Environment/SREnvironment/food-systems/CSOs/Plataforma-Internacional-contr-la-Impunidad.docx) (in Spanish).

<sup>68</sup> See A/HRC/40/56/Add.2.

## E. Right to a safe, clean, healthy and sustainable environment

48. The right to a safe, clean, healthy and sustainable environment is legally protected by more than 80 per cent of States (156 out of 193 United Nations members) through regional treaties, constitutions and legislation.<sup>69</sup> Healthy and sustainable food is one of the six substantive elements of the right to a healthy environment, as recognized by regional tribunals, national human rights institutions, laws and jurisprudence.

49. In 2020, the Inter-American Court of Human Rights ruled that Indigenous peoples' right to a healthy environment had been violated by the unregulated activities of settlers – raising cattle and installing fencing – that “had an impact on the traditional ways of obtaining food of the Indigenous communities”.<sup>70</sup> The State was aware of the harmful activities but failed to halt them. The Court ordered Argentina to formalize the title of the Indigenous peoples to their land as promptly as possible, remove the livestock and fences and facilitate access to nutritional and culturally acceptable food.

50. National human rights institutions play a vital role in addressing environmental and human rights impacts from food systems. The national human rights institution in Malawi addressed a case where effluent from a food processing facility affected the rights of local residents. The national human rights institution in Malaysia investigated the impacts of land-grabbing for palm oil plantations on the rights of Indigenous people. The Costa Rica Ombudsperson investigated the use of dibromochloropropane on banana plantations, concluding that the pesticide sterilized male farmworkers. The Hungary Ombudsperson successfully argued before the Constitutional Court that allowing unregulated groundwater use for agriculture violated the right to a healthy environment. The national human rights institution in Thailand investigated allegations that a Thai company operating a sugar cane plantation in Cambodia was involved in forced evictions and the killing of livestock, violating human rights.<sup>71</sup>

51. Court decisions from every region have determined that unsustainable food production practices violate the right to a healthy environment. In 2017, the Supreme Court of Mexico concluded that the Government had “not taken all possible measures, to the maximum of available resources, to prevent and control processes of water degradation, to monitor that wastewater discharges comply with current regulations in quantity and quality, nor to carry out the necessary corrective actions to clean up the water” and warned that “it is indispensable that the State monitor compliance with environmental norms and, if necessary, sanction or limit the actions of private individuals; otherwise, the human right to a healthy environment would be void of content”.<sup>72</sup> In 2021, the same Court upheld an injunction against a 49,000-head hog facility in Yucatán, because the facility would violate the right to a healthy environment.<sup>73</sup> In Chile, the Government's decision to allow aquaculture companies to dump 9 million kilograms of dead salmon into the ocean led the Supreme Court to conclude that the right to a healthy environment had been violated.<sup>74</sup> The highest court in Costa Rica ruled that the destructive impacts of bottom trawl fishing on the ocean

<sup>69</sup> See [A/HRC/43/53](#), annex II.

<sup>70</sup> See Inter-American Commission on Human Rights, *Indigenous Communities of the Lhaka Honhat Association v. Argentina*, 6 February 2020.

<sup>71</sup> Cases in paragraph 50: see C. Ituarte-Lima and others, 2021, “National human rights institutions' catalyzing action for the realization of the right to a healthy environment” (in preparation).

<sup>72</sup> See Amparo in review, 641/2017, Supreme Court, 18 October 2017. See also Amparo in review 241/20151, Supreme Court, 4 November 2015.

<sup>73</sup> See Appeal for Review, 6/2020, Supreme Court, 19 May 2021.

<sup>74</sup> Supreme Court of Chile, 22 May 2018.

violate the right to a healthy environment.<sup>75</sup> The Superior Court of Justice of Brazil ruled that severe air pollution from burning sugar cane waste violates the right to a healthy environment.<sup>76</sup>

52. A court in Canada found a violation of the right to a healthy environment in a case involving foul odours from a composting facility that processed slaughterhouse sludge.<sup>77</sup>

53. The Council of State in Greece ruled that diverting the Acheloos River into a different watershed to provide water for irrigation violated Greek laws, including the right to a healthy environment.<sup>78</sup>

54. In Uganda, a court struck down a sugar cane licence that was issued in a protected forest reserve because it violated the right to a healthy environment.<sup>79</sup>

55. In 2008, the Supreme Court of the Philippines ruled that environmental degradation in Manila Bay violated the right to a healthy environment and ordered 13 government agencies to take remedial action. The Department of Agriculture was instructed to stop illegal fishing and restore marine biodiversity.<sup>80</sup> In another case, regulations that restricted destructive fishing practices were upheld on the basis of the right to a healthy environment.<sup>81</sup> In India, courts have prohibited further development of shrimp aquaculture based on environmental and human rights concerns.<sup>82</sup> In Indonesia, the Ministry of Environment and Forests relied on the right to a healthy environment in a successful lawsuit against a palm oil plantation that illegally burned peatlands, resulting in \$25 million in fines and restoration.<sup>83</sup>

56. Cases involving large palm oil monocultures and the rights of Indigenous peoples, highly hazardous pesticides, water pollution and land-grabbing have been brought to national contact points, using the non-judicial mechanism established under the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.<sup>84</sup>

## F. Rights of children

57. The Convention on the Rights of the Child requires “the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution”.<sup>85</sup> Unfortunately, in 2019, 149 million children under 5 years of age were stunted, 45 million wasted and 39 million overweight, while

<sup>75</sup> See Constitutional Chamber of the Supreme Court, resolution No. 13101/2013, 2 October 2013.

<sup>76</sup> See Special Appeal No 1.094.873 — SP (2008/0215494-3), 4 August 2009, Judge Humberto Martins.

<sup>77</sup> See *St-Luc-de-Vincennes (Municipalité de) c. Compostage Mauricie inc.*, 2008 QCCA 235 (CanLII).

<sup>78</sup> See Council of State decisions, including 2759-2760/1994, 3478/2000, 3054/2009 and 26/2014.

<sup>79</sup> See *Advocates Coalition for Development and Environment v. Attorney General* (2004), High Court. Miscellaneous Cause No. 0100 of 2004.

<sup>80</sup> See *Metropolitan Manila Development Authority and others* (2008), Nos. 171947-48, Supreme Court.

<sup>81</sup> See *Alfredo Tano and others v. Hon. Gov. Salvador P. Socrates and others* (1997) PHSC 1472, Supreme Court of the Philippines.

<sup>82</sup> See *S. Jagannath v. Union of India* (1997) 2 SCC 87.

<sup>83</sup> See *Ministry of Environment and Forestry v. PT Kallista Alam*, Supreme Court, 651/K/Pdt/2015, 28 August 2015.

<sup>84</sup> See, for example, *Public Eye et al v. Syngenta AG*, 17 September 2020, OECD national contact point, Switzerland.

<sup>85</sup> Convention on the Rights of the Child, art. 24 (2) (c).

at least 340 million children suffered from micronutrient deficiencies.<sup>86</sup> Despite studies showing breast milk may be contaminated by environmental pollutants, it remains the best choice for infant health.

58. The Committee on the Rights of the Child has warned States about the dangers to children's health posed by water pollution, specifically agrochemicals.<sup>87</sup> Children often undertake agricultural labour, risking exposure to pesticides. Young children playing may be exposed to pesticides and contaminated soil, jeopardizing their neurological development. Early exposure of children to nitrates in water contaminated by agricultural fertilizer run-off can stunt their growth and affect brain development. The Committee urged States to strengthen the implementation of laws and other measures to ensure that the negative impact of "agrochemicals on underlying determinants of health, such as food, safe drinking water and sanitation, is minimized and that the entities responsible are held accountable and victims afforded effective remedies".<sup>88</sup> The Committee also suggested that States reduce the use of agrochemicals, ban the use of pesticides prohibited in other States, strictly regulate aerial spraying, carry out comprehensive assessments of the health effects of air, water and soil pollution and increase monitoring of pollution and pesticide residues.<sup>89</sup>

59. It is important to acknowledge and amplify children's voices. Among the comments submitted for the present report:

"We should create vertical farms around the world to make plant-based food accessible to everyone"

"Preserve the Amazon and limit the deforestation caused by agriculture"

"Reduce animal agriculture to make way for more sustainable farming practices"

"Eat less meat, eat local, seasonal and organic food"

"Make people more aware about how much food they waste"

"Mandatory use of organic food in schools"

"Make laws against plastic that is not needed in packaging and make it compulsory to use sustainable packaging ... Ban plastic toys and glitter in fast food restaurants"

## G. Vulnerable populations

60. In addition to children, States should give special attention to other vulnerable or marginalized groups whose rights may be jeopardized by the environmental impacts of food systems, including women, Indigenous peoples, racially and ethnically marginalized groups, refugees, migrants, persons with disabilities, lesbian, gay, bisexual and transgender persons (LGBT) persons, older persons, people living in protracted armed conflicts and people living in poverty. These groups often have fewer resources, are disproportionately impacted and have less access to health-care services, increasing the risk of illness or death.

<sup>86</sup> See Food and Agriculture Organization of the United Nations, *The State of Food Security and Nutrition in the World, 2021*; [www.unicef.org/nutrition](http://www.unicef.org/nutrition).

<sup>87</sup> See [CRC/C/PHL/CO/3-4](#), [CRC/C/BRA/CO/2-4](#), [CRC/C/ISR/CO/2-4](#), [CRC/C/PRK/CO/4](#), [CRC/C/GEO/CO/3](#).

<sup>88</sup> See [CRC/C/ARG/CO/5-6](#).

<sup>89</sup> See [CRC/C/BRA/CO/2-4](#).

61. A critical issue is lack of access to land.<sup>90</sup> A lack of formal land and tenure rights jeopardizes the right to food for millions of Indigenous peoples, peasants, Afro-descendants, women and the poor. The Committee on Economic, Social and Cultural Rights is concerned that the expansion of industrial agriculture, particularly monocultures, has restricted Indigenous peoples' access to land on which to grow, gather and hunt their own food.<sup>91</sup> Palm oil, rubber and soy plantations have been identified as problematic for human rights and the environment in Brazil, Colombia, Ecuador, Indonesia, Liberia, Malaysia, Paraguay and other States.<sup>92</sup> The Committee on the Elimination of Racial Discrimination expressed concern over the significant obstacles Indigenous and Afro-descendant communities face in exercising their rights to land, including violence against their leaders and forced displacement.<sup>93</sup> The Special Rapporteur on minority issues observed that "specific legal and policy measures are required to protect the land rights of those who practice nomadic, transhumance and hunter-gatherer lifestyles, including their right to have access to traditional forest habitats and to use land seasonally for grazing".<sup>94</sup>

62. Lack of access to land is exacerbated by land, water and resource grabbing, often resulting in the forced eviction, displacement or loss of access to land for Indigenous peoples, peasants and local communities. The Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination warned that businesses contribute to land-grabbing through financing, processing or trading palm oil, soybeans and other agricultural commodities, thus violating the rights of Indigenous peoples and children.<sup>95</sup> Other examples include the sale of oil exploration rights to hundreds of thousands of hectares of the Amazon to foreign companies despite the objections of Indigenous peoples and the sale of valuable farmland in Africa and elsewhere to foreign corporations. It is widely understood that, for Indigenous peoples and peasants, the loss of land leads to the destruction of their traditional way of life.

63. Today's industrial agriculture system, in which a handful of large corporations control a massive and growing share of the market for seeds, fertilizers, pesticides and farm equipment, creates power imbalances that threaten all farmers, but particularly smallholders. The Committee on Economic, Social and Cultural Rights warned that "extreme poverty among small-hold farmers caused by the lack of land, access to credit and adequate rural infrastructures, has been exacerbated by the introduction of genetically modified seeds by multinational corporations and the ensuing escalation of prices of seeds, fertilizers and pesticides".<sup>96</sup>

64. Polluting industrial food facilities, including intensive livestock operations, slaughterhouses and agrochemical manufacturing factories, are disproportionately located in poor and racially marginalized communities, resulting in severe environmental injustices and human rights violations.

65. As farmers, fishers, land managers, scientists and entrepreneurs, women are often responsible for growing, gathering, processing and preparing food. Women make up almost half of the world's agricultural workforce and in some low-income countries produce up to 80 per cent of the food, yet are often unpaid or paid less than men doing the same work. Understanding gender differences in vulnerability, roles and capacity is essential for designing fair and effective actions to ensure healthy and

<sup>90</sup> See CERD/C/KHM/CO/14-17, CERD/C/PRY/CO/4-6, E/C.12/PHL/CO/5-6.

<sup>91</sup> See E/C.12/GTM/CO/3.

<sup>92</sup> See E/C.12/IDN/CO/1, A/HRC/42/47/Add.2, E/C.12/PRY/CO/4.

<sup>93</sup> See CERD/C/COL/CO/14.

<sup>94</sup> See A/HRC/25/56/Add.1.

<sup>95</sup> See CRC/C/NLD/CO/4, CERD/C/NLD/CO/19-21.

<sup>96</sup> See E/C.12/IND/CO/5.

sustainable food. Women have less access to a range of resources, including land ownership or tenure, credit, agricultural extension services and technology. These inequalities are perpetuated because discrimination means women are often less involved in food system planning, policymaking and decision-making.

66. The Committee on the Elimination of All Forms of Discrimination Against Women expressed concerns about the disproportionate impacts on women of environmental problems caused by industrial agriculture.<sup>97</sup> The Committee emphasized the harmful impact of the use of pesticides, fertilizers and other agrochemicals on women's health.<sup>98</sup> The Special Rapporteur on the right to food warned that soil erosion, diminishing soil fertility and desertification threaten women's traditional role as food producers.<sup>99</sup> Indigenous women face heightened difficulties, including lack of recognition of land ownership and tenure, forced evictions from traditional lands, exclusion from decision-making processes concerning land use and the failure to secure their free, prior and informed consent regarding proposed developments in their territories.<sup>100</sup>

67. Nevertheless, women can be key actors in changing the way food is grown, raised, gathered, processed and sold. Closing the agricultural gender gap can improve the lives of women, their families and communities and improve food security while reducing deforestation. It is estimated that if all women smallholders received access to productive resources equal to men, their farm yields would rise by 20 to 30 per cent, potentially ending hunger for up to 150 million people.<sup>101</sup>

## **IV. Human rights obligations related to healthy and sustainable food**

### **A. State obligations**

68. The devastating environmental effects of industrial food systems and associated unhealthy diets on the enjoyment of a wide range of human rights give rise to extensive duties of States to prevent those harms. States should apply a rights-based approach to all food-related laws, regulations, policies and actions, in order to minimize negative impacts on the environment and human rights. The rights-based approach clarifies the obligations of States and responsibilities of businesses; catalyses ambitious action; emphasizes the need for capacity-building; prioritizes the poorest and most vulnerable; and empowers people to become involved in designing and implementing solutions.

69. The Committee on Economic, Social and Cultural Rights clarified substantive obligations related to the right to food through its general comment No. 12, noting that "sustainability" requires food to be accessible for both present and future generations and requiring States to implement rights-based national food strategies and effective environmental policies.<sup>102</sup> The Committee added that "care should be taken to ensure the most sustainable management and use of natural and other resources for food at the national, regional, local and household levels."<sup>103</sup>

<sup>97</sup> See [CEDAW/C/HND/CO/7-8](#).

<sup>98</sup> See [CEDAW/C/GTM/CO/8-9](#), [CEDAW/C/ARG/CO/7](#).

<sup>99</sup> See [A/HRC/31/51/Add.2](#).

<sup>100</sup> See [CEDAW/C/ARG/CO/7](#).

<sup>101</sup> See FAO, *The State of Food and Agriculture: Women in Agriculture – Closing the Gender Gap for Development* (Rome, 2011).

<sup>102</sup> Committee on Economic and Social Rights, general comment No. 12 on the right to adequate food, paras. 7 and 8.

<sup>103</sup> *Ibid.*, para. 10.

70. The framework principles on human rights and the environment clarify the three categories of State obligations: procedural, substantive and special obligations towards those in vulnerable situations.<sup>104</sup> States have procedural obligations to:

(a) Provide the public with accessible information about healthy and sustainable food, including nutritional content, the environmental footprint and dietary guidelines based on human and environmental health;

(b) Incorporate information about healthy and sustainable food throughout the educational curriculum;

(c) Ensure an inclusive, equitable and gender-based approach to public participation in all food system planning, policymaking, budgeting and other actions;

(d) Enable affordable and timely access to justice and effective remedies for all;

(e) Assess the potential environmental, social, health, cultural and human rights impacts of all plans, policies, projects and proposals related to food systems;

(f) Integrate gender equality into all plans and actions related to food systems, increasing women's access to land, credit, inputs, information and technology and empowering women to play leadership roles at all levels;

(g) Provide strong protection for environmental human rights defenders working on food-related issues.

71. Agribusiness is frequently implicated in the murder of human right defenders.<sup>105</sup> States must vigilantly protect defenders from intimidation, criminalization and violence, diligently investigate, prosecute and punish the perpetrators of these crimes; and address the root causes of social-environmental conflict related to food systems.<sup>106</sup>

72. With respect to substantive obligations, States must not violate, through their own actions, the right to food, the right to a healthy and sustainable environment or other human rights that are jeopardized by the environmental consequences of food systems; must protect rights from being violated by third parties, in particular businesses; and must take positive actions to fulfil these rights. Failing to prevent foreseeable human rights harms caused by the environmental impacts of industrial food systems or failing to mobilize the maximum available resources in an effort to do so, could constitute a breach of States' obligations. States also must avoid discrimination and retrogressive measures. The Human Rights Committee has clarified that human rights obligations should be informed by international environmental law and vice versa.<sup>107</sup> States should integrate the right to food and the right to a healthy environment into national agriculture, aquaculture and fisheries laws, policies, strategies and programmes.

73. States have particular obligations to Indigenous peoples, local communities, Afro-descendants and peasants (including artisanal fishers) in actions related to food systems. The top priority involves legal recognition for their land titles, tenures and rights, acknowledging the existence of different customs and systems, including collective ownership and governance models. The United Nations Declaration on the Rights of Indigenous Peoples provides that "Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their

---

<sup>104</sup> See [A/HRC/37/59](#), annex.

<sup>105</sup> See Global Witness, *Defending Tomorrow: The Climate Crisis and Threats against Land and Environmental Defenders* (2020).

<sup>106</sup> See [A/HRC/25/55](#) and [A/71/281](#).

<sup>107</sup> Human Rights Committee, general comment No. 36 (on the right to life), para. 62.

lands or territories and resources.”<sup>108</sup> Pursuant to the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, States must “take appropriate measures to promote and protect the traditional knowledge, innovation and practices of peasants and other people working in rural areas, including traditional agrarian, pastoral, forestry, fisheries, livestock and agroecological systems relevant to the conservation and sustainable use of biological diversity”.<sup>109</sup>

74. Applying a rights-based approach to the governance of food systems requires States to make systemic changes, prioritizing action to improve the lives and livelihoods of the most disadvantaged, particularly those: who do not currently have adequate access to healthy and sustainable food; who lack access to land or whose land tenure is insecure; or whose right to a healthy and sustainable environment is being threatened or violated by food-related actions. Pursuant to international human rights law, the rights to food and a healthy, sustainable environment are subject to progressive realization, recognizing that in some low-income States they cannot be immediately fulfilled. However, States are obligated to use the maximum available resources to realize the rights to food and a healthy, sustainable environment. Some obligations, such as non-discrimination and non-regression, are of immediate effect.

75. States currently provide more than \$700 billion in annual subsidies to food production, the majority of which supports unsustainable practices and goes to large operators in industrial food systems.<sup>110</sup> Agroecology, other sustainable production approaches and smallholders receive a small fraction of subsidies, research and development funding and extension services. In the United States, the top 10 per cent of agricultural subsidy recipients receive 77 per cent of available funds while 60 per cent of farms get nothing. Shifting subsidies towards sustainable practices and smallholders would provide immense social, health and environmental benefits.<sup>111</sup>

76. The investment needed to transform food systems to become sustainable is an estimated \$300 billion–\$350 billion annually, although the societal return on investment could be up to 15 times higher.<sup>112</sup> Wealthy States must contribute more towards the costs of securing healthy and sustainable food in low-income countries. The amount of official development assistance dedicated to food security and nutrition is a paltry \$12 billion annually, but \$33 billion, if spent on effective interventions, could end hunger by 2030.<sup>113</sup> To avoid exacerbating debt problems, food-related financial assistance to low-income countries should consist of grants, not loans.

## B. Responsibilities of businesses

77. Businesses play an important role in food systems but are responsible for input-heavy monoculture plantations, intensive livestock operations, land and water-grabbing, deforestation and overfishing, thus exacerbating the global environmental crisis. Through the production and marketing of unhealthy ultra-processed foods,

<sup>108</sup> United Nations Declaration on the Rights of Indigenous Peoples, art. 29.

<sup>109</sup> United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 20.

<sup>110</sup> See OECD, *Agricultural policy, monitoring and evaluation 2017* (Paris, 2017).

<sup>111</sup> See David Laborde and others, “Agricultural subsidies and global greenhouse gas emissions” *Nature Communications* vol. 12, art. No. 2601 (2021).

<sup>112</sup> See Food and Land Use Coalition, *Growing Better* (see footnote 10).

<sup>113</sup> See David Laborde and others, *Ceres2030: Sustainable Solutions to End Hunger, Summary Report*, (Cornell University, International Food Policy Research Institute and International Institute for Sustainable Development, 2020).

including advertising aimed at children, businesses negatively influence dietary choices.

78. Businesses must adopt human rights policies, conduct human rights due diligence, establish transparent and effective grievance mechanisms, remedy human rights violations for which they are directly responsible and work to influence other actors to respect human rights where relationships of leverage exist. The Guiding Principles on Business and Human Rights apply to the activities, subsidiaries and supply chains of food-related businesses. These businesses should implement solutions to reduce greenhouse gas emissions, safeguard carbon sinks, reduce pollution, alleviate water scarcity, restore soil health, reduce impacts on biological diversity, reduce waste and decrease risks of pandemics from zoonotic diseases. Businesses should respect the rights of Indigenous peoples, local communities and peasants and avoid projects, products and activities that jeopardize the human rights to food and a safe, clean, healthy and sustainable environment. In addition, businesses should support laws and policies intended to reduce the environmental and health impacts imposed by industrial food systems.

## V. Good practices

79. Despite the immense environmental impacts of food systems, there are hundreds of millions of farmers, fishers, pastoralists, peasants and Indigenous peoples striving to produce healthy and sustainable food in the face of daunting challenges. A handful of leading examples are profiled below, with additional good practices contained in annex I.<sup>114</sup>

80. Agroecological practices can reduce environmental impacts and improve livelihoods for small-scale farmers, including women, because of reduced reliance on expensive external inputs.<sup>115</sup> Agroecology improves air, soil and water quality, is less energy-intensive, reduces emissions of greenhouse gases and enhances carbon sinks.<sup>116</sup> Examples of successful transitions to agroecology include strawberry farming in Santa Cruz, California, sustainable coffee production in San Ramón, Nicaragua and Veracruz, Mexico, an Ecovillage in Chololo, United Republic of Tanzania, a food cooperative in Shanxi, China, organic production in the Drôme Valley, France and Vega, Andalusia, Spain, and the dramatic decline in chemical inputs used in Cuba.<sup>117</sup>

81. Globally Important Agricultural Heritage Systems are systems led by local communities that support cultural heritage, agricultural biodiversity and ecosystem resilience. There are more than 60 designated systems in 22 nations, including the traditional rice-fish-duck system in south-western China, the agropastoral practices of the Maasai in the United Republic of Tanzania, terraced olive groves in Italy, Indigenous Andean agriculture growing potatoes, maize and quinoa at high elevations in Peru and the oases system in Morocco.

<sup>114</sup> Available at:

[www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AnnualReports.aspx](http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AnnualReports.aspx).

<sup>115</sup> See High Level Panel of Experts on Food Security and Nutrition, *Agroecological and other Innovative Approaches for Sustainable Agricultural and Food Systems that Enhance Food Security and Nutrition* (2019).

<sup>116</sup> See A/HRC/16/49.

<sup>117</sup> See International Panel of Experts on Sustainable Food Systems, *Breaking away from Industrial Food and Farming Systems: Seven case studies of agroecological transition* (2018).

82. Taxes on unhealthy ultra-processed foods (e.g., junk food, soft drinks) have been successful in reducing consumption of these products in many States, including Chile, Mexico, South Africa and the United Kingdom of Great Britain and Northern Ireland.
83. To protect the land rights of Indigenous peoples and peasants, Argentina and Brazil passed laws limiting foreign land ownership, while Cambodia and Laos imposed moratoriums on new land concessions.
84. Banning all highly hazardous pesticides significantly reduced suicides in Bangladesh and Sri Lanka, without adversely affecting agricultural yields. Bhutan is the first State to prohibit all uses of synthetic pesticides.
85. France is a leader in promoting healthy and sustainable food, with pioneering laws promoting agroecology, addressing food waste, increasing corporate accountability, prohibiting bee-killing neonicotinoid pesticides and banning the export of agrochemicals not permitted for use in France.
86. Micronesia reintroduced a traditional variety of orange-fleshed banana with 50 times more beta-carotene than the commercial white-fleshed banana, improving nutrition and health.
87. The European Union banned non-medicinal uses of antibiotics in livestock in 2006. Denmark, Finland, Norway and Sweden have demonstrated that dramatically reducing antibiotic use in livestock is compatible with a healthy, productive agricultural sector. In the Netherlands, livestock operations must meet stringent limits for ammonia emissions, reducing air pollution.
88. In Brazil, the National School Meals Programme provides healthy food for millions of children, while the Programme for the Purchase of Food from Family Agriculture is excellent example of using public procurement to support sustainable food.

## VI. Conclusion and recommendations

89. FAO defines “healthy and sustainable food” as having low environmental impact, protecting biodiversity, ecosystems and the climate; contributing to food security and meeting the health and nutritional needs of current and future generations through culturally acceptable, accessible and affordable food.<sup>118</sup> A rights-based approach, focused on the right to food and the right to a healthy environment, is an essential catalyst for accelerating the transformation from today’s unsustainable food systems to a future where everyone enjoys healthy and sustainable food, workers are treated fairly and degraded ecosystems are restored. This is an obligation for States, not an option.
90. Recognizing the complexity and diversity of food systems is essential when evaluating solutions. For hundreds of millions of people facing hunger and malnutrition, poverty must be alleviated and the quantity and quality of accessible food must be increased. In middle and high-income States, diets with fewer calories but more nutrients would improve health and reduce environmental impacts. Small-scale producers require support to improve their livelihoods while minimizing additional environmental impacts. Large-scale producers must be regulated or incentivized to reduce their environmental impacts. Solutions such as “eat less meat” may be appropriate in States where meat consumption is excessive, but are inappropriate in other contexts, including Indigenous peoples and pastoralists for

---

<sup>118</sup> See FAO, *Sustainable Diets and Biodiversity: Directions and Solutions for Policy, Research and Action* (Rome, 2010).

whom livestock are key to their cultures and livelihoods or people living in poverty for whom meat could contribute to healthier diets.<sup>119</sup>

91. To address the environmental impacts of food systems, there are proven solutions available to reduce greenhouse gas emissions and enhance carbon sinks, reduce air and water pollution, alleviate water scarcity, decrease the use of pesticides, fertilizers and antibiotics, restore soil health, safeguard biological diversity and decrease the risks of pandemics from zoonotic diseases. Agroecology, with its 13 principles, addresses all of these problems, while also seeking to achieve economic diversification, social equity, co-creation of knowledge, connections between producers and consumers, animal health and dignified, robust livelihoods for all food system actors.<sup>120</sup> Progress towards sustainable food production could be achieved through various approaches, including regenerative agriculture, organic farming, conservation agriculture, permaculture, climate-smart agriculture, precision agriculture and agroforestry. Many solutions offer multiple benefits (e.g., reducing pesticide use is good for soil, biodiversity and human health).

92. Despite complexity and diversity, there are key changes that would improve the sustainability and equity of food systems globally, especially industrial food systems:

(a) Reduce greenhouse gas emissions and safeguard carbon sinks:

Many of the most powerful climate mitigation actions involve food systems, including: reduced food waste, predominantly plant-based diets, restoration of tropical and temperate forests, silvopasture, peatland protection and rewetting, reforestation on degraded land, perennial staple crops, managed grazing, agroforestry and tree inter-cropping (planting trees among diverse crops).<sup>121</sup> Climate-smart agriculture employs crops that are more tolerant of heat, drought, salinity, pests and disease. Integrated animal and crop systems, better manure management and improved feed can reduce greenhouse gas emissions.

(b) Reduce air and water pollution:

The key steps that States must take to reduce pollution from food systems include: identifying major sources of food-related air and water pollution; ensuring that legislation, regulations, standards and policies for air and water quality apply fully to pollution from food systems; developing and implementing action plans for air and water quality at the local, national and, if necessary, regional levels; and evaluating progress, taking stronger action if needed. A priority is phasing out intensive livestock operations, which generate high levels of pollution.

(c) Alleviate water scarcity:

Legislation should ensure that the highest priorities for access to water are fulfilling human rights to water, sanitation, food, an adequate standard of living (including small-scale food production) and a healthy environment. Key agricultural actions include shifting to less water-intensive, more drought-tolerant crops, using high-efficiency irrigation systems, harvesting rainwater, maintaining vegetation and mulch cover, safely using treated wastewater and altering flood regimes for rice paddies. Ecosystem-based watershed management can reduce agricultural impacts on surface water and groundwater, minimize flood risks, increase climate resilience and protect biodiversity.

<sup>119</sup> See Zia Mehrabi and others, “Livestock policy for sustainable development”, *Nature Food*, vol. 1 (2020), pp. 160–165.

<sup>120</sup> See High-level Panel of Experts on Food Security and Nutrition, *Agroecological and other Innovative Approaches* (2019).

<sup>121</sup> See Project Drawdown, 2021, table of solutions. Available at <https://drawdown.org/solutions/table-of-solutions>.

## (d) Decrease the use of pesticides, fertilizers and antibiotics:

The use of highly hazardous pesticides should be prohibited in all States, as this would save lives without sacrificing yields.<sup>122</sup> Neonicotinoid pesticides should be banned to protect bees and other important pollinators. Regulations should be strengthened and taxes imposed on all remaining pesticides based on their toxicity, with revenues used to assist producers to reduce or eliminate pesticide use.<sup>123</sup> Support should be provided (e.g., credit, information, extension services, training programmes) to producers seeking organic, fair trade or other credible sustainability certification. In some regions (e.g., North America, Western Europe, South-East Asia), fertilizer use is often excessive and should be reduced. Adopting a closed loop system recycles nitrogen and phosphorous from places where they concentrate, such as sewage treatment plants, food processing plants, compost operations and livestock production facilities. This keeps excess nitrogen and phosphorous out of the biosphere, decreasing environmental effects. In other regions (e.g., Africa, Latin America), low fertilizer use contributes to a substantial yield gap. Regulations are needed to eliminate the use of antibiotics to promote growth in livestock and prevent prophylactic treatment of entire herds/flocks.

## (e) Restore soil health:

In addition to the preceding steps, key actions to restore soil health include application of organic fertilizers, minimal or no tillage, diverse crop rotations, use of cover crops, composting, integration of crops and livestock, planting trees and restoring vegetation on degraded lands, application of biochar and improved grazing management. These techniques will increase soil biodiversity, water storage and carbon sequestration, contributing to reduced erosion and increased yields.

## (f) Safeguard biological diversity:

States should enact and enforce laws to end deforestation and the conversion of forests into agricultural land, with exceptions in appropriate circumstances for small-scale subsistence farmers; encourage diversification at multiple scales (from farm to landscape) to increase both crop and non-crop biodiversity; require diversification of large monoculture plantations; and incorporate food systems into national biodiversity strategies and action plans. International agreements and national laws on genetic resources and intellectual property should be modified to respect and protect farmers' access to diverse, traditional and locally adapted seeds, foods and livestock breeds.<sup>124</sup> Protecting and restoring marine biodiversity will require an end to overfishing, increasing enforcement against illegal, unreported and unregulated fishing, protecting marine and coastal habitats, reducing pollution and establishing well-managed protected areas. Reviving and supporting traditional foods and ancestral practices of Indigenous peoples and peasants, including crops with high climate/disease tolerance and nutritional value, will increase resilience. Laws are needed to reduce the impacts of invasive species. Sensitive ecosystems (e.g., wetlands, peatlands, mangroves) should not be used for agriculture or aquaculture.

## (g) Decrease the risks of pandemics from zoonotic diseases:

Key actions include enacting and enforcing laws to end deforestation and the conversion of forests into agricultural land; strictly regulating wildlife trade by targeting illegal, unsustainable and unhygienic practices and high-risk species while supporting sustainable trade in wildlife that fulfils the rights to food and livelihood for poor and marginalized rural populations and contributes to protecting species and

<sup>122</sup> See Hanna-Andrea Rother, "Pesticide suicides: what more evidence is needed to ban highly hazardous pesticides?" *The Lancet Global Health*, vol. 9, No. 3 (March 2021), pp. e225-e226.

<sup>123</sup> A/HRC/34/48, para. 107.

<sup>124</sup> See A/HRC/46/33.

their habitat; tightening regulations for industrial agriculture, including biosecurity measures, to prevent transmission of infectious diseases from wildlife and livestock to people; and monitoring high-risk wildlife and vulnerable human populations, focusing on hotspots of emerging infectious diseases and high-risk interfaces between wildlife, livestock and humans. States should implement One Health, an integrated strategy for managing the complex interconnections between humans, animals and ecosystems to prevent zoonotic disease outbreaks.

93. Actions to tackle the climate emergency and biodiversity crisis must take the right to food into account. In the past, policies supporting biofuel production have contributed to spikes in food prices, riots and a major increase in people suffering from hunger.<sup>125</sup> Conservation measures, such as new parks, must take into account the right to food of Indigenous people, peasants, Afro-descendants and others dependent on the land for food, livelihoods and culture.

94. While the foregoing changes are necessary, they are not sufficient to achieve the required transformation of today's food systems. Fulfilling the rights to food and a healthy and sustainable environment requires additional policy and governance changes:

(a) Increase equity:

Supporting smallholders has the potential for a triple dividend – improving livelihoods, increasing yields and protecting biodiversity. To enhance social equity, States should:

a. Support small-scale producers with access to land, water, seeds and other inputs, information, credit, markets and marketing facilities, appropriate technology, extension services (including agroecological field schools), value-added opportunities and affordable and effective insurance;

b. Empower women through gender-responsive strategies to ensure equal access to all of the foregoing resources and strengthen women's participation in all levels of policymaking;

c. Invest in vocational programmes for rural youth that offer training in food-related skills;

d. Strengthen food producers' and consumers' cooperatives and other organizations that build capacities, create and exchange knowledge and facilitate the adoption of agroecological and other sustainable approaches;

e. Strengthen minimum income and other social protection programmes for marginalized and vulnerable groups to ensure they can afford healthy diets;

(b) Promote healthy and sustainable diets:

Moving to predominantly plant-based diets could reduce greenhouse gas emissions, ocean acidification and eutrophication from food systems by half; free up billions of hectares of land for restoration to protect biodiversity and store carbon; and reduce water scarcity.<sup>126</sup> Therefore, States should:

a. Create incentives for producing and consuming diverse, fresh, healthy, seasonal and sustainable foods, including whole grains, legumes, vegetables, fruits, nuts and seeds, as well as nutritionally rich but neglected species and varieties;

<sup>125</sup> See High-level Panel of Experts on Food Security and Nutrition, *Biofuels and food security* (Rome, 2013).

<sup>126</sup> See Willett and others, "Food in the Anthropocene", *The Lancet* (see footnote 52).

- b. Publish and promote national nutrition guidelines that integrate health and sustainability considerations;
- c. Require front-of-package warning labels for food products, based on health and sustainability criteria;
- d. Use public procurement (including school and hospital meals) to support the production and consumption of local, healthy and sustainable foods;
- e. Prohibit marketing of unhealthy foods towards children;
- f. Prohibit marketing of breast milk substitutes and ultra-processed foods intended for babies, toddlers and young children;
- g. Use taxes to reduce consumption of unhealthy and unsustainable foods, including drinks, ultra-processed products and processed meats that are high in sugar, salt or fat;
- h. Provide food literacy programmes to the general population and children in particular;

(c) Reduce food loss and waste:

Reducing loss and waste could reduce food-related environmental impacts by roughly 30 per cent. States should:

- a. Increase credit, education, training, extension services and access to markets for smallholders, enabling them to improve harvest timing and techniques;
- b. Invest in better storage, cooling, processing and transport infrastructure to reduce post-harvest losses;
- c. Apply circular economy principles by supporting the reuse of animal waste, crop residues and food processing waste as animal feed, compost, biogas and mulch;
- d. Support local and regional food systems;
- e. Address food waste through policies related to general waste management, food safety, labelling and subsidies;

(d) Economic reforms

To finance the required systemic changes, States should:

- a. Redirect more than \$700 billion in food-related subsidies that undermine sustainability to support innovation, implement sustainable production practices (particularly agroecology), end overfishing, develop green technologies, create just transition strategies, support healthy diets and restore ecosystems;
- b. Fund research and development and extension services to support sustainable production practices, particularly agroecology and to increase yields of dietary staples in the global South;
- c. Implement the proposed global fund for social protection;<sup>127</sup>
- d. Support urban, community and household food production;
- e. Create incentives for young entrepreneurs, women and community-led enterprises that capture and retain value locally

<sup>127</sup> See [A/HRC/47/36](#).

- f. Use recent developments in digital technologies and support open data initiatives that link producers, consumers, academics and decision makers;
  - g. Revise trade agreements and rules to ensure that food trade is equitable and to support transitions towards sustainable food systems;
  - h. Use anti-trust legislation to reverse the excessive concentration in the food sector;
  - i. Implement reforms aimed at ensuring equitable access to land;
- (e) Transforming food system governance;
- States should:
- a. Incorporate the right to food and the right to a healthy, sustainable environment in legislation, with mechanisms for accountability;
  - b. Develop national food goals and strategies, informed by the Sustainable Development Goals, to achieve sustainable food systems;
  - c. Enact legislation implementing the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas and International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries;
  - d. Enact legislation, based on the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, to prevent land, water and resource-grabbing;
  - e. Implement the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication;
  - f. Limit food-related businesses and their industry associations from lobbying, making political donations or otherwise influencing food, agriculture, nutrition, water, energy and environmental policies, in the light of their disproportionate contribution to the global environmental crisis;
  - g. Repeal laws and regulations that: exempt agricultural activities from environmental laws and standards (e.g., right-to-farm laws); prohibit criticism of agricultural activities (e.g., “ag-gag” laws, food libel laws); and permit lower wages or inadequate working conditions for persons employed in food-related jobs;
  - h. Legislate standards requiring businesses to conduct due diligence for human rights and the environment, both at the firm level and throughout supply chains, including access to remedies for affected rights-holders and substantial penalties for non-compliance;
  - i. Complete negotiations on new international treaty governing transnational corporations and human rights.

95. Feeding 8 billion people healthy, sustainable food and fulfilling the Sustainable Development Goals by 2030 are monumental challenges. However, transforming food systems that exploit millions of workers, undermine the health of billions of people and inflict trillions of dollars in environmental damages is morally and legally imperative in order to respect, protect and fulfil human rights. Achieving just, healthy and sustainable food systems will ensure that nobody is hungry or malnourished, that all producers and workers are treated fairly and that environmental impacts – climate change, biodiversity loss, water use and pollution – remain within planetary boundaries.



# General Assembly

Distr.: General  
12 January 2022

Original: English

---

## Human Rights Council

### Forty-ninth session

28 February–1 April 2022

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **The right to a clean, healthy and sustainable environment: non-toxic environment**

### **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**

#### *Summary*

In the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd – with the collaboration of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana – identifies a non-toxic environment as one of the substantive elements of the right to a safe, clean, healthy and sustainable environment. The Special Rapporteur describes the ongoing toxification of people and the planet, which is causing environmental injustices and creating “sacrifice zones”, extremely contaminated areas where vulnerable and marginalized groups bear a disproportionate burden of the health, human rights and environmental consequences of exposure to pollution and hazardous substances. The Special Rapporteur highlights State obligations, business responsibilities and good practices related to ensuring a non-toxic environment by preventing pollution, eliminating the use of toxic substances and rehabilitating contaminated sites.



## I. Introduction

1. On 8 October 2021, marking a turning point in the evolution of human rights, the Human Rights Council adopted an historic resolution recognizing, for the first time at the global level, the human right to a clean, healthy and sustainable environment (resolution 48/13). While this right is already recognized in law by more than 80 per cent of States Members of the United Nations,<sup>1</sup> the new resolution should be a catalyst for universal recognition in constitutions, legislation and regional human rights treaties, as well as for accelerated action to address the global environmental crisis.

2. As highlighted in the present report, the world is plagued by unconscionable environmental injustices, including “sacrifice zones”, where communities are exposed to extreme levels of pollution and toxic contamination. As stated by a resident of Quintero-Puchuncaví sacrifice zone in Chile: “They are giving us a bad life, every day they are sacrificing us, killing us slowly with cancer, with illness, and so on.” Urgent clean-up actions are required to protect people’s health and human rights in these extraordinarily hazardous places. Employing rights-based approaches to detoxify people’s bodies and the planet will require systemic and transformative changes to environmental law. States and businesses must vigorously pursue zero pollution and the elimination of toxic substances, rather than merely trying to minimize, reduce and mitigate exposure to these hazards. Prevention, precaution and non-discrimination must be the paramount principles in environmental policymaking.

3. The present report on the right to a non-toxic environment in which people can safely live, work, study and play is the sixth in a series of thematic reports addressing the substantive elements of the right to a safe, clean, healthy and sustainable environment, including clean air,<sup>2</sup> a safe climate,<sup>3</sup> healthy ecosystems and biodiversity,<sup>4</sup> safe and sufficient water<sup>5</sup> and healthy and sustainable food.<sup>6</sup>

4. The present report was developed in collaboration with the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes. A call for input was circulated in January 2021. Submissions were received from Argentina, Austria, Azerbaijan, Brazil, Cambodia, Chile, Costa Rica, Côte d’Ivoire, El Salvador, Finland, Greece, Guatemala, Malta, the Marshall Islands, Mauritius, Mexico, Montenegro, the Niger, Poland, Qatar, Singapore, Switzerland and Togo, and from youth, Indigenous peoples, students, academics, civil society and human rights institutions.<sup>7</sup>

## II. Pervasive pollution and toxic contamination of people and the planet

5. While the climate emergency, the global biodiversity crisis and the coronavirus disease (COVID-19) pandemic garner headlines, the devastating toll inflicted upon health, human rights and ecosystem integrity by pollution and hazardous substances continues to be largely overlooked. Yet pollution and toxic substances cause at least 9 million premature deaths, double the number of deaths inflicted by the COVID-19 pandemic during its first 18 months. 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.<sup>8</sup> Air pollution is the largest

---

<sup>1</sup> [A/HRC/43/53](#), para. 13.

<sup>2</sup> [A/HRC/40/55](#).

<sup>3</sup> [A/74/161](#).

<sup>4</sup> [A/75/161](#).

<sup>5</sup> [A/HRC/46/28](#).

<sup>6</sup> [A/76/179](#).

<sup>7</sup> See <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/ToxicFree.aspx>.

<sup>8</sup> See Philip J. Landrigan and others, “The *Lancet* Commission on pollution and health”, *The Lancet*, vol. 391, No. 10119 (February 2018).

environmental contributor to premature deaths, causing an estimated 7 million annually.<sup>9</sup> Low- and middle-income countries bear the brunt of pollution-related illnesses, with nearly 92 per cent of pollution-related deaths.<sup>10</sup> Over 750,000 workers die annually because of exposure to toxic substances on the job, including particulate matter, asbestos, arsenic and diesel exhaust.<sup>11</sup>

6. The toxification of planet Earth is intensifying. While a few toxic substances have been banned or are being phased out, the overall production, use and disposal of hazardous chemicals continues to increase rapidly. Hundreds of millions of tons of toxic substances are released into air, water and soil annually. Production of chemicals doubled between 2000 and 2017, and is expected to double again by 2030 and triple by 2050, with the majority of growth in non-members of the Organisation for Economic Co-operation and Development (OECD).<sup>12</sup> According to the United Nations Environment Programme (UNEP), the result of this growth will be increased exposure and worsening health and environmental impacts unless ambitious, urgent and worldwide collaborative action is taken by all stakeholders and in all countries.<sup>13</sup>

7. The world is struggling to address both old and new chemical threats. For example, lead is still widely used despite long-standing knowledge regarding its toxicity and devastating consequences for the neurological development of children. Lead causes close to 1 million deaths annually, as well as immense and irreversible damage to the health of millions of children.

8. Emerging issues of concern include per- and polyfluoroalkyl substances, endocrine disruptors, microplastics, neonicotinoid pesticides, polycyclic aromatic hydrocarbons, pharmaceutical residues and nanoparticles. Per- and polyfluoroalkyl substances are a group of thousands of chemicals widely used in industrial and consumer applications, such as firefighting foams and water- and grease-repellent coatings for textiles, paper and cookware. Known as “forever chemicals” owing to their persistence in the environment, they are also toxic and bioaccumulative, building up in the tissue of living organisms and increasing in concentration higher in the food chain. Virtually everyone in industrialized nations has per- and polyfluoroalkyl substances in their body. Exposure is linked to liver damage, hypertension, decreased immune response, decreased fertility, lower birth weight, and testicular and kidney cancer. In the European Union, the health-related costs of per- and polyfluoroalkyl substances range from 52 billion to 84 billion euros annually, while treatment and remediation costs for contaminated water and soil range from 10 billion to 170 billion euros.<sup>14</sup>

9. The extraction, processing, distribution and combustion of fossil fuels – coal, oil and natural gas – produces prodigious volumes of pollution and toxic chemicals. Fossil fuels are also the primary feedstock for the heavily polluting petrochemical and plastic industries. Industrial agriculture contaminates air, water, soil and the food chain with hazardous pesticides, herbicides, synthetic fertilizers and drugs.<sup>15</sup> Other industries that produce immense volumes of pollution and toxic substances are mining and smelting, manufacturing, textiles, construction and transportation. Unsafe waste management, including dumping, open burning and informal processing of electronic waste, lead-acid batteries and plastic, exposes hundreds of millions of people in the global South to chemical cocktails, including brominated flame retardants, phthalates, dioxins, heavy metals, polycyclic aromatic hydrocarbons and bisphenol A.

<sup>9</sup> Ibid., and [https://www.who.int/health-topics/air-pollution#tab=tab\\_1](https://www.who.int/health-topics/air-pollution#tab=tab_1).

<sup>10</sup> Ibid., and [UNEP/EA.4/3](#).

<sup>11</sup> See <https://www.who.int/publications/i/item/9789240034945>.

<sup>12</sup> See United Nations Environment Programme (UNEP), *Global Chemicals Outlook II: From Legacies to Innovative Solutions – Implementing the 2030 Agenda for Sustainable Development* (Nairobi, 2019).

<sup>13</sup> Ibid.

<sup>14</sup> See Nordic Council of Ministers, *The Cost of Inaction: A Socioeconomic Analysis of Environmental and Health Impacts Linked to Exposure to PFAS* (Copenhagen, 2019).

<sup>15</sup> See [A/76/179](#).

10. Chemical accidents can have a catastrophic impact on health human rights and the environment. A well-known example is the exposure in 1984 of more than half a million people in Bhopal, India, to methyl isocyanate gas released from a Union Carbide pesticide plant, causing thousands of deaths. Accidents at mining sites also cause massive releases of toxic substances, illustrated by the collapse of tailings ponds at Mariana and Brumadinho in Brazil (2015 and 2019 respectively) and the Baia Mare disaster in Romania (2000). Explosions of warehouses containing toxic substances have taken on greater prominence in the aftermath of the catastrophes in Beirut (2020) and Tianjin, China (2015).

11. Toxic contaminants are ubiquitous today, from the highest Himalayan peaks to the depths of the Mariana Trench. Humans are exposed to toxic substances through breathing, eating and drinking, through skin contact and via the umbilical cord to the unborn child. Biomonitoring studies reveal pesticide residues, phthalates, flame retardants, per- and polyfluoroalkyl substances, heavy metals and microplastics in our bodies. Toxic substances can even be found in newborn infants.<sup>16</sup>

12. Exposure to toxic substances raises the risks of premature death, acute poisoning, cancer, heart disease, stroke, respiratory illnesses, adverse effects on the immune, endocrine and reproductive systems, birth defects and lifelong negative impacts on neurological development. One quarter of the total global burden of disease is attributed to preventable environmental risk factors, the overwhelming majority of which involve exposure to pollution and toxic substances.<sup>17</sup>

13. It is important to highlight the connections between toxic substances and the other two aspects of the world's triple environmental crisis (the climate emergency and the decline in biodiversity). The chemical industry exacerbates the climate emergency by consuming more than 10 per cent of fossil fuels produced globally and emitting an estimated 3.3 billion tons of greenhouse gas emissions annually. Global warming contributes to the release and remobilization of hazardous pollutants from melting glaciers and thawing permafrost.<sup>18</sup> Pollution and toxic substances are also one of the five main drivers of the catastrophic decline in biodiversity, with particularly negative impacts on pollinators, insects, freshwater and marine ecosystems (including coral reefs) and bird populations.<sup>19</sup>

14. At the World Summit on Sustainable Development in 2002, States committed to minimizing the adverse effects of chemicals and waste on human health and the environment by 2020. This pledge informed the overall objective of the Strategic Approach to International Chemicals Management, adopted in 2006. However, the goal was clearly not fulfilled.<sup>20</sup> The post-2020 framework for chemicals and waste offers an opportunity to rethink the global goal, since the goal of minimizing adverse effects implies that people will continue to be harmed by exposure to pollution, toxic chemicals and waste. Instead, the right to a non-toxic environment requires a focus on preventing exposure to pollution and toxic substances.

15. An extensive body of international law addresses pollution and toxic substances, including the following instruments:

- (a) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter;
- (b) International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto;
- (c) Montreal Protocol on Substances that Deplete the Ozone Layer;

---

<sup>16</sup> See [A/HRC/33/41](#).

<sup>17</sup> See Annette Prüss-Ustün and others, *Preventing Disease through Healthy Environments: A Global Assessment of the Burden of Disease from Environmental Risks* (Geneva, World Health Organization, 2016).

<sup>18</sup> See UNEP, *Global Chemicals Outlook II*.

<sup>19</sup> See Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Global Assessment Report on Biodiversity and Ecosystem Services: Summary for Policymakers* (Bonn, 2019).

<sup>20</sup> See UNEP, *Global Chemicals Outlook II*.

- (d) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal;
- (e) International Labour Organization (ILO) Chemicals Convention, 1990 (No. 170);
- (f) ILO Prevention of Major Industrial Accidents Convention, 1993 (No. 174);
- (g) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade;
- (h) Stockholm Convention on Persistent Organic Pollutants;
- (i) International Health Regulations (2005);
- (j) Minamata Convention on Mercury.

16. Several voluntary instruments adopted by international organizations also address pollution and toxic chemicals. Prominent examples include the World Health Organization (WHO) air quality guidelines, the International Code of Conduct on Pesticide Management and the Globally Harmonized System of Classification and Labelling of Chemicals.

17. The effectiveness of these instruments is undermined by many major gaps and weaknesses, including the fact that none of them mention human rights, the vast majority of toxic substances are not controlled and few nations are fulfilling all of their obligations. For example, OECD estimates that between 20,000 and 100,000 existing chemicals have not been adequately assessed to determine their risks because of information gaps.<sup>21</sup> Fewer than half of States have implemented the Globally Harmonized System of Classification and Labelling of Chemicals and fewer than half compile and publish data on pollutant releases and transfers. Many parties to the Basel, Rotterdam and Stockholm Conventions are not fulfilling their reporting obligations.<sup>22</sup>

18. While most nations have laws and policies intended to protect human and ecosystem health from toxic substances the focus is on reduction, not elimination. Many gaps remain, and institutions often lack the expertise and resources to carry out their duties. Laws, policies, implementation and enforcement are highly inconsistent across the world. Permitted levels of sulfur in diesel fuel range from fewer than 10 parts per million in some high-income States to more than 10,000 parts per million in some low-income States, meaning that fuel can be 1,000 times dirtier in the latter. Most countries still lack legally binding limits for lead in paints, yet where limits do exist, they range from 90 to 20,000 parts per million.<sup>23</sup>

19. Preventing exposure to toxic substances is vital to fulfilling many of the Sustainable Development Goals, including those related to health (Goal 3), clean water (Goal 6) and sustainable consumption and production (Goal 12). Key targets include target 3.9, on substantially reducing the number of deaths and illnesses from hazardous chemicals and pollution; target 6.3, on improving water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals; and target 12.4, on achieving the environmentally sound management of chemicals and all wastes throughout their life cycle and significantly reducing their release to air, water and soil. Effectively managing chemicals and waste is necessary for many other Goals, including those related to biodiversity, climate action and clean energy.

20. Overall, while progress has been made in certain areas, the goal of protecting all humans and ecosystems from the adverse effects of chemicals has not been achieved.<sup>24</sup> States are not on track to achieve the above-noted Sustainable Development Goals. The costs associated with pollution and toxic chemicals are trillions of dollars annually.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> See UNEP, "Update on the global status of legal limits on lead in paint", September 2019.

<sup>24</sup> See UNEP, *Global Chemicals Outlook II*.

### III. Environmental injustices and sacrifice zones

#### A. Environmental injustices

21. While all humans are exposed to pollution and toxic chemicals, there is compelling evidence that the burden of contamination falls disproportionately upon the shoulders of individuals, groups and communities that are already enduring poverty, discrimination and systemic marginalization. Women, children, minorities, migrants, Indigenous peoples, older persons and persons with disabilities are potentially vulnerable, for a variety of economic, social, cultural and biological reasons. Workers, especially in low- and middle-income nations, are at risk because of elevated exposures on the job, poor working conditions, limited knowledge about chemical risks and lack of access to health care. 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.

22. The disturbing phenomenon of poor and marginalized communities being more heavily affected by pollution is a form of environmental injustice. Environmental injustices related to pollution and the production, export, use and disposal of toxic substances are rooted in racism, discrimination, colonialism, patriarchy, impunity and political systems that systematically ignore human rights.<sup>25</sup>

23. Contaminated sites are usually found in disadvantaged communities. It is estimated that there are 2.8 million contaminated sites in Europe,<sup>26</sup> while the United States of America has identified more than 1,000 national priority sites for remediation, out of hundreds of thousands of contaminated sites. In low- and middle-income countries, new contaminated sites are being created through industrialization (for example, coal-fired power plants) and extractivism (for example, artisanal and small-scale gold mining). In many States, clean-up and remediation are delayed by a lack of available funds.

24. Many environmental injustices are transnational, with consumption in wealthy States resulting in severe impacts on health, ecosystems and human rights in other States. High-income States continue to irresponsibly export hazardous materials such as pesticides,<sup>27</sup> plastic waste,<sup>28</sup> electronic waste, used oil and derelict vehicles, along with the associated health and environmental risks, to low- and middle-income countries, taking advantage of the fact that these countries often have weaker regulations and limited enforcement.<sup>29</sup> Businesses in the European Union planned to export more than 81 thousand tons of banned pesticides in 2018.<sup>30</sup> Approximately 80 per cent of shipbreaking occurs on the beaches of Bangladesh, India and Pakistan, exposing unprotected workers to toxic chemicals.<sup>31</sup> In some countries, up to 95 per cent of electronic waste is processed informally by untrained workers lacking appropriate equipment, resulting in significant releases of heavy metals, polychlorinated biphenyls, brominated flame retardants, polycyclic aromatic hydrocarbons and dioxins.<sup>32</sup>

25. Poor, vulnerable and marginalized communities are less likely to enjoy access to environmental information, to participate in decision-making related to the environment or to have access to justice and effective remedies when their rights are jeopardized or violated by pollution and toxic chemicals. While the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)

<sup>25</sup> See [A/75/290](#).

<sup>26</sup> See European Court of Auditors, *The Polluter Pays Principle: Inconsistent Application across EU Environmental Policies and Actions* (Luxembourg, 2021).

<sup>27</sup> See [A/HRC/34/48](#).

<sup>28</sup> See [A/76/207](#).

<sup>29</sup> Submissions by Costa Rica and Cote d'Ivoire.

<sup>30</sup> See Swagata Sarkar and others, *The Use of Pesticides in Developing Countries and Their Impact on Health and the Right to Food* (Brussels, European Union, 2021).

<sup>31</sup> See [A/HRC/12/26](#).

<sup>32</sup> See UNEP, *Global Chemicals Outlook II*.

focus on rectifying these injustices and ensuring that everyone enjoys their right to a clean, healthy and sustainable environment, fewer than 60 States are parties to these treaties and implementation challenges are ongoing.

## B. Sacrifice zones

26. Some communities suffer from environmental injustices whereby the exposure to pollution and toxic substances is so extreme in the areas in which they live that they are described as “sacrifice zones”.<sup>33</sup> The phrase originated in the cold war era, when it was used to describe areas rendered uninhabitable by nuclear experiments, conducted by the United States, the Soviet Union, France and the United Kingdom of Great Britain and Northern Ireland, that caused high and lasting levels of radiation.

27. 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. The climate crisis is creating a new category of sacrifice zones as a result of unabated greenhouse gas emissions, as communities have become, and are becoming, uninhabitable because of extreme weather events or slow-onset disasters, including drought and rising sea levels.

28. The most heavily polluting and hazardous facilities, including open-pit mines, smelters, petroleum refineries, chemical plants, coal-fired power stations, oil- and gas fields, steel plants, garbage dumps and hazardous waste incinerators, as well as clusters of these facilities, tend to be located in close proximity to poor and marginalized communities. Health, quality of life and a wide range of human rights are compromised, ostensibly for “growth”, “progress” or “development” but in reality to serve private interests. Shareholders in polluting companies benefit from higher profits, while consumers benefit through lower-cost energy and goods. Prolonging the jobs of workers in polluting industries is used as a form of economic blackmail to delay the transition to a sustainable future, while the potential of green jobs is unjustifiably discounted.

29. The continued existence of sacrifice zones is a stain upon the collective conscience of humanity. Often created through the collusion of Governments and businesses, sacrifice zones are the diametric opposite of sustainable development, harming the interests of present and future generations. The people who inhabit sacrifice zones are exploited, traumatized and stigmatized. They are treated as disposable, their voices ignored, their presence excluded from decision-making processes and their dignity and human rights trampled upon. Sacrifice zones exist in States rich and poor, North and South, as described in the examples below. Descriptions of additional sacrifice zones are contained in annex I.<sup>34</sup>

### Africa

30. In Kabwe, Zambia, 95 per cent of children suffer from elevated blood lead levels caused by lead mining and smelting.<sup>35</sup> Experts described the situation as a severe environmental health crisis,<sup>36</sup> and Kabwe was named as one of the most polluted places on Earth. Exposure to lead during childhood impairs neurological development, causing lifelong cognitive deficits. Extremely high levels of exposure, such as those seen in Kabwe, can cause blindness, paralysis and death.

31. The people of the Niger Delta in Nigeria have lived with oil pollution and gas flaring for decades, resulting in extensive physical and mental health problems caused by

<sup>33</sup> See Steve Lerner, *Sacrifice Zones: The Front Lines of Toxic Chemical Exposure in the United States* (Cambridge, Massachusetts, MIT Press, 2010).

<sup>34</sup> The annexes will be made available at <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AnnualReports.aspx>.

<sup>35</sup> See Human Rights Watch, “*We Have to Be Worried*”: *The Impact of Lead Contamination on Children’s Rights in Kabwe, Zambia* (New York, 2019).

<sup>36</sup> Stephan Bose-O’Reilly and others, “Lead intoxicated children in Kabwe, Zambia”, *Environmental Research*, vol. 165, 2018, pp. 420–424.

contaminated air, water and food.<sup>37</sup> Adverse health effects of exposure to oil pollution include abnormalities in blood, liver, kidney, respiratory and brain functions, as well as asthma attacks, headaches, diarrhoea, dizziness, abdominal pain and back pain.<sup>38</sup> Average life expectancy for residents of the Niger Delta is only 40 years, compared to 55 years for Nigeria as a whole.<sup>39</sup>

32. In 2006, thousands of people in Abidjan, Côte d'Ivoire, were harmed and 15 killed by the illegal dumping of toxic waste containing high levels of hydrogen sulfide offloaded from the vessel *Probo Koala*.<sup>40</sup> A review of the hospital records of more than 10,000 patients determined that the main impacts included respiratory problems (such as coughs and chest pains) and digestive symptoms (such as abdominal pain, diarrhoea and vomiting).<sup>41</sup>

### Asia and the Pacific

33. Astronomical levels of air pollution have harmed the health of billions of people in Asia. The majority of the world's most polluted cities are in China and India. In New Delhi, thick smog provoked a weeks-long closure of all schools in November 2021, with levels of fine particulate matter (PM<sub>2.5</sub>) 20 times higher than the maximum daily limit recommended by WHO.<sup>42</sup>

34. China extracts the majority of the world's rare earth minerals, elements used in products including electric vehicles, wind turbines and mobile phones. These minerals are mined in Bayan Obo and processed in Baotou, a nearby city. Air quality is very poor, and toxic emissions cause a substantial lifetime risk of lung cancer for local residents, especially children.<sup>43</sup> Residents have elevated levels of rare earth minerals (lanthanum, cerium and neodymium) in their blood, urine and hair.<sup>44</sup> Elevated concentrations of heavy metals in dust and soil threaten people's health.<sup>45</sup>

35. People in the Marshall Islands, in Kazakhstan, in Chernobyl, Ukraine, and in Fukushima, Japan,<sup>46</sup> continue to suffer the adverse effects of radiation from nuclear tests and disasters at nuclear reactors. Between 1946 and 1958, the United States tested more than 60 nuclear weapons on or near Bikini and Enewetak atolls in the Marshall Islands, resulting in elevated levels of cancer, birth defects and psychological trauma that continue to this day.<sup>47</sup> Marshallese women and girls suffer disproportionately from thyroid and other cancers and

<sup>37</sup> Jerome O. Nriagu, "Oil industry and the health of communities in the Niger Delta of Nigeria", in *Encyclopedia of Environmental Health*, Jerome O. Nriagu, ed. (Amsterdam, Elsevier B.V., 2011), pp. 240–250.

<sup>38</sup> Jerome O. Nriagu and others, "Health risks associated with oil pollution in the Niger Delta, Nigeria", *International Journal of Environmental Research and Public Health*, vol. 13, No. 3 (March 2016), art. No. 346.

<sup>39</sup> Orish Ebere Orisakwe, "Crude oil and public health issues in Niger Delta, Nigeria: much ado about the inevitable", *Environmental Research*, vol. 194, March 2021, art. no. 110725.

<sup>40</sup> See [A/HRC/12/26/Add.2](#).

<sup>41</sup> Boko Kouassi and others, "Manifestations cliniques chez les sujets exposés à un accident toxique environnemental (Abidjan, Côte d'Ivoire 2006)", *Revue des Maladies Respiratoires*, vol. 32, No. 1 (January 2015), pp. 38–47.

<sup>42</sup> See <https://www.aljazeera.com/news/2021/11/13/delhi-shuts-schools-as-government-considers-pollution-lockdown> and <https://www.theguardian.com/world/2021/nov/16/soaring-pollution-has-delhi-considering-full-weekend-lockdown>.

<sup>43</sup> Kexin Li and others. "Risk assessment of atmospheric heavy metals exposure in Baotou, a typical industrial city in northern China", *Environmental Geochemistry and Health*, vol. 38, No. 3 (June 2015), pp. 843–853.

<sup>44</sup> T.M. Bao and others, ["An investigation of lanthanum and other metals levels in blood, urine and hair among residents in the rare earth mining area of a city in China"] (article in Chinese; abstract available in English), *Zhonghua Lao Dong Wei Sheng Zhi Ye Bing Za Zhi*, vol. 36, No. 2 (February 2018), pp. 99–101.

<sup>45</sup> Xiufeng Han and others, "Health risks and contamination levels of heavy metals in dusts from parks and squares of an industrial city in semi-arid area of China", *International Journal of Environmental Research and Public Health*, vol. 14, No. 8 (August 2017), art. No. 886.

<sup>46</sup> [CEDAW/C/JPN/CO/7-8](#), paras. 36–37.

<sup>47</sup> Submission by the Marshall Islands.

from reproductive health problems.<sup>48</sup> The former Soviet Union conducted 456 nuclear testing explosions in the former Semipalatinsk region (now Semey, Kazakhstan). People in the region, living in poverty and not informed about the tests, were exposed to high levels of radiation, leading to large numbers of birth defects, elevated rates of cancer and extensive psychological trauma.<sup>49</sup>

### Eastern Europe

36. Bor, Serbia, is one of the most polluted European cities, largely because of a huge copper mining and smelting complex that emits massive amounts of sulfur dioxide, particulates, arsenic, lead, zinc and mercury.<sup>50</sup> UNEP described a devastating legacy of environmental problems, with sulfur dioxide concentrations occasionally exceeding the measuring range of monitoring equipment.<sup>51</sup> The Borska Reka River is so contaminated with heavy metals that experts described it as without any trace of life.<sup>52</sup> Metallurgical workers have high levels of arsenic in their hair and urine, with nearly 80 per cent suffering from an average of two chronic diseases.<sup>53</sup>

37. Norilsk is among the most polluted cities in the Russian Federation, suffering very high levels of air pollution, acid rain, water pollution and soil contamination.<sup>54</sup> The main source of pollution is the mining and smelting company Norilsk Nickel, which caused a catastrophic diesel spill in 2020 affecting the Pyasina River. Very high levels of heavy metals have been found in fish, moss, soil and snow in the region.<sup>55</sup> The most adversely affected communities are Indigenous peoples from Taymyr, who face high rates of respiratory diseases, cancer, weakened immune system, premature births, reproductive failure, increased childhood morbidity and life expectancy 10 years below the national average.<sup>56</sup>

38. Although the Pata Rât landfill in Cluj-Napoca, Romania, closed in 2015, thousands of marginalized Roma people still live in the area, regarded as one of the worst waste dumps in Europe. They lack access to safe drinking water, sanitation or decent housing, leading researchers to describe Pata Rât as a desolate scenario of dehumanization.<sup>57</sup> People are exposed to arsenic, benzene, cadmium, chromium, creosote, dioxins, hexane, hydrogen sulfide, lead, mercury, styrene and zinc. Residents report suffering from infections of the ears, eyes and skin, asthma, bronchitis, high blood pressure, cancer, and heart, liver and stomach ailments.<sup>58</sup>

<sup>48</sup> CEDAW/C/MHL/CO/1-3, para. 8.

<sup>49</sup> “Four decades of nuclear testing: the legacy of Semipalatinsk”, editorial, *EClinicalMedicine*, vol. 13, August 2019, p. 1.

<sup>50</sup> Snežana M. Šerbula and others, “Extreme air pollution with contaminants originating from the mining–metallurgical processes”, *Science of the Total Environment*, vol. 586, May 2017, pp. 1066–1075.

<sup>51</sup> UNEP, *From Conflict to Sustainable Development: Assessment of Environmental Hot Spots – Serbia and Montenegro*, (Nairobi, 2004), pp. 49–50.

<sup>52</sup> Jovana Brankov, Dragana Milijašević and Ana Milanović Pešić, “The assessment of the surface water quality using the Water Pollution Index: a case study of the Timok River (Danube River Basin), Serbia”, *Archives of Environmental Protection*, vol. 38, No. 1 (January 2012), pp. 49–61.

<sup>53</sup> UNEP, “Municipality of Bor, Serbia-Montenegro: Local Environmental Action Plan – booklet (draft summary)”, March 2003.

<sup>54</sup> Alexander V. Kirilyanov and others, “Ecological and conceptual consequences of Arctic pollution”, *Ecology Letters*, vol. 23, No. 12 (September 2020), pp. 1827–1837.

<sup>55</sup> Alexander Zhulidov and others, “Long-term changes of heavy metal and sulphur concentrations in ecosystems of the Taymyr Peninsula (Russian Federation) north of the Norilsk industrial complex”, *Environmental Monitoring and Assessment*, vol. 181, Nos. 1–4 (January 2011), pp. 539–553.

<sup>56</sup> See Brian Walsh, “Urban wastelands: the world’s 10 most polluted places”, *Time*, 4 November 2013.

<sup>57</sup> Ruxandra Mălina Petrescu-Mag and others, “Environmental equity through negotiation: a case study on urban landfills and the Roma community”, *International Journal of Environmental Research and Public Health*, vol. 13, No. 6 (June 2016), art. No. 591.

<sup>58</sup> Jennifer L. Hall and Catherine Zeman, “Community-based participatory research with the Roma of Pata Rât, Romania: exploring toxic environmental health conditions”, *Journal of Ethnographic and Qualitative Research*, vol. 13, No. 2 (2018), pp. 92–106.

### Latin America and the Caribbean

39. Quintero-Puchuncaví, the most notorious sacrifice zone in Chile, is home to the Ventanas industrial complex, comprising more than 15 industrial businesses (oil refineries, petrochemical facilities, coal-fired power plants, gas terminals and a copper smelter). In 2018, a major air pollution incident in Quintero-Puchuncaví made hundreds of schoolchildren ill. In the universal periodic review process, the United Nations country team recommended that Chile investigate the negative effects on the inhabitants of sacrifice zones, accelerate the implementation of remediation programmes and develop environmental quality standards in accordance with WHO international standards.<sup>59</sup> The Supreme Court of Chile concluded that the egregious air pollution in Quintero-Puchuncaví violated the right to a pollution-free environment and ordered the Government to take steps to address the problem.<sup>60</sup>

40. In La Oroya, Peru, generations of children have been poisoned by a huge lead smelter. A shocking 99 per cent of children have levels of lead in their blood that exceed acceptable limits. Despite interventions by the Constitutional Court of Peru and the Inter-American Commission on Human Rights, levels of contamination in La Oroya remain hazardous. Also located in Peru, in Cerro de Pasco, is a massive open-pit mine adjacent to an impoverished community exposed to elevated levels of heavy metals. In 2018, the Government of Peru declared a state of emergency in Cerro de Pasco because of the pollution, but children in the region continue to suffer adverse health effects.<sup>61</sup>

41. Water and soil in Guadeloupe and Martinique, France, are contaminated by unsafe levels of the pesticide chlordecone. Although the manufacturing and use of this pesticide was banned in the 1970s in the United States, it continued to be used in the West Indies into the 1990s. Residents are still exposed to chlordecone through drinking water and the food that they grow because of the pesticide's persistence in the environment. Ninety per cent of people living in Guadeloupe and Martinique have been found to have chlordecone in their blood, raising their risk of cancer.<sup>62</sup>

42. Garbage dumps in numerous Caribbean nations are regularly set on fire, despite the presence of plastics, used tyres and other items that generate extremely hazardous chemicals when burned. This practice creates massive, lingering clouds of toxic smoke that envelope neighbouring residents and jeopardize their health. Examples include the landfills at Parkietenbos in Aruba, (Netherlands), Riverton (Jamaica) and Truitier (Haiti). A major fire at the Riverton dump in Jamaica in 2015 led to 50 schools being closed and hundreds of persons hospitalized.

### Western Europe and North America

43. One of the most notorious pollution hotspots in Canada – “Chemical Valley”, in Sarnia, Ontario – has disturbing health effects on the Aamjiwnaang First Nation. There are more than 40 large petrochemical, polymer, oil-refining and chemical facilities in close proximity to Aamjiwnaang, as well as a coal-fired power plant. This Indigenous community endures some of the worst air quality in Canada. Physical and psychological health problems are common, including high rates of miscarriages, childhood asthma, and cancer.<sup>63</sup>

44. In the United States, cancer rates are far higher than the national average in predominantly Black communities such as Mossville, St. Gabriel, St. James Parish and St. John the Baptist Parish, located in Louisiana's “Cancer Alley”, which is home to more than 150 refineries and petrochemical plants, including the world's largest producer of

<sup>59</sup> A/HRC/WG.6/32/CHL/2, para. 16.

<sup>60</sup> *Francisco Chahuan contra Empresa Nacional de Petróleos, ENAP S.A.*, Case No. 5888-2019, Judgment, 28 May 2019.

<sup>61</sup> Xulia Fandiño Piñeiro and others, “Heavy metal contamination in Peru: implications on children's health”, *Scientific Reports*, vol. 11, November 2021, art. No. 22729.

<sup>62</sup> Luc Multigner and others, “Chlordecone exposure and adverse effects in French West Indies populations”, *Environmental Science and Pollution Research International*, vol. 23, No. 1 (January 2016), pp. 3–8.

<sup>63</sup> Deborah Davis Jackson, “Shelter in place: a First Nation community in Canada's Chemical Valley”, *Interdisciplinary Environmental Review*, vol. 11, No. 4 (January 2010), pp. 249–262.

Styrofoam.<sup>64</sup> Large polluting industrial facilities in the United States are disproportionately located in communities with the highest percentages of persons of African descent, the lowest household incomes and the highest proportion of residents who did not graduate from high school. A leading scholar wrote that, “[e]nabled by state zoning, a wave of chemical plants dropped on African American communities like a bomb”.<sup>65</sup> Cancer Alley contains 7 of the 10 United States census tracts with the highest risk of cancer from air pollution.<sup>66</sup> In 2020, air concentrations of cancer-causing chloroprene in St. John the Baptist Parish were 8,000 times higher than the acceptable level established by the United States Environmental Protection Agency.<sup>67</sup>

45. The Ilva steel plant in Taranto, Italy, has compromised people’s health and violated human rights for decades by discharging vast volumes of toxic air pollution.<sup>68</sup> Nearby residents suffer from elevated levels of respiratory illnesses, heart disease, cancer, debilitating neurological ailments and premature mortality. Clean-up and remediation activities that were supposed to commence in 2012 have been delayed to 2023, with the Government introducing special legislative decrees allowing the plant to continue operating.<sup>69</sup> In 2019, the European Court of Human Rights concluded that environmental pollution was continuing, endangering the health of the applicants and, more generally, that of the entire population living in the areas at risk.<sup>70</sup>

46. The foregoing examples of sacrifice zones represent some of the most polluted and hazardous places in the world, illustrating egregious human rights violations, particularly of poor, vulnerable and marginalized populations. Sacrifice zones represent the worst imaginable dereliction of a State’s obligation to respect, protect and fulfil the right to a clean, healthy and sustainable environment.

#### IV. Human rights obligations related to pervasive pollution and toxic substances

47. United Nations treaty bodies, regional courts, national courts, national human rights institutions and special procedure mandate holders have expressed concerns about the impacts of pollution and toxic substances upon the enjoyment of a wide range of human rights, including the rights to life, health, water, food, housing, cultural rights and an adequate standard of living, the rights of the child and the rights of Indigenous peoples.<sup>71</sup> The recent recognition of the right to a clean, healthy and sustainable environment should mark a turning point in society’s approach to managing pollution and toxic substances. From a human rights perspective, achieving a non-toxic environment is a legally binding obligation rather than a policy option.

48. As a corollary to the right to a clean, healthy and sustainable environment, States and businesses have a comprehensive suite of corresponding obligations and responsibilities. States should apply a human rights-based approach to all laws, regulations, policies and actions governing the production, import, sale, use, release and disposal of substances that may harm human health or the environment, in order to eliminate negative impacts on human

<sup>64</sup> See communication AL USA 33/2020, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25814>.

<sup>65</sup> Oliver Houck, “Shintech: environmental justice at ground zero”, *Georgetown Environmental Law Review*, vol. 31, No. 3 (2019), p. 455.

<sup>66</sup> See <https://www.epa.gov/national-air-toxics-assessment/2014-nata-assessment-results>.

<sup>67</sup> See [https://earthjustice.org/sites/default/files/files/ccsj\\_petition\\_for\\_emergency\\_action\\_petition\\_for\\_rule\\_making\\_05-06-2021\\_1.pdf](https://earthjustice.org/sites/default/files/files/ccsj_petition_for_emergency_action_petition_for_rule_making_05-06-2021_1.pdf).

<sup>68</sup> See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27957&LangID=E>. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27607&LangID=E>.

<sup>69</sup> Roberta Greco, “*Cordella et al. v. Italy* and the effectiveness of human rights law remedies in cases of environmental pollution”, *Review of European, Comparative and International Environmental Law*, vol. 29, No. 3 (2020), pp. 491–497.

<sup>70</sup> *Cordella et al. v. Italy*, applications No. 54414/13 and No. 54624/15, Judgment, 24 January 2019, para. 172.

<sup>71</sup> See [A/HRC/25/53](#).

rights. A rights-based approach should also govern clean-up, remediation, restoration and, where necessary, relocation of affected communities. The rights-based approach clarifies the obligations of States and responsibilities of businesses, prioritizes the most disadvantaged and catalyses ambitious action.

49. The framework principles on human rights and the environment<sup>72</sup> clarify three categories of State obligations: procedural obligations, substantive obligations, and special obligations towards those in vulnerable situations. In terms of procedural obligations regarding pollution and toxic substances, States must:

- (a) Establish monitoring programmes, assess major sources of exposure and provide the public with accurate, accessible information about risks to health;
- (b) Ensure meaningful, informed and equitable public participation in decision-making;
- (c) Use the best available scientific evidence to develop laws, regulations, standards and policies;<sup>73</sup>
- (d) Enable affordable and timely access to justice and effective remedies for all;
- (e) Assess the potential environmental, social, health, cultural and human rights impacts of all plans, policies, projects and proposals that could foreseeably result in exposure to pollution or toxic substances;
- (f) Integrate gender equality into all plans and actions and empower women to play leadership roles at all levels;
- (g) Provide strong protection for environmental human rights defenders, vigilantly protect defenders from intimidation, criminalization and violence, diligently investigate, prosecute and punish the perpetrators of these crimes, and address the root causes of social-environmental conflict.

50. Regarding substantive obligations, States must not cause pollution or exposure to toxic substances that violates the right to a clean, healthy and sustainable environment; protect this right from being violated by third parties, in particular businesses; and take positive actions to fulfil this right. Given that current efforts to minimize or mitigate pollution and waste are grossly inadequate, States should establish or strengthen legislation, regulations, standards and policies to prevent exposure to toxic substances, and develop action plans for preventing pollution, eliminating toxic substances and rehabilitating contaminated sites.

51. Under framework principle 11, States should establish and maintain substantive environmental standards that are non-discriminatory and non-retrogressive and otherwise respect, protect and fulfil human rights. National standards must take into consideration the best interests of children.<sup>74</sup> States should incorporate, as legally binding national standards, WHO guidelines on ambient air quality (updated in 2021), indoor air quality, drinking water quality and toxic chemicals.<sup>75</sup> From the perspective of the right to a clean, healthy and sustainable environment, it is unacceptable that 80 States have no air quality standards.<sup>76</sup>

52. The Human Rights Committee has made it clear that States must investigate situations of serious pollution or release of toxic substances and impose sanctions where violations occur.<sup>77</sup> Failing to prevent foreseeable human rights harms caused by exposure to pollution and toxic substances, or failing to mobilize the maximum available resources in an effort to do so, could constitute a breach of States' obligations. States must also make full reparation to victims and other community members for harms suffered, including through adequate

<sup>72</sup> [A/HRC/37/59](#), annex.

<sup>73</sup> See [A/HRC/48/61](#).

<sup>74</sup> Convention on the Rights of the Child, art. 3.

<sup>75</sup> See WHO, *Compendium of WHO and Other UN Guidance on Health and Environment* (Geneva, 2021).

<sup>76</sup> Meltam Kutlar Joss and others, "Time to harmonize national ambient air quality standards", *International Journal of Public Health*, vol. 62, No. 4 (May 2017), pp. 453–462.

<sup>77</sup> See *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016).

compensation, take all necessary measures – in close consultation with the community – to remedy the environmental degradation, and prevent similar transgressions in the future. According to the Supreme Court of Mexico, it is indispensable that the State monitor compliance with environmental norms and, if necessary, sanction or limit the actions of private individuals; otherwise, the human right to a healthy environment would be void of content.<sup>78</sup>

53. States can no longer countenance the creation of sacrifice zones, nor allow existing sacrifice zones to continue. Immediate action must be taken to eliminate residents' exposure to environmental hazards. It is unacceptable for States to exacerbate ongoing human rights violations in sacrifice zones by approving additional sources of pollution and toxic substances. For example, St. James Parish, Louisiana, is one of the most polluted communities in the United States. Yet in 2018, the government approved a massive new \$9.4 billion chemical plant by Formosa Plastics Group in this community that would discharge vast volumes of toxic substances. Fortunately, in 2020, the United States Army Corps of Engineers rescinded a permit that it had granted for the project, citing errors in the review process and the need for a comprehensive environmental impact assessment.<sup>79</sup>

54. The Human Rights Committee has clarified that States' obligation to respect and ensure the right to life should inform their obligations under international environmental law, and vice versa.<sup>80</sup> The application and interpretation of the right to a safe, clean, healthy and sustainable environment in the context of pollution and toxic substances should be guided by the principles of prevention, precaution, non-discrimination and non-regression, and the polluter pays principle.

### Prevention

55. Prevention is paramount. States should enact measures to achieve zero pollution and zero waste. States should eliminate the production, use and release of toxic substances, except for essential uses in society. States must prevent exposure, by regulating industries, emissions, chemicals and waste management, and promote innovation and acceleration of safe substitutes.<sup>81</sup> The Inter-American Commission on Human Rights has found that for States to fulfil the right to a non-toxic environment, compliance with the duty of prevention is closely linked to the existence of a robust regulatory framework and a coherent system of supervision and oversight.<sup>82</sup> The Human Rights Committee reached a similar conclusion.<sup>83</sup> States should enact legislation requiring businesses that generate pollution or use toxic substances to conduct human rights due diligence.<sup>84</sup>

### Precaution

56. Knowledge about pollution and toxic substances will never be complete, necessitating recourse to the precautionary principle, which holds that where there are threats of harm to human health or the environment, lack of full scientific certainty must not be used as a reason for postponing preventive action. Application of the precautionary principle in the context of human rights obligations related to a healthy environment has been endorsed by the Inter-American Court of Human Rights.<sup>85</sup>

### Non-discrimination

57. Non-discrimination requires States to avoid exacerbating, and actively improve, existing situations of environmental injustice, with special urgency in sacrifice zones. The

<sup>78</sup> *Amparo* review No. 641/2017, 18 October 2017.

<sup>79</sup> Rick Mullin, "Community groups score against Formosa in St James Parish, Louisiana", *Chemical and Engineering News*, 19 August 2021.

<sup>80</sup> General comment No. 36 (2018), para. 62.

<sup>81</sup> See [CRC/C/KOR/CO/5-6](#).

<sup>82</sup> Inter-American Commission on Human Rights, "Caso No. 12.718: Comunidad de La Oroya, Perú – informe No. 330/20", September 2021, para. 169.

<sup>83</sup> See *Portillo Cáceres et al. v. Paraguay*.

<sup>84</sup> Inter-American Commission, "La Oroya".

<sup>85</sup> See Inter-American Court of Human Rights, advisory opinion OC-23/17, 15 November 2017.

principle of non-discrimination also requires States to prioritize clean-up and restoration measures for disadvantaged communities that bear a disproportionate burden of exposure to pervasive pollution and toxic contamination.

### **Non-regression**

58. States must adopt science-based standards for pollution and toxic substances, based on international guidance from organizations including WHO, the Food and Agriculture Organization of the United Nations (FAO) and UNEP. Once these standards are in place, the principle of non-regression means the State cannot ignore them or establish levels that are less protective without adequate justification, which would compromise its obligation to ensure the progressive development of the rights to health and the environment.<sup>86</sup> The weakening by Peru of national air quality standards was identified by the Inter-American Commission on Human Rights as unjustified and inconsistent with its human rights obligations.

### **Special duties towards vulnerable populations**

59. Children are uniquely vulnerable to the adverse health effects of exposure to pollution and toxic substances. Under the Convention on the Rights of the Child (art. 24), States parties are required to provide adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. Yet more than 1 million premature deaths among children under the age of 5 are caused by pollution and toxic substances annually. According to the Committee on the Rights of the Child, if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done.<sup>87</sup> States have a duty to consider the best interests of the child when making decisions that could affect them, and a non-toxic environment is unequivocally a fundamental element of all children's best interests.

60. It is important to consider the perspectives of children and youth themselves. Statements gathered for the present report by the Children's Environmental Rights Initiative include the following:

- (a) "The field of grass where I once used to run around is now an industrial complex. The sky full of stars that I once used to look up to is now full of smoke."
- (b) "Boys and girls have the right to live on a planet free from pollution."
- (c) "World leaders need to be responsible for their countries' health and attempt to decrease pollution levels, which will save lives."

61. In addition to children, States should give special attention to other vulnerable or marginalized groups whose rights are jeopardized by pervasive pollution and toxic contamination, including women, Indigenous peoples, minorities, refugees, migrants, persons with disabilities, older persons, people living in protracted armed conflicts, and people living in poverty. These groups are often disproportionately affected, have fewer resources, and have less access to health-care services, increasing the risk of illness or death.

### **Progressive realization**

62. The right to a clean, healthy and sustainable environment is subject to progressive realization, although States are obligated to use the maximum available resources to realize it. However, some specific obligations flowing from this right, such as non-discrimination and non-regression, are of immediate effect. According to the Inter-American Commission on Human Rights, the obligation of progressive development requires the State to develop strategies, plans or policies with indicators and criteria that allow for strict monitoring of the progress made. This requires ensuring that the State carries out actions to advance or take steps (obligation of immediate enforceability) with a view to achieving the full and effective enjoyment of the right involved (obligation of result conditioned to a gradual and continuous

<sup>86</sup> Inter-American Commission, "La Oroya", para. 188.

<sup>87</sup> General comment No. 16 (2013), para. 31.

materialization).<sup>88</sup> In 2017, the Supreme Court of Mexico concluded that the Government had failed to take all possible measures, to the maximum of available resources, to prevent and control processes of water degradation, to monitor compliance of wastewater discharges with current regulations in quantity and quality, and to carry out the necessary corrective actions to clean up the water.<sup>89</sup> As a result, the Government had violated the right to a healthy environment.

63. In some sacrifice zones, pollution or contamination is so extreme that relocation of residents or communities may be contemplated. Relocation processes must employ a rights-based approach so that affected persons are involved in planning from the outset, are engaged throughout the process and provide informed consent. In Fiji, the guidelines for relocating communities affected by the climate crisis are an exemplary good practice.

#### **Business responsibilities related to pollution and toxic substances**

64. Businesses should conduct human rights and environmental due diligence and respect human rights in all aspects of their operations, yet there are countless examples of businesses violating the right to a clean, healthy and sustainable environment by generating pollution or causing exposure to toxic substances. For example, some businesses sell extremely dirty diesel and gasoline in West Africa, containing sulfur levels hundreds of times higher than European law permits.<sup>90</sup> Some vehicle manufacturers fraudulently sold millions of vehicles equipped with “defeat devices” that enabled vehicles to pass emission tests but produced illegal quantities of pollution under normal driving conditions. Some businesses continue to add millions of kilograms of lead to paint every year. In terms of their environmental impacts, businesses should comply with the Guiding Principles on Business and Human Rights and the Children’s Rights and Business Principles.

65. Businesses have a disturbing track record of lobbying against the enactment or strengthening of environmental standards, limits on pollution, and prohibition or restriction of the production, sale and use of toxic substances.<sup>91</sup> Using their power and influence, businesses have undermined science, denied and fraudulently misrepresented the adverse health and environmental impacts of their products and misled Governments about the availability of solutions and substitutes.<sup>92</sup> Businesses should not lobby against stronger environmental laws and policies and must refrain from publishing or supporting inaccurate, false or misleading information about the risks posed by toxic substances.

66. Large businesses contributing to the burden of pollution and toxic exposure in sacrifice zones are not meeting their human rights responsibilities. In sacrifice zones there is a catastrophic market failure, as businesses maximize profits while externalizing health and environmental costs onto vulnerable and marginalized communities. Businesses operating in sacrifice zones should install pollution-abatement equipment, switch to clean fuels, change processes, reduce production and, if necessary, relocate. Businesses are also responsible for cleaning up and rehabilitating communities, lands, waters and ecosystems polluted or contaminated by their operations.

## **V. Implementation of the right to a clean, healthy and sustainable environment**

67. After decades of recognition at the regional and national levels, there is a substantial track record of implementation of the right to a clean, healthy and sustainable environment by national human rights institutions, regional courts and tribunals and national courts in cases involving pollution and toxic substances.

<sup>88</sup> Inter-American Commission, “La Oroya”, para. 186.

<sup>89</sup> *Amparo* review No. 641/2017.

<sup>90</sup> See Public Eye, *Dirty Diesel: How Swiss Traders Flood Africa with Dirty Fuel* (Lausanne, 2016).

<sup>91</sup> See David Michaels, *Doubt Is Their Product: How Industry’s Assault on Science Threatens Your Health* (Oxford, Oxford University Press, 2008).

<sup>92</sup> See [A/HRC/48/61](#).

68. National human rights institutions play a vital role in defending the right to a clean, healthy and sustainable environment. Those in Chile, Colombia, Costa Rica, Croatia, France, Hungary, India, Kenya, Mexico, Norway, the Philippines and South Africa, among others, have been active in addressing threats to people's right to a healthy and non-toxic environment.

69. In 2018, the National Human Rights Commission of Mexico published the results of an extensive investigation into air quality in Mexico. It determined that there were systemic and ongoing violations of the constitutional right to a healthy environment regarding air quality, including inadequate monitoring, failure to update standards, lack of timely public information and failure to take effective actions to ensure clean air.<sup>93</sup>

70. The African Commission on Human and Peoples' Rights issued a ground-breaking decision in 2001 in a case involving toxic pollution caused by the oil industry in Nigeria. It determined that pollution violated the Ogoni people's right to a healthy environment under the African Charter on Human and Peoples' Rights and held that Governments had clear obligations to take reasonable and other measures to prevent pollution and ecological degradation.<sup>94</sup>

71. In 2021, the Inter-American Commission on Human Rights determined that catastrophic pollution from a lead smelter in La Oroya, Peru, was responsible for pollution that caused virtually every child in the community to have blood lead levels far above levels considered safe by WHO. Children suffered developmental setbacks, cancer, anaemia, depression and other ailments as a result. The Inter-American Commission concluded that the Government of Peru had deliberately prioritized the economic benefits that could be obtained, ignoring its primary responsibility to enforce domestic environmental regulations and to adopt regulatory provisions that corresponded to its international human rights obligations.<sup>95</sup> Putting economic considerations ahead of human rights is precisely the kind of fundamentally flawed decision-making that creates sacrifice zones.

72. The Inter-American Commission recently requested that Mexico take precautionary measures to address severe pollution affecting the right to a healthy environment in two cases. The first case involved contamination from a notorious landfill and the second industrial water pollution from more than 300 facilities that had caused alarming levels of toxicity in the Santiago River.<sup>96</sup>

73. In a landmark 2008 decision, the Supreme Court of Argentina found that severe air, water and soil pollution in a poor area of Buenos Aires bearing the hallmarks of a sacrifice zone violated the constitutional right to a healthy environment. The Court ordered State and local governments to cooperate to produce public information about the state of the environment and threats to health, control industrial pollution, clean up unauthorized garbage dumps, improve water services infrastructure, restore the health of the watershed and prevent future damage.<sup>97</sup> Since the Court's decision, millions of people have gained access to safe drinking water and sanitation, hundreds of polluting businesses and illegal garbage dumps have been closed, parks and riverside pathways have been built and thousands of people have acquired new homes in social housing developments. Implementation is ongoing, but the progress is significant in remediating a former sacrifice zone and fulfilling people's human rights.

74. In 2019, the Supreme Court of Chile issued a strong decision, rooted in the constitutional right to live in a pollution-free environment, regarding the air pollution crisis in the Quintero-Puchuncaví sacrifice zone.<sup>98</sup> The Court held that economic development,

<sup>93</sup> General recommendation No. 32/2018, July 2018, paras. 445–459.

<sup>94</sup> See *Social and Economic Rights Action Centre and Centre for Economic and Social Rights v. Nigeria*, communication No. 155/96, October 2001.

<sup>95</sup> Inter-American Commission, "La Oroya", para. 175.

<sup>96</sup> *Marcelino Díaz Sánchez y otros respecto de México*, resolution 24/2019, precautionary measure No. 1498-18, 23 April 2019; and *Inhabitants of the areas near the Santiago River regarding Mexico*, resolution 7/2020, precautionary measure No. 708-19, 5 February 2020.

<sup>97</sup> *Mendoza, Beatriz Silvia y otros c/ Estado Nacional y otros*, Case No. M.1569.XL, Ruling, 8 July 2008.

<sup>98</sup> *Francisco Chahuan contra Empresa Nacional de Petróleos*.

such as that represented by the creation of Ventanas industrial complex, even when it legitimately aimed to improve the quality of life of people, including those who lived in Quintero, Ventanas and Puchuncaví, could not be implemented by ignoring or abandoning the conservation and protection of the environment, and could not compromise the expectations of future generations.<sup>99</sup> This is tacit recognition that sacrifice zones cannot be reconciled with human rights obligations, even if there are purported economic benefits. In another case, the Supreme Court of Chile ruled that legal recognition of the right to a healthy environment required the Government to consider WHO guidelines when establishing air quality standards.<sup>100</sup>

75. In 2008, the Supreme Court of the Philippines ruled that environmental degradation in Manila Bay violated the right to a healthy environment and ordered 13 government agencies to take remedial action.<sup>101</sup> In 2021, the Supreme Court of India ordered government officials to institute emergency actions to address the air pollution crisis in New Delhi, improve air quality and protect human rights. The Administrative Court of Thailand plays a vital role in protecting the right to a healthy environment in cases brought by citizens and local communities, having issued orders in more than 65 cases involving human rights harmed by pollution and toxic substances.<sup>102</sup>

76. In a case brought by the South African Human Rights Commission, a court found that air and water pollution caused by a poorly managed landfill violated the constitutional right of nearby residents to a healthy environment.<sup>103</sup> The court ordered the municipal government to develop an action plan within one month to address the problem, and to report back to the court monthly on the implementation of the plan.

77. The foregoing cases illustrate the potential for the right to a clean, healthy and sustainable environment to be used to prevent and rehabilitate sacrifice zones and environmental injustices. As the Supreme Court of Mexico recently acknowledged, courts are obligated to ensure that the authorities comply with human rights, such as the right to a healthy environment, so that these fundamental rights have a real impact and are not reduced to mere ideals or good intentions.<sup>104</sup>

## VI. Good practices

78. It is encouraging to recognize that there are examples of both the prevention of future environmental injustices and the remediation of past and current ones, including some sacrifice zones. Dozens of additional good practices are highlighted in annex II.<sup>105</sup>

79. Important global treaties that control certain toxic substances and wastes include the Basel Convention, the Stockholm Convention, the Rotterdam Convention and the Minamata Convention. Exposure to persistent organic pollutants covered by the Stockholm Convention declined substantially in many countries following its adoption. Important regional treaties include the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, the Aarhus Convention, the Escazú Agreement and the Convention on Long-range Transboundary Air Pollution. The effective implementation of these treaties contributes to realizing the right to a clean, healthy and sustainable environment.

<sup>99</sup> *Ibid.*, para 34.

<sup>100</sup> *Fernando Dougnac y otros*, Case No. 1119-2015, Judgment, 30 September 2015. See also UNEP, 2021, *Regulating Air Quality: The First Global Assessment of Air Pollution Legislation* (Nairobi, 2021), p. 52.

<sup>101</sup> *Metropolitan Manila Development Authority and others v. Concerned Residents of Manila Bay*, General Register Nos. 171947-48, Decision, 18 December 2008.

<sup>102</sup> See A/HRC/43/53, annex II.

<sup>103</sup> High Court of South Africa, *South African Human Rights Commission v. Msunduzi Municipality et al.*, Case No. 8407/2020P, Order, 17 June 2021.

<sup>104</sup> Amparo review No. 610/2019, 22 January 2020.

<sup>105</sup> The annexes will be made available at

<https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AnnualReports.aspx>.

80. Consistent with WHO recommendations, more than 60 States have prohibited all uses of all types of asbestos, which causes mesothelioma, lung cancer and asbestosis. Estimated worldwide consumption of asbestos fell from approximately 2 million tons in 2010 to 1.4 million tons in 2016. Unfortunately, parties to the Rotterdam Convention have repeatedly failed to establish the controls necessary to prevent harm to human health from chrysotile asbestos.<sup>106</sup>

81. The European Union has a relatively strong regulatory framework for toxic substances, involving approximately 40 instruments. A hazard-based approach to chemical management is adopted in the regulations on the registration, evaluation, authorization and restriction of chemicals and on the classification, labelling and packaging of chemical substances and mixtures.<sup>107</sup> It is estimated that European regulations have prevented more than one million cancer cases in the past 20 years.<sup>108</sup> However, the European Union acknowledges that this regulatory framework must be strengthened to protect human and environmental health. As a result, it is implementing the European Green Deal, to achieve a circular economy, and a strategy entitled “Chemicals strategy for sustainability: towards a toxic-free environment”. These ambitious policies aim to maximize the contribution of safe chemicals to society while achieving zero pollution and a non-toxic environment for the benefit of current and future generations.<sup>109</sup>

82. Sustainable remediation of contaminated sites involves cleaning up sacrifice zones and alleviating environmental injustices.<sup>110</sup> In the United States, the Comprehensive Environmental Response, Compensation and Liability Act and the Superfund Redevelopment Initiative have transformed some of the nation’s most contaminated sites (former mines, smelters and landfills) into residential developments, recreation areas, renewable energy projects and commercial properties such as shopping centres.<sup>111</sup> Similar legislation in British Columbia, Canada, authorizes the provincial government to apply the polluter pays principle by seeking payments for contaminated site remediation from a “responsible person”, including present and past owners and operators of a property, creditors and persons who produced or transported the substances that caused a site to become contaminated.<sup>112</sup>

83. The closure of coal-fired power plants can contribute to dramatic improvements in air quality and reductions in mercury emissions, preventing premature deaths, reducing cases of respiratory illness, cardiovascular disease and cancer, and spurring progress in fulfilling the right to a healthy environment. More than 40 States have committed to eliminating coal-fired power production by 2030.<sup>113</sup> Ten OECD members plus the European Union pledged to end financial support (including export credits and tied aid) for unabated coal-fired power plants from November 2021.<sup>114</sup>

84. FAO assists States in eliminating the use of highly hazardous pesticides. Mozambique cancelled the registrations of 61 such pesticides. Botswana, Malawi, Tanzania and Zimbabwe have developed shortlists and started to phase them out. China banned the use of 23 highly hazardous pesticides. After Bangladesh and Sri Lanka banned them, suicides declined and agricultural productivity was unaffected.<sup>115</sup>

<sup>106</sup> A/HRC/48/61, para. 71.

<sup>107</sup> Regulations (EC) No. 1907/2006 and No. 1272/2008.

<sup>108</sup> European Commission, “Chemicals strategy for sustainability: towards a toxic-free environment”, communication, 14 October 2020.

<sup>109</sup> See European Commission, “Pathway to a healthy planet for all – EU Action Plan: towards zero pollution for air, water and soil”, communication, 12 May 2021.

<sup>110</sup> See <https://www.sustainableremediation.org>.

<sup>111</sup> See <https://www.epa.gov/superfund-redevelopment>.

<sup>112</sup> Contaminated Sites Regulation, B.C. Reg. 375/96, 16 December 1996 (as amended).

<sup>113</sup> See <https://poweringpastcoal.org>.

<sup>114</sup> See communication AL OTH 249/2021 and the reply, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26751> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36695>.

<sup>115</sup> See UNEP, *Global Chemicals Outlook II*.

85. There is a compelling economic case for eliminating pollution and exposure to toxic substances. For example, air pollution costs 330 billion to 940 billion euros annually in the European Union, including lost workdays, health-care costs, crop-yield losses and damage to buildings,<sup>116</sup> whereas measures to improve air quality cost an estimated 70 billion to 80 billion euros annually.<sup>117</sup>

## VII. Conclusions and recommendations

86. Current approaches to managing the risks posed by pollution and toxic substances are clearly failing, resulting in widespread violations of the right to a clean, healthy and sustainable environment. The deeply disturbing evidence – millions of premature deaths, impaired health for billions of people and lives lived in the purgatory of sacrifice zones – demonstrates a systematic denial of dignity and human rights. The substantive obligations stemming from the right to a non-toxic environment require immediate and ambitious action to detoxify people’s bodies and the planet. States must prevent toxic exposure by eliminating pollution, terminating the use or release of hazardous substances, and rehabilitating contaminated communities.

87. If the promises of the 2030 Agenda for Sustainable Development are to have any real meaning, people living in sacrifice zones must be prioritized, not left behind. A zero-pollution, non-toxic environment must be more than a slick slogan. It must be the vision that inspires Governments, businesses and citizens to make the systemic and transformative changes required to create a new generation of rights-based environmental laws, fulfil the Sustainable Development Goals and achieve a cleaner, greener, healthier future for all. Today’s environmental injustices must be rectified, and tomorrow’s prevented.

88. A human rights-based approach to preventing exposure to pollution and toxic chemicals could save millions of lives every year, while avoiding billions of episodes of illness. The costs of prevention will be billions of dollars, but the benefits will be measured in the trillions. Safe chemicals will play an important role in the transition to a sustainable, low-carbon, zero-pollution future and a circular economy. Society has the requisite knowledge and ingenuity to fulfill the right to a clean, healthy and sustainable environment, but must overcome powerful vested interests in order to do so.

89. To fulfil their obligations related to ensuring a non-toxic environment, States should:

- (a) Urgently detoxify sacrifice zones and eliminate environmental injustices:
  - (i) Take immediate action to address human rights violations occurring in sacrifice zones by dramatically reducing pollution to levels that meet international standards, closing polluting facilities, remediating contaminated sites, providing medical treatment and, where necessary, relocating affected communities (with informed consent and adequate compensation);
  - (ii) Prevent the creation of new sacrifice zones and prohibit new sources of pollution in areas where a disadvantaged population already endures a disproportionate burden of pollution, in part by amending environmental impact assessment legislation to require consideration of environmental justice issues;
  - (iii) Produce a national report on environmental injustices and, where relevant, sacrifice zones, ideally by the national human rights institution, and update it regularly;
  - (iv) Establish or strengthen laws and policies to establish liability (based on the polluter pays principle) for the clean-up and restoration of contaminated sites, including retroactive liability for all responsible parties;

<sup>116</sup> See [https://ec.europa.eu/governance/impact/ia\\_carried\\_out/docs/ia\\_2013/swd\\_2013\\_0531\\_en.pdf](https://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2013/swd_2013_0531_en.pdf).

<sup>117</sup> See [https://ec.europa.eu/environment/air/pdf/clean\\_air\\_outlook\\_economic\\_impact\\_report.pdf](https://ec.europa.eu/environment/air/pdf/clean_air_outlook_economic_impact_report.pdf).

- (b) **Strengthen national efforts:**
- (i) **Incorporate an enforceable right to a safe, clean, healthy and sustainable environment in constitutions and legislation;**
  - (ii) **Reform environmental laws and policies to achieve a non-toxic environment, rather than merely reducing some types of pollution and restricting some toxic substances;**
  - (iii) **Apply the principles of prevention, precaution, non-discrimination and non-regression, the polluter pays principle and the best interests of the child;**
  - (iv) **Prohibit the production and use of substances that are highly toxic, bioaccumulative and persistent (including carcinogens, mutagens, endocrine disruptors, reproductive toxins, immune system toxins and neurotoxins) with limited exemptions where uses are essential for society; eliminate all uses of highly hazardous pesticides; ban all uses of per- and polyfluoroalkyl substances; and phase out the manufacture, sale and use of lead in paint, toys, cosmetics, costume jewellery, glassware, cooking equipment and other consumer items;**
  - (v) **Establish or strengthen national air and water quality standards, giving effect to WHO guidelines;**
  - (vi) **Prohibit the export of toxic substances that are banned domestically;**
  - (vii) **Require businesses to warn regulators and the public about accidents, spills, pollutant releases and toxic chemicals in products;**
  - (viii) **Require businesses to post mandatory bonds or insurance of sufficient magnitude to cover future pollution and contamination liabilities;**
  - (ix) **Strengthen regulatory requirements and institutional capacities for solid, liquid and hazardous waste collection, treatment and management, financed by implementation of the polluter pays principle;**
  - (x) **Implement policies to reduce the risk of chemical accidents;**
  - (xi) **Take steps to prepare for natural disasters and climate impacts that could trigger chemical accidents;<sup>118</sup>**
- (c) **Fulfil the right to information:**
- (i) **Fill knowledge gaps through independent research, with an emphasis on understanding the health and environmental effects of chemical mixture;**
  - (ii) **Share knowledge about pollution and toxic chemicals through accessible platforms, recognizing that human rights, public health and environmental protection must take priority over business confidentiality;**
  - (iii) **Implement worker, community and citizen right-to-know laws and policies, to ensure that relevant and complete information concerning chemical hazards, risks and possible exposure is available and easily accessible;**
- (d) **Accelerate the transition to a circular economy:**
- (i) **Require businesses to redesign products so that they can be safely repaired, repurposed, reused, recycled or composted;**
  - (ii) **Employ market-based regulations, including extended producer responsibility, to internalize the health and environmental costs of pollution and toxic contamination, recognizing that if health or environmental risks are high, bans are more appropriate;**
  - (iii) **Redirect subsidies away from activities and products that produce pollution and release toxic substances, to support non-toxic and sustainable products;**

---

<sup>118</sup> See UNEP, *Global Chemicals Outlook II*.

- 
- (iv) **Invest in innovation to identify safe substitutes, accelerate the elimination of the most hazardous chemicals, advance green and sustainable chemistry and spur sustainable remediation;**
  - (e) **Take international action:**
    - (i) **Support United Nations resolutions recognizing the right to a safe, clean, healthy and sustainable environment;**
    - (ii) **Ratify and fully implement international treaties, such as the Basel Convention, the Rotterdam Convention, the Stockholm Convention, the Minamata Convention, the Aarhus Convention and the Escazú Agreement;**
    - (iii) **Support new treaties on the prevention of plastic pollution and on human rights due diligence for transnational businesses;**
    - (iv) **Implement a global tax on chemical feed stocks to support low- and middle-income countries in developing the capacity to effectively eliminate pollution, toxic substances and waste;<sup>119</sup>**
    - (v) **Establish an international science-policy body to synthesize evidence about pollution, toxic substances and waste, similar to the Intergovernmental Panel on Climate Change and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services;<sup>120</sup>**
    - (vi) **Create a global pollutant release and transfer registry, or an internationally harmonized network of national registries.**

---

<sup>119</sup> See [https://www.ciel.org/wp-content/uploads/2020/09/ipen-ciel-producer-responsibility-vf1\\_9e-web-en.pdf](https://www.ciel.org/wp-content/uploads/2020/09/ipen-ciel-producer-responsibility-vf1_9e-web-en.pdf).

<sup>120</sup> A/HRC/48/61, para. 110; and Zhanyun Wang and others, “We need a global science-policy body on chemicals and waste”, *Science*, vol. 371, No. 6531 (February 2021), pp. 774–776.



# General Assembly

Distr.: General  
10 August 2022

Original: English

---

## Seventy-seventh session

Item 69 (c) of the provisional agenda\*\*

### **Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives**

## **Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment\*\*\***

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the 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 R. Boyd, in accordance with Human Rights Council resolution [46/7](#).

---

\* Reissued for technical reasons on 24 October 2022.

\*\* [A/77/150](#).

\*\*\* The present report was submitted after the deadline in order to reflect the most recent developments.



---

**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 R. Boyd**

**The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals**

*Summary*

In the present report, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, challenges the conventional wisdom that the Sustainable Development Goals are mere aspirations, by highlighting the extensive human rights obligations that underlie the Goals. This critical misunderstanding of the Goals as aspirational is a key reason for the failure to make progress towards the Goals. The right to a clean, healthy and sustainable environment, recently recognized by the Human Rights Council and the General Assembly, is identified as a catalyst for systemic changes and accelerated progress towards achieving the Goals. The Special Rapporteur details the steps needed to apply a rights-based approach to the climate emergency, the collapse of biodiversity, pervasive toxic pollution and the Goals. The Special Rapporteur also identifies sources of funds to close the financing gap with respect to the Goals, showcases good practices and makes recommendations regarding how States and businesses can achieve the Goals, leave no one behind, and fulfil their obligations and responsibilities related to the right to a clean, healthy and sustainable environment.

## I. Introduction

1. The global economy is broken. It is based on two pillars – the exploitation of people and the exploitation of the planet – that are fundamentally unjust, unsustainable and incompatible with the full enjoyment of human rights. This is at the heart of the human predicament, and while pandemics and wars are destructive and devastating events, they are transient distractions compared with the extreme poverty, grotesque inequality and environmental catastrophe that threaten to torpedo our future.

2. Pollution causes a premature death every four seconds. The 10 richest men in the world possess more wealth than the poorest 3.1 billion people, and the 20 wealthiest billionaires generate 8,000 times as much carbon pollution as the poorest billion people combined.<sup>1</sup>

3. In response to these interlinked global crises, the United Nations conducted the broadest public consultation in history, reaching almost 10 million people, and, in 2015, adopted an international framework entitled “Transforming our world: the 2030 Agenda for Sustainable Development” (General Assembly resolution 70/1). The 2030 Agenda includes the Sustainable Development Goals and 169 targets, aiming to “end poverty and hunger, in all their forms and dimensions, and to ensure that all human beings can fulfil their potential in dignity and equality and in a healthy environment”.

4. Human rights are at the heart of this vision, including the pledges to leave no one behind and to reach the furthest behind first. In adopting the 2030 Agenda, Member States advocated a rights-based approach grounded in the Universal Declaration of Human Rights and international human rights treaties, and envisaged a world of universal respect for human rights. In her statement to the fortieth session of the Human Rights Council, the Deputy Secretary-General stated that “human rights are an intrinsic part of sustainable development – and sustainable development is a powerful vehicle for the realization of all human rights”.

5. Unfortunately, the Sustainable Development Goals were sabotaged by the failure to explicitly link them to legally enforceable human rights obligations. A report prepared by the Technical Support Team for the Open Working Group on Sustainable Development Goals recommended that each Goal should explicitly refer to the corresponding human rights standards in a way that imports and reinforces the actual content of those rights as recognized in international law.<sup>2</sup> The Technical Support Team also recommended that targets be closely and explicitly aligned with their corresponding human rights standards. States rejected this guidance. The Goals contain only a handful of explicit references to human rights, failing to mention the rights to food, water, health, an adequate standard of living or a healthy environment. Critics observed that “it is likely the desire to avoid a robust system of accountability that motivated [United Nations] members to choose not to frame the [Sustainable Development Goals] explicitly in terms of human rights legal obligations”.<sup>3</sup>

6. The biggest problem is not the Sustainable Development Goals themselves, but the way they are perceived and portrayed by States as merely aspirational, when in fact the Goals are built on a robust foundation of legally binding and enforceable human rights law and international environmental law. The Goals cannot magically

<sup>1</sup> Oxfam International, *Inequality Kills* (Oxford, 2022).

<sup>2</sup> United Nations, Technical Support Team for the Open Working Group on Sustainable Development Goals, *Compendium of TST Issues Briefs*, Issues Brief 18: Human rights, including the right to development, pp. 139–146.

<sup>3</sup> See Gillian MacNaughton “The mysterious disappearance of human rights in the 2030 development agenda”, in *Interdisciplinary Approaches to Human Rights*, E.H. Chowdhury and R. Srikanth, eds. (Abingdon and New York, Routledge, 2019).

transform legally binding obligations into unenforceable political pledges. The absence of explicit human rights standards in the Goals and targets has negatively impacted both the international human rights agenda and the sustainable development agenda.

7. According to the Danish Institute for Human Rights, there are human rights obligations underlying all of the Goals and 93 per cent of the targets (157 out of 169).<sup>4</sup> For example, Goal 7 on affordable and clean energy is connected to the Universal Declaration of Human Rights (art. 25, para. 1), the International Covenant on Economic, Social and Cultural Rights (art. 11, para. 1), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e)), the Convention on the Rights of the Child (art. 24, para. 2 (c)), the Convention on the Elimination of All Forms of Discrimination against Women (art. 14, para. 2 (h)), the Convention on the Rights of Persons with Disabilities (art. 28, para. 1), the African Charter on Human and Peoples' Rights (art. 22, para. 2, and art. 24), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (art. xviii, para. 2 (b)), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the San Salvador Protocol) (art. 11), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) (art. 1), the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) (arts. 1 and 4), the United Nations Declaration on the Rights of Indigenous Peoples (arts. 25 and 32) and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (arts. 5 and 18).

8. As humanity approaches the halfway point between 2015 and 2030, understanding the human rights underlying the Sustainable Development Goals and the corresponding obligations and responsibilities of States and businesses is essential for alleviating environmental injustices, closing the financing gap with respect to the Goals and accelerating progress towards achieving the Goals. As the Secretary-General noted in launching his 2020 call to action entitled "The highest aspiration: a call to action for human rights":

When we take a human rights-based approach to development, the outcomes are more sustainable, powerful and effective. This is why human rights permeate the 2030 Agenda for Sustainable Development. The 17 Sustainable Development Goals are underpinned by economic, civil, cultural, political and social rights, as well as the right to development.<sup>5</sup>

9. In 2021, the Human Rights Council renewed the mandate of the Special Rapporteur and requested him to work on identifying challenges and obstacles to the full realization of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and protection gaps thereto, including in the context of sustainable development and the Sustainable Development Goals (resolution 46/7).

10. To prepare this report, a call for inputs was circulated in March 2022. Submissions were received from Algeria, Australia, Azerbaijan, Colombia, El Salvador, Estonia, Greece, Guatemala, Italy, Kenya, Mauritius, Mexico, Portugal, Qatar, the Russian Federation, Saudi Arabia, South Sudan, Togo, United Arab Emirates, Vanuatu and the European Union, as well as from civil society

<sup>4</sup> See <https://sdgdata.humanrights.dk/en/node/252884>.

<sup>5</sup> See [www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The\\_Highest\\_Aspiration\\_A\\_Call\\_To\\_Action\\_For\\_Human\\_Right\\_English.pdf](http://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf).

organizations.<sup>6</sup> A consultation was held in June with experts on the Sustainable Development Goals and human rights from the Centre for International Sustainable Development Law. The present report focuses on the right to a clean, healthy and sustainable environment and the transformative potential of taking a human rights-based approach to implementing the Sustainable Development Goals.

## II. Update on the Sustainable Development Goals: the world is headed for catastrophic failure

11. As we approach the halfway point between 2015 and 2030, any hope of meeting the Sustainable Development Goals is disappearing like a mirage. In 2019, prior to the pandemic, the Deputy Secretary-General warned that “we are off track when it comes to achieving the Sustainable Development Goals” and that “a deeper, more ambitious, more transformative and more integrated response is urgently needed to get back on track”.<sup>7</sup> The Organisation for Economic Co-operation and Development (OECD) reached same conclusion.<sup>8</sup> The pandemic has made things much worse. In 2021, for the second year in a row, the world failed to make progress on the Goals.<sup>9</sup> In 2022, the Secretary-General observed that “years, or even decades, of development progress have been halted or reversed” (see [E/2022/55](#), para. 2). No State is on track to meet all of the Goals. Most States are likely to miss the vast majority of the targets, especially those focused on the environment. A major reason why States are failing to take the bold and transformative actions so desperately needed is that the Goals are misinterpreted as aspirations rather than obligations.

12. Except where noted, the following data comes from the report of the Secretary-General on progress towards the Sustainable Development Goals ([E/2022/55](#)).

### Goals 2 and 6: food and water

13. Levels of hunger, which had been declining for years, began increasing again in 2015, a reversal driven by climate change, conflict and economic inequality. Between 702 million and 828 million people were affected by hunger in 2021, while 3.1 billion people were unable to afford a healthy and balanced diet.<sup>10</sup> One in five children suffers from stunting due to inadequate nutrition.

14. There have been advances related to water and sanitation, but 2 billion people still lack access to safely managed drinking water, while 3.6 billion people lack access to safely managed sanitation. Billions of people will still lack access to these essential services in 2030, unless the rate of progress immediately quadruples. More than 2.3 billion people live in water-stressed nations, a figure that is rising because of the climate crisis, population growth and increasing water use by agriculture and industry.

<sup>6</sup> See [www.ohchr.org/en/calls-for-input/2022/call-inputs-human-rights-transformative-actions-and-un-sustainable-development](http://www.ohchr.org/en/calls-for-input/2022/call-inputs-human-rights-transformative-actions-and-un-sustainable-development).

<sup>7</sup> United Nations, “Sustainable development reports underscore need for robust action on means of implementation, Deputy Secretary-General stresses at briefing”, press release, 22 May 2019.

<sup>8</sup> Organisation for Economic Co-operation and Development (OECD), *Measuring Distance to the SDG Targets 2019: An Assessment of Where OECD Countries Stand* (Paris, 2019).

<sup>9</sup> Jeffrey D. Sachs and others, *Sustainable Development Report 2022: From Crisis to Sustainable Development: the SDGs as Roadmap to 2030 and Beyond* (forthcoming).

<sup>10</sup> Food and Agriculture Organization of the United Nations, International Fund for Agricultural Development, United Nations Children’s Fund, World Food Programme and World Health Organization, *State of Food Security and Nutrition in the World: Repurposing Food and Agricultural Policies to Make Healthy Diets More Affordable* (Rome, 2022).

### **Goals 7 and 13: clean energy and climate action**

15. One in three people (2.6 billion) still use cooking systems that generate prodigious amounts of air pollution, damaging their health. Most of those without access to clean cooking stoves and fuels live in Asia and Africa. Approximately 750 million people (1 in 10) lack access to electricity, mostly in sub-Saharan Africa. While millions gain access every year, the rate of progress must double to reach the 2030 target, posing major difficulties in low-income, fragile and conflict-torn States.

16. In 2021, demand for coal, oil and gas surged, driving global energy-related CO<sub>2</sub> emissions up 6.0 per cent to 36.3 billion metric tons, an all-time high. Fossil fuels still provide over 80 per cent of the world's energy. Based on current national commitments, global emissions are projected to increase 14 per cent by 2030. Past performance indicates that many national commitments will not be fulfilled, meaning the increase in emissions will likely be even larger. International financial flows to developing countries in support of clean and renewable energy were a measly \$10.9 billion in 2019, 23.6 per cent lower than in 2018, revealing a decline that predates the pandemic and a level of funding that is grossly inadequate.

### **Goals 3, 11 and 12: good health, sustainable cities and responsible production and consumption**

17. Nine in ten people live in areas where air quality fails to meet the guidelines established by the World Health Organization (WHO). No State meets the new WHO annual guideline of 5µg/m<sup>3</sup> for ambient PM<sub>2.5</sub>.<sup>11</sup> Health impacts from exposure to air pollution cut average life expectancy by two years globally and up to 10 years for residents of some cities in India.<sup>12</sup> Unless progress is made, more than 70 million people will die prematurely in the next eight years because of air pollution, contaminated water and exposure to toxic substances, including 5 million children under 5 years of age.

18. More than 1 billion people living in informal settlements in and around cities lack reliable access to water, sanitation, electricity or solid waste management. By 2050, another 2.5 billion people will be added to the world's cities, with nearly 90 per cent of this increase in Africa and Asia, putting an unfathomable strain on infrastructure and services already stretched to the breaking point.

19. The global material footprint increased by 70 per cent between 2000 and 2017.<sup>13</sup> Every minute, more than 1 million plastic drinking bottles are purchased, while more than 9 million single-use plastic bags are thrown away. Globally, less than 10 per cent of recyclable materials are recycled, while the vast majority end up in garbage dumps or the environment.

### **Goals 14 and 15: life below water and on land**

20. Biodiversity is in freefall. Wildlife populations have fallen 70 per cent since 1970. An estimated 1 million species are at risk of extinction. The world has lost 100 million hectares of forest since 2000. Between 1970 and 2015, global wetlands shrank by 35 per cent, part of an 85 per cent decline over the past 300 years. Dead zones, areas of the ocean that, because of pollution, lack sufficient oxygen to support life, jumped from 400 in 2008 to 700 in 2019. Over 3 billion people rely on oceans

<sup>11</sup> Health Effects Institute, *How Does Your Air Measure Up Against the WHO Air Quality Guidelines? A State of Global Air Special Analysis* (Boston, 2022).

<sup>12</sup> University of Chicago Energy Policy Institute, Air Quality Life Index. Available at <https://aqli.epic.uchicago.edu>.

<sup>13</sup> United Nations, *The Sustainable Development Goals Report 2021*.

for their livelihoods, but marine ecosystems are being degraded by pollution, plastic, overfishing, eutrophication, acidification and rising temperatures.

### **Leaving no one behind**

21. A review of States' reports on their efforts to achieve the Sustainable Development Goals demonstrated that Governments lack understanding of the connections between climate change, environmental degradation and the pledge to leave no one behind.<sup>14</sup> The phrase "leave no one behind" is usually discussed in the context of ending poverty and hunger. However, people are also being left behind because they live in sacrifice zones, bearing a disproportionate burden of the impacts of waste, pollution, the climate crisis and the collapse of biodiversity, as well as because they lack access to clean water, adequate sanitation, proper waste management, clean electricity and public green spaces.

## **III. The Sustainable Development Goals and the right to a clean, healthy and sustainable environment**

22. Against this bleak background, the recent recognition of the universal right to a clean, healthy and sustainable environment by both the Human Rights Council (resolution [48/13](#)) and the General Assembly (resolution [76/300](#)) is a beacon of hope. The recognition of this fundamental human right, which had not previously been recognized by the United Nations, highlights the transformative potential of taking a rights-based approach to the 2030 Agenda and the Sustainable Development Goals.

23. The right to a healthy environment is explicitly included in regional treaties ratified by 133 States. This includes 53 parties to the African Charter on Human and Peoples' Rights, 46 parties to the Aarhus Convention, 17 parties to the San Salvador Protocol, 13 parties to the Escazú Agreement and 16 States parties to the Arab Charter on Human Rights.<sup>15</sup> Ten States adopted the Human Rights Declaration of the Association of Southeast Asian Nations, but are not included in the total because the Declaration is non-binding.

24. The right to a clean, healthy and sustainable environment enjoys constitutional protection in 110 States. Constitutional protection for human rights is essential because constitutions represent the highest and strongest law in domestic legal systems. Furthermore, constitutions play an important cultural role, reflecting a society's deepest, most cherished values and aspirations.

25. Legislation should be enacted and implemented to respect, protect and fulfil the right to a clean, healthy and sustainable environment. There are more than 100 States where this right has been incorporated into national legislation. In Argentina, Brazil, Colombia, Costa Rica, France, the Philippines, Portugal and South Africa, the right to a healthy environment serves as a unifying principle that permeates legislation, regulations and policies (see [A/HRC/43/53](#)).

26. In total, more than 80 per cent of Member States (156 of 193) legally recognize the right to a clean, healthy and sustainable environment, establishing binding duties for Governments. Over the past four years, the Special Rapporteur has produced a

<sup>14</sup> United Nations, Department of Economic and Social Affairs, *2020 Voluntary National Reviews Synthesis Report*.

<sup>15</sup> Some States are parties to multiple regional agreements, so the total is less than the sum of parties to the individual agreements. Argentina, Bolivia (Plurinational State of), Ecuador, Mexico, Nicaragua, Panama and Uruguay are parties to the San Salvador Protocol and the Escazú Agreement. Algeria, Egypt, Libya, Mauritania and the Sudan are parties to the African Charter on Human and Peoples' Rights and the Arab Charter on Human Rights.

series of thematic reports describing the substantive elements of this right, including clean air (A/HRC/40/55), a safe climate (A/74/161), healthy ecosystems and biodiversity (A/75/161), safe and sufficient water (A/HRC/46/28), healthy and sustainable food (A/76/179) and non-toxic environments (A/HRC/49/53).

27. Some of the Sustainable Development Goals are clearly related to the right to a clean, healthy and sustainable environment, including clean water and sanitation (Goal 6), affordable and clean energy (Goal 7), sustainable cities and communities (Goal 11), responsible consumption and production (Goal 12), climate action (Goal 13), life below water (Goal 14) and life on land (Goal 15). Other Goals cover a broad range of issues, including poverty, health and education, but every Goal incorporates targets directly related to the right to a clean, healthy and sustainable environment, as the following examples demonstrate:

---

*Sustainable Development Goal    Sustainable Development Goal target*

---

Goal 1: no poverty	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
Goal 2: zero hunger	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
Goal 3: good health and well-being	3.9 By 2030, substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water and soil pollution and contamination
Goal 4: quality education	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
Goal 5: gender equality	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
Goal 8: decent work and economic growth	8.4 Improve progressively, through 2030, global resource efficiency in consumption and production and endeavour to decouple economic growth from environmental degradation, in accordance with the 10-Year Framework of Programmes on Sustainable Consumption and Production, with developed countries taking the lead

<i>Sustainable Development Goal</i>	<i>Sustainable Development Goal target</i>
Goal 9: industry, innovation and infrastructure	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
Goal 10: reduced inequalities	10.7 Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies
Goal 16: peace, justice and strong institutions	16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all  16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels  16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
Goal 17: partnerships for the Goals	17.7 Promote the development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed

28. There are important interconnections and synergies between all of the Sustainable Development Goals and human rights. For example, recognizing the rights of women in managing nature advances equality (Goals 5 and 10) and reduces women's vulnerabilities to climate change, environmental degradation and disaster risk, while simultaneously improving outcomes related to water, climate and biodiversity (Goals 6, 13, 14 and 15). The right to education, including access to environmental education and green skills training (Goal 4), is critical for responsible production and consumption (Goal 12), climate action (Goal 13) and actions needed to protect and restore life on Earth (Goals 14 and 15).

29. A comprehensive list of Sustainable Development Goal targets connected to the right to a clean, healthy and sustainable environment, as well as related international human rights instruments, is provided in annex I.<sup>16</sup> Respecting, protecting and fulfilling the right to a clean, healthy and sustainable environment is a prerequisite for achieving the Goals, while implementation of the Goals can advance the realization of this right.

#### **IV. A human rights-based approach to the Sustainable Development Goals**

30. A human rights-based approach to the Sustainable Development Goals rejects the assumption that the Goals are mere political promises, because each and every Goal is built upon a robust foundation of internationally recognized human rights, establishing enforceable obligations for States. The Goals cannot contradict or

<sup>16</sup> Annex I is available at [www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports](http://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports).

undermine – in content, scope or urgency of implementation – the obligations corresponding to the right to a clean, healthy and sustainable environment and other human rights closely linked to the 2030 Agenda.

31. Because the Goals are so deeply rooted in human rights, there is no viable option but to apply a rights-based approach to efforts to achieve them. Human rights law defines the roles of rights holders (individuals and groups with valid human rights claims) and duty bearers (State and non-State actors with corresponding obligations to respect, protect or fulfil human rights). The application of a rights-based approach puts a human face on the triple environmental crisis, prioritizes the improvement of conditions for the poorest and most vulnerable, emphasizes the need for capacity-building (of both rights holders and duty bearers), catalyses ambitious action, increases accountability and empowers people, especially from disadvantaged communities, to become involved in designing and implementing solutions. Thus, the human rights-based approach is the most powerful way to ensure that no one is left behind.

32. To apply a rights-based approach, all laws, policies, plans, projects and programmes related to the Goals, as well as the processes to develop those actions, must be guided by human rights norms, standards and principles. The principles of progressive realization, equality, non-discrimination, participation, accountability, prevention and non-regression are at the core of the rights-based approach.

### **Progressive realization**

33. The full and effective enjoyment of the right to a clean, healthy and sustainable environment is subject to progressive realization, although some specific obligations are of immediate effect, such as non-discrimination, non-regression and the requirement to take steps to advance the right. States must take deliberate, concrete and targeted steps (the obligation of immediate enforceability) towards achieving the full and effective enjoyment of the right involved (the obligation of result conditioned to gradual, progressive and continuous improvement). The obligation of progressive realization requires the State to develop strategies, plans or policies with indicators and criteria that enable monitoring of the progress made. To realize human rights, States are obligated to use the maximum financial, natural, human, technological, institutional and informational resources available (see [A/HRC/45/10](#)).

### **Equality and non-discrimination**

34. All human beings are considered equal and entitled to their right to a clean, healthy and sustainable environment without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status. Priority must be given to fulfilling the rights of those who are marginalized, excluded and most strongly affected by environmental, social and economic inequality, particularly those facing multiple and intersecting forms of discrimination.<sup>17</sup> In order to overcome discrimination, data must be disaggregated to identify vulnerable and marginalized groups.

35. Human rights must be prioritized in budgets, and State policies must favour the vulnerable and marginalized to ensure that no one is left behind and reach those who are furthest behind first. The principle of non-discrimination requires States to address environmental injustices by prioritizing mitigation, adaptation, clean-up and restoration measures for disadvantaged communities in sacrifice zones, which bear a

<sup>17</sup> See Operational guidelines on the inclusion of people of African descent in the 2030 Agenda, adopted by the Working Group of Experts on People of African Descent on 9 December 2020.

disproportionate burden of the impacts of the climate crisis, biodiversity loss and pervasive pollution and toxic contamination (see [A/HRC/49/53](#)).

### **Participation**

36. Every person is entitled to safely and meaningfully participate in, and contribute to, the development, implementation and evaluation of laws, policies, programmes and other actions that have implications for the Sustainable Development Goals, the climate and the environment. Participation empowers marginalized communities to effect change, enhances the effectiveness and sustainability of interventions and increases the possibility of social transformation.

### **Accountability**

37. States and other duty bearers (e.g., businesses) are responsible for respecting, protecting and fulfilling human rights. They must comply with the interconnected legal norms and standards enshrined in human rights law and environmental law.<sup>18</sup> Where they fail to do so, aggrieved rights holders must have access to justice, with effective remedies (see [E/C.12/2019/1](#), paras. 7 and 14). Access to justice can take many forms, including administrative complaints procedures, national human rights institutions and judicial processes at the local, national and regional levels. Accountability is closely linked to monitoring compliance with standards and targets, ensuring the rights to information and participation and building the capacities of rights holders to claim their rights effectively.

### **Prevention and non-regression**

38. Prevention of human rights violations and abuses is paramount. States should enact measures to rapidly reduce greenhouse gas emissions, protect and restore biodiversity and achieve zero pollution and zero waste. The Inter-American Commission on Human Rights has found that for States to fulfil the right to a healthy environment, compliance with the duty of prevention requires the existence of a robust regulatory framework and a coherent system of supervision and oversight.<sup>19</sup> The Human Rights Committee reached a similar conclusion.<sup>20</sup> States should enact legislation requiring businesses that contribute to climate change, biodiversity loss, pollution and other forms of environmental degradation to conduct inclusive and rigorous human rights and environmental due diligence.<sup>21</sup>

39. States must adopt science-based environmental laws, policies and standards, based on international guidance from organizations, including WHO, the Food and Agriculture Organization of the United Nations and the United Nations Environment Programme (UNEP). Once in place, the principle of non-regression means States cannot ignore or weaken rules without compelling justification. Regression violates States' obligation to ensure the progressive development of the right to a clean, healthy and sustainable environment. For example, the weakening of national air quality standards was identified by the Inter-American Commission on Human Rights as unjustified and inconsistent with human rights obligations.<sup>22</sup>

<sup>18</sup> See Human Rights Committee, general comment No. 36 on the right to life (2018), para. 62.

<sup>19</sup> See Inter-American Commission on Human Rights, *Caso No. 12.718: Comunidad de La Oroya, Perú*, informe No. 330/20, November 2021, para. 169.

<sup>20</sup> Human Rights Committee, *Portillo Cáceres and others v. Paraguay* (2019) ([CCPR/C/126/D/2751/2016](#)).

<sup>21</sup> Special Rapporteur on human rights and the environment, "Essential elements of effective and equitable human rights and environmental due diligence legislation", Policy Brief No. 3.

<sup>22</sup> See Inter-American Commission, *La Oroya*, para. 188.

### International environmental law principles

40. In addition to the preceding principles drawn from human rights law, Sustainable Development Goal actions should also be guided by the precautionary and polluter-pays principles drawn from international environmental law. Knowledge about climate change, biodiversity and toxic substances will never be complete, necessitating recourse to the precautionary principle, which holds that where there are threats of harm to human health or the environment, lack of full scientific certainty must not be used as a reason for postponing preventive action. Application of the precautionary principle in the context of human rights obligations related to a healthy environment has been endorsed by the Human Rights Committee, the European Court of Human Rights and the Inter-American Court of Human Rights.<sup>23</sup>

### State obligations

41. The framework principles on human rights and the environment clarify three categories of State obligations relevant to the Sustainable Development Goals: procedural obligations, substantive obligations and special obligations towards those in vulnerable situations (see [A/HRC/37/59](#), annex). In striving to fulfil their duties related to the Goals, States have procedural obligations to:

(a) Provide the public with accessible, affordable and understandable information regarding the causes and consequences of the global environmental crisis, including incorporating the importance of a safe climate and healthy ecosystems into the educational curriculum at all levels;

(b) Establish monitoring programmes, assess major causes of harm to the climate, biodiversity and the environment, and use the best available scientific evidence to develop laws, regulations, standards and policies (see [A/HRC/48/61](#));

(c) Ensure an inclusive, equitable and gender-responsive approach to public participation in all actions related to the Sustainable Development Goals, climate, biodiversity and environmental protection, with a particular emphasis on empowering the most directly affected populations;<sup>24</sup>

(d) Integrate gender equality into all laws, plans, budgets, policies and actions and empower women to play leadership roles at all levels;<sup>25</sup>

(e) Enable affordable and timely access to justice and effective remedies for all in order to hold States and businesses accountable for fulfilling their obligations to respect, protect and fulfil the right to a clean, healthy and sustainable environment;

(f) Conduct independent assessments, both ex ante and ex post facto, of the potential environmental, social, cultural and human rights impacts of all plans, policies and proposals that could foreseeably contribute to the climate crisis, damage, destroy or diminish ecosystems and biodiversity, or cause pollution or exposure to toxic substances, paying particular attention to the transboundary or spillover impacts on developing countries;

<sup>23</sup> Inter-American Court of Human Rights, advisory opinion OC-23/17 (2018); Human Rights Committee, general comment No. 36 on the right to life (2018); and European Court of Human Rights, *Tatar v. Romania*, chamber judgment of 27 January 2009.

<sup>24</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 37 on gender-related dimensions of disaster risk reduction in the context of climate change ([CEDAW/C/GC/37](#)).

<sup>25</sup> See [E/2022/27-E/CN.6/2022/16](#), chap. I, para. 1.

(g) Implement human rights safeguards in the design and use of innovative financing mechanisms (e.g., payments for ecosystem services, Sustainable Development Goal bonds, and debt-for-nature and debt-for-climate swaps);

(h) Respect the rights of indigenous peoples, peasants and local communities in all actions to conserve, protect, restore, sustainably use and equitably share the benefits of healthy ecosystems and biodiversity, including respect for traditional knowledge, customary practices and the right of indigenous peoples to free, prior and informed consent;

(i) Protect environmental human rights defenders from intimidation, criminalization and violence, diligently investigate, prosecute and punish the perpetrators of those crimes and address the root causes of socioenvironmental conflict;

(j) Promote and protect civic space, building on the rights to participate and to freedom of expression, association and assembly.

42. The substantive obligations stemming from the right to a clean, healthy and sustainable environment are discussed in previous reports of the Special Rapporteur, including the framework principles on human rights and the environment. States must take immediate and ambitious rights-based action to:

(a) Improve air quality by reducing both outdoor and household air pollution ([A/HRC/40/55](#));

(b) Ensure everyone has access to safe and sufficient water ([A/HRC/46/28](#));

(c) Transform industrial agriculture to produce healthy and sustainable food ([A/76/179](#));

(d) Phase out the use of coal, oil and natural gas by investing in renewable energy, energy storage and energy efficiency and assist climate-vulnerable nations in adapting to the climate emergency ([A/74/161](#));

(e) Conserve, protect and restore biodiversity ([A/75/161](#));

(f) Detoxify people's bodies and the planet ([A/HRC/49/53](#)).

43. Many different groups are particularly vulnerable to climate and environmental harms, including children, women, persons living in poverty, persons with disabilities, lesbian, gay, bisexual, transgender and queer persons, older persons, indigenous peoples, peasants, refugees, internally displaced persons and migrants. In order to leave no one behind, States must prioritize actions to respect, protect and fulfil the right to a clean, healthy and sustainable environment for those groups.

44. Children are a good example of a vulnerable population because of their unique sensitivity to the adverse effects of climate change and exposure to toxic substances. Under the Convention on the Rights of the Child (art. 24), States parties are required to provide adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution. Yet more than 1 million premature deaths among children under the age of 5 are caused annually by pollution and toxic substances. According to the Committee on the Rights of the Child, if children are identified as victims of environmental degradation, immediate steps should be taken by all relevant parties to prevent further damage to the health and development of children and repair any damage done.<sup>26</sup> States have a duty to consider the best interests of the child when making decisions that could affect them – and a safe climate, healthy ecosystems and non-toxic environments are unequivocally

<sup>26</sup> See Committee on the Rights of the Child, general comment No. 16 on State obligations regarding the impact of the business sector on children's rights (2013), para. 31.

fundamental elements of children's best interests. The achievement of the Sustainable Development Goals is crucial to ensuring that all children enjoy their right to a clean, healthy and sustainable environment.

## V. Steps in a human rights-based approach

45. All actions directed towards addressing the Sustainable Development Goals, the climate emergency, biodiversity loss, the water crisis, pollution, food system transformation and the spillover of zoonotic diseases should apply a human rights-based approach focused on fulfilling the right to a clean, healthy and sustainable environment. The steps required to implement such an approach include: conduct of a situation analysis; identification of vulnerable groups; legal mapping and strengthening; development of strategies and action plans; implementation and enforcement (including capacity-building); and evaluation of progress.

### Situation analysis

46. The first step in applying a human rights-based approach to the Sustainable Development Goals in the context of the right to a clean, healthy and sustainable environment involves conducting a situation analysis, for which data related to air quality, water quality and quantity, food system sustainability, greenhouse gas emissions, chemical production, releases and exposures, and populations of wildlife, plants and fungi (and the state of the ecosystems in which they live) are collected and analysed. It is vital to track the adverse health effects (such as premature mortality, waterborne diseases and respiratory illnesses) caused by various types of environmental degradation, as well as levels of access to environmental services (such as clean water, sanitation, waste management and public green spaces). Baseline information and data on trends are essential for determining priorities and informing policymaking. It is also important to assess the primary contributors to environmental damage and hazards. For example, in some States the majority of air pollution comes from burning coal for electricity, while in other States fossil fuel-based transportation is the dominant contributor.

### Identifying vulnerable rights holders

47. A second step, as the Committee on Economic, Social and Cultural Rights has consistently emphasized, involves identifying and prioritizing the needs of rights holders (individuals and groups) who are disadvantaged and vulnerable to systemic and intersectional forms of discrimination (see [E/C.12/2019/1](#), paras. 7 and 14). In many States, there are information gaps that may prevent the identification of some groups as vulnerable or marginalized. Disaggregated data (by sex, age, race, ethnicity, migration status, disability, geographic location and other characteristics relevant in national contexts) is vital to ensure that no one is being left behind. Research indicates that racial and ethnic variables have been largely ignored in the first few years of monitoring of the Sustainable Development Goals, despite the fact that racial and ethnic discrimination are among the most prevalent and persistent forms of discrimination.<sup>27</sup> States should identify, not only vulnerable groups, but the immediate, underlying and structural causes of the non-realization of rights. Duty bearers (both State and non-State actors) should also be identified and their obligations and responsibilities clarified.

---

<sup>27</sup> I.T. Winkler and M.L. Satterthwaite, "Leaving No One Behind? Persistent Inequalities in the SDGs", *International Journal of Human Rights*, vol. 21, No. 8 (July 2017), p. 1074.

### **Law and policy mapping**

48. The third step involves the mapping of laws and policies to ensure that the human right to a clean, healthy and sustainable environment, as well as related rights such as food, water, sanitation, housing and an adequate standard of living are recognized in national and subnational constitutions and incorporated in legislation, regulations, standards and policies. A good example involves environmental impact assessment laws, which have been enacted in almost every State. All environmental impact assessment laws should be amended to require the integration of human rights impact assessments for proposed plans, policies and projects. A national legal road map is a useful tool for identifying gaps and weaknesses in laws and policies, providing guidance on rights-based processes and developing a timeline for remedying gaps and weaknesses. Laws and policies should address power dynamics and the root causes of human rights violations, not merely the symptoms.

49. States have an obligation to establish and maintain substantive environmental standards that are non-discriminatory and non-regressive and that respect, protect and fulfil human rights. For example, States should incorporate, as legally binding national standards, the WHO guidelines on air quality, drinking water quality and toxic chemicals.<sup>28</sup> From the perspective of the right to a clean, healthy and sustainable environment, it is unacceptable that up to 80 States have no air quality standards (see [A/HRC/40/55](#)). National standards must take into consideration the best interests of children.<sup>29</sup>

### **Strategies and plans for the achievement of the Sustainable Development Goals**

50. As a fourth step, all States should develop an overarching rights-based strategy or action plan for the Sustainable Development Goals, under which are nested various strategies and action plans related to air quality, water, food, biodiversity, climate, desertification, and chemicals and waste. Plans and strategies must include objectives and measurable indicators and clarify exactly who is responsible for each action to be taken at each step of the process.

### **Implementation and enforcement**

51. The fifth step involves implementing and enforcing the laws, regulations, standards, policies, plans and programmes identified in the previous steps. Effective implementation and enforcement depend on the building of human, financial and institutional capacity, with a focus on empowering rights holders from potentially vulnerable and marginalized groups. Strengthening the environmental rule of law is also a key consideration. For example, reducing corruption is important because corruption facilitates environmental crimes, which have devastating impacts on human rights.

### **Monitoring and evaluation**

52. The sixth step requires States to evaluate progress and, if necessary, strengthen actions to ensure that human rights are fulfilled and the Sustainable Development Goals are achieved. Independent monitoring and accountability mechanisms are essential for evaluating progress. Victims of violations of States' obligations must have access to justice with effective remedies, as discussed earlier. Progress on the Goals is reviewed through voluntary national reviews and the high-level political forum on sustainable development. Unfortunately, the voluntary national reviews and

---

<sup>28</sup> See WHO, *Compendium of WHO and Other UN Guidance on Health and Environment: 2022 Update* (Geneva, 2022).

<sup>29</sup> See Convention on the Rights of the Child, art. 3.

the high-level political forum are weak mechanisms for monitoring and accountability. They rely on voluntary self-reporting and brief annual meetings, while providing limited feedback to States. Haiti, Iran (Islamic Republic of), Myanmar, South Sudan, the United States of America and Yemen are the only States that have not submitted their first voluntary national review.

53. The Special Rapporteur reviewed all 44 voluntary national reviews submitted to the high-level political forum in 2022. Although the majority of them (35 of 44) mentioned human rights, there was no evidence that any States were applying a rights-based approach to the Goals. The right to a healthy environment was only mentioned by four States (Argentina, Italy, Luxembourg and Montenegro). The *2021 Voluntary National Reviews Synthesis Report* prepared by the Department of Economic and Social Affairs contains a number of generic references to human rights, but only three States (Denmark, Norway and Sweden) are praised for making concerted efforts to mainstream human rights in their international development work. In the *2022 Synthesis Report*, the lack of substance and analysis in the voluntary national reviews is criticized and the failure to implement the transformative aspects of the 2030 Agenda is highlighted

54. In contrast to the voluntary national reviews and the high-level political forum, the international human rights system provides much greater accountability. Human rights mechanisms, including the universal periodic review and the United Nations treaty bodies and special procedures; the regional African, European, and Inter-American human rights systems; and national human rights institutions, are already engaged in monitoring compliance with the human rights obligations underlying the Sustainable Development Goals. For example, from the adoption of the Goals in September 2015 through February 2022, almost half of the 608 texts adopted by the Human Rights Council (including resolutions, decisions and President's statements) specifically mentioned the Goals or the 2030 Agenda.<sup>30</sup> United Nations treaty bodies, special procedures and the universal periodic review have issued thousands of recommendations directly related to realizing the Goals.<sup>31</sup>

55. The universal periodic review is a powerful mechanism for assessing a State's progress towards achieving the Sustainable Development Goals.<sup>32</sup> It is a constructive peer review process that engages civil society, supports the promotion and protection of human rights and assists States in building their capacity to protect human rights through technical assistance and the sharing of best practices. The advantages of the universal periodic review include its universality, the timely submissions made by States, the inclusion of various stakeholders, including rights holders, and the fact that it incorporates all human rights standards, regardless of whether or not a State has ratified a particular treaty.

## VI. Closing the Sustainable Development Goals financing gap

56. A major obstacle to progress, which is related to the misperception that the Sustainable Development Goals are aspirational, is inadequate funding. According to OECD, in order to achieve the Goals by 2030, an additional investment, above current budget projections, of \$4.2 trillion per year (\$33.6 trillion over the next 8 years) will

<sup>30</sup> See Human Rights Council, "The Human Rights Council and the Sustainable Development Goals: an overview" (2022).

<sup>31</sup> See Danish Institute for Human Rights, SDG – Human Rights Data Explorer. Available at <https://sdgdata.humanrights.dk/en>.

<sup>32</sup> Judith Bueno de Mesquita and others, "Monitoring the Sustainable Development Goals through human rights accountability reviews", *World Health Organization Bulletin*, vol. 96, No. 9 (2018), p. 627.

be required.<sup>33</sup> Over 80 per cent of States have insufficient financial resources to meet national water, sanitation and hygiene targets.<sup>34</sup> Funds needed for ambitious climate action are measured in trillions of dollars annually, while spending was only \$632 billion annually in 2019 and 2020.<sup>35</sup> Annual climate adaptation costs in low-income countries and lower-middle-income countries are expected to reach \$155 billion to \$330 billion in 2030, yet wealthy States have not yet fulfilled their long-standing promise to mobilize at least \$100 billion in climate finance for those countries, and most of the funding has come in the form of loans, not grants.<sup>36</sup> To put these seemingly staggering numbers in context, wealthy States spent more than \$17 trillion responding to the COVID-19 pandemic, and total financial assets held by banks, institutional investors and asset managers in wealthy States are valued at more than \$378 trillion.<sup>37</sup>

57. If the Sustainable Development Goals were mere aspirations, then States would have infinite discretion with respect to funding efforts to achieve them. However, since they are based on human rights obligations, States are required to devote the maximum available resources to their fulfilment and must prioritize human rights in developing fiscal policies and budgets.<sup>38</sup>

58. Structural problems in the global economy are a major impediment to the achievement of the Goals and the realization of human rights. These problems include astronomical debt levels and debt-servicing costs, in addition to difficulty accessing adequate financing, for low-income countries; massive subsidies for fossil fuels and other destructive industries; tax evasion and avoidance; international investment and trade treaties that prioritize profits over human rights; and a failure to apply the widely endorsed polluter-pays principle. The long-standing failure of wealthy States to fulfil their commitments to provide development assistance is another problem.

59. According to a recent report, States spend at least \$1.8 trillion annually on subsidies for fossil fuel use, industrial agriculture, mining, deforestation, overfishing and other activities that exacerbate the climate crisis, encourage pollution or damage nature.<sup>39</sup> Other estimates of perverse subsidies are even higher, but include externalities such as the health and environmental costs of air pollution, which do not involve direct government expenditures.

60. Tax evasion (the illegal non-payment or underpayment of tax) and tax avoidance (arranging financial affairs, within the law, to minimize tax liability using loopholes and tax havens, among other things) are estimated to cost Governments \$500 billion to \$600 billion in lost corporate taxes and \$200 billion in lost personal taxes annually.<sup>40</sup>

<sup>33</sup> OECD, "Closing the SDG financing gap in the COVID-19 era", scoping note for the Development Working Group of the Group of 20.

<sup>34</sup> WHO and UN-Water, *National Systems to Support Drinking-Water, Sanitation and Hygiene: Global Status Report 2019* (Geneva, 2019).

<sup>35</sup> Climate Policy Initiative, *Global Landscape of Climate Finance 2021*.

<sup>36</sup> UNEP, *Adaptation Gap Report 2021*.

<sup>37</sup> See OECD, "Closing the SDG financing gap".

<sup>38</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3 on the nature of States parties' obligations (art. 2, para. 1, of the Covenant) (1990), and International Bar Association, "The obligation to mobilize resources: bridging human rights, Sustainable Development Goals and economic and fiscal policies" (2017).

<sup>39</sup> Doug Koplou and Ronald Steenblik, *Protecting Nature by Reforming Environmentally Harmful Subsidies: The Role of Business* (2021). Available at [www.earthtrack.net/sites/default/files/documents/EHS\\_Reform\\_Background\\_Report\\_fin.pdf](http://www.earthtrack.net/sites/default/files/documents/EHS_Reform_Background_Report_fin.pdf).

<sup>40</sup> Nicholas Shaxson, "Tackling tax havens: the billions attracted to tax havens do harm to sending and receiving nations alike", International Monetary Fund, September 2019. Available at [www.imf.org/Publications/fandd/issues/2019/09/tackling-global-tax-havens-shaxon](http://www.imf.org/Publications/fandd/issues/2019/09/tackling-global-tax-havens-shaxon).

61. There is widespread agreement on the polluter-pays principle, meaning that those responsible for carbon emissions and other types of pollution should be required to pay a fair share for the damage their actions cause. In 2017, the High-level Commission on Carbon Prices concluded that limiting global warming to below 2°C would require carbon-pricing levels of \$40 to \$80 per ton. Carbon pricing is endorsed by UNEP and the International Monetary Fund.<sup>41</sup>

62. The majority of international investment agreements not only fail to effectively address environmental concerns but treat corporate rights as more important than human rights.<sup>42</sup> These treaties provide foreign investors with special protection and access to investor-State dispute settlement mechanisms. The fossil fuel industry is especially litigious, having brought to international arbitration tribunals more than 230 cases in which they have asserted that government actions have decreased the value of their investments. Fossil fuel corporations have been successful in nearly 75 per cent of cases, forcing Governments to pay billions of dollars in compensation.<sup>43</sup> The average amount awarded in fossil fuel cases – over \$600 million – is almost five times the amount awarded in non-fossil fuel cases. Governments acting to fulfil their commitments under the Paris Agreement may be liable for hundreds of billions of dollars in future investor-State dispute settlement cases, which discourages climate action.<sup>44</sup> Another study estimated that foreign investors could use the European Energy Charter Treaty to sue Governments for €1.3 trillion until 2050 in compensation for early closure of coal, oil and gas facilities.<sup>45</sup> There is a deeply disturbing contradiction between human rights obligations (and the Sustainable Development Goals) and investment agreements that require Governments to compensate foreign corporations for stopping activities that exacerbate the climate crisis and result in human rights abuses.

63. Developing countries have accumulated more than \$11 trillion in external debt (see A/75/164, para. 17). In 2020, countries of the global South spent a total of \$372 billion servicing debt.<sup>46</sup> More than half of the debt of low-income countries is non-concessional. Some least developed countries and small island developing States are spending more than 15 per cent of annual government revenue to service their debts.<sup>47</sup> At least 14 States in Africa spend more per capita on debt servicing than on education, health and social protection combined.<sup>48</sup> Some African States, including Angola, Zambia and Zimbabwe, spend more than half their national budget to service

<sup>41</sup> UNEP finance initiative, Net-Zero Asset Owner Alliance discussion paper on governmental carbon-pricing. Available at [www.unepfi.org/wordpress/wp-content/uploads/2021/07/FINAL-AOA-Discussion-paper-on-governmental-carbon-pricing.pdf](http://www.unepfi.org/wordpress/wp-content/uploads/2021/07/FINAL-AOA-Discussion-paper-on-governmental-carbon-pricing.pdf).

<sup>42</sup> See United Nations, Inter-Agency Task Force on Financing for Development, *Financing for Sustainable Development Report 2022* (New York, 2022).; see also A/72/153.

<sup>43</sup> Lea Di Salvatore, *Investor-State Disputes in the Fossil Fuel Industry* (Winnipeg, International Institute for Sustainable Development, 2021).

<sup>44</sup> Kyla Tienhaara and others, “Investor-State disputes threaten the global green energy transition”, *Science*, vol. 376, issue 6594, pp. 701–703.

<sup>45</sup> Jennifer Rankin, “Secretive court system poses threat to Paris climate deal, says whistleblower”, *The Guardian*, 3 November 2021.

<sup>46</sup> European Network on Debt and Development, submission in response to the call for contributions on international debt architecture reform and human rights by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights. Available at [www.ohchr.org/sites/default/files/Documents/Issues/IEDebt/Int-debt-architecture-reform/Eurodad-input-IDAreform-EN.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/IEDebt/Int-debt-architecture-reform/Eurodad-input-IDAreform-EN.pdf).

<sup>47</sup> See United Nations, Inter-agency Task Force on Financing for Development, *Financing for Sustainable Development Report 2022* (New York, 2022), p. 16.

<sup>48</sup> Bob Libert Muchabaiwa, “The looming debt crisis in Eastern and Southern Africa: what it means for social sector investments and children”, UNICEF Eastern and Southern Africa Regional Office social policy working paper (Nairobi, 2021).

debt. Conditionalties for receiving debt relief, imposed on low-income countries and lower-middle-income countries by high-income countries and international financial institutions, often undermine human rights.

64. Debt burdens and the climate crisis are directly linked, making debt relief a prerequisite for climate action in vulnerable nations. After Hurricane Maria damaged 90 per cent of Dominica's buildings at a cost exceeding three times the national gross domestic product, Dominica's debt jumped sharply upward because the Government had to borrow funds to rebuild infrastructure and maintain public services. Many small island developing States are not eligible for debt relief or concessional financing because of narrow, obsolete criteria for determining eligibility (see [A/75/164](#)). After the devastating Cyclones Idai and Kenneth, the International Monetary Fund (IMF) lent Mozambique \$118 million, rather than providing debt relief. In 2021, 34 of the world's poorest countries spent five times more on debt payments than on protecting their people from climate impacts.<sup>49</sup>

65. The climate crisis is linked to economic inequality. The poorest half of the global population possesses just 2 per cent of the world's wealth.<sup>50</sup> In contrast, the richest 10 per cent own 76 per cent of all wealth. With respect to income, the richest 10 per cent of the global population currently takes 52 per cent of global income, whereas the poorest half of the population earns only 8.5 per cent. The wealthiest 10 per cent of people are responsible for close to half of all greenhouse gas emissions, while the bottom half of humanity generates only 12 per cent of emissions.

66. Fifty years ago, wealthy nations promised to allocate 0.7 per cent of gross national income (GNI) for official development assistance (ODA), including 0.15 to 0.20 per cent to the least developed countries. This commitment has never been fulfilled, with wealthy States providing only 0.33 per cent of GNI in 2021, amounting to \$179 billion.<sup>51</sup>

67. Some progress is being made. Recently, 136 countries and territories agreed to institute a global minimum corporate tax rate of 15 per cent and require multinational companies to pay taxes in the countries where they do business.<sup>52</sup> OECD and the United Nations Development Programme launched a framework for finance aligned with the Sustainable Development Goals in 2020. The Group of 20 Debt Service Suspension Initiative was helpful, but covered only a small fraction of the debt payments that highly indebted poor countries faced. Unfortunately, most of the benefits of debt relief from public creditors accrue to private creditors, because the latter refuse to provide any debt relief.<sup>53</sup> The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (General Assembly resolution [69/313](#), annex) remains the best framework to finance the Goals, but it is not being adequately implemented.

68. Taxation is one of Governments' most powerful tools. It is critical for investing in public goods, fulfilling human rights and achieving sustainable development. Governments, guided by human rights norms and standards, should use tax policy to

<sup>49</sup> See Debt Justice, "Lower income countries spend five times more on debt than dealing with climate change", press release, 27 October 2021. Available at <https://debtjustice.org.uk/press-release/lower-income-countries-spend-five-times-more-on-debt-than-dealing-with-climate-change>.

<sup>50</sup> See World Inequality Lab, *World Inequality Report 2022*. Available at <https://wir2022.wid.world>.

<sup>51</sup> See OECD, "The global picture of official development assistance", Development Finance database. Available at [www.oecd.org/dac/financing-sustainable-development/development-finance-data/](http://www.oecd.org/dac/financing-sustainable-development/development-finance-data/).

<sup>52</sup> See OECD and the Group of 20, "Statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy", 8 October 2021. Available at [www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf](http://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf).

<sup>53</sup> See Joseph Stiglitz and Hamid Rashid, eds., "Averting catastrophic debt crises in developing countries", Centre for Economic Policy Research *Policy Insights*, No. 104 (29 July 2020).

reduce extreme inequalities in wealth, generate sufficient revenue to provide adequate public services and social protection, ensure fair royalty regimes for extractive activities and reward economic activities that protect, sustain and restore nature, while discouraging activities that produce carbon emissions, pollution and environmental damage (see A/75/982, para. 24). These policies are needed to ensure that States comply with their obligation to maximize available resources.

69. Seven key actions, described below, should be implemented to close the Sustainable Development Goals financing gap.<sup>54</sup> These seven proposals would raise an estimated \$7.0 trillion annually to be invested in climate action, advancing human rights and achieving the Sustainable Development Goals (see table below). There are many other ideas under consideration (such as a tax on international currency transactions), but it is vital, and indeed a legal obligation, for States to take action now to increase funding for the Goals in order to apply the maximum available resources. Steps must also be taken to ensure that the additional funds are spent in an effective, efficient and equitable way, adhering to the human rights-based approach set forth earlier in the present report.

### **New sources of financing for the Sustainable Development Goals**

(United States dollars)

<i>New sources of financing</i>	<i>Amount</i>
Global wealth tax	2.5 trillion
Redirecting environmentally damaging subsidies	1.8 trillion
Global carbon tax	1.0 trillion
Reducing tax evasion and avoidance	0.6 trillion
Special drawing rights for climate action	0.5 trillion
Debt relief	0.4 trillion
Fulfilling official development assistance commitments	0.2 trillion
<b>Total</b>	<b>7.0 trillion</b>

#### **Wealth tax**

70. A wealth tax would help reduce inequality and carbon emissions. Globally, 3.6 million people have over \$5 million in wealth, with a combined total of \$75 trillion; 200,000 individuals own over \$50 million, with a combined wealth of \$36 trillion; and nearly 3,000 billionaires have a combined wealth of \$14 trillion. An annual wealth tax, with a graduated rate structure (2 per cent tax on wealth over \$5 million; 3 per cent on wealth over \$50 million; 5 per cent on wealth over \$1 billion) would raise \$2.5 trillion per year.<sup>55</sup>

#### **Redirecting subsidies**

71. The \$1.8 trillion that States waste on climate- and environment-damaging subsidies should be reallocated to renewable energy, energy storage, energy conservation, regenerative agriculture, ecosystem restoration and other environmentally

<sup>54</sup> United Nations, Department of Economic and Social Affairs, *World Economic and Social Survey 2012: In Search of New Development Finance* (New York, 2012).

<sup>55</sup> Oxfam and others, "Taxing extreme wealth: an annual tax on the world's multi-millionaires and billionaires: what it would raise and what it could pay for", Factsheet Report. Available at [www.fightinequality.org/sites/default/files/2022-01/Taxing-Extreme-Wealth-What-It-Would-Raise-What-It-Could-Pay-For.pdf](http://www.fightinequality.org/sites/default/files/2022-01/Taxing-Extreme-Wealth-What-It-Would-Raise-What-It-Could-Pay-For.pdf).

friendly activities. This reallocation is mentioned in Sustainable Development Goal targets 12.c (fossil fuel subsidies) and 14.6 (fisheries subsidies).

### **Carbon tax**

72. All greenhouse gas emissions should be taxed. The World Bank notes that, to date, 64 countries, regions and States have implemented carbon-pricing initiatives, covering 16 per cent of carbon emissions, while policies covering an additional 7 per cent of emissions (including the emissions trading programme of China) are in the process of being implemented. A carbon tax at \$40 per ton, applied to the 75 per cent of annual emissions not currently priced, would generate \$1.08 trillion annually.<sup>56</sup> Sustainable Development Goal target 12.c refers to the restructuring of taxation as it relates to fossil fuels.

### **Reducing tax evasion and avoidance**

73. Stronger international cooperation is needed to tackle tax evasion and avoidance, unfair tax competition, profit-shifting, money-laundering and illicit financial flows, all of which undermine States' capacity to leverage resources towards realizing human rights and the Sustainable Development Goals. Rich countries must lead the way. The international agreement to implement a global minimum corporate tax rate by 2023 is a step in the right direction, but it must be effectively implemented.

### **Special drawing rights**

74. Various proposals related to the issuance of special drawing rights (SDRs) from IMF have been advanced. For example, the United Nations Conference on Trade and Development put forward a proposal for \$1 trillion worth of SDRs for developing countries, while the Prime Minister of Barbados called for SDRs of \$500 billion annually for the next 20 years. IMF is using SDRs to create a \$50 billion resilience and sustainability trust fund, but a prominent critic noted that "to reach the scale necessary we need to add one more zero, make it annual, and allow private investors to compete to access these funds on the basis of how much climate mitigation and adaptation they can achieve across the world".<sup>57</sup>

### **Debt relief**

75. Debt and debt service are unsustainable if States are left with insufficient funds to advance the realization of human rights or to ensure progress in attaining the Sustainable Development Goals. Debt relief of up to \$400 billion annually should be provided immediately to low-income countries and lower-middle-income countries, as well as other climate-vulnerable nations, so that those funds can be spent on climate action, biodiversity conservation and achieving the Goals, consistent with target 17.4.<sup>58</sup>

<sup>56</sup> See International Energy Agency, "Global CO<sub>2</sub> emissions rebounded to their highest level in history in 2021", press release, 8 March 2022. Available at [www.iea.org/news/global-co2-emissions-rebounded-to-their-highest-level-in-history-in-2021](http://www.iea.org/news/global-co2-emissions-rebounded-to-their-highest-level-in-history-in-2021). Seventy-five per cent of global emissions x 36 billion tons x \$40/ton = \$1.08 trillion.

<sup>57</sup> See Avinash Persaud, "Saving Paris: an economically efficient and equitable rescue plan", VOXEU, 2 November 2021. Available at <https://voxeu.org/article/saving-paris-economically-efficient-and-equitable-rescue-plan>.

<sup>58</sup> Target 17.4 reads: "Assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries to reduce debt distress."

### **Official development assistance commitments**

76. Wealthy States should meet their long-standing commitment to achieve the targets of 0.7 per cent of GNI to developing countries, and 0.15 to 0.20 per cent of GNI to least developed countries. This action, consistent with target 17.2, would produce approximately \$200 billion in additional funds annually. Denmark, Luxembourg, the Netherlands, Norway and Sweden consistently meet or exceed the 0.7 target, proving it is possible.

## **VII. Good practices**

77. Owing to space constraints, the section on good practices could not be included in the present report (see annex II).<sup>59</sup>

## **VIII. Conclusion and Recommendations**

78. **To achieve the Sustainable Development Goals and fulfil the right to a clean, healthy and sustainable environment, States should apply a human rights-based approach to all aspects of improving air quality, ensuring safe and sufficient water, accelerating ambitious climate action to limit global warming to 1.5°C, detoxifying the economy, shifting to a sustainable food system, and conserving, protecting and restoring healthy ecosystems and biodiversity. For example, a rights-based approach to conservation is essential to ensure that the designation and management of protected terrestrial, freshwater and marine areas do not violate the rights of indigenous peoples, peasants, Afrodescendants or nature-dependent local communities. A human rights-based approach to preventing exposure to pollution and toxic chemicals could save millions of lives every year, while avoiding billions of episodes of illness and generating trillions of dollars in benefits.**

79. **If we fail to employ a rights-based approach to achieving the Sustainable Development Goals, addressing the climate emergency, protecting the biosphere and detoxifying the global economy, today's children and future generations will live in an ecologically impoverished world, deprived of nature's critical contributions to human well-being, riven by deepening environmental injustices and ravaged by increasingly frequent pandemics. Conversely, if we place human rights and nature at the heart of sustainable development and succeed in transforming society, humanity could attain a just and sustainable future in which people live happy, healthy and fulfilling lives in harmony with nature.**

80. **To fulfil their human rights obligations and achieve the Sustainable Development Goals, States should:**

(a) **Incorporate the right to a clean, healthy and sustainable environment at all levels (global, regional and national), including in a legally binding global instrument, the Universal Declaration of Human Rights, post-2020 global biodiversity framework, the European Convention on Human Rights and national constitutions, legislation and policies;**

(b) **Acknowledge that the Goals are built on a robust foundation of human rights law, establishing legally binding obligations;**

<sup>59</sup> Annex II is available at [www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports](http://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports); see also A/HRC/43/53.

(c) Prioritize actions that achieve multiple Goals and human rights concurrently (e.g., ecological restoration initiatives, such as the Great Green Wall for the Sahara and the Sahel initiative, that reduce poverty, improve food security, provide access to clean energy, protect nature and address climate change);

(d) Take urgent action to safeguard environmental human rights defenders;

(e) Accelerate actions required to address the global climate emergency, including the phaseout of coal (eliminating the use of coal for the generation of electricity by 2030 for high-income States, 2040 for upper-middle-income States and 2050 for all others), oil and natural gas (including no further permits for oil and gas exploration or infrastructure expansion in high-income States, effective immediately);

(f) Ensure that a rights-based approach is at the heart of the post-2020 global biodiversity framework and replace Sustainable Development Goal biodiversity targets that expired in 2020 with new targets;

(g) Align all economic stimulus provided by COVID-19 recovery efforts with Paris climate objectives and the transition to renewable energy;

(h) Establish robust legal frameworks to effectively prevent, investigate and prosecute corruption related to the environment and climate, including cases of exploitation and destruction of renewable and non-renewable natural resources;

(i) Led by the Group of 20, implement the actions required to close the financing gap for the Sustainable Development Goals, including a global wealth tax, reallocation of climate- and environment-damaging subsidies, a global carbon tax, a crackdown on tax evasion and avoidance, special drawing rights for climate action, generous debt relief and fulfilment of commitments for official development assistance;

(j) Negotiate the removal of investor-State dispute settlement mechanisms from international trade and investment agreements or terminate the agreements (because such mechanisms constrain States from taking immediate and effective action to address the climate crisis, biodiversity loss and pollution);

(k) Collect, analyse and publish reliable and disaggregated statistical data, including disaggregation by race or ethnicity, for each relevant Goal, target and indicator in the 2030 Agenda;

(l) Transparently report spending on the Goals as well as on servicing debt;

(m) Employ the universal periodic review to assess State performance in respecting, protecting, fulfilling and promoting the right to a clean, healthy and sustainable environment and achieving the Goals;

(n) Coordinate reporting procedures on human rights (e.g., the universal periodic review) with reports on the Goals (e.g., voluntary national reviews);<sup>60</sup>

---

<sup>60</sup> See OECD, Recommendation of the Council on policy coherence for sustainable development, document OECD/LEGAL/0381.

(o) Ensure that post-2030 sustainable development frameworks explicitly incorporate human rights in all goals and targets, providing greater clarity and certainty for rights holders and duty bearers.

81. High-income States, as the main cause of the triple planetary crisis, bear a special responsibility when it comes to respecting, protecting and fulfilling the right to a clean, healthy and sustainable environment and implementing and financing solutions. They therefore must:

(a) Scale up financing flows to low-income countries, lower-middle-income countries and small island developing States for the Sustainable Development Goals, biodiversity conservation, climate action, and loss and damage;

(b) Increase the lending capacity of the multilateral development banks;

(c) Expand technology transfer and cooperation;

(d) Implement a multidimensional vulnerability index for small island developing States to help address their unique financing needs;

(e) Adopt national targets and policies to address adverse impacts of their consumption on other States, including by:

(i) Halting all exports of e-waste, plastic waste, highly hazardous pesticides and other toxic substances to low-income countries and lower-middle-income countries;

(ii) Making consumption-based metrics part of official statistics and taking tangible steps to reduce unsustainable consumption, including through improved diets (predominantly plant-based) and lower material consumption;

(iii) Including international spillovers systematically in voluntary national reviews;

(iv) Strengthening regulation of businesses covering full supply chains, through human rights and environment due diligence legislation.

82. All international financial institutions should:

(a) Accelerate and standardize fossil fuel exclusion policies;

(b) Conduct human rights impact assessments of proposed programmes and carry out human rights-based debt sustainability analyses;

(c) Provide comprehensive debt relief and restructuring and prioritize grants and concessional loans to small island developing States and other climate-vulnerable low-income countries and lower-middle-income countries;

(d) Avoid imposing structural adjustment programmes and austerity requirements as conditions for obtaining debt relief, grants or loans.

83. In order to fulfil their responsibility to respect the human right to a clean, healthy and sustainable environment while contributing to meeting the Sustainable Development Goals, businesses should:

(a) Support the implementation of human rights-based approaches to the Goals;

(b) Ensure that all investments, projects and policies are intentionally aligned with accelerating progress towards the Goals;

(c) Contribute to and support efforts to shift towards the goal of a pollution-free circular economy;

(d) Reduce energy use and accelerate their transition from fossil fuels to renewables and energy storage;

(e) Reduce adverse impacts on ecosystems and biodiversity from their own activities, products, services, subsidiaries and suppliers;

(f) Carry out comprehensive human rights and environmental due diligence prior to commencing new projects, developing new products or entering new markets.

84. Other special procedures have made excellent recommendations related to human rights and the Sustainable Development Goals, including the Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia and related intolerance ([A/HRC/50/60](#)), extreme poverty and human rights ([A/75/181/Rev.1](#)) and the right to food ([A/74/164](#)), the Working Group on business and human rights ([A/HRC/41/49](#)) and others.<sup>61</sup>

85. As the Secretary-General concluded in his 2021 progress report on the Sustainable Development Goals, humanity needs “a decade of truly transformative action that delivers for people and planet” (see [E/2021/58](#), para. 7). Bold, decisive and systemic changes are needed at all levels to avoid a lost decade for sustainable development, a lost decade that neither people nor the planet can afford. If implemented in tandem, human rights and the Sustainable Development Goals offer a synergistic paradigm shift away from the traditional exploitative model of economic development, providing an inspiring vision that is people- and planet-centred, where both present and future generations are able to fully enjoy their right to a clean, healthy and sustainable environment.

---

<sup>61</sup> See [www.ohchr.org/en/special-procedures-human-rights-council/cross-cutting-thematic-issues](http://www.ohchr.org/en/special-procedures-human-rights-council/cross-cutting-thematic-issues).

**Human Rights Council****Fifty-second session**

27 February–31 March 2023

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Women, girls and the right to a clean, healthy and  
sustainable environment****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 R. Boyd***Summary*

The triple planetary crisis, combined with systemic gender-based discrimination, patriarchal norms and inequality, is imposing distinct and disproportionate harms on women and girls, threatening and violating their human rights, including the right to a clean, healthy and sustainable environment. To achieve gender equality and ecological sustainability, States must tackle gender-based discrimination and environmental injustices with urgent, gender-transformative, rights-based climate and environmental action. In the present report, the Special Rapporteur describes State obligations, business responsibilities and the potential benefits of achieving gender equality and ecological sustainability. He makes recommendations related to dismantling systemic discrimination, empowering women and girls as climate and environmental leaders and ensuring that women and girls are able to fully enjoy their right to a clean, healthy and sustainable environment.

---

\* Reissued for technical reasons on 3 March 2023.



## I. Introduction<sup>1</sup>

1. It has been 75 years since the Universal Declaration of Human Rights boldly stated that “all human beings are born free and equal in dignity and rights”.<sup>2</sup> The Convention on the Elimination of All Forms of Discrimination against Women, which currently has 189 States parties, entered into force in 1981. Despite remarkable progress towards gender equality in some States, systemic discrimination persists. Laws that discriminate against women, girls and gender-diverse persons, sociocultural norms that reduce their agency, and stereotypes about femininity, masculinity and gender-assigned roles continue to restrict the political and economic power of women and girls in every State and every sphere of society.

2. The planetary environmental crisis affects everyone, everywhere, but not equally. Harmful gender norms, stereotypes, biases and discrimination exclude women and girls from participating in environmental decision-making and enjoying a fair share of nature’s benefits, while imposing disproportionate impacts related to the climate emergency, biodiversity collapse and pervasive pollution. According to the former United Nations High Commissioner for Human Rights, “the exclusion of half of society from effectively helping to shape environmental policies means those policies will be less responsive to the specific damage being caused, less effective in protecting communities and may even intensify the harm being done”.<sup>3</sup>

3. Sustainable development depends on the gender-transformative realization of the right to a clean, healthy and sustainable environment, as recognized in historic United Nations resolutions. In its pioneering resolution 48/13, adopted in 2021, the Human Rights Council emphasized that States must fully respect human rights obligations, including those related to gender equality. In its resolution 76/300, adopted in 2022, the General Assembly recognized the importance of gender equality, gender-responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and full, equal and meaningful participation of women and girls, and the role that women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment.

4. As demonstrated by their impressive but underappreciated contributions to protecting the environment, women and girls are powerful, transformative agents of change who should be primarily viewed not as victims, but as equal, indispensable partners and leaders in the transition to a just and sustainable future. In order for women and girls to realize their rights and potential, nature must be conserved, protected and restored, pollution must be prevented and urgent action must be taken to achieve a safe climate. The voices of women and girls must be heard, their ideas implemented and their stewardship work rewarded. To facilitate these advances, society must dismantle the beliefs, norms, institutions and systems that perpetuate gender discrimination.

## II. Patriarchy and persistent systemic discrimination

5. The global economy is broken. It is based on two pillars – the exploitation of people and the exploitation of the planet – that are fundamentally unjust, unsustainable and incompatible with human rights. Similarly, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) observed that environmental crises “are deeply rooted in an economic system that fails to value, protect, nourish and invest in what is essential”.<sup>4</sup> Like women’s disproportionate unpaid labour and contributions to the care

<sup>1</sup> The Special Rapporteur expresses his thanks to Stephanie Keene for her outstanding support in preparing the present report.

<sup>2</sup> Ms. Hansa Mehta, from India, is widely credited with changing the language from “all men are born free and equal”.

<sup>3</sup> <https://www.ohchr.org/en/statements/2019/09/global-update-42nd-session-human-rights-council>.

<sup>4</sup> UN-Women, *Beyond COVID-19: A Feminist Plan for Sustainability and Social Justice*, key messages (2021).

economy, nature's contributions to people are a critical foundation for human health and the economy but are taken for granted.

6. Skewed value systems that champion profit, growth and domination of nature fuel discrimination, environmental injustice and the oppression, erasure and exploitation of women, girls and other vulnerable groups. Businesses abuse human rights with impunity, worsen inequality, pollute, destroy nature and exacerbate the climate crisis. Powerful marketing methods exploit stereotypes and drive gendered patterns of unsustainable consumption (e.g. meat, cars, cosmetics and fashion) to the detriment of women, girls, human rights and the environment.

7. As a result, women and girls face profound socioeconomic disadvantages that erode their political agency and power. Legal, social and cultural obstacles prevent them from securing jobs, promotions and leadership positions, and limit their access to land, natural resources, finance, technologies, agricultural equipment and inputs, training and extension services. The following facts illustrate the pervasive, devastating nature of gender discrimination today:

(a) Women comprise 70 per cent of the world's poor; rural women have fared worse than rural men and urban women and men on every development indicator;<sup>5</sup>

(b) Women do three times more unpaid household and care work than men in both high- and low-income countries,<sup>6</sup> resulting in time poverty, lower employment and lower earnings;

(c) Women are overrepresented in informal economies (and thus lack social and legal protections); receive 20 per cent lower wages than men for the same work;<sup>7</sup> and frequently experience worse working conditions;<sup>8</sup>

(d) Women are underrepresented in leadership, management and decision-making roles across all levels and all sectors:

(i) Across 156 countries, women hold only 22.9 per cent of parliament seats and represent only 16.1 per cent of ministers;<sup>9</sup>

(ii) In 2022, only 8.8 per cent of chief executive officers at Fortune 500 companies were women.<sup>10</sup>

8. At current rates of progress, it will take 286 years to repeal or amend discriminatory laws and close gaps in legal protection for women and girls,<sup>11</sup> and 155 years to close the political empowerment gap.<sup>12</sup> Making matters worse, many gender gaps have widened as a result of the economic, health and social consequences of the coronavirus disease (COVID-19) pandemic.<sup>13</sup>

9. Gender discrimination and stereotypes affect girls from a young age, as they are treated as inferior in many States and cultures, undermining their self-esteem and leading to lifelong inequality, deprivation and exclusion. For example, domestic obligations imposed on girls – including water and fuel collection, cooking, cleaning, care-giving and other time-

<sup>5</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 34 (2016), para. 5.

<sup>6</sup> UN-Women, *Beyond COVID-19*.

<sup>7</sup> International Labour Organization (ILO), *Global Wage Report 2018/2019: What Lies Behind Gender Pay Gaps* (2018).

<sup>8</sup> ILO, *Women at Work: Trends 2016* (2016).

<sup>9</sup> World Economic Forum, *Global Gender Gap Report 2022*.

<sup>10</sup> Women Business Collaborative and others, *Women CEOs in America: Changing the Face of Business Leadership* (2022).

<sup>11</sup> UN-Women and Department of Economic and Social Affairs, *Progress on the Sustainable Development Goals: The Gender Snapshot 2022*.

<sup>12</sup> World Economic Forum, *Global Gender Gap Report 2022*.

<sup>13</sup> UN-Women, *Beyond COVID-19*.

consuming tasks that interfere with girls' education, play and development – are rooted in cultural norms and traditions that give men and boys preferential treatment.<sup>14</sup>

10. States must tackle the root causes of gender inequality. To fulfil women and girls' human rights, gender-transformative changes to laws, policies, programmes and projects, as well as education, awareness-building and training are urgently needed. Human rights, based on the bedrock of equality and non-discrimination, can and should be a catalyst for needed systemic changes. Yet according to the United Nations Environment Programme (UNEP), “almost no countries have policy frameworks or mechanisms in place that would enable a synergistic view (let alone implementation) of gender and environmental goals”.<sup>15</sup>

11. Although the present report is focused on the right of women and girls to a clean, healthy and sustainable environment, all human rights are interrelated, undermined by inequality and gender discrimination, and compounded by intersecting vulnerabilities related to race, ethnicity, poverty, age, sexual orientation, migration status and disability. The Special Rapporteur recognizes the diversity of gender identities that comprise humanity and acknowledges that alleviating discrimination and achieving gender equality is relevant not only for heterosexual women and girls, but also for lesbian, gay, bisexual, transgender, intersex, two-spirit and other gender-diverse and non-binary (LGBT+) persons.

### III. Disproportionate impacts of the global environmental crisis on women and girls

12. All people depend on nature for their life, health and well-being, from the oxygen in air produced by plants on land and at sea, to crops pollinated by birds, bats and bees and other insects. Everyone has the right to a clean, healthy and sustainable environment. This includes clean air; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; healthy biodiversity and ecosystems; and a safe climate. It is also linked to the rights to information, participation in decision-making and access to justice with effective remedies.

13. Unfortunately, gender-based stereotypes, biases, inequalities and discrimination profoundly restrict women and girls' enjoyment of the right to a clean, healthy and sustainable environment.<sup>16</sup> This also affects the rights to life, health, adequate housing, food, water, sanitation, education and an adequate standard of living, cultural rights and child rights. Gender-based discrimination is exacerbated for women and girls who are potentially vulnerable or marginalized because they are Indigenous, Afrodescendent, peasants, older, LGBT+, migrants, displaced, refugees, unmarried, informally married, widowed or living in armed conflict, or because they have disabilities.

14. The lack of gender- and sex-disaggregated data regarding many environmental issues renders women, girls and their needs invisible to policymakers.<sup>17</sup> Despite decades of commitments to ensure gender equality in environmental decision-making and sustainable development, existing monitoring and assessment mechanisms and data-collection/disaggregation practices are inadequate to meet State obligations to the right of women and girls to a healthy environment.<sup>18</sup> For example, in 2021 only 22 per cent of States included data disaggregated by sex in their nationally determined contributions under the Paris Agreement.<sup>19</sup>

<sup>14</sup> E/CN.4/2006/45.

<sup>15</sup> UNEP, *Global Gender and Environment Outlook: The Critical Issues* (2016), p. 84.

<sup>16</sup> E/CN.6/2022/3 and A/HRC/41/26.

<sup>17</sup> UN-Women, “Measuring the nexus between gender equality and women's empowerment and the environment, including climate change and disaster risk reduction” (2021).

<sup>18</sup> UNEP and International Union for Conservation of Nature, *Gender and Environment Statistics: Unlocking Information for Action and Measuring the SDGs* (2018).

<sup>19</sup> International Union for Conservation of Nature, *Gender and National Climate Planning: Gender Integration in the Revised Nationally Determined Contributions* (2021).

## A. Clean air

15. Due to gendered cooking responsibilities, millions of women and girls die prematurely each year because of household air pollution from unclean fuels and inefficient cookstoves.<sup>20</sup> Household air pollution is a risk factor for acute lower respiratory tract infections, pneumonia, chronic obstructive pulmonary disease, cancer and heart disease. Women and girls living in poverty are especially affected. Girls living in households without clean cooking technologies bear the greatest time-loss burden related to collecting fuel. Negative impacts of solid-fuel cooking on the environment, public health and gender equality cost \$2.4 trillion annually.<sup>21</sup>

16. Nine in ten people live in areas that do not meet the World Health Organization (WHO) air quality guidelines, and are thus at higher risk for asthma, other respiratory diseases, cardiovascular disease, cancer and neurodegenerative diseases. Ambient air pollution threatens women's reproductive health, causing preterm birth, low birth weight, and stillbirth, as well as systemic inflammation and placental injury.<sup>22</sup> Air pollution is often concentrated in impoverished, racially or ethnically marginalized communities. A recent study revealed that, in the United States of America, people of colour are 3.6 times more likely than white people to live in counties with poor air quality.<sup>23</sup> LGBT+ persons in the United States are more likely to reside in low-income areas with high levels of air pollution.<sup>24</sup>

## B. Safe, sufficient water and adequate sanitation

17. Lack of access to clean water causes the death of approximately 800,000 women and girls annually.<sup>25</sup> Women and girls are primarily responsible for water collection in 80 per cent of households that lack water on the premises.<sup>26</sup> In sub-Saharan Africa and South Asia they spend huge amounts of time and energy to secure water for their families. Girls responsible for collecting household water often miss school in order to complete this task. Pollution and climate change force women and girls to travel farther to acquire safe and sufficient water, exposing them to injuries, stress and increased risks of violence.

18. Water pollution (from industry, agriculture and inadequate wastewater treatment) harms the reproductive health of women and girls. Lack of access to clean water increases the risk of pregnancy complications and death during childbirth.<sup>27</sup> Rising sea levels, storm surges and fresh water depletion are increasing drinking water salinity. This has been linked to adverse health impacts for pregnant persons, including hypertension and preeclampsia.<sup>28</sup>

19. One in three women and girls lack access to safe toilets, which exposes them to shame, psychosocial stress, violence and elevated risks of disease<sup>29</sup> (e.g. cholera, diarrhoea and bacterial infections). Women and girls require clean and sufficient water to achieve healthy menstrual management and hygiene, which is central to their ability to attend school, work

<sup>20</sup> <https://www.who.int/news-room/fact-sheets/detail/household-air-pollution-and-health>.

<sup>21</sup> <https://drawdown.org/solutions/clean-cooking>.

<sup>22</sup> Bruce Bekkar and others, "Association of air pollution and heat exposure with preterm birth, low birth weight, and stillbirth in the US: a systematic review", *JAMA Network Open*, vol. 3, No. 6 (2020).

<sup>23</sup> American Lung Association, *State of the Air 2022*.

<sup>24</sup> Timothy Collins, Sara Grineski and Danielle Morales, "Sexual orientation, gender, and environmental injustice: unequal carcinogenic air pollution risks in Greater Houston", *Annals of the American Association of Geographers*, vol. 107, No. 1 (2017).

<sup>25</sup> UN-Women and Department of Economic and Social Affairs, *Progress on the Sustainable Development Goals*.

<sup>26</sup> UN-Women, "Gender equality in the 2030 Agenda: gender-responsive water and sanitation systems" (2018).

<sup>27</sup> WHO and United Nations Children's Fund (UNICEF), *Water, Sanitation and Hygiene in Health Care Facilities: Status in Low- and Middle-Income Countries and Way Forward* (2015).

<sup>28</sup> Aneire Ehmar Khan and others, "Drinking water salinity and maternal health in coastal Bangladesh: implications of climate change", *Environmental Health Perspectives*, vol. 119, No. 9 (2011).

<sup>29</sup> UNEP, *Global Gender and Environmental Outlook*, p. 65.

and live productive and dignified lives.<sup>30</sup> Women and girls with disabilities face unique challenges in accessing sanitation facilities. As noted by the Special Rapporteur on the human rights to safe drinking water and sanitation, water and sanitation facilities must be safe, available, accessible, affordable and socially and culturally acceptable, provide privacy and ensure dignity for all individuals, including those who are transgender and gender non-conforming.<sup>31</sup>

### C. Healthy and sustainably produced food

20. Women and girls make up almost half of the world's agricultural workforce. In some low-income countries, they produce up to 80 per cent of the food, yet are often unpaid or paid less than men doing the same work. They account for 70 per cent of the world's hungry and are disproportionately affected by malnutrition, poverty and food insecurity.<sup>32</sup> These inequalities are rooted in discriminatory norms dictating that when insufficient food is available, women and girls should restrict their own food consumption and implement preferential feeding practices that favour men and boys. In 2019, nearly one in three women of reproductive age (15–49) were anaemic.<sup>33</sup>

21. A critical problem is discrimination regarding women's land ownership and the recognition and security of their resource tenure rights. Because of legal, cultural and economic barriers, only 20 per cent of the world's land is owned by women, and the land and resource rights of Indigenous women, Afrodescendants and other rural women who rely on community-based tenure systems are underrecognized and insecure. The number of malnourished children is 60 per cent higher in countries where women do not have the right to own land and 85 per cent higher in countries where women lack access to credit.<sup>34</sup>

22. In recent years, the climate crisis, the COVID-19 pandemic and armed conflicts exacerbated food insecurity for hundreds of millions of women and girls. Extreme weather events, such as droughts and floods, coupled with rising food prices, have devastating impacts on food security in the Horn of Africa, Latin America and many small island developing States. Nutritional deficiencies exacerbated by climate change adversely affect pregnancy, nursing and newborn health, leading to low-weight births, miscarriages and perinatal mortality.<sup>35</sup>

### D. Healthy ecosystems and biodiversity

23. Climate change, pervasive pollution and irresponsible resource use – all caused by the corporate capitalist economy that prioritizes extractive industries, energy megaprojects and large-scale industrial agriculture – have catastrophic impacts on the health of biodiversity and ecosystems and the people who depend most directly on nature.<sup>36</sup>

24. Declining biodiversity and degraded ecosystems affect human health, food security and livelihoods, particularly for Indigenous, Afrodescendent, peasant and local community women and girls. These women and girls steward their territories and use them for food, water, medicinal plants, non-timber forest products, cultural and spiritual purposes and small-scale livelihoods (agriculture, agroforestry, fisheries, livestock management and aquaculture). They also play vital roles in seed selection, protection and distribution. However, they and their communities often lack legal land title or legally recognized tenure rights, creating precarity. The Committee on the Elimination of Discrimination against

<sup>30</sup> General recommendation No. 34 (2016), para. 42.

<sup>31</sup> [A/HRC/33/49](#), para. 9.

<sup>32</sup> [A/HRC/16/40](#), para. 29.

<sup>33</sup> UN-Women Department of Economic and Social Affairs, *Progress on the Sustainable Development Goals*.

<sup>34</sup> United Nations Development Programme and Global Gender and Climate Alliance, "Gender and climate finance", Policy Brief No. 5 (2016).

<sup>35</sup> Women Deliver, "The link between climate change and sexual and reproductive health and rights: an evidence review" (2021).

<sup>36</sup> General recommendation No. 34 (2016), and [E/2022/27-E/CN.6/2022/16](#), chap. I, sect. A.

Women has highlighted adverse impacts of deforestation on the rights of women and girls, especially in Indigenous communities.<sup>37</sup>

25. In addition to women's land ownership being limited, the land owned by women tends to be smaller than men's, inferior in quality, and more prone to flooding, erosion and other adverse climatic effects.<sup>38</sup> Property, land and resource tenure laws, policies and practices and marital property regimes that discriminate based on gender are major barriers to equality and the enjoyment of the right to a healthy environment for women and girls.<sup>39</sup> These factors, coupled with limited information and financial resources, make it difficult for women to influence resource-management decisions, restricting their livelihood opportunities and perpetuating gender-based cycles of poverty and environmental injustice.

26. Rural land is increasingly targeted for land-grabbing to facilitate activities such as large-scale biofuel plantations for renewable energy and massive industrial monocultures. Loss of access to land endangers women's livelihoods and biodiversity.<sup>40</sup> For example, a women's cooperative in Haiti acquired land to operate an organic farming training school for peasant women. In 2020, its land was re-designated as an agro-industrial zone and the women were forcibly displaced.<sup>41</sup> Rural women are disproportionately affected by land grabs because of their limited ownership and control over land and resources, limited power and lack of access to justice.

27. Women comprise almost half of the global fishing workforce.<sup>42</sup> Rising ocean temperatures and acidification<sup>43</sup> and loss of coral reefs are contributing to declines in fisheries, compromising valuable livelihood activities for women involved in fish catching, processing and trading.

28. Ecosystem degradation perpetuates gender inequalities by increasing time poverty of women and girls, forcing them to travel further, repeat activities (e.g. replanting crops), do more unpaid caregiving, and spend more time and money to obtain the necessities of life, such as food, water, firewood<sup>44</sup> and fodder.

## E. Non-toxic environments

29. Because of economic, social, cultural and physiological factors, women and girls are disproportionately vulnerable to the adverse health effects of toxic substances. Exposure to industrial chemicals, heavy metals, pesticides and other pollutants causes cardiovascular disease, respiratory illnesses, cancer and reproductive harms. For example, women and girls from the Marshall Islands continue to suffer adverse physical and mental health effects from radiation caused by nuclear weapons testing decades ago. The breast milk of Inuit women in the Arctic contains levels of persistent organic pollutants up to nine times higher than that of women in southern Canada.<sup>45</sup>

30. Cultural norms affect the vulnerability of women and girls. Women of colour, regardless of socioeconomic status, are exposed to higher levels of toxic substances –

<sup>37</sup> General recommendation No. 39 (2022), [CEDAW/C/CIV/CO/4](#) and [CEDAW/C/GUY/CO/9](#).

<sup>38</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018).

<sup>39</sup> UN-Women and OHCHR, *Realizing Women's Rights to Land and Other Productive Resources* (2020).

<sup>40</sup> [E/CN.6/2022/3](#).

<sup>41</sup> <https://www.openglobalrights.org/land-grabs-in-haiti-sow-climate-vulnerability-and-violence-against-women/>.

<sup>42</sup> UNEP, *Global Gender and Environment Outlook*, p. 49.

<sup>43</sup> [A/HRC/41/26](#).

<sup>44</sup> UN-Women, *Beyond COVID-19*, p. 10.

<sup>45</sup> International Union for Conservation of Nature, *Women's Participation and Gender Considerations in Country Representation, Planning and Reporting to the BRS Conventions* (2017).

including lead and mercury – as a result of using beauty products such as haircare products and skin whiteners.<sup>46</sup>

31. Adverse reproductive health impacts of exposure to toxic substances include early puberty in adolescent girls (linked to breast cancer and other diseases), infertility, fibroids, poor maternal health, miscarriages, stillbirths, premature birth, low birth weight and birth defects. Urban women working as informal waste pickers and in the informal processing of electronic waste (including batteries) are exposed to dangerous chemicals associated with endocrine disruption and reproductive health problems.

32. The Committee on the Elimination of Discrimination against Women has expressed concern about the harmful impacts of agrochemicals on women's and children's health.<sup>47</sup> Pesticide exposure can cause infant mortality, birth defects, infant and childhood cancers, arrested physical, mental and reproductive development, including malformation of sexual organs in infants, premature and late menses, sterility and early menopause.<sup>48</sup> Because literacy rates in some States are substantially lower for women and girls, and agricultural training less accessible, important chemical safety information may be inaccessible, increasing the risks of unintended exposures to pesticides.

33. A disturbing emerging concern is plastic pollution. In many communities lacking effective waste management programmes, women and girls are responsible for disposal of household waste, often resulting in exposure to toxic smoke from open burning of waste containing plastic. Microplastics are more likely to accumulate in women and are associated with a range of adverse health effects.<sup>49</sup>

## F. A safe climate

34. For women and girls, adapting to climate change impacts is often harder due to rigid gender roles and their reduced access to and control over natural resources, information, technologies and finance. Extreme weather events provide a compelling example. Gendered social norms surrounding work, mobility, household decision-making authority, and comparatively limited access to health care, education, food, water, sanitation, technology and information place women and girls at greater risk during climate-related disasters.<sup>50</sup> It is shocking that 96 per cent of deaths from the Solomon Island floods in 2014 were of women and children and 70 per cent of deaths from the Tonga and Samoa tsunami in 2009 were of women.<sup>51</sup> During the catastrophic 2022 floods, hundreds of thousands of pregnant women in Pakistan were deprived of access to maternal health services.<sup>52</sup> Women and girls are more vulnerable to the increased prevalence of malaria after climate change-induced floods, hurricanes and typhoons because they fulfil cooking responsibilities during morning and evening hours when mosquitoes are most active. The climate crisis has also created significant mental health problems for women and girls, including stress-related disorders and depression.<sup>53</sup>

<sup>46</sup> Ami R. Zota and Bhavna Shamasunder, "The environmental injustice of beauty: framing chemical exposures from beauty products as a health disparities concern", *American Journal of Obstetrics and Gynecology*, vol. 217, No. 4 (October 2017).

<sup>47</sup> General recommendation No. 34 (2016), [CEDAW/C/GTM/CO/8-9](#) and [CEDAW/C/ARG/CO/7](#).

<sup>48</sup> Andrea Carmen, "Environmental violence: impacts on Indigenous women and girls", in *Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace*, Elsa Stamatopoulou, ed. (2017), pp. 98–100.

<sup>49</sup> UNEP, *From Pollution to Solution: A Global Assessment of Marine Litter and Plastic Pollution* (2021).

<sup>50</sup> General recommendation No. 37 (2018).

<sup>51</sup> UN-Women, *Leveraging Co-Benefits between Gender Equality and Climate Action for Sustainable Development* (2016), p. 24.

<sup>52</sup> <https://pakistan.unfpa.org/en/news/women-and-girls-bearing-brunt-pakistan-monsoon-floods>.

<sup>53</sup> Global Gender and Climate Alliance, *Gender and Climate Change: A Closer Look at Existing Evidence* (2016) and <https://www.carbonbrief.org/mapped-how-climate-change-disproportionately-affects-womens-health>.

35. The failure to develop and implement gender-transformative disaster risk reduction and response plans has led to early warning systems, shelters and relief programmes that neglect the particular needs of diverse groups of women, including women with disabilities, older women, Indigenous women,<sup>54</sup> pregnant/nursing persons and women with young children. Discrimination and social stigmatization endured by women, girls and LGBT+ persons during climate-related disasters increase risks of gender-based violence and limit access to vital relief services, including water, sanitation, food, housing and health care.

36. The climate crisis exacerbates extreme heat exposure, disproportionately affecting the health of older women and pregnant persons. Exposure to extreme heat causes increased risk of pregnancy-related hospitalizations and serious complications, including premature births, stillbirths and low birth weight.<sup>55</sup> In the United States, extreme heat exposure is worse for Black women, because Black communities experience hotter temperatures than white communities (e.g. due to less green space), lower socioeconomic status and less access to locations for cooling.<sup>56</sup> Rising temperatures are adversely affecting pregnant subsistence farmers in the Gambia, increasing cases of heat stress.<sup>57</sup>

37. Climate disasters result in economic difficulties for families that increase the likelihood of girls dropping out of school and render girls vulnerable to child marriage, which families use as a means to raise money or decrease the number of dependents.<sup>58</sup> Child marriage exposes girls to adolescent pregnancy and damages their health, education and future prospects. Globally, pregnancy complications and unsafe abortions are the leading causes of death for girls between the ages of 15 and 19.<sup>59</sup> Childhood pregnancy often terminates girls' education opportunities, perpetuating generations of poverty. An estimated 15 million girls are married before turning 18 each year, contributing to school dropout rates, rapid population growth and poverty that will cost developing countries trillions of dollars over the next decade.<sup>60</sup> By 2025, the climate emergency is expected to prevent at least 12.5 million girls from completing their education each year.<sup>61</sup>

## G. Risk multipliers

38. The climate and environmental crises are notorious risk multipliers, exacerbating the challenges faced by women and girls, especially in poor and marginalized communities. Droughts, soil degradation and other disasters worsen food and water scarcity, increasing the likelihood of displacement and migration. When families migrated from rural to urban areas in 2018–2019 in response to flooding, drought and conflict, girls' school enrolment rates dropped from 45 per cent to 29 per cent, while boys' enrolment rose.<sup>62</sup> Migrant, displaced and refugee women and girls are especially vulnerable to food insecurity, adverse health consequences and gender-based violence.<sup>63</sup> The increasing frequency and severity of extreme weather events cause additional injuries and illnesses, increasing the care burden of women and girls. Increases in food prices due to climate impacts on agricultural productivity are more likely to affect rural women and women living in poverty.

<sup>54</sup> Ibid., paras. 4–5.

<sup>55</sup> Bekkar and others, "Association of air pollution".

<sup>56</sup> [https://www.hrw.org/sites/default/files/media\\_2020/10/climatecrisis-reproductivejustice-US\\_1020\\_web.pdf](https://www.hrw.org/sites/default/files/media_2020/10/climatecrisis-reproductivejustice-US_1020_web.pdf).

<sup>57</sup> Shantelle Spencer and others, "The challenges of working in the heat whilst pregnant: insights from Gambian women farmers in the face of climate change", *Frontiers in Public Health* (2022).

<sup>58</sup> Lorena Aguilar, *Study on the Differentiated Impacts of Desertification, Land Degradation and Drought on Women and Men* (2022).

<sup>59</sup> [https://www.who.int/health-topics/adolescent-health/pregnancy-and-childbirth-complications-are-the-leading-cause-of-death-among-15-19-year-old-girls#tab=tab\\_2](https://www.who.int/health-topics/adolescent-health/pregnancy-and-childbirth-complications-are-the-leading-cause-of-death-among-15-19-year-old-girls#tab=tab_2).

<sup>60</sup> <https://www.worldbank.org/en/news/immersive-story/2017/08/22/educating-girls-ending-child-marriage>.

<sup>61</sup> Malala Fund, "A greener, fairer future: why leaders need to invest in climate and girls' education" (2021).

<sup>62</sup> UN-Women and Department of Economic and Social Affairs, *Progress on the Sustainable Development Goals*.

<sup>63</sup> General recommendation No. 37 (2018) and [A/77/136](#).

39. The climate change, biodiversity and pollution crises increase the risk of conflict – especially in fragile States that are ill-equipped to confront these environmental crises<sup>64</sup> – posing serious threats to peace and national security. Armed conflict is a major driver of gender inequality and environmental destruction, worsening living conditions for women and girls. In the Sahel region, in Africa, women and girls are disproportionately affected by the convergence of floods, droughts, conflict, food and water insecurity and limited resilience and adaptation capacity. Similarly, the dramatic shrinking of Lake Chad and land degradation caused by overuse is causing conflict between pastoral herders and farmers in Cameroon, Chad, the Niger and Nigeria, increasing risks of food insecurity and violence for women and girls.<sup>65</sup> Overlooking the security implications of climate change can jeopardize peace, adaptation and gender equality.

## H. Access to information, participation, and access to justice and effective remedies

40. Women and girls lack equal access to environmental and climate information; are often excluded from participation in environmental, climate and disaster risk decision-making processes; and lack access to justice and effective remedies when their rights are threatened or violated.

### 1. Access to information

41. Women and girls have less access to environmental and climate information because of unequal educational opportunities, disproportionate care responsibilities, stereotypes, lack of disposable income, language barriers, inadequate access to the Internet and communications technology, governments' failure to provide information in a gender-responsive manner, and other gender disparities. In low- and middle-income nations, hundreds of millions of women and girls do not own mobile phones,<sup>66</sup> putting the Internet out of reach despite its important role in providing access to information. For example, in Bangladesh, women have less access to radios, televisions and mobile phones than men, potentially cutting them off from life-saving information about extreme weather events.<sup>67</sup> Global surveys indicate that a surprising proportion of girls are unfamiliar with climate change, reflecting the failure of school systems to provide comprehensive environmental education.<sup>68</sup>

### 2. Participation in decision-making

42. Discrimination prevents many women and girls from having a say in the critical climate and environmental decisions that will determine humanity's future. Women are excluded from law-making and policymaking, planning, monitoring, and governance related to land, forests, fisheries, food systems, chemicals, climate, energy, fresh water and water and sanitation services. Common obstacles, rooted in systemic gender-based discrimination, include the comparative lack, among women and girls, of education, time, money, mobility, security and knowledge of legal, political and institutional procedures.<sup>69</sup>

43. The following statistics illustrate the underrepresentation of women in environmental decision-making:

- (a) In 2020, only 15 per cent of ministers of environmental sectors were women;<sup>70</sup>

<sup>64</sup> [S/2021/827](#).

<sup>65</sup> UNEP and others, *Gender, Climate and Security: Sustaining Inclusive Peace on the Frontlines of Climate Change* (2020).

<sup>66</sup> GSM Association, *Connected Women: The Mobile Gender Gap Report 2022*.

<sup>67</sup> Global Gender and Climate Alliance, *Gender and Climate Change*.

<sup>68</sup> <https://www.unicef.org/media/118691/file/Bring%20In%20the%20Girls!.pdf>.

<sup>69</sup> General recommendation No. 34 (2016).

<sup>70</sup> <https://www.iucn.org/news/gender/202103/new-data-reveals-slow-progress-achieving-gender-equality-environmental-decision-making>.

(b) Just one third of decision-making roles under the United Nations Framework Convention on Climate Change and the Paris Agreement are occupied by women;<sup>71</sup>

(c) Only 21 per cent of delegates during the fourteenth session of the Conference of Parties of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa were women.<sup>72</sup>

44. Even when women were equally represented among registered delegates at one United Nations climate conference, men spoke for three quarters of the time.<sup>73</sup>

45. Employment discrimination and norms favouring men limit women's opportunities to fill key leadership positions relevant to the right to a healthy environment, including elected offices and senior roles in government agencies, corporations, industry associations, universities and international organizations. These institutions are dominated by men, particularly at management and leadership levels, undermining women's participation in environmental decision-making.

46. Indigenous and rural women are consistently excluded from business and government decisions related to land acquisition, land use, resource rights and processes in which their community's free, prior and informed consent is required. This exclusion harms women's ability to feed their families, earn livelihoods, participate in development, maintain their nature-dependent cultural or spiritual practices and receive compensation, leading to environmental conflicts and heightened risks of violence.<sup>74</sup> The systematic underrepresentation of women and girls worsens environmental outcomes. For example, their exclusion from community forest management leads to ineffective forest protection.<sup>75</sup>

### 3. Access to justice and effective remedies

47. Gender-equitable access to justice and effective remedies in all environmental contexts remains elusive. The same obstacles to participation in decision-making processes also impede access by women and girls to justice and effective remedies.<sup>76</sup> Patriarchal judicial and non-judicial grievance processes, biases against women, a lack of sensitivity towards the particular concerns of women and girls and the absence of affordable, accessible legal aid are also barriers.<sup>77</sup> It has been estimated that women account for only 27 per cent of judges worldwide.<sup>78</sup> Threats and reprisals also have a chilling effect on women's pursuit of justice.

48. In the aftermath of harms caused by climate change, biodiversity loss and pollution, access to justice is often inaccessible, particularly for Indigenous women, women in situations of intersecting vulnerability, including poverty, and where transnational claims are needed.<sup>79</sup> For example, following climate-related disasters, women may encounter significant difficulties in claiming compensation and other forms of reparation to mitigate their losses and to adapt to climate change.<sup>80</sup>

<sup>71</sup> <https://www.un.org/sg/en/content/sg/statement/2022-03-14/secretary-generals-opening-remarks-the-commission-the-status-of-women-bilingual-delivered-followed-all-english-and-all-french-versions>.

<sup>72</sup> Aguilar, *Study*.

<sup>73</sup> <https://unfccc.int/news/overrepresentation-of-men-in-un-climate-process-persists>.

<sup>74</sup> [A/HRC/41/43](#), and <https://www.wri.org/research/making-womens-voices-count-community-decision-making-land-investments>.

<sup>75</sup> UNEP, *Global Gender and Environment Outlook*.

<sup>76</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 33 (2015). See also [A/HRC/32/19](#).

<sup>77</sup> [A/HRC/41/43](#). See also [A/HRC/26/39](#).

<sup>78</sup> World Bank Group, *Women, Business and the Law 2016: Getting to Equal* (2015).

<sup>79</sup> Committee on the Elimination of Discrimination against Women, general recommendations No. 33 (2015) and No. 37 (2018), and Gwynne Skinner and others, *The Third Pillar: Access to Judicial Remedies for Human Rights Violations by Transnational Business* (2013).

<sup>80</sup> General recommendation No. 37 (2018), para. 37.

## I. Gender-based violence

49. During their lifetime, one in three women and girls will experience gender-based violence.<sup>81</sup> The climate, pollution and biodiversity crises worsen poverty, increase stress and fuel violence against women and girls, including physical, psychological, domestic and sexual violence, child marriage and sex trafficking. Increased domestic and sexual violence have been reported after hurricanes, cyclones, heatwaves and bush fires.<sup>82</sup>

50. Gender-based violence disproportionately affects women and girls in vulnerable situations. Indigenous women and girls experience a range of gender-based violence, including environmental violence that can take the form of environmental harm, degradation, pollution or State failures to prevent foreseeable harm connected to climate change.<sup>83</sup> Gender-based violence threatens the individual autonomy, personal liberty and security, privacy and integrity of all Indigenous women and girls and may also harm the collective and its well-being, by jeopardizing the spiritual life, connection with Mother Earth, cultural integrity and survival, and social fabric of Indigenous Peoples and communities.<sup>84</sup>

51. In some States, the climate crisis contributes to economic violence through wife inheritance (after a husband dies, his brother or other male family member “inherits” the widow and her family’s property), inheritance renouncement and other means of disinheriting women and girls. Climate-related disasters such as droughts and floods also are contributing to a rise in “witch” killings, which target women and girls and may serve as cover for land and property grabbing.

52. Militarized efforts to protect or facilitate environmentally destructive activities (especially large-scale agribusiness, extractive, hydropower and mining projects) heighten risks of gender-based violence, especially on Indigenous and rural lands. Examples from Guatemala, Papua New Guinea, the Philippines and the United Republic of Tanzania reveal the involvement of the police, the military and armed guards in rape, torture, assault, sexual harassment and other forms of violence against women.<sup>85</sup> Trafficking for the exploitation and the prostitution of others or other forms of sexual exploitation may replace safer livelihoods for women and girls. The risks of gender-based violence are also exacerbated by exclusionary, militarized approaches to conservation and by the illegal wildlife and timber trades.<sup>86</sup>

53. The planetary environmental crisis also contributes to forced displacement, where risks of violence against women and girls escalate. In 2021, over 20 million people were displaced by climate-related disasters. Millions more were displaced in 2022, in part because of the devastating floods in Pakistan. Most displaced persons are women and girls.

## J. Environmental human rights defenders

54. Women and girls around the world, especially from Indigenous, Black and other racially marginalized communities, have an inspiring history at the forefront of environmental defence. Women environmental human rights defenders are disproportionately affected by environment-related human rights violations. In response, they challenge patriarchy, corporate power and State complicity.<sup>87</sup>

55. Women and girls are at a disadvantage in defending the environment and human rights due to their lack of land and tenure rights, relative poverty and exclusion from decision-

<sup>81</sup> [A/77/136](#).

<sup>82</sup> *Ibid.*, para. 24.

<sup>83</sup> General recommendation No. 39 (2022), para. 37.

<sup>84</sup> *Ibid.*, paras. 17–18.

<sup>85</sup> Itzá Castañeda Camey and others, *Gender-based Violence and Environment Linkages: The Violence of Inequality* (2020).

<sup>86</sup> <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/policy-briefing-1.pdf>. See also Joni Seager, *Gender and Illegal Wildlife Trade: Overlooked and Underestimated* (2021).

<sup>87</sup> [A/72/170](#).

making processes. Because of gender discrimination and the power of their activism, women and girl defenders are stigmatized, marginalized, shamed and exposed to greater risks of violence and reprisals. They are accused of pursuing environmental justice to the detriment of their domestic duties and may be subject to coercion through threats against their families and loved ones.<sup>88</sup> Hundreds of women have been murdered for their work as environment, land, water and human rights defenders in recent years. Countless more experience violence, intimidation and criminalization.

#### IV. Reasons for hope

56. Women and girls have always made substantial environmental stewardship contributions, benefiting their families, communities, businesses and nature. They are formidable agents of change, essential partners in the quest for a just and sustainable future, and their potential empowerment offers much-needed hope. Immense benefits would result from the gender-transformative realization of the right to a clean, healthy and sustainable environment, not only for women and girls. However, these potential benefits should not be used to instrumentalize or commodify the right of women and girls to non-discrimination. Without question, the equal realization of the right to a healthy environment for women and girls is a worthy imperative in and of itself, stemming from the inherent dignity of each woman and girl.

57. There is compelling evidence that the participation and leadership of women and girls in the design and implementation of climate and environmental policies results in cleaner, healthier and more biodiverse environments, resilient communities and more equitable distribution of nature's benefits.<sup>89</sup> Correlations exist between: women in positions of political authority and lower national carbon footprints; parliaments with a greater proportion of women and environmental treaty ratification; and higher percentages of women on corporate boards and full disclosure of carbon emissions.<sup>90</sup> A recent study of 18 nations found that higher numbers of elected women were correlated with stronger environmental standards.<sup>91</sup> Higher levels of girls' education have been strongly linked to climate resilience.<sup>92</sup>

58. Increasing women's rights and access to natural resources improves outcomes for nature and people. In Indonesia, Peru and the United Republic of Tanzania, when women's involvement in community forest management was guaranteed by gender quotas and supported by financial incentives, conservation outcomes improved.<sup>93</sup> Women's participation in environmental governance reduces the risk of resource-driven conflict. For example, fisherwomen on the border between Guinea and Liberia creatively resolved a decades-long conflict about a shared fishery.<sup>94</sup>

59. Women involved in policymaking are more likely to emphasize public goods. For example, women councillors in India prioritized water and sanitation investments more than their male counterparts.<sup>95</sup> A study of water supply and sanitation projects across 88 communities in 15 countries indicated that "projects designed and run with the full participation of women are more sustainable and effective than those that are not".<sup>96</sup>

60. Gender-transformative and -responsive approaches to agriculture (e.g. ensuring equal benefit from government support programmes) contribute to the achievement of Sustainable

<sup>88</sup> A/HRC/40/60.

<sup>89</sup> [https://www.unwomen.org/sites/default/files/2021-12/CSW66%20EGM%20report\\_final.pdf](https://www.unwomen.org/sites/default/files/2021-12/CSW66%20EGM%20report_final.pdf).

<sup>90</sup> Global Gender and Climate Alliance, *Gender and Climate Change*.

<sup>91</sup> Amy Atchison and Ian Down, "The effects of women officeholders on environmental policy", *Review of Policy Research* (2019).

<sup>92</sup> Plan International, *From the Frontlines: Youth Call for Action to Address Loss and Damage Caused by Climate Change* (2022).

<sup>93</sup> Nathan Cook, Tara Grillos and Krister Andersson, "Gender quotas increase the equality and effectiveness of climate policy interventions", *Nature Climate Change* (2019).

<sup>94</sup> Isabelle Fauconnier and others, *Women as Change-Makers in the Governance of Shared Waters* (2018).

<sup>95</sup> Ibid.

<sup>96</sup> Imrana Jalal, *Women, Water, and Leadership* (2014).

Development Goals concerning hunger, poverty, gender inequality, resilience to climate-related disasters, biodiversity, education and livelihoods. Closing the agricultural gender gap would lift hundreds of thousands of people in Malawi, Uganda and the United Republic of Tanzania out of poverty.<sup>97</sup> Empowering women farmers with the same level of resources as men farmers could reduce global hunger by 12 to 17 per cent, providing food for 100 million to 150 million people in need.<sup>98</sup> As the Secretary-General emphasized in his report entitled “Our Common Agenda”, women’s equal leadership, economic inclusion and gender-balanced decision-making are simply better for everyone, men and women alike.<sup>99</sup>

## V. State obligations

61. The Convention on the Elimination of All Forms of Discrimination against Women is the most comprehensive articulation of the right of women to equality, requiring States to take all appropriate measures, including temporary special measures, to prohibit and eliminate discrimination against women and girls in all fields. States must implement gender-transformative measures, meaning steps capable of changing norms and systems that perpetuate gender inequality, and address the root causes of gender-based discrimination, including those related to the right of women and girls to a clean, healthy and sustainable environment.

62. As a corollary to the right to a clean, healthy and sustainable environment, States have procedural, substantive and heightened obligations towards those in vulnerable situations, as set forth in the framework principles on human rights and the environment.<sup>100</sup> Framework principle 3, reflecting foundational principles of international human rights law, asserts that to address indirect as well as direct discrimination, States must pay attention to historical or persistent prejudice against groups of individuals, recognize that environmental harm can both result from and reinforce existing patterns of discrimination, and take effective measures against the underlying conditions that cause or help to perpetuate discrimination. These obligations apply to both sex and gender discrimination, and require urgent, transformative action to address the structural causes of inequality.<sup>101</sup>

63. While some human rights obligations are subject to progressive realization, the obligation of non-discrimination is of immediate effect. States must take into account women’s (and girls’) de jure and de facto situation, and then take legislative, policy-based and other measures to ensure substantive equality.<sup>102</sup> This requires mainstreaming gender-responsive assessments and gender-transformative measures across all actions with environmental or climate implications to ensure the gender-equal realization of the right to a healthy environment. Temporary special measures (including quotas, quorum requirements, targets and incentives) should be adopted to accelerate progress. The principle of non-discrimination also requires States to apply an intersectional lens, recognizing the heterogeneity of women, girls and LGBT+ persons.

64. States are obliged to employ a gender-transformative, rights-based approach to addressing the impacts of the climate, biodiversity and pollution crises and to accelerate gender equality related to environmental decision-making and benefit-sharing processes and outcomes. The rights-based approach clarifies the obligations of States towards women and girls, catalyses ambitious action and prioritizes the most disadvantaged. States must mobilize the maximum available financial, human and political resources in their gender-transformative actions to respect, protect and fulfil the right to a clean, healthy and sustainable environment. Implementation of State obligations must be guided by other

<sup>97</sup> UNEP and International Union for Conservation of Nature, *Gender and Environment Statistics*.

<sup>98</sup> Food and Agriculture Organization of the United Nations, *The State of Food and Agriculture 2010–11* (2011).

<sup>99</sup> [A/75/982](#), para. 31.

<sup>100</sup> [A/HRC/37/59](#), annex I.

<sup>101</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010).

<sup>102</sup> *Ibid.*

principles, including prevention, precaution, non-regression and polluter pays. States must avoid exacerbating, and actively improve, existing situations of environmental injustice.

## **A. Procedural obligations**

### **1. Empower women and girls through access to information and education**

65. Since gender stereotypes have resulted in most environmental sectors (e.g. science and technology) being dominated by men, States must take targeted measures to promote women's training, professional development, hiring and promotion in these fields. Gender-transformative education has a key role in eliminating prejudices and stereotypes, and changing the practices, patterns and norms that foster exploitation of nature, women and girls. States must sensitize men and boys to gender, and educate them about the need to become allies in empowering women and girls and addressing both gender inequality and the global environmental crisis.

66. A gender-transformative approach requires States to provide the public with accessible, affordable, accurate, understandable information and comprehensive environmental education at all levels regarding:

(a) The human rights of women and girls, including their right to a clean, healthy and sustainable environment and their land, water and other resource rights;

(b) The nexus between gender inequality and environmental injustice, including the causes, consequences and gender-differentiated impacts of climate change, pollution and biodiversity loss;

(c) The distinct impacts of environmental harm on the rights and health of women and girls, including sexual and reproductive health;

(d) Existing and proposed laws, policies and decision-making processes related to environmental governance.

67. States must also:

(a) Provide gender-transformative training for teachers;

(b) Support capacity-building, vocational and technical training, professional development, and access to the Internet, technology and other resources for women and girls;

(c) Develop programmes to involve female professionals and scientists in all aspects of environmental stewardship and sustainable economic development;<sup>103</sup>

(d) Mandate that environmental impact assessment processes incorporate gender-responsive human rights impact assessments to examine the potential gender impacts of proposed plans, policies and projects.

### **2. Ensure meaningful, informed, inclusive and equitable participation**

68. States must take gender-transformative measures, including temporary special measures, to accelerate equal participation in climate and environmental decision-making; to redistribute land, power and resources; to eliminate discrimination against women in political and public life; and to ensure that women have equal opportunities to represent their governments internationally.<sup>104</sup> Examples of such measures include: increased allocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical targets connected with timelines; and quota systems.<sup>105</sup> Time poverty is a central obstacle to women's participation in environmental decision-making and leadership, so States must take

<sup>103</sup> Beijing Platform for Action, para. 256.

<sup>104</sup> Convention on the Elimination of All Forms of Discrimination against Women, arts. 7–8.

<sup>105</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004).

actions to transform gender stereotypes and patterns of behaviour that contribute to women's disproportionate unpaid care burden.<sup>106</sup>

69. To ensure a gender-transformative approach to participation and leadership, States must:

(a) Ensure that all women and girls have equal opportunities for meaningful, informed and equitable public participation in all climate and environmental decision-making and implementation;

(b) Redesign decision-making institutions at all levels to overcome gendered barriers to women's participation and substantive engagement;

(c) Take special measures to place women in leadership positions across all sectors of climate, environmental and disaster risk reduction action;

(d) Empower the most directly affected, vulnerable and marginalized women and girls.<sup>107</sup>

### 3. Ensure affordable and timely access to justice and effective remedies

70. States must ensure, through courts, tribunals, national human rights institutions and other public institutions, the effective protection of women against any act of discrimination.<sup>108</sup> This obligation includes providing access to gender-transformative remedies and mechanisms to hold those responsible for climate and environmental harms accountable. States must ensure that women and girls have access to judicial and administrative procedures that address their specific needs and that also meet basic requirements of justice, including: impartiality, independence, affordability, accessibility, security, transparency and fairness; timely review of claims; necessary expertise and resources; a right of appeal to a higher body; and binding, publicly available and effectively enforced decisions, including for interim measures, compensation, restitution and reparation.<sup>109</sup> These procedures should be available for claims of past, current, imminent and foreseeable human rights violations.

71. Specifically, States must:

(a) Provide women and girls with accurate, sufficient information about their rights and the various justice pathways to defend and enforce them;

(b) Systematically eliminate gendered obstacles to justice (social, cultural, financial, legal, procedural, linguistic and physical, among others) across formal and informal justice mechanisms;

(c) Provide judges, prosecutors and other legal and law enforcement professionals with training aimed at eliminating gender stereotyping;

(d) Incorporate a gender perspective and gender-transformative approaches in all aspects of the justice system, responding to the different types of violations experienced by women and girls and their unique remedial needs and expectations;

(e) Ensure that all justice systems are adapted to the needs of women who face intersectional forms of discrimination, including with regard to physical accessibility for women and girls with disabilities.<sup>110</sup>

### 4. Provide strong protections for environmental human rights defenders

72. States must: ensure safe and enabling environments for woman and girl environmental human rights defenders; provide them with specific, heightened protections from threats, intimidation, harassment, criminalization and violence; investigate, prosecute and punish perpetrators of those crimes; and address root causes of socioenvironmental conflict. To

<sup>106</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 5.

<sup>107</sup> Committee on the Rights of the Child, general comment No. 12 (2009).

<sup>108</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 2 (c).

<sup>109</sup> General recommendation No. 33 (2015).

<sup>110</sup> Ibid. See also general recommendation No. 39 (2022) and [A/72/162](#).

exercise this obligation in a gender-transformative manner, States must provide specific, heightened protections for woman and girl environmental and human rights defenders. Such efforts should take an intersectional approach, prioritizing woman and girl defenders whose identities intersect with other vulnerable groups, especially Indigenous persons, Afrodescendants and other racial minorities, peasants and LGBT+ persons. States should also establish, support and publicize gender-transformative, independent and accessible national and regional mechanisms for the protection of human rights defenders.

## 5. Disaggregated data and monitoring

73. Elimination of de jure as well as de facto discrimination against women and girls is required for the equal enjoyment of human rights, including the right to a clean, healthy and sustainable environment. Thus, eliminating discriminatory laws, regulations and policies is insufficient. States must also eliminate gender- and age-based differences in exposure to air pollution and toxic substances, in access to safe drinking water and healthy, sustainably produced food, in disaster risk reduction and in access to land, tenure and resources. This requires sex- and gender-disaggregated data to better understand the problems and to what extent policies, programmes and actions taken are producing the intended results. For example, because aid recipient countries fail to gather data disaggregated by sex, it is impossible to track whether official development assistance reaches women farmers.<sup>111</sup>

74. To identify and remedy environmental injustices in a gender-transformative manner, States must strengthen the capacity of national statistical offices and government institutions to collect, disaggregate, assess, monitor and report on data by sex, gender and other intersecting variables associated with increased vulnerability to environmental and climate-related harms (e.g. income, age, race, ethnicity, migration status, disability, geographical location and other characteristics). This will enable States to track the environmental, health, social, economic, cultural and human rights impacts – including discriminatory impacts – of climate change, pollution and biodiversity loss, such as the relationship between climate change and child marriage and other distinctive impacts on women and girls. States must ensure the highest standard of health throughout the life cycle of women, in equality with men.<sup>112</sup> Additional research and researchers will be required, meaning that fulfilling States' obligations requires increased funding and human and technical capacity, along with improved coordination across government agencies. In particular, States must increase monitoring and research about environmental impacts on maternal and reproductive health.

## B. Substantive obligations

75. Discriminatory laws affect over 2.5 billion women and girls worldwide.<sup>113</sup> Women's ability to inherit land and other forms of property is often restricted by discriminatory land, succession, civil, customary, religious and family laws,<sup>114</sup> especially in Africa, the Middle East, Asia and the Pacific. For example, 76 States do not have laws granting women equal rights to property and inheritance. These discriminatory laws violate the Convention on the Elimination of All Forms of Discrimination against Women, which requires States parties to embody the principle of gender equality in their national constitutions and legislation; repeal or modify legislation that constitutes discrimination against women; and modify or abolish all practices or customs that constitute discrimination against women. States must eliminate all forms of discrimination related to land ownership, tenure and property rights, and natural resource governance, including those related to marital status, legal capacity and lack of access to economic resources. In particular, States must ensure equal land ownership and tenure rights for women and men, including the right to inherit and bequeath those rights.

76. States should legally recognize the right of women and girls to a clean, healthy and sustainable environment, as well as associated rights concerning women's equal ability to

<sup>111</sup> Oxfam, *Ten Years after the Global Food Crisis, Rural Women Still Bear the Brunt of Poverty and Hunger* (2019).

<sup>112</sup> Beijing Platform for Action, para. 92.

<sup>113</sup> E/CN.6/2020/3.

<sup>114</sup> Aguilar, *Study*.

use, conserve, protect, benefit from and participate in decision-making about nature. Government actions that threaten or violate these rights must be avoided. All climate, land, energy, natural resource and environmental laws and policies should be reviewed and, as necessary, revised to ensure that they are gender transformative. It has been noted that so-called gender-blind laws, policies, budgets and procedures, including those relevant to climate and the environment, are proven to enable discrimination against women and to disproportionately disadvantage them, and thus are incompatible with States' obligations under international law.<sup>115</sup> States must amend all gender-blind climate and environmental laws to specify the rights of women and girls and avoid retrogressive measures affecting the right of women and girls to a healthy environment.

77. States must employ "whole-of-government" approaches, recognizing that the entire range of national and subnational government institutions – legislative, executive and judicial branches – must be gender-transformative in order for women and girls to enjoy their right to a clean, healthy and sustainable environment without discrimination.<sup>116</sup> This will require extensive training and capacity-building because government institutions are dominated by men, particularly among leadership positions, and often characterized by gender biases and discriminatory social norms. States must enhance gender expertise across environmental ministries, and environmental expertise across women's affairs ministries.

78. States are obliged to effectively implement and enforce gender-transformative environmental laws, regulations and standards, supported by adequate financial, institutional and human resources. Failing to prevent foreseeable human rights harm caused by climate change, which disproportionately affects women and girls, or to regulate harmful activities contributing to such harm, could constitute a violation of States' obligations, and States must mobilize the maximum available resources to the adoption of measures aimed at mitigating climate change.<sup>117</sup>

79. Voluntary approaches to ensuring that businesses respect human rights have proven insufficient. States are obliged to regulate and monitor the conduct of businesses to ensure they respect the rights of women and girls, effectively enforcing rules and imposing meaningful penalties for violations.<sup>118</sup>

80. States must fulfil the right of women and girls to a clean, healthy and sustainable environment by employing gender-transformative approaches in order to:

- (a) Deliver improvements in household and outdoor air quality through universal access to clean cooking and heating technologies and reductions in ambient air pollution, prioritizing communities enduring the worst air quality;
- (b) Ensure universal access to safe and sufficient water and adequate, appropriate and acceptable sanitation;
- (c) Support the transition to agroecological food systems in which women and girls have equal opportunities to sustainably produce and consume healthy food;
- (d) Regulate and prevent exposure to toxic substances that disproportionately harm women and girls, paying special attention to developmental, reproductive and maternal health;
- (e) Conserve, protect and restore healthy biodiversity and ecosystems, while guaranteeing that women and girls share equally in the benefits of using nature;
- (f) Preserve a safe climate, including mitigation, adaptation, disaster risk reduction and climate finance actions that address the specific needs of women and girls, particularly in climate-vulnerable nations;

<sup>115</sup> E/CN.4/2006/118 and A/HRC/16/40. See also general recommendation No. 34 (2016).

<sup>116</sup> E/2022/27-E/CN.6/2022/16, chap. I, sect. A.

<sup>117</sup> HRI/2019/1.

<sup>118</sup> Committee on Economic, Social and Cultural Rights, general comments No. 24 (2017) and No. 16 (2005), para. 20.

(g) Eliminate environmental violence and all other forms of gender-based violence exacerbated by environmental harm;

(h) Fulfil the needs and rights of women and girls who are forced to migrate or who are left behind when men migrate due to environmental factors.<sup>119</sup>

81. The elimination of systemic discrimination against women and girls is essential for their consistent enjoyment of the right to a clean, healthy and sustainable environment. States must:

(a) Dismantle the root causes of gender inequalities prejudicing women and girls;

(b) Reform laws, policies, action plans and measures that perpetuate discrimination against women's enjoyment of the right to a healthy environment;

(c) Ensure that women have the same legal capacity as men to own, manage, inherit, bequeath and sell land and property, hold tenures and licences, conclude contracts and administer property independent of their husband or any male guardian;

(d) Adopt effective and appropriate measures to abolish practices that adversely affect the rights and health of girls and that are exacerbated by the climate and environmental crisis, including child marriage, female genital mutilation, preferential feeding of male children and "witch" killing;

(e) Improve health-care systems' gender-responsiveness, and expand gender-transformative measures, particularly in the context of disaster response;

(f) Overcome economic discrimination by mandating equal employment opportunities and pay for women and men, paid maternity leave and massive investments in the care economy;

(g) Prohibit the dismissal of workers due to pregnancy, maternity or marital status;

(h) Improve health and safety in working conditions across formal and informal sectors that are dominated by women, and address occupational health risks specific to women and girls;

(i) Demonstrate zero tolerance for violence against women and girls by preventing, investigating and punishing all forms of gender-based violence.

### C. Heightened duties towards women and girls in vulnerable situations

82. Gender-transformative climate and environmental actions should prioritize those groups of women and girls with heightened risk of vulnerability, including those from Indigenous, racial, ethnic and sexual minority groups, women and girls with disabilities, adolescents, older women, unmarried women, women heads of household, widows, women and girls living in poverty in both rural and urban settings, women sex workers and internally displaced, stateless, refugee, asylum-seeking and migrant women.<sup>120</sup>

83. Indigenous women and girls have a special connection to their environment, described as "territories of life", Pachamama or Mother Earth. They are disproportionately affected by pollution, deforestation, the climate crisis and biodiversity loss. Some Afrodescendent, peasant and local communities enjoy similarly deep connections to nature. States must:

(a) Recognize and prioritize the collective and individual needs and rights of women and girls in these communities in all climate actions and efforts to conserve, protect, restore, sustainably use and equitably share the benefits of nature;

(b) Take measures to protect Indigenous, Afrodescendent and other nature-dependent rural women's traditional knowledge, customary practices and cultural rights;

<sup>119</sup> General recommendation No. 37 (2018).

<sup>120</sup> *Ibid.*, paras. 26 (a) and 35.

(c) Support capacity-building for women and girls who depend directly on nature for their cultural identities and livelihoods to sustainably conserve and use nature based on traditional knowledge, customs and stewardship responsibilities;

(d) Respect the right of Indigenous women and girls to free, prior and informed consent in all decisions that affect their territories, cultural heritage and rights before authorizing economic, development, extractive or climate projects or designating their lands as protected areas.

84. As the customary laws and practices of Indigenous, Afrodescendent and other nature-dependent rural communities may be a source of discrimination against women and girls, States must not exempt customary laws and practices from laws guaranteeing gender equality or prohibiting discrimination against women.

85. Land is the most important asset for the majority of people in developing countries, in part because it is pivotal to rural women's capacity to escape poverty and act as transformational environmental agents, including with respect to their right to a clean, healthy and sustainable environment.<sup>121</sup> States must legally recognize the land and natural resource ownership, tenures and participatory rights of Indigenous and other nature-dependent rural women, including the collective ownership and tenure rights held by Indigenous and other nature-dependent communities.

86. To fulfil their obligation to protect the right to a clean, healthy and sustainable environment, States must strictly regulate business activities to prevent actions that threaten the lands, waters and ecosystems of Indigenous, Afrodescendent, local community, and peasant women and girls. States should recognize, support and honour the many contributions to climate action, environmental stewardship, conservation and restoration made by these pivotal rights holders.

## VI. Business responsibilities

87. Corporations and other non-State actors routinely abuse the rights of women and girls by polluting air, water and soil, exacerbating the climate crisis, devastating biodiversity and ecosystems and producing and marketing unhealthy, unsustainable food. Businesses are also responsible for promoting harmful gender stereotypes, consumerism, overconsumption and the commodification of nature. Environmentally destructive business activities are often outsourced from high-income to low- and middle-income States where protections for human rights and the environment are weaker or not enforced.<sup>122</sup> Additionally, some environmental organizations continue to employ exclusionary conservation approaches that abuse human rights and jeopardize biodiversity outcomes, with dire consequences for women and girls.<sup>123</sup>

88. Gender-transformative business practices should contribute to changing the patriarchal norms and unequal power relations that cause gender-based environmental injustices, discrimination and violence.<sup>124</sup> In the light of the Guiding Principles on Business and Human Rights,<sup>125</sup> businesses' responsibilities related to the right of women and girls to a clean, healthy and sustainable environment require them:

(a) To implement human rights and environmental due diligence to identify, assess, prevent, cease, mitigate and effectively remedy all actual or potential adverse human rights and environmental impacts that their activities may cause or contribute to, and prevent or mitigate adverse human rights, climate and environmental impacts linked to their operations, goods or services through their supply chains and business relationships;

<sup>121</sup> <https://www.ifad.org/documents/38714170/39148759/Land+tenure+security+and+poverty+reduction.pdf/c9d0982d-40e4-4e1e-b490-17ea8fef0775>. See also Aguilar, *Study*.

<sup>122</sup> [A/75/161](#).

<sup>123</sup> <https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/policy-briefing-1.pdf>.

<sup>124</sup> [A/HRC/41/43](#), para. 39.

<sup>125</sup> <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2022-07-01/20220701-sr-environment-policybriefing3.pdf>.

- (b) To publicly disclose their adverse impacts on the health, rights and well-being of women, girls and nature;
- (c) To publicly commit to achieve substantive gender equality;
- (d) To support laws and policies intended to close gender gaps and employ rights-based approaches to climate and environmental problems;
- (e) To implement zero-tolerance policies concerning intimidation of, threats against or reprisals against women and girls;
- (f) To provide, or cooperate in providing, effective remedies for women and girls affected by environmental harm that a business causes or contributes to.

## VII. Good practices

89. There are many good practices that recognize and implement the right of women and girls to a clean, healthy and sustainable environment. Due to space constraints, these are highlighted in a separate annex.<sup>126</sup>

## VIII. Conclusion and recommendations

90. **Humanity must create a world that is gender equitable and ecologically sustainable. These imperatives are so deeply interwoven that neither can be achieved without the other. Because discrimination and unsustainability are so intertwined, pervasive and entrenched, only rights-based, systemic and transformative changes can achieve a just and sustainable future where everyone, including every woman and girl, enjoys the right to a clean, healthy and sustainable environment. Gender-transformative change is especially important in the context of a just recovery from the COVID-19 pandemic, which reversed gender equality gains in many countries.**

91. **The Special Rapporteur wholeheartedly endorses the recommendations on climate change, the environment and the rights of women and girls advanced by the Commission on the Status of Women,<sup>127</sup> the Committee on the Elimination of Discrimination against Women,<sup>128</sup> the Committee on the Rights of the Child,<sup>129</sup> the Special Rapporteur on violence against women and girls, its causes and consequences,<sup>130</sup> the Special Rapporteur on the human rights to water and sanitation,<sup>131</sup> the Special Rapporteur on the right to food,<sup>132</sup> the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes,<sup>133</sup> the Special Rapporteur on the rights of Indigenous Peoples,<sup>134</sup> UN-Women,<sup>135</sup> UNEP<sup>136</sup> and OHCHR.<sup>137</sup>**

### 1. Accelerate gender-transformative, rights-based climate and environmental action

92. **States should recognize the right to a clean, healthy and sustainable environment – for women, girls and all people – in all regional and national legal systems, and**

<sup>126</sup> The annex will be available at <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/AnnualReports.aspx>.

<sup>127</sup> E/2022/27-E/CN.6/2022/16, chap. I, sect. A.

<sup>128</sup> General recommendations No. 37 (2018) and No. 39 (2022).

<sup>129</sup> Draft general comment No. 26, available at <https://www.ohchr.org/en/calls-for-input/2023/call-comments-draft-general-comment-childrens-rights-and-environment-special>.

<sup>130</sup> A/77/136.

<sup>131</sup> A/HRC/33/49.

<sup>132</sup> A/HRC/31/51.

<sup>133</sup> A/77/183.

<sup>134</sup> A/77/238 and A/71/229.

<sup>135</sup> UN-Women, *Beyond COVID-19*.

<sup>136</sup> UNEP, *Global Gender and Environment Outlook*.

<sup>137</sup> A/HRC/41/26.

accelerate the implementation of gender-transformative actions to fulfil this right for women and girls, including by:

- (a) Taking more ambitious action on mitigation, adaptation and compensation to limit and remedy the impacts of the climate crisis on women and girls;
- (b) Prioritizing water and sanitation provision in schools, health-care facilities, other public buildings, workplaces and households lacking these essential services;
- (c) Strengthening air quality standards by incorporating the most recent World Health Organization guidelines;
- (d) Scaling up investments in clean cooking to \$5 billion annually to achieve universal access by 2030;
- (e) Strengthening regulations on chemicals that disproportionately harm women and girls;
- (f) Taking additional measures to prevent the exposure of girls, women of child-bearing age and pregnant persons to toxic substances, including through a new international instrument to eliminate developmental neurotoxins;
- (g) Enhancing the role of women and girls in the stewardship, protection and restoration of nature;
- (h) Addressing the drivers and impacts of climate- and environment-induced displacement and migration;
- (i) Prioritizing human rights and gender equality in nationally determined contributions, National Biodiversity Strategies and Action Plans, land degradation neutrality profiles and other strategies for climate and environmental action;
- (j) Establishing binding targets and timelines for achieving gender equality, including quotas for women in leadership positions in all environmental sectors and fields;
- (k) Monitoring the disaggregated impacts of the above actions.

## 2. Empower women and girls as climate and environmental leaders

93. States should take action, including temporary special measures, to empower women and girls as climate and environmental leaders by:

- (a) Addressing barriers to participation for marginalized women and girls, including through consultations exclusively for women and girls and the provision of safe transportation, free childcare and translation services;
- (b) Partnering with ministries responsible for women's affairs when designing and implementing climate and environmental policies and actions;
- (c) Strengthening institutions and mechanisms, including national human rights institutions, customary justice systems and community paralegal services, to defend the rights of women and girls to a healthy environment, land and other natural resources.

## 3. Empower women and girls as economic actors

94. States should:

- (a) Subsidize childcare services;
- (b) Increase support for woman and girl entrepreneurs, including equal access to finance, marketing support and technologies;
- (c) Promote equal rights and opportunities for women in agriculture and fisheries, including access to finance, technology, education, training and extension services;

(d) **Integrate informal workers, who are predominantly women, into formal economies and provide them with social protection;**

(e) **Improve social protection programmes, prioritizing women and girls living in poverty.**

**4. Increase information and resources for women and girls**

**95. States should:**

(a) **Increase funding for grass-roots women's organizations working on climate and environmental issues;**

(b) **Redirect hundreds of billions of dollars in subsidies from environmentally harmful activities to sustainable and regenerative actions led by women and girls;**

(c) **Increase funding for the implementation of gender action plans under multilateral environmental agreements;**

(d) **Prioritize gender-transformative climate and biodiversity finance in the form of grants, not loans, for projects in low-income nations and small island developing States that directly benefit women and girls, designed, decided and implemented with their full and effective participation;**

(e) **Provide health-care providers with sufficient capacity to inform pregnant patients about environmental risks and adaptation measures, particularly in marginalized communities;**

(f) **Devote the resources necessary to ensure effective implementation of the recommendations in the present report, including through gender-transformative budgets.**

**96. The General Assembly and United Nations entities should support the gender-transformative implementation of the right to a clean, healthy and sustainable environment. The Human Rights Council, United Nations treaty bodies and national human rights institutions should address the nexus of gender equality and environmental justice through the universal periodic review, country reviews, investigations and public education.**

**97. The final recommendation is for men, who should acknowledge their privilege and power, become advocates for the empowerment of women and girls as agents of change and environmental leaders, and take tangible actions to support women and girls in realizing their right to a clean, healthy and sustainable environment.**

---



# General Assembly

Distr.: General  
26 July 2022

Original: English

---

## Seventy-seventh session

Item 69 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Promotion and protection of human rights in the context of climate change**

### **Note by the Secretary-General\*\***

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, in accordance with Human Rights Council resolution [48/14](#).

---

\* [A/77/150](#).

\*\* The present report was submitted after the deadline in order to reflect recent developments.



## **Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change**

### **Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation**

#### *Summary*

We are faced with a global crisis in the name of climate change. Throughout the world, the rights of people are being negatively affected or violated as a consequence of climate change. The Special Rapporteur on the promotion and protection of human rights in the context of climate change highlights the reference to human rights included in the preamble to the Paris Agreement and considers the human rights implications of mitigation actions. Considerable attention is given to the extensive and disastrous lack of action to address loss and damage as a result of the impacts of climate change and its related human rights impacts. The Special Rapporteur also highlights the serious disconnect between those that continue to support the fossil fuel economy and those that are most affected by the impacts of climate change. Also highlighted is the fact that those most affected by climate change have the least participation and representation in political and decision-making processes. The Special Rapporteur provides various recommendations on eliminating the use of fossil fuels, addressing the funding gap on loss and damage, improving participation and protecting the rights of indigenous and environmental human rights defenders. We are already confronted with a climate change emergency that comes with inherent serious human rights abuses. We can no longer delay. The time to actively address this emergency is now.

## I. Introduction

1. We are faced with a global crisis in the name of climate change. Throughout the world, human rights are being negatively affected and violated as a consequence of climate change. For many millions, climate change constitutes a serious threat to the ability of present and future generations to enjoy the right to life.<sup>1</sup> Human-induced climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced. In its article 28, the Universal Declaration of Human Rights guarantees that all human beings are entitled to a social and international order in which their rights and freedoms can be fully realized. Climate change already undermines this order and the rights and freedoms of all people. We are being confronted with an enormous climate change crisis of catastrophic proportions. It is happening now.

2. There is an enormous injustice being manifested by developed economies against the poorest and least able to cope. Unwillingness by developed economies and major corporations to take responsibility for drastically reducing their greenhouse gas emissions has led to demands for “climate reparations” for losses incurred. Some have suggested the term “atmospheric colonization” to explain the global imbalance between the impacts of climate change and the emitters of greenhouse gases.<sup>2</sup> When ranked by income, the economically most privileged 50 per cent of countries are responsible for 86 per cent of the cumulative global carbon dioxide emissions, while the economically vulnerable half are responsible for only 14 per cent.<sup>3</sup>

3. The Special Rapporteur on the promotion and protection of human rights in the context of climate change highlights the reference to human rights included in the preamble to the Paris Agreement, in which parties should, *inter alia*, “consider their respective obligations on human rights”.

4. The present report explores the functional arrangements of the United Nations Framework Convention on Climate Change and the Paris Agreement. The report will focus primarily on three key themes: mitigation (emissions reduction), loss and damage (the impacts of climate change) and participation in decision-making processes in the climate change regime. Underpinning all of these themes is the need for adequate and predictable finance and support. The implications for human rights will be considered in each of these three themes. The present report complements and updates the report by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.<sup>4</sup>

5. To prepare the present report, throughout June and July 2022, the Special Rapporteur on the promotion and protection of human rights in the context of climate change held extensive in-person consultations in Bonn, Germany, as well as in Geneva and Lisbon, and numerous online consultations. In particular, he convened a number of meetings with civil society organizations, States that have signed the Geneva Pledge for Human Rights in Climate Action, members of the Climate Vulnerable Forum, small island developing States, and other stakeholders. These consultations complemented a call for inputs to which the Special Rapporteur received approximately 90 submissions.<sup>5</sup>

<sup>1</sup> Human Rights Committee, general comment No. 36 (2018) on the right to life, para. 62.

<sup>2</sup> Erin Fitz-Henry, “Climate change is white colonization of the atmosphere. It’s time to tackle this entrenched racism” (12 July 2022). Available at <https://phys.org/news/2022-07-climate-white-colonization-atmosphere-tackle.html>.

<sup>3</sup> Submission from Alana Institute.

<sup>4</sup> A/74/161.

<sup>5</sup> See [www.ohchr.org/en/calls-for-input/2022/call-input-promotion-and-protection-human-rights-context-mitigation-adaptation](http://www.ohchr.org/en/calls-for-input/2022/call-input-promotion-and-protection-human-rights-context-mitigation-adaptation).

## II. Human rights implications of mitigation actions

6. Mitigation efforts to reduce greenhouse gas emissions have two implications on the enjoyment of human rights. First, an inadequate response to reducing greenhouse gas emissions has a significant negative impact on the enjoyment of human rights. Second, some mitigation actions have a significant impact on the exercise of human rights.

### A. Mitigation: a catastrophically inadequate response

7. The global response to reducing greenhouse gas emissions has been grossly inadequate. The overall effect of inadequate actions to reduce such emissions is creating a human rights catastrophe. Parties to the Paris Agreement are required to produce nationally determined contributions as an indication of their actions to reduce greenhouse gas emissions. The Intergovernmental Panel on Climate Change notes that there is an implementation gap between the projected emissions with current policies and the projected emissions resulting from the implementation of the unconditional and conditional elements of the nationally determined contributions.<sup>6</sup> Subsequently, the International Energy Agency has called for an immediate end to fossil fuel expansion if the world is to decarbonize by 2050 and limit warming to 1.5°C, as required under the Paris Agreement.<sup>7</sup>

8. Tragically, there remains a huge disparity in effort and a lack of commitment by States that have been the primary historical contributors of greenhouse gas emissions, leading to the negative impact on the enjoyment of human rights. The negative impacts of failing to reduce greenhouse gas emissions are disproportionately felt by persons and communities who are already in a disadvantageous situation owing to a number of factors. Climate change aggravates already existing inequalities, marginalization and exclusion and further increases vulnerabilities.<sup>8</sup> These aspects are covered in section III of the present report.

9. Against this backdrop, the Special Rapporteur emphasizes the human rights obligation of States relating to mitigation actions. States must limit greenhouse gas emissions to prevent the current and future negative human rights impacts of climate change. Furthermore, States are obliged to take measures to mitigate climate change and to regulate the emissions of those businesses under their jurisdictions in order to prevent foreseeable negative impacts on human rights.

#### 1. Human rights obligation to prevent by limiting greenhouse gas emissions

10. States are failing in their human rights obligation to mitigate climate change and prevent its negative human rights impacts. The Intergovernmental Panel on Climate Change notes that global net anthropogenic greenhouse gas emissions during the period 2010–2019 were higher than at any previous time in human history.

11. In 2019, the world's major emitters of carbon dioxide – China, the United States of America, India, the European Union plus the United Kingdom of Great Britain and Northern Ireland, the Russian Federation and Japan – together accounted for 67 per

<sup>6</sup> Intergovernmental Panel on Climate Change, working group III contribution to the sixth assessment report (2022). Available at [https://report.ipcc.ch/ar6wg3/pdf/IPCC\\_AR6\\_WGIII\\_FinalDraft\\_TechnicalSummary.pdf](https://report.ipcc.ch/ar6wg3/pdf/IPCC_AR6_WGIII_FinalDraft_TechnicalSummary.pdf).

<sup>7</sup> International Energy Agency, “Net Zero by 2050: A Roadmap for the Global Energy Sector” (Paris, 2021). Available at [https://iea.blob.core.windows.net/assets/7ebafc81-74ed-412b-9c60-5cc32c8396e4/NetZeroBy2050-ARoadmapfortheGlobalEnergySector-SummaryforPolicyMakers\\_CORR.pdf](https://iea.blob.core.windows.net/assets/7ebafc81-74ed-412b-9c60-5cc32c8396e4/NetZeroBy2050-ARoadmapfortheGlobalEnergySector-SummaryforPolicyMakers_CORR.pdf).

<sup>8</sup> Intergovernmental Panel on Climate Change, working group III contribution.

cent of total fossil carbon dioxide emissions.<sup>9</sup> The members of the Group of 20 account for 78 per cent of emissions over the past decade.<sup>10</sup> Collectively, the members of the Group of 20 are not on track to achieve their unconditional nationally determined contribution commitments, based on pre-COVID-19 projections. Five members of the Group of 20 – Australia, Brazil, Canada, the Republic of Korea and the United States – are projected to fall short and therefore require further action. By contrast, the world’s 55 most vulnerable economies have lost over half their economic growth potential owing to the impacts of the climate crisis.

12. The highest historical emitter of greenhouse gas emissions appears to be making little progress with its obligations under the United Nations Framework Convention on Climate Change or the Paris Agreement. Despite promises by the Biden Administration to reduce emissions through the 2015 Clean Power Plan, there have been legal challenges in the United States Supreme Court to the Administration’s attempts to act. The Court found that it was unlawful for federal agencies to make “major” decisions without a clear authorization from the United States Congress.<sup>11</sup>

## 2. Human rights obligation to protect by regulating

13. While there is a grave urgency to the action required to reduce emissions, the global economy is driving in the opposite direction. Studies suggest that subsidies for fossil fuels are estimated to be around \$500 billion annually.<sup>12</sup> Current nationally determined contributions provided by parties to the Paris Agreement remain seriously inadequate to achieve the climate goals of the Paris Agreement and would lead to a temperature increase of at least 3°C by the end of the century.<sup>13</sup>

14. Gaps exist in regulating major greenhouse gas emitting industries and sectors both within and outside national boundaries, making the achievement of the Paris Agreement goals more difficult. As an example, the international transport sector is a significant source of such emissions and yet this industry is taking limited action to reduce its emissions. Calls have been made for the International Maritime Organization to adopt stringent global measures to phase out the sector’s greenhouse gas emissions in line with the Paris Agreement’s 1.5°C goal.<sup>14</sup> Concerns have also been expressed that the International Civil Aviation Organization’s carbon offsetting scheme is a measure that only delays action to reduce emissions at the source.<sup>15</sup>

15. States must take substantive measures to limit emissions of greenhouse gases and mitigate climate change, including through regulatory measures, in order to protect all persons from human rights harms. Urgent and drastic action is required by States and business enterprises to reduce their emissions. The Secretary-General stated in 2022 that high emitting Governments and corporations are not just turning a blind eye, they are adding fuel to the flames.<sup>16</sup> This is exemplified by the fact that

<sup>9</sup> Environmental Justice Foundation, “In Search of Justice” (London, 2022). Available at <https://ejfoundation.org/resources/downloads/EJF-Climate-Inequality-report-2021.pdf>.

<sup>10</sup> United Nations Environment Programme (UNEP), *Emissions Gap Report 2020* (Nairobi, 2020). Available from [www.unep.org/emissions-gap-report-2020](http://www.unep.org/emissions-gap-report-2020).

<sup>11</sup> *Supreme Court of the United States, Syllabus, West Virginia et al., v Environmental Protection Agency et al.*, Certiorari to the United States Court of Appeals for the District of Columbia Circuit, No. 20-1530, Decided June 30, 2022.

<sup>12</sup> See <https://sdg-tracker.org/sustainable-consumption-production#12.C>.

<sup>13</sup> UNEP, *Emissions Gap Report 2020*.

<sup>14</sup> Submission from Opportunity Green.

<sup>15</sup> FERN, “Cheating the climate: the problems with aviation industry plans to offset emissions”, briefing note (September 2016). Available at [https://aragge.ch/wp-content/uploads/2018/04/GB\\_Fern\\_20160919\\_ICAO\\_CORSA\\_Cheating-the-climate\\_en.pdf](https://aragge.ch/wp-content/uploads/2018/04/GB_Fern_20160919_ICAO_CORSA_Cheating-the-climate_en.pdf).

<sup>16</sup> Rachel LaFortune (Human Rights Watch News), “Report Shows Climate Crisis Solutions Exist but Action Is Lacking”, 5 April 2022. Available at [www.hrw.org/news/2022/04/05/report-shows-climate-crisis-solutions-exist-action-lacking](http://www.hrw.org/news/2022/04/05/report-shows-climate-crisis-solutions-exist-action-lacking).

fossil fuel producers are using investor-State dispute settlements within the Energy Charter Treaty to sue States for compensation if they take positive policy actions to reduce the use of fossil fuels. It has been estimated that legal claims by oil and gas investors against those States that impose laws to limit fossil fuel activities could reach a total cost of \$340 billion.<sup>17</sup>

## **B. Human rights implications of certain mitigation actions**

16. A number of mitigation actions being employed by States and business enterprises have significant human rights implications. Some of these include forest-based mitigation and hydroelectric dams. Others include the location of wind turbines. New mitigation technologies associated with atmospheric changes and geoengineering also have the potential for significant human rights impacts. The impact of new technologies will be the theme of the Special Rapporteur's report to the Human Rights Council at its fifty-ninth session, in 2024.

### **1. Forest-based mitigation actions**

17. The Intergovernmental Panel on Climate Change states that the agriculture, forestry and other land use sector offers significant near-term mitigation potential at relatively low cost. Nevertheless, these predictions do not match global trends in deforestation. Deforestation in the Amazon has risen again over the past four years. Other parts of the world also face steady, or rapidly increasing, deforestation. It is estimated that while 15 billion trees are cut down every year, only 5 billion are replanted – resulting in an annual net loss of 10 billion trees.<sup>18</sup> Emissions by the agriculture, forestry and other land use sector account for around 11 per cent of the global total, with the bulk of the emissions occurring in relatively few countries.<sup>19</sup> The group of indigenous peoples that the Special Rapporteur met with in Bonn in June 2022 have indicated that forest fires in the Amazon as a result of droughts have had enormous impacts on the livelihoods of indigenous peoples.

18. Other studies suggest that the value of using forestry as a means of reducing global temperature limits may be overstated and that, while restoring ecosystems is crucial for planetary health, it is no substitute for preventing emissions from fossil fuels.<sup>20</sup> The Special Rapporteur concurs with this conclusion. It is preferable to address emissions at the source.

19. Forest-based mitigation actions have negative consequences on the exercise of human rights, particularly those that are related to land and land tenure. According to Oxfam, instead of reducing emissions at the scale and speed required to stay within a relatively safe level of warming, too many Governments and corporations are hiding behind planting trees and unproven technologies in order to claim that their 2050 climate change plans will achieve net zero emissions. Studies suggest that these land-hungry plans would require at least 1.6 billion hectares of new forests. The explosion of net zero commitments, many of which lack clarity and transparency, could lead to a surge in demand for land, particularly in low- and middle-income countries, which, if not subject to robust safeguards, could pose increasing risks to the enjoyment of

<sup>17</sup> Nour Ghantous (Energy Monitor), "The Energy Charter Treaty has not aged well", 13 July 2022. Available at [www.energymonitor.ai/policy/international-treaties/the-energy-charter-treaty-has-not-aged-well](http://www.energymonitor.ai/policy/international-treaties/the-energy-charter-treaty-has-not-aged-well).

<sup>18</sup> Phys.Org, "Why can't we simply plant more trees to clean carbon dioxide from the air?" (8 July 2022). Available at <https://phys.org/news/2022-07-simply-trees-carbon-dioxide-air.html>.

<sup>19</sup> UNEP, *Emissions Gap Report 2020*.

<sup>20</sup> K. Dooley et al. (One Earth), "Carbon removals from nature restoration are no substitute for steep emission reductions", 1 July 2022. Available at <https://doi.org/10.1016/j.oneear.2022.06.002>.

human rights to food, water, sanitation and housing, especially for people and communities whose livelihoods depend on land.<sup>21</sup>

20. Another related response with human rights implications is the mechanism for reducing emissions from deforestation and forest degradation (REDD+) developed by the United Nations Framework Convention on Climate Change in response to high deforestation rates, particularly in tropical forests. There are mixed views regarding the efficacy of the mechanism's programmes and whether they deliver real emissions reductions. The mechanism itself and associated voluntary carbon market programmes have been the source of human rights infringements, particularly of indigenous peoples in rainforest areas.<sup>22</sup> The allocation of rights to the protection of carbon in forests has been referred to as "neo-colonialism" as the land occupied by indigenous peoples is set aside for the protection of carbon stores.<sup>23</sup> This can deny indigenous peoples their traditional rights and practices.

21. Another mitigation action, associated with biomass burning, has implications for land appropriation and the exercise of human rights. Biomass burning and bioenergy, carbon capture and storage is a process where wood or other plant-based carbon (biomass) is burned as an alternative to fossil fuels. Providing the feedstock for energy production from biomass burning as a fuel source requires using existing forests or new land to grow the biomass.

22. Concerns have been expressed that sourcing trees from plantations for biomass electrical power generators in Latin American is adversely affecting the rights of indigenous peoples.<sup>24</sup> The Special Rapporteur heard concerns expressed by the Sámi indigenous peoples that their land will be appropriated for biomass fuel production.

## 2. Hydroelectric dams

23. The development of hydroelectric dams is creating significant human rights implications for people displaced by dams and for downstream users of water. Climatological studies suggest that downstream countries along the Mekong River have suffered low water supplies despite ample upstream rainfall, because of water being withheld by upstream dams.<sup>25</sup> This has significant implications for access to safe drinking water and food security for downstream countries.

24. Indigenous peoples of the Amazon region are also experiencing the effects of hydroelectric dams. Dam construction and related infrastructure have displaced indigenous peoples from their land. The Special Rapporteur heard from indigenous peoples that changes to river flows have had significant implications for the ecological maintenance of riverine systems, which in turn affect the ability for indigenous peoples to seek sources of sustenance.

<sup>21</sup> Aditi Sen and Nafkote Dabi, *Tightening the Net: Net zero climate targets – implications for land and food security* (Oxfam, 2021). Available at <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621205/bp-net-zero-land-food-equity-030821-en.pdf?sequence=1>.

<sup>22</sup> John Cannon (Mongabay), "Indigenous leader sues over Borneo natural capital deal", 17 December 2021. Available at <https://news.mongabay.com/2021/12/indigenous-leader-sues-over-borneo-natural-capital-deal/>.

<sup>23</sup> Renata Bessi and Santiago Navarro F (Avispa Media), "REDD, Neo-Colonialism in the Land of the Pataxo Warriors", 14 December 2014. Available at <https://avispa.org/redd-neo-colonialism-in-the-land-of-the-pataxo-warriors/>.

<sup>24</sup> Global Forest Coalition, "Annual Report 2021". Available at <https://globalforestcoalition.org/wp-content/uploads/2022/07/GFC-Annual-Report-2021.pdf>.

<sup>25</sup> Paul G. Harris (Hong Kong Free Press), "Water is power: How Southeast Asia pays the price for China's dam-building frenzy", 10 July 2022. Available at <https://hongkongfp.com/2022/07/10/water-is-power-how-southeast-asia-pays-the-price-for-chinas-dam-building-frenzy/>.

### 3. Other technologies

25. The Sámi indigenous peoples have expressed concern to the Special Rapporteur that they were not properly consulted and had not given free, prior informed consent to the erection of wind turbines on their land. Furthermore, serious concerns have been brought to the attention of the Special Rapporteur about the potential environmental and human rights impacts from deep seabed exploration and mining for minerals that could be used in battery production for electric vehicles and other forms of electrical storage.

## III. Loss and damage: a litany of human rights impacts

26. In its article 8, the Paris Agreement states that “Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change”. From a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation.

27. In its sixth assessment report, the Intergovernmental Panel on Climate Change describes how observed and predicted changes in climate are adversely affecting billions of people and the ecosystems, natural resources and physical infrastructure upon which they depend. This number is rising dramatically.<sup>26</sup> Many of these effects are highlighted in the present report.

28. Climate change has already harmed human physical and mental health. In all regions, health impacts often undermine efforts for inclusive development.

### A. Loss and damage by climate change disasters (in physical form)

29. About 3.3 billion people are living in countries with high human vulnerability to climate change. Analysis by the International Federation of Red Cross and Red Crescent Societies found that 97.6 million people were affected by climate- and weather-related disasters in 2019.<sup>27</sup> The intersection of gender with race, class, ethnicity, sexuality, indigenous identity, age, disability, income, migrant status and geographical location often compound vulnerability to climate change impacts, exacerbate inequity and create further injustice. Climate change manifests itself in many physical forms, which in turn, creates a multitude of human rights impacts. The hard realities of the enormity of the losses and damages suffered by people, particularly by those in the global South, are explored below.

#### 1. Floods, heavy rains and strong winds

30. By 2050, the number of people at risk of floods will increase from its current level of 1.2 billion to 1.6 billion. In the early to mid-2010s, 1.9 billion people, or 27 per cent of the global population, lived in potential severely water-scarce areas. In

<sup>26</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Working Group II Contribution to the Sixth Assessment Report, Technical Summary (Intergovernmental Panel on Climate Change and World Meteorological Organization, 2022). Available at [www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC\\_AR6\\_WGII\\_FinalDraft\\_TechnicalSummary.pdf](http://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FinalDraft_TechnicalSummary.pdf).

<sup>27</sup> International Federation of Red Cross and Red Crescent Societies and International Committee of the Red Cross, “Humanitarian sector joins forces to tackle ‘existential threat’ of climate change” (News Release, 21 June 2022). Available at [www.icrc.org/en/document/red-cross-red-crescent-humanitarian-sector-joins-forces-tackle-existential-threat-climate](http://www.icrc.org/en/document/red-cross-red-crescent-humanitarian-sector-joins-forces-tackle-existential-threat-climate).

2050, this number will increase to 2.7 to 3.2 billion people.<sup>28</sup> Citing initial reports, the United Nations High Commissioner for Refugees said more than 12,000 refugees had been affected by heavy rainfall, while an estimated 2,500 shelters had been damaged or destroyed.<sup>29</sup>

31. The Special Rapporteur received many submissions highlighting examples of tropical cyclones, floods, hurricanes and typhoons in all regional areas of the world. A representative sample of the impacts on the enjoyment of human rights is presented below.

32. In Madagascar, an estimated 4,300 people were temporarily displaced and 2 killed after the adverse impact of tropical cyclones in December 2020 and February 2021. In Zimbabwe, an estimated 60,000 people were internally displaced in 2019, while an estimated 270,000 were affected. In Mozambique, 160,000 people were internally displaced and 1.72 million were affected.<sup>30</sup> In April and May 2022, flooding in the KwaZulu-Natal province in South Africa caused the deaths of 461 people, with 88 people missing. In addition, 8,584 houses were completely destroyed and 13,536 damaged. A total of 6,000 people are still homeless (as at 13 June 2022); 630 schools were affected, with over 100 inaccessible in the aftermath; and the entire province was without water for weeks, with some communities without water two months later.<sup>31</sup> In Malawi, for example, in 2019 the country was hit by Cyclone Idai, which affected about 975,000 people, with 86,976 displaced, 60 killed and 672 injured. In South Sudan, floods have displaced hundreds of thousands of inhabitants, forcing them to move, causing conflicts between herders and farmers. These events have affected women, children and the aged, and have caused property losses and the loss of animal and human life.<sup>32</sup> In the Chimanimani and Chipinge districts of Zimbabwe, people faced risks of statelessness in the aftermath of Cyclone Idai in 2019.<sup>33</sup> In Rwanda, flooding caused the deaths of more than 130 people.<sup>34</sup> In 2021, over 1.2 million people in West and Central Africa were affected by flooding.<sup>35</sup>

33. In 2020, Hurricanes Eta and Iota hit Central America and the Caribbean. Many families lost their crops and the animals they had raised for food. As a consequence, poverty and child malnutrition has increased. The hurricanes caused young people and children to interrupt their education owing to displacement and the initial isolation suffered by many communities.<sup>36</sup> In El Salvador, Guatemala and Honduras, the number of food insecure people reached an estimated 6.4 million people in October 2021.<sup>37</sup> Heavy rains in Guatemala in June 2022 killed at least 15 people in a dozen mudslides affecting more than 500,000 people.<sup>38</sup> In Guatemala, storms have caused internal displacement, thus contributing to irregular migration, school dropouts and the vulnerability of indigenous girls and women.<sup>39</sup> In the period 2010–2020 alone, El Salvador experienced 18 extreme rainfall events of varying

<sup>28</sup> UN-Water, “Water and Climate Change” (2022). Available at [www.unwater.org/water-facts/climate-change/](http://www.unwater.org/water-facts/climate-change/).

<sup>29</sup> ABC News, “Bangladesh camp housing Rohingya refugees floods, thousands become homeless” (29 July 2021). Available at [www.abc.net.au/news/2021-07-29/bangladesh-coxs-bazar-refugee-camp-flooded-rohingya/100335472](http://www.abc.net.au/news/2021-07-29/bangladesh-coxs-bazar-refugee-camp-flooded-rohingya/100335472).

<sup>30</sup> Submission from Human and Civil Rights Organizations of America.

<sup>31</sup> Submission from Amnesty International and Center for International Environmental Law.

<sup>32</sup> Submission from African Women’s Development and Communications Network.

<sup>33</sup> Submission from Zimbabwe.

<sup>34</sup> Submission from African Women’s Development and Communications Network.

<sup>35</sup> Submission from Association Jeunes Agriculteurs.

<sup>36</sup> Submission from Continental Network of Indigenous Women of the Americas (children).

<sup>37</sup> A/HRC/50/57.

<sup>38</sup> Phys.Org, “15 dead, half million impacted by heavy rains in Guatemala” (4 June 2022). Available at <https://phys.org/news/2022-06-dead-million-impacted-heavy-guatemala.html>.

<sup>39</sup> Submission from Guatemala.

magnitudes and impacts.<sup>40</sup> In Colombia, Hurricane Iota left the 5,000 inhabitants of the small island of Providencia with practically nothing.<sup>41</sup> In Brazil, in peripheral urban areas with greater socioeconomic vulnerability, children, especially poor children and children of African descent, are the most affected by the greater intensity and occurrence of extreme events of floods and landslides.<sup>42</sup>

34. In 2020, hurricanes devastated the honey and milpas crops of the Mayan people who live on the Yucatán Peninsula of Mexico.<sup>43</sup>

35. In 2022, flooding along the Brahmaputra river in the north-eastern Indian state of Assam inundated close to 1,500 villages, affecting nearly 500,000 people.<sup>44</sup> In the coastal districts of Pondicherry and Villupuram, flooding damaged houses and exacerbated sanitation issues, particularly for women and children.<sup>45</sup> In the state of Odisha, multiple cyclones have caused considerable damage and the loss of identity documents, which are prerequisites for gaining access to compensation payments.<sup>46</sup>

36. In Bangladesh, a single flood in 2007 submerged over 2 million hectares of cropland, destroyed 85,000 homes and caused more than 1,000 deaths.<sup>47</sup> In 2020, Cyclone Amphan caused 500,000 families to lose their homes, and destroyed 149,000 hectares of agricultural lands, along with 18,235 water points and almost 41,000 latrines. In coastal districts, nearly 1,100 km of roads, 200 bridges and numerous dams sustained damage.<sup>48</sup> In July 2021, more than 21,000 Rohingya refugees in Cox's Bazar, Bangladesh, were affected by flash floods and landslides. This compounded existing human rights violations already being suffered by the Rohingya community in Myanmar.<sup>49</sup>

37. In 2020, the Philippines suffered Typhoon Quinta/Molave, followed by Typhoon Rolly/Goni, and Typhoon Ulysses/Vamco. This was preceded by two years of severe drought that affected over 2,444,959 individuals.<sup>50</sup> In 2021, Super-Typhoon Rai killed at least 407 people and caused losses of \$336 million to agricultural goods and \$75 million to fishing boats and gear, as well as \$565 million in damages to homes, roads and electricity and water lines.<sup>51</sup>

## 2. Coastal storms, floods and sea level rise

38. The Intergovernmental Panel on Climate Change notes that coastal settlements with high inequality, for example, those with a high proportion of informal settlements, as well as deltaic cities prone to land subsidence (e.g., Bangkok; Jakarta; Lagos, Nigeria; New Orleans, United States; and those along the Mississippi, Nile and Ganges-Brahmaputra deltas) and small island developing States are highly vulnerable and have experienced impacts from severe storms and floods in addition to, or in combination with, those from accelerating sea level rise.

<sup>40</sup> Submission from El Salvador.

<sup>41</sup> Submission from CAN Adaptation and Loss and Damage Working Group.

<sup>42</sup> Submission from Alana Institute.

<sup>43</sup> Submission from Interamerican Association for Environmental Defense.

<sup>44</sup> Skand Agarwal (Climate Homes News), "Deadly heatwaves show why India needs to get serious on climate adaptation", 6 July 2022. Available at [www.climatechangenews.com/2022/06/07/deadly-heatwaves-show-why-india-needs-to-get-serious-on-climate-adaptation/](http://www.climatechangenews.com/2022/06/07/deadly-heatwaves-show-why-india-needs-to-get-serious-on-climate-adaptation/).

<sup>45</sup> Submission from Good Living Eco Foundation.

<sup>46</sup> Submission from Society for the Protection of the Rights of the Child.

<sup>47</sup> Adam Day and Jessica Caus, *Conflict Prevention in an Era of Climate Change: Adapting the UN to Climate-Security Risks* (United Nations University, New York, 2020).

<sup>48</sup> Submission from International Federation of Red Cross and Red Crescent Societies.

<sup>49</sup> Submission from the Office of the United Nations High Commissioner for Refugees (UNHCR).

<sup>50</sup> Submission from Climate Change Network for Community-based Initiatives, Inc.

<sup>51</sup> Submission from Foundation for Mutual Aid.

39. In small island developing States, the agriculture and fisheries sectors are suffering from the compounded effects of extreme events and slow-onset events. In Timor-Leste, Cyclone Seroja in 2021 washed away houses and belongings, including legal documentation.<sup>52</sup> In the Marshall Islands, climate change displacement dispossessed women of their traditional ownership of land, limiting their access to the resources and opportunities associated with it.<sup>53</sup>

### 3. Impacts of increased carbon dioxide concentrations

40. Increased carbon dioxide concentrations promote crop growth and yield but reduce the density of important nutrients in some crops with projected increases in undernutrition and micronutrient deficiency.<sup>54</sup> This is leading to malnutrition in children and stunting their growth, with devastating effects on their physical, cognitive and emotional development.<sup>55</sup>

41. Climate change has slowed the productivity gains of world agriculture over the past 50 years. Malnutrition has increased, mainly affecting children, pregnant women and indigenous peoples.<sup>56</sup>

### 4. Droughts

42. Over 1.4 billion people were affected by droughts in the period 2000–2019. Africa suffered from drought more frequently than any other continent, with 134 droughts, of which 70 occurred in East Africa.<sup>57</sup> It is estimated that one person is likely to die of hunger every 48 seconds in drought-ravaged Ethiopia, Kenya and Somalia.<sup>58</sup>

43. Droughts have claimed the lives of 650,000 people since 1970, mostly in countries that have least contributed to the factors intensifying the effects of drought.<sup>59</sup> Greater burdens and suffering are inflicted on women and girls in emerging and developing countries in terms of education levels, nutrition, health, sanitation and safety. Almost 160 million children are exposed to severe and prolonged droughts; by 2040, it is estimated that one in four children will be living in areas with extreme water shortages.<sup>60</sup>

44. In communities where there is no drinking water, especially when the rivers dry up and there is a shortage of water, diseases proliferate among people, especially children. If water sources dry up, women and girls must walk further to fetch water.<sup>61</sup> In all states of Somalia, drought and COVID-19 have brought about more widespread economic challenges, higher rates of girls dropping out of school and increases in cases of female genital mutilation. Multiple studies show that women are several times more likely to die from climate disasters than men, and the greater the gender

<sup>52</sup> Submission from Oxfam International.

<sup>53</sup> Submission from the Marshall Islands.

<sup>54</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*.

<sup>55</sup> Submission from Make Mothers Matter.

<sup>56</sup> Submission from the Alana Institute.

<sup>57</sup> United Nations Convention to Combat Desertification, “Drought in numbers 2022: restoration for readiness and resilience” (2022). Available at [www.unccd.int/sites/default/files/2022-06/Drought%20in%20Numbers%20%28English%29.pdf](http://www.unccd.int/sites/default/files/2022-06/Drought%20in%20Numbers%20%28English%29.pdf).

<sup>58</sup> Submission from Oxfam.

<sup>59</sup> UNEP (UNEP News), “Around the globe, as the climate crisis worsens, droughts set in”, 15 June 2022. Available at [www.unep.org/news-and-stories/story/around-globe-climate-crisis-worsens-droughts-set#:~:text=As%20Riziki%20Bwanake%20walks%20along,and%20an%20abundance%20of%20fish](http://www.unep.org/news-and-stories/story/around-globe-climate-crisis-worsens-droughts-set#:~:text=As%20Riziki%20Bwanake%20walks%20along,and%20an%20abundance%20of%20fish).

<sup>60</sup> United Nations Convention to Combat Desertification, “Drought in numbers”.

<sup>61</sup> Submission from ActionAid International.

and economic inequality, the greater the disparity. In total, 80 per cent of people displaced by climate disasters are women. Due to the power imbalance caused by patriarchal systems, women of various classes, castes and creeds are disproportionately affected socially and economically, in particular indigenous and disabled women.<sup>62</sup> For vulnerable households with minimal economic buffers, which is often the situation for women-headed households, the climate-induced loss of or damage to homes, land, crops, food or livelihoods can push people into spiralling poverty and destitution.<sup>63</sup>

45. In parts of the United Republic of Tanzania, pastoralists whose survival depends on free pastures and land have lost almost a quarter of their livestock owing to prolonged droughts.<sup>64</sup>

46. Since 2010, Chile has suffered a “mega-drought”. In total, more than 5,000 people have migrated since 2006, when the drought intensified.<sup>65</sup> In 2013 and 2014, the states of São Paulo, Rio de Janeiro and Minas Gerais in Brazil suffered a prolonged period of drought. This situation left millions of people with limited access to water. In 2020, the Pantanal region in Brazil was hit by the biggest fire in history.<sup>66</sup> In the northwest of Haiti, climate change is making the land drier and unproductive, contributing to crop failure and food shortages.<sup>67</sup>

47. In 2021, abnormally high summer temperatures and the lack of irrigation water during the growing season in Kyrgyzstan caused a reduction in the yield of grain and other crops.<sup>68</sup> In 2019, Afghanistan experienced both drought and flash floods, leading to losses in crop production and subsequent human displacement.<sup>69</sup>

## 5. Extreme heat

48. Between 2005 and 2015, more than 5 million deaths were associated with non-optimal temperatures annually, with over half of all excess deaths occurring in Asia.<sup>70</sup> The impact of this phenomenon is greater among children: approximately 1 billion children live in extremely high-risk countries, with 820 million children currently highly exposed to heatwaves.<sup>71</sup> Studies have found that heat worsens maternal and neonatal health outcomes, with research suggesting that an increase of 1°C in the week before delivery corresponds with a 6 per cent greater likelihood of stillbirth.

49. Higher sea surface temperatures are causing coral reef bleaching, affecting the viability of reefs and the complex ecosystems they support. This is affecting the right to food for people reliant on coral reefs as a food source.<sup>72</sup>

50. In May and June 2022, at least 90 people were estimated to have died in India and Pakistan owing to heat-related causes. Heat waves in Pakistan in 2021 resulted in disproportionate impacts on people living in poverty and day-wage workers, and women have been particularly exposed to extreme heat.<sup>73</sup> In Australia, discriminatory practices are compounded at times of extreme heat. Studies suggest that indigenous

<sup>62</sup> Submission from Women’s Rehabilitation Centre.

<sup>63</sup> Submission from ActionAid International.

<sup>64</sup> Submission from CAN Adaptation and Loss and Damage Working Group.

<sup>65</sup> Submission from Chile.

<sup>66</sup> Submission from LACLIMA.

<sup>67</sup> Submission from Church World Service.

<sup>68</sup> Submission from Kyrgyz Indigo.

<sup>69</sup> Submission from International Federation of Red Cross and Red Crescent Societies.

<sup>70</sup> Ibid.

<sup>71</sup> Environmental Justice Foundation, “In Search of Justice”.

<sup>72</sup> Submission from the Alliance of Small Island States.

<sup>73</sup> Ibid.

peoples are denied access to public swimming pools because of segregation policies.<sup>74</sup> Other studies in Australia show how higher temperatures in remote indigenous communities in the Northern Territory will drive inequities in housing, energy and health.<sup>75</sup> In Hong Kong, China, heat stress was deeply distressful for persons with physical and mental disabilities as opportunities for relief were limited.<sup>76</sup>

51. The indigenous peoples of the Sierra Nevada de Santa Marta in Colombia, the Arhuaco, Kogui and Kankuamo, have witnessed the melting of glaciers that threatens their access to water. Indigenous peoples across the Arctic are facing losses to their cultures and traditional ways of living owing to changes to the thaw cycle, drought and unpredictable summer weather.<sup>77</sup>

52. Migrant workers in the Gulf region are vulnerable to occupational heat exposure, or heat stress, which can provoke health problems that increase the risk of certain diseases and affect their ability to maintain healthy and productive lives. A 2020 study on Kuwait found that the overall number of deaths doubles on extremely hot days, but triples for non-Kuwaiti men, who form the majority of the low-income workforce.<sup>78</sup>

## B. Economic losses: the overall economic costs of climate change

53. A report by Oxfam found that United Nations humanitarian appeals in response to extreme weather disasters rose by more than 800 per cent between 2000 and 2021. Since 2017, funder nations have met 54 per cent of these appeals on average, leaving an estimated \$28 billion to \$33 billion shortfall. By 2030, the unavoidable economic losses due to climate change are projected to reach \$290 billion to \$580 billion.<sup>79</sup> A report on 55 economies hit hard by climate change found they had lost about \$525 billion in the past two decades owing to the impacts of global warming.<sup>80</sup> According to the United Nations Convention to Combat Desertification, between 1998 and 2017, droughts had led to global economic losses of approximately \$124 billion.<sup>81</sup>

54. Annual funding requests related to climate-linked disasters stood on average at \$15.5 billion in the period 2019–2021, up from about \$1.6 billion in the period 2000–2002 – but rich countries have only met just over half of these appeals since 2017, leaving a huge shortfall.<sup>82</sup>

55. In 2020, Cyclone Amphan was one of the strongest storms on record in the Bay of Bengal. The economic loss in South Asia amounted to \$15 billion, making it the costliest tropical cyclone of the year. It affected 10 million people in Bangladesh.<sup>83</sup>

<sup>74</sup> Submission from Beth Goldblatt.

<sup>75</sup> Simon Quilty and Norman Frank Jupurrurla ([Phys.Org](https://phys.org)), “How climate change is turning remote Indigenous houses into dangerous hot boxes”, 17 June 2022. Available at <https://phys.org/news/2022-06-climate-remote-indigenous-houses-dangerous.html>.

<sup>76</sup> Submission from CarbonCare InnoLab.

<sup>77</sup> Submission from Amnesty International and Center for International Environmental Law.

<sup>78</sup> Submission from [Migrant-Rights.org](https://migrant-rights.org).

<sup>79</sup> Tracy Carty and Lyndsay Walsh, *Footing the bill: Fair finance for loss and damage in an era of escalating climate impacts* (Oxfam International, 2022). Available at <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/621382/bp-fair-finance-loss-and-damage-070622-en.pdf>.

<sup>80</sup> Thomson Reuters Foundation (Eco-Business), “Vulnerable nations demand funding for climate losses, fearing UN ‘talk shop’”, 10 June 2022. Available at [www.eco-business.com/news/vulnerable-nations-demand-funding-for-climate-losses-fearing-un-talk-shop/](https://www.eco-business.com/news/vulnerable-nations-demand-funding-for-climate-losses-fearing-un-talk-shop/).

<sup>81</sup> United Nations Convention to Combat Desertification, “Drought in numbers”.

<sup>82</sup> *Ibid.*

<sup>83</sup> Environmental Justice Foundation, “In Search of Justice”.

56. In the past 40 years, climate-linked disasters have affected more than 150 million people in Southern Africa, left about 3 million homeless and led to economic damages of more than \$14 billion.<sup>84</sup> In Durban, South Africa, flooding has cost \$760 million in damage.<sup>85</sup> It has been estimated that the cost of climate-related disasters per year will increase from \$250 billion to \$300 billion today to \$415 billion by 2030.<sup>86</sup>

57. In the Pacific, it is estimated that climate change-induced migration of tuna stocks will potentially reduce total annual fishing access fees earned by the 10 Pacific small island developing States by an average of \$90 million per year compared with the average annual revenue received between 2015 and 2018.<sup>87</sup> The economies of the Vulnerable Twenty Group of countries<sup>88</sup> have lost on aggregate \$525 billion because of the effects of climate change during the period 2000–2019.<sup>89</sup>

58. It has been estimated that the United States alone has inflicted more than \$1.9 trillion in damage to other countries from the effects of its greenhouse gas emissions.<sup>90</sup> This puts the United States ahead of China, currently the world's leading emitter, and the Russian Federation, India and Brazil, the next largest contributors to global economic damage through their emissions. The total estimated cost of the emissions by the United States, China, the Russian Federation, India and Brazil comes to \$6 trillion in losses worldwide, or about 11 per cent of annual global gross domestic product, since 1990.

### C. Non-economic losses of climate change, including climate change displacement

59. The impacts of climate change are also contributing to losses that are not easy to place in economic terms. These are known as non-economic losses and include, inter alia, loss of life, human health, cultural heritage and sovereignty.<sup>91</sup> In Samoa, for instance, sea level rise and storm surges are eroding cultural sites.<sup>92</sup>

60. Climate change displacement can be considered a non-economic loss, although the movement of people away from regular employment often has significant economic costs. According to the Intergovernmental Panel on Climate Change, since 2008, an annual average of over 20 million people have been internally displaced annually by weather-related extreme events, with storms and floods being the most

<sup>84</sup> Mongabay, “In Africa, temperatures rise, but adaptation lags on West’s funding failure” (19 January 2022). Available at <https://news.mongabay.com/2022/01/in-africa-temperatures-rise-but-adaptation-lags-on-west-s-funding-failure/>.

<sup>85</sup> Chloé Farand (Climate Home News), “Vulnerable nations set to design and test loss and damage funding facility”, 25 April 2022. Available at [www.climatechangenews.com/2022/04/25/vulnerable-nations-set-to-design-and-test-loss-and-damage-funding-facility/](http://www.climatechangenews.com/2022/04/25/vulnerable-nations-set-to-design-and-test-loss-and-damage-funding-facility/).

<sup>86</sup> Submission from Maat for Peace Development and Human Rights.

<sup>87</sup> J.D. Bell et al, “Pathways to sustaining tuna-dependent Pacific Island economies during climate change”, *Nature Sustainability*, No. 4, pp. 900–910 (2021). Available at <https://doi.org/10.1038/s41893-021-00745-z>.

<sup>88</sup> The current members of the V20 Group that self-identify as those most vulnerable to the impacts of climate change now number 55. See [www.v-20.org/members](http://www.v-20.org/members).

<sup>89</sup> Vulnerable Twenty Group, “Climate Vulnerable Economies Loss Report: 2000–2019” (2022). Available at <https://www.v-20.org/resources/publications/climate-vulnerable-economies-loss-report>.

<sup>90</sup> C.W. Callahan and J.S. Mankin, “National attribution of historical climate damages”, *Climatic Change*, No. 172 art. 40. Available at <https://link.springer.com/article/10.1007/s10584-022-03387-y>.

<sup>91</sup> A. Telesetsky, “Climate-Change Related ‘Non-economic Loss and Damage’ and the Limits of Law”, *San Diego Journal of Climate and Energy Law*, Vol. 11, No. 97, 2020. Available at <https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1096&context=jcel>.

<sup>92</sup> Submission from Samoa.

common.<sup>93</sup> Studies estimate that up to 216 million people could be forced to migrate by 2050, largely owing to drought, together with other factors such as water scarcity, declining crop productivity, sea-level rise and overpopulation.<sup>94</sup>

61. In India alone, more than 3.8 million people were internally displaced in 2020, mostly owing to weather-related disasters. In the same period, China counted more than 5 million and the United States more than 1.7 million new displacements.<sup>95</sup>

62. Displaced people now make up more than 80 per cent of the urban population of Bangladesh, the vast majority working in the informal sector and residing in insecure slums.<sup>96</sup>

63. Climate change fuels disasters and displacement within and across borders in Southern Africa. Southern Africa has experienced slow-onset disasters, notably in Madagascar, where 1.5 million people are affected by emergency-level food crisis following consecutive droughts. It has also caused internal displacement as people flee in search of food and work. An estimated 2.3 million people in Angola are also affected by drought, which has generated the internal displacement of approximately 60,000 people, in addition to 10,000 people crossing the border to Namibia.<sup>97</sup>

64. Climate change-induced displacement has many linkages between non-economic losses and the enjoyment of human rights. Displacement has affected the mental health of communities owing to the trauma of losing their habitats, homes and livelihoods.<sup>98</sup> Other studies suggest that climate-displaced persons face economic vulnerability, social exclusion and limited support for upholding cultural identity. Relocation may lead to loss of nationality of origin, particularly for individuals who do not have or retain identity documentation.<sup>99</sup>

65. Risks of statelessness can arise for persons forcibly displaced owing to climate change. In these circumstances, statelessness may result in such situations where individuals are unable to prove their nationality because of a loss of documentation or the inability to obtain replacement documentation. In addition, protracted or permanent displacement outside of one's country can sometimes result in passive loss of citizenship. Being stateless or undocumented implies that people may not be able to enjoy access to food, water, medical services or any support or subsidies provided by the Government.

66. The Special Rapporteur will dedicate his report to the Human Rights Council at its fifty-third session, in 2023, to the theme "Addressing the human rights implications of climate change displacement, including legal protection of people displaced across international borders".

## **D. Response to loss and damage**

### **1. International response and funding gap**

67. In response to growing concerns about loss and damage, in 2012, the parties to the United Nations Framework Convention on Climate Change established the Warsaw International Mechanism for Loss and Damage associated with Climate Change

<sup>93</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*.

<sup>94</sup> United Nations Convention to Combat Desertification, "Drought in numbers".

<sup>95</sup> Environmental Justice Foundation, "In Search of Justice".

<sup>96</sup> Day and Caus, *Conflict Prevention*.

<sup>97</sup> Submission from UNHCR.

<sup>98</sup> Submission from Laiakini Waqanisau.

<sup>99</sup> Submission from International Center for Advocates Against Discrimination.

Impacts. To date, the Mechanism has focused mainly on enhancing knowledge and understanding and strengthening dialogue, coordination, coherence and synergies. The Special Rapporteur notes that, despite considerable resistance from the United States and the European Union, parties to the Framework Convention agreed to include loss and damage as a separate article under the Paris Agreement (article 8).

68. Since then, progress on advancing action and support, a key pillar of article 8, has been extremely limited.<sup>100</sup> The Special Rapporteur has observed that the United States continues to stall negotiations on the basis of a procedural debate as to whether the Mechanism now only serves the Paris Agreement. Furthermore, the Special Rapporteur observes that negotiations around the operationalization of the Santiago Network for Averting, Minimizing and Addressing Loss and Damage, which was created at the twenty-fifth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change to catalyse technical assistance, continue to be stalled by developed countries.

69. Despite a unanimous call from the Group of 77 and China at the twenty-sixth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Glasgow, United Kingdom, for a new funding mechanism for loss and damage, the proposal was rejected by influential developed countries. In the end, developing countries were pressured by wealthy nations into settling for a three-year “dialogue” on a funding arrangement for loss and damage, with no decision-making powers.<sup>101</sup> Nevertheless, there were some funding pledges made at the twenty-sixth session of the Conference of the Parties. Scotland pledged \$2.4 million for a loss and damage fund, the Wallonia Region of Belgium dedicating \$1 million to the fund, and Germany pledged \$10.4 million to support the Santiago Network. While welcomed, these piecemeal pledges do little to bridge the gap in what is needed for loss and damage finance. Effectively, the major emitting countries have abandoned their duty to cooperate in line with the principles of international cooperation.

70. While funding is provided internationally through the United Nations and bilateral disaster relief support, this funding is generally on an ad hoc basis and well below what is needed.<sup>102</sup> Furthermore, there is also a large time gap between the event of the disaster and the receipt of the relief money.<sup>103</sup> Other funding for disaster risk reduction agendas primarily focus on risk assessment and place the onus on affected countries and communities to fund their own losses. Views expressed to the Special Rapporteur and submissions received suggest that these arrangements are inadequate to address loss and damage both in the short and longer term.<sup>104</sup> Data presented in the present report would strongly support this perception. Current funding arrangements at the international, regional and national levels are either difficult to gain access to, do not address all loss and damage or are poorly capitalized. Ironically, existing funding arrangements may incur more debt in the process of gaining access to them.<sup>105</sup> Little funding is provided to help particularly vulnerable developing countries, especially small island developing States, to cover the costs of loss and damage associated with slow-onset events, such as the resettlement of populations from areas

<sup>100</sup> Submission from Amnesty International and Center for International Environmental Law.

<sup>101</sup> J. Lo and C. Farand (Climate Homes News), “EU blocks bespoke fund for climate victims as rich nations moot alternatives”, 17 June 2022. Available at <https://www.climatechangenews.com/2022/06/17/eu-blocks-bespoke-fund-for-climate-victims-as-rich-nations-moot-alternatives/>.

<sup>102</sup> Carty and Lyndsay Walsh, *Footing the bill*.

<sup>103</sup> Submission from Good Living Eco Foundation.

<sup>104</sup> Submission from Alliance of Small Island States.

<sup>105</sup> Submission from Samoa.

rendered uninhabitable owing to climate change and measures to address permanent loss of, among other things, ecosystems and heritage.<sup>106</sup>

## 2. National approaches to funding loss and damage

71. Despite the lack of progress on funding at the international level, some States have established national funding arrangements to address loss and damage. Many government agencies have “quick response funds” or built-in budget allocation that represent pre-disaster or standby funds for agencies in order to immediately assist areas stricken by disasters and calamities. These funds are used to purchase family food packs, implement cash or food-for-work programmes, provide shelter assistance and send additional relief supplies.<sup>107</sup> But too often, these are intermittent, short-term and location-specific.<sup>108</sup>

72. It has been found that disaster insurance schemes can increase inequalities, as without substantial and well-targeted subsidies, women are more likely to be excluded from microinsurance schemes owing to affordability, political, social discrimination or economic marginalization.<sup>109</sup> Overall national funding for loss and damage relies on the fact that the countries that are affected by loss and damage are the ones having to pay for the financial costs incurred by major greenhouse gas polluting countries. This is not consistent with the polluter-pays principle.

## IV. Participation and the protection of climate rights defenders

### A. “Participation disconnect”

73. It is a regretful indictment of the current decision-making process that those who are most affected and suffering the greatest losses are the least able to participate in current decision-making. New participatory processes need to be found urgently.

74. There is a serious disconnect between those that continue to support the fossil fuel economy and those that are most affected by the impacts of climate change. While this disconnect continues, actions to address climate change will be limited. Furthermore, it is evident that business elites with interests in the fossil fuel and carbon intensive industries have disproportionate access to decision-makers, a phenomenon that is described as “corporate capture”. These fossil industry elites and the politicians they sponsor have a human rights responsibility and need to be held accountable for the human rights abuses they are underwriting.

75. There is also a disconnect between those who are most vulnerable to climate change impacts and those who actually participate and are represented in political and decision-making processes. The Special Rapporteur reiterates that the voices of those most affected must be heard and the losses and damages they are suffering must be understood and accounted for. During consultations, oral testimonies provided to the Special Rapporteur by youth groups, gender groups, indigenous peoples, persons with disabilities, faith-based groups, groups representing children, people of African descent and other people from ethnic minorities all emphasized the need for greater participation in decision-making processes. Many are calling for far greater participation of and climate justice for vulnerable groups. The Special Rapporteur lends support to those calls.

<sup>106</sup> Submission from Alliance of Small Island States.

<sup>107</sup> Submission from Community Organizers Multiversity.

<sup>108</sup> Submission from Indigenous Peoples’ International Centre for Policy Research and Education the Indigenous Peoples Rights International and Elatia.

<sup>109</sup> Submission from Oxfam.

## B. Levels of participation

76. There are many levels of participation that need to be addressed. At the international level, these include the United Nations and its institutions, and leaders' summits (such as the Group of Seven and the Group of 20), and their participation in international, national and local courts, meetings of the parties to the United Nations Framework Convention on Climate Change and the Paris Agreement, and other bodies associated within the process of the Framework Convention. At the national level, these include national parliaments, central and local government meetings and communities. Within all these forums, it must be recalled that "public participation is one of the fundamental pillars of instrumental or procedural rights, because it is through participation that the individual exercises democratic control of a State's activities and is able to question, investigate and assess compliance with public functions".<sup>110</sup>

### 1. Conferences of the parties to the United Nations Framework Convention on Climate Change and to the Paris Agreement

77. Among the many forums in which participation must be a fundamental pillar, the Special Rapporteur wishes to highlight the conferences of the parties to the United Nations Framework Convention on Climate Change and to the Paris Agreement. The Special Rapporteur heard numerous calls for such conferences to be opened up for greater participation by indigenous peoples, young people and other civil society representatives. The Special Rapporteur observed that indigenous peoples and civil society organizations are often excluded from observing some negotiations and have virtually no input into the negotiation of outcomes apart from brief interventions in the opening plenary meetings of these conferences. Other international bodies are not so restrictive. For example, the Special Rapporteur draws attention to the Convention on Biological Diversity, which allows for textual inputs from civil society organizations. Furthermore, he notes that the conferences of the parties to the Framework Convention and to the Paris Agreement are virtually two unconnected meetings in one. One meeting involves negotiations of textual decisions held by government representatives, and the other is a series of side events and discussions organized by non-State actors. There is little cross-fertilization of inputs and exchanges of views apart from daily newsletters, such as "Eco".

78. Despite some progress, the participation of women in these conferences of the parties is still problematic. Despite the fact that the numbers of women and men in party delegations are almost equal (49 per cent women and 51 per cent men), men accounted for 60 per cent of the speakers and 74 per cent of the speaking time in plenaries.<sup>111</sup> The Special Rapporteur concurs with calls that have been made to revise the Gender Action Plan of the United Nations Framework Convention on Climate Change to make it more relevant and effective. Others affected by the impacts of climate change have the least ability to make change in the Conference of the Parties process. The Special Rapporteur refers to this as "the participation disconnect". The Special Rapporteur regrets that the process of conferences of the parties to the

<sup>110</sup> Inter-American Court of Human Rights, Advisory Opinion) C-23/17 of 15 November 2017. Requested by the Republic of Colombia: The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: Interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2 of the American Convention on Human Rights.

<sup>111</sup> A. Dazé and C. Hunter, "Gender-Responsive National Adaptation Plan (NAP) Processes: Progress and promising examples – NAP Global Network synthesis report, 2021–2022" (International Institute for Sustainable Development, Winnipeg, Canada, 2022). Available from <https://naglobalnetwork.org/resource/gender-responsive-nap-processes-progress-promising-examples/>.

Framework Convention and to the Paris Agreement is denying some people the right to participate effectively.

79. Youth groups have demanded the establishment of a youth advisory committee on loss and damage to allow their participation in the decision-making processes at the national and international levels.<sup>112</sup> With respect to the Santiago Network for Averting, Minimizing and Addressing Loss and Damage, there has been a call for the operational modalities to be inclusive and transparent.<sup>113</sup> Similarly, there have been calls for indigenous peoples to be involved in the decision-making mechanisms to define climate finance, specifically in the setting up of a financial mechanism on loss and damage.<sup>114</sup>

80. Furthermore, during interactions in Bonn, the Special Rapporteur heard several concerns that procedural arrangements set up under the United Nations Framework Convention on Climate Change and the Paris Agreement, such as the Local Communities and Indigenous Peoples Platform, are not adequate substitutes for meaningful and active participation in negotiations. In addition, the Conference of the Parties process has become more like a “world expo” rather than a venue for negotiations and meaningful participation. The locations of such conferences are becoming more expensive and difficult to attend for indigenous peoples and civil society organizations. Stateless people displaced by climate change or people who have lost their identification papers due to climate change disasters have little or no chance of being represented at these conferences.

## 2. Inclusion in governmental planning processes

81. In the process of preparing, implement and monitoring the planning for nationally determined contributions, adaptation plans and loss and damage planning, there is a call for indigenous peoples, especially women and young people, to be included in decision-making.<sup>115</sup> If done well, social protection measures can be a critical way for States to fulfil their commitments to protect human rights and advance sustainable development, including through responsive and scaling-up approaches to address climate impacts and strengthen resilience as needed.<sup>116</sup>

## 3. National and local courts

82. Regarding access to climate change litigation and other judicial processes, in a consultation, the Special Rapporteur was presented with a call for children and young people to be able to have full access to courts. While youth groups have been successful in a number of climate change litigation cases, standing and justiciability remain challenges.<sup>117</sup>

## 4. National parliaments

83. There have been calls for young people to be represented in national parliaments to ensure that public authorities comply with their obligations under multilateral

<sup>112</sup> Loss and Damage Youth Coalition, open letter to the Presidency of the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, available at <https://actionnetwork.org/petitions/open-letter-to-cop27-presidency>.

<sup>113</sup> Submission from Amnesty International and Center for International Environmental Law.

<sup>114</sup> Submission from Indigenous Peoples’ International Centre for Policy Research and Education, Indigenous Peoples Rights International and Elatia.

<sup>115</sup> Submission from Continental Network of Indigenous Women of the Americas.

<sup>116</sup> Submission from ActionAid International.

<sup>117</sup> E. Donger, “Children and Youth in Strategic Climate Litigation: Advancing Rights through Legal Argument and Legal Mobilization”, *Transnational Environmental Law*, vol. 11, iss. 2, pp. 263-289, July 2022. Available at <https://doi.org/10.1017/S2047102522000218>.

treaties, such as the United Nations Framework Convention on Climate Change and the Paris Agreement.<sup>118</sup> In this respect, some useful examples have been tried. Twelve members of the organization Children’s Parliament aged 7 to 12 years participated in the deliberative Climate Assembly process in Scotland.

### C. Protecting climate rights defenders

84. As groups and communities become increasingly frustrated with the lack of action on climate change and the subsequent loss and damage that has occurred and will occur into the future, protests and public interventions have taken place to bear witnesses to the climate emergency. Protests and other forms of intervention have precipitated reprisals from Governments and businesses supporting the fossil fuel industry. Some climate rights defenders have been killed. In one country in Latin America, for instance, a Government has been accused of criminalizing popular leaders and social movements that dare to question the socio-environmental impacts of climate change and large mitigation projects in the region. In one country in Asia, the passing of anti-terrorism legislation endangered the lives of climate justice advocates. Furthermore, some civil society organizations are being red-tagged and vilified, and some human rights advocates have been imprisoned on the basis of false charges, while others have been murdered.

85. In North America, at least one environmental organization has been labelled by a national enforcement agency as a domestic terrorist threat.<sup>119</sup> Trade unions’ campaigns on climate change and its impact on workers have been targeted in some countries.<sup>120</sup>

86. Indigenous peoples defending their rights have been the target of serious attacks and human rights abuses. In 2020, there was a total of 227 lethal attacks against land and environmental defenders. A disproportionate five out of seven mass killings of defenders recorded in 2020 were of indigenous peoples. Indigenous women acting as environmental defenders face additional obstacles to their well-being, such as sexual violence, sexual discrimination, harassment of their children and families and increased vulnerability to mistreatment from State forces and armed groups.<sup>121</sup>

87. Concerns have also been expressed to the Special Rapporteur that climate change activists may be targeted for recrimination and harassment if they are involved in protests during the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, to be held in Egypt.<sup>122</sup> The Special Rapporteur is particularly concerned about the safety of activists based in Egypt.

## V. Conclusion and recommendations

**88. We are faced with a global crisis in the name of climate change. Throughout the world, the rights of people are being denied as a consequence of climate change. This includes a denial of the right to, inter alia, life, health, food, development, self-determination, water and sanitation, work, adequate housing and freedom from violence, sexual exploitation, trafficking and slavery. Human-**

<sup>118</sup> Submission from Alana Institute.

<sup>119</sup> H. Alberro (The Conversation), “Radical environmentalists are fighting climate change – so why are they persecuted?”, 11 December 2018. Available at <https://theconversation.com/radical-environmentalists-are-fighting-climate-change-so-why-are-they-persecuted-107211>.

<sup>120</sup> Submission from International Trade Union Confederation.

<sup>121</sup> Submission from Natural Justice.

<sup>122</sup> Oral testimony by civil society organizations, Bonn, June 2022.

induced climate change is the largest, most pervasive threat to the natural environment and human societies the world has ever experienced. The human right to a clean, healthy and sustainable environment was endorsed by the Human Rights Council in its resolution 48/13. Urgent action is needed to address the climate change crisis. The set of recommendations below require urgent attention by the General Assembly.

#### **Recommendations with respect to bridging the mitigation gap**

89. The Special Rapporteur maintains that all of the recommendations made by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in his report to the General Assembly in 2019 with respect to mitigation action<sup>123</sup> are still relevant and should be considered as recommended in the present report. In addition, the below recommendations should be considered.

90. With respect to mitigation, the Special Rapporteur on the promotion and protection of human rights in the context of climate change recommends that the General Assembly:

(a) Request the Secretary-General to host a high-level mitigation commitment forum as part of the Summit of the Future conference. The aim of the forum would be to deliver commitments to reduce global emissions by at least 55 per cent by 2030;

(b) Recommend the repeal of the Energy Charter Treaty;

(c) Agree to establish an internationally legally binding fossil fuel financial disclosure mechanism, to require Governments, businesses and financial institutions to disclose their investments in the fossil fuel and carbon intensive industries;

(d) Establish an international human rights tribunal to hold accountable Governments, business and financial institutions for their ongoing investments in fossil fuels and carbon intensive industries and the related human rights effects that such investments invoke;

(e) Pass a resolution to ban any further development of fossil fuel mining and other harmful mitigation actions;

(f) Recommend that the International Criminal Court include an indictable offense of ecocide.

91. Also with respect to mitigation, the Special Rapporteur recommends that the parties to the United Nations Framework Convention on Climate Change agree to the following at the twenty-seventh session of the Conference of the Parties:

(a) Include human rights considerations in their nationally determined contributions and other planning processes and ensure that market-based mechanisms have effective means for protecting human rights and effective compliance and redress mechanisms to this effect;

(b) Ensure that food security and the protection of the rights of indigenous peoples take precedent over land-based mitigation actions.

92. With respect to loss and damage, the Special Rapporteur recommends that the General Assembly:

<sup>123</sup> A/74/161, sect. IV.A.

- (a) Agree to establish a loss and damage finance facility;
- (b) Agree to establish a consultative group of finance experts to define the modalities and rules for the operation of the loss and damage finance facility;
- (c) Agree that the consultative group of finance experts should be appointed by the Secretary-General and should comprise representatives from financial institutions that have experience in funding loss and damage, and should include representatives from various rights holders mentioned in the present report and not include State climate change negotiators;
- (d) Agree that the consultative group of finance experts be given one year to complete its work and provide recommendations for agreements to the General Assembly at its seventy-eighth session;
- (e) Agree that the consultative group of finance experts, in undertaking its work, shall be guided by the following modalities and principles:
  - (i) Funding for the group should be new and not repurposed climate finance;
  - (ii) The group should be based on the “polluter pays” principle;
  - (iii) The group should be based on an inclusive, human rights-based approach and give priority to marginalized groups and other rights holders in situations vulnerable to the impacts of climate change;
  - (iv) Funding for the group should come from innovative sources and should be at scale to meet current and future needs with respect of loss and damage. Such sources could include: a climate damages tax on the fossil fuel industry; the redirection of fossil fuel subsidies; international levies on commercial air passenger travel and emissions from international shipping; and a debt cancellation and debt relief mechanism;
- (f) Develop international legal measures to address the permanent loss of land and ocean territories and their associated ecosystems, livelihoods, culture and heritage;
- (g) Create a sovereign debt relief mechanism as a means of restructuring or cancelling debts in an equitable manner with all creditors as a means of delivering on climate justice;
- (h) Create a redress and grievance mechanism to allow vulnerable communities to seek recourse for damages incurred, including legal measures to determine criminal, civil or administrative liability, and providing comprehensive restitution and guarantee of non-repetition;
- (i) Establish international legal protections to persons internally displaced and displaced across international borders as a consequence of climate change;
- (j) Explore legal options to close down tax havens as a means of freeing up taxation revenue for loss and damage.

93. Also with respect to loss and damage, the Special Rapporteur recommends that the parties to the United Nations Framework Convention on Climate Change agree to the following at the twenty-seventh session of the Conference of the Parties:

- (a) Establish an interim financial window for funding urgent loss and damage under the Green Climate Fund;

(b) Invite the United Nations Environment Programme to create an annual loss and damage finance and action gap report, with a view that the present report will inform the global stocktake.

#### **Recommendations for enhancing the participation and protection of climate rights defenders**

94. The Special Rapporteur recommends that the International Law Commission be mandated to develop, within a two-year time frame, an international legal procedure to give full and effective protection to environmental and indigenous human rights defenders, including by establishing an international tribunal for the prosecution of perpetrators of violence against and the killing of environmental and indigenous human rights defenders.

95. The Special Rapporteur recommends that the International Law Commission be mandated to include in the definition of ecocide those actions against environmental and indigenous human rights defenders.

96. The Special Rapporteur recommends that the General Assembly request the Secretary-General to call for all major meetings, such as those of the Group of Seven and the Group of 20, to include the participation of human rights holders affected by the impacts of climate change.

97. The Special Rapporteur also recommends that the General Assembly encourage all Member States to include youth representatives in national parliaments to highlight climate change concerns.

98. The Special Rapporteur further recommends that the General Assembly encourage all States to give standing to children and young people, including indigenous children and young people international, national and subnational court systems.

99. With respect to the participation and protection of human right defenders, the Special Rapporteur recommends that the parties to the United Nations Framework Convention on Climate Change agree to the following at the twenty-seventh session of the Conference of the Parties:

(a) Pass an omnibus decision that allows for the full and effective participation of indigenous peoples and civil society organizations in decision-making processes at all levels of the Conference of the Parties process;

(b) Establish a youth advisory committee on loss and damage;

(c) Establish a process to revise and improve the Gender Action Plan, for agreement at the twenty-eighth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.

#### **Summit of the Future recommendation**

100. The Special Rapporteur encourages the Summit of the Future to endorse all of the recommendations contained in the present report.

**Human Rights Council****Fifty-third session**

19 June–14 July 2023

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Providing legal options to protect the human rights of  
persons displaced across international borders due to climate  
change****Report of the Special Rapporteur on the promotion and protection of  
human rights in the context of climate change, Ian Fry***Summary*

The number of people displaced across international borders due to climate change is rapidly increasing, as the effects of climate change become more severe. As people are forced across international borders, they face numerous human rights violations. This is particularly the case for women and children, who make up the majority of displaced people. There are many definitions used to define people displaced by climate change. Some use the term “climate change refugees”, despite the fact that this term does not align with the Convention relating to the Status of Refugees or the Protocol thereto.

In the present report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change considers various international, regional and national legal and policy approaches to address people displaced across international borders due to climate change. He concludes that there is a deficit in legal protection for such people and makes a number of recommendations on how this legal deficit can be resolved, including his recommendation for the development of an optional protocol to the Convention relating to the Status of Refugees to protect the human rights of persons displaced across international borders due to climate change.



## I. Introduction

1. In 2021, 38 million people were displaced from their homes, and 22.3 million people were displaced by “weather-related” events.<sup>1</sup> This is fewer than in 2020 (30.7 million people due to weather-related events) and 2019 (24.9 million people due to weather-related events). In 2019 and 2020, droughts were a major factor in displacement. While there are many reports of people displaced across international borders due to climate-related events,<sup>2</sup> the actual number of people displaced or migrating across international borders is not well known.<sup>3</sup> The Special Rapporteur is of the view that it could be in the hundreds of thousands annually, if not more. In 2015, at least 50 countries had experienced people crossing into their countries due to disasters.<sup>4</sup> The people crossing international borders due to climate change are generally not defined as refugees under the Convention relating to the Status of Refugees of 1951 and the 1967 Protocol thereto, as they do not fit the definition of a refugee. Under the Convention, a refugee is someone who is unable or unwilling to return to his or her country of origin, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. As a consequence, people displaced or migrating across international borders due to climate change are not afforded the same level of legal protection as refugees. They also face the risk of being subjected to a number of human rights violations. Nevertheless, the Office of the United Nations High Commissioner for Refugees (UNHCR) has conceded that, in specific circumstances, notably when the effects of climate change and disasters intersect and are connected with conflict or violence or other forms of persecution, the Convention may be applicable.<sup>5</sup>

2. The purpose of the present report is to consider existing arrangements and explore options to give appropriate legal protection to people who have crossed international borders due to climate change. To prepare the present report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change issued a call for input, to which he received approximately 50 submissions.<sup>6</sup> He also held online consultations with civil society organizations.

## II. Terms used to define persons displaced across international borders due to climate change

3. There are many terms used to define people displaced by climate change. Popular media often define such people as “climate change refugees” or “climate refugees”. For instance, the Environmental Justice Foundation defines climate refugees as persons or groups of persons who, for reasons of sudden or progressive climate-related change in the environment that adversely affects their lives or living conditions, are obliged to leave their homes, either temporarily or permanently, and who move either within their country or abroad.

4. In its submission, Poland, indicated that the term “climate change migrants” applied to persons who changed their living place voluntarily, and the term “people displaced by climate change” applied to those who had been forced to change their domicile. Switzerland

<sup>1</sup> International Displacement Monitoring Centre and Norwegian Refugee Council, *Global Report on Internal Displacement, 2022*. Available at [https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC\\_GRID\\_2022\\_LR.pdf](https://www.internal-displacement.org/sites/default/files/publications/documents/IDMC_GRID_2022_LR.pdf).

<sup>2</sup> *Ibid.*

<sup>3</sup> There appears to be a distinct institutional reluctance, unwillingness or political aversion to enumerating the people crossing international borders due to climate change. See also sect. II.

<sup>4</sup> This included both weather-related and geological disasters. Nansen Initiative on Disaster-Induced Cross-Border Displacement, “Agenda for the protection of cross-border displaced persons in the context of disasters and climate change: volume I”, December 2015. Available at <https://disasterdisplacement.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>.

<sup>5</sup> Submission by Office of the United Nations High Commissioner for Refugees (UNHCR).

<sup>6</sup> See <https://www.ohchr.org/en/calls-for-input/2022/call-inputs-report-addressing-human-rights-implications-climate-change>.

preferred to use the term “environmentally induced migration and displacement”.<sup>7</sup> The United States of America used the term “climate change-related migration”.<sup>8</sup> The International Organization for Migration (IOM) used the terms “environmental migrant” or “displaced person”.<sup>9</sup> Others used the term “cross-border disaster-displaced persons”.<sup>10</sup>

5. According to one submission, the language of “climate mobility” was increasingly gaining traction to encompass the range of movement types that were at play, namely, displacement, migration, planned relocation and evacuation.<sup>11</sup> While this may be a convenient term, the Special Rapporteur is of the view that it is limited by the fact that it uses the shortened term of “climate”, rather than climate change, and thereby creates ambiguity as to whether weather-related events are a result of climate change or simply naturally occurring. This could infer some level of climate change denial. The term “mobility” tends to under-emphasize the human rights violations that are inherent in being displaced. Mobility does not distinguish between internal displacement and cross-border displacement.

6. The Nansen Initiative on Disaster-Induced Cross-Border Displacement used the term “cross-border displaced persons in the context of disasters and climate change”.<sup>12</sup> This is close to a workable definition, although the connection between climate change and natural disasters creates some confusion. The Platform on Disaster Displacement, which follows on from the work of the Nansen Initiative, defined a disaster as a “serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources”.<sup>13</sup> This term ignores the fact that climate change can have an effect on an individual and may not necessarily lead to widespread losses.

7. The International Law Commission referred to the “protection of persons in the events of disasters” with no distinction as to the type of disaster.<sup>14</sup> The Commission referred to a disaster as a “calamitous event which results in the serious disruption of the functioning of society”. The Special Rapporteur is of the view that this definitional threshold is not very helpful, as it would eliminate individuals or small groups of people having to leave their land due to droughts or other climate change-related events.

8. It has been contended that people move across international borders as an “adaptation” strategy. IOM tends to use this concept.<sup>15</sup> The Special Rapporteur is of the view that use of the term adaptation tends to underplay the fact that people are forced from their land. This is not really adapting to climate change, it is escaping its effects.

9. The notion of “displacement” is also important, as it indicates that people have been displaced from their land due to climate change. The displacement may be due to a sudden climate change event, or it may be due to a slow progressing climate change event, such as a drought or sea level rise. In most cases, people in these circumstances are forced to move. They have little choice, and therefore they are displaced. The term “climate-displaced

<sup>7</sup> Submission by Switzerland.

<sup>8</sup> United States, White House, “Report on the impact of climate change on migration”, 2021. Available at [www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf](http://www.whitehouse.gov/wp-content/uploads/2021/10/Report-on-the-Impact-of-Climate-Change-on-Migration.pdf).

<sup>9</sup> International Organization for Migration (IOM), “Glossary on migration”, 2019. Available at [https://publications.iom.int/system/files/pdf/iml\\_34\\_glossary.pdf](https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf).

<sup>10</sup> Platform on Disaster Displacement, “Strategy, 2019–2022”, 2019. Available at [https://disasterdisplacement.org/wp-content/uploads/2019/06/26062019-PDD-Strategy-2019-2022-FINAL\\_to\\_post\\_on\\_website.pdf](https://disasterdisplacement.org/wp-content/uploads/2019/06/26062019-PDD-Strategy-2019-2022-FINAL_to_post_on_website.pdf).

<sup>11</sup> Submission by Jane McAdam.

<sup>12</sup> Nansen Initiative, “Agenda for the protection of cross-border displaced persons”.

<sup>13</sup> Platform on Disaster Displacement, “Strategy, 2019–2022”.

<sup>14</sup> [A/71/10](#), chap. IV.E.

<sup>15</sup> For instance, IOM notes that Hurricanes Eta and Iota caused disasters in Honduras, leading to at least 13,386 houses being affected. According to IOM, this led to people migrating out of Honduras as an adaptation strategy. IOM, “Regional report: highly vulnerable migrant flows and border mobility in Guatemala, Honduras, El Salvador, Costa Rica and Mexico”, 2021. Available at <https://dtm.iom.int/sites/g/files/tmzbd11461/files/reports/%28eng%29RondaFinal-DTMRegional.pdf>.

persons” has been suggested.<sup>16</sup> For the purposes of clarity, in the present report, the Special Rapporteur uses the term persons displaced across international borders due to climate change. While this term is used to give clarity, it should not be forgotten that it is only a label and that this label does not adequately describe the hardships faced by displaced individuals or the circumstances that have driven them to cross international borders.

10. The Special Rapporteur is of the view that it is important to remember that climate change is primarily caused by greenhouse gas emissions from major emitting countries. There is an important aspect of causality and international responsibility that must be considered when referring to climate change displaced persons. While people suffering from so-called “natural disasters”, such as earthquakes and tsunamis, may experience similar hardships in the context of those events, the responsibility for responding to climate change is quite different, and differentiation is needed. However, the countries that are historically the most responsible for the climate crisis spend more money securing their borders to keep migrants out than on tackling the crisis that forces people from their homes in the first place.<sup>17</sup>

### III. Instances and projections of cross-border displacement due to climate change

11. The Intergovernmental Panel on Climate Change has calculated that 3.3 billion people are living in countries with high human vulnerability to climate change. Global concentrations of high vulnerability are emerging in transboundary areas, encompassing more than one country as a result of interlinked issues concerning health, poverty, migration, conflict, gender inequality, inequity, education, high debt, weak institutions, lack of governance capacities and infrastructure.<sup>18</sup> The United Nations High Commissioner for Refugees has stated that the adverse effects of climate change and disasters are increasingly contributing to human movements,<sup>19</sup> in the form of the planned relocation of individuals or communities, migration or displacement.<sup>20</sup>

12. A thorough assessment of persons displaced internationally by climate change has not been done. The Special Rapporteur is concerned that neither UNHCR nor IOM provide a total assessment of the number of persons displaced internationally as a consequence of climate change, although they do provide numbers in individual cases. There appears to be a reluctance to make such a total assessment. This is a significant oversight. Most statistics are on internally displaced persons, but, as soon as they cross international borders, their status becomes poorly defined. Some appear to argue that it is too difficult to define people as victims of climate change as the root cause of their displacement. While this may be the case in some circumstances, it is very clear that climate change events are drivers of displacement, and people can be defined as being displaced by climate change.

<sup>16</sup> Letter dated 20 September 2021 from Alexander Vernon et al. addressed to the President of the United States of America and the Secretary of the Department of Homeland Security concerning executive authority to admit those who flee or cannot safely return to their home country due to climate change. See also Aydali Campa, “Climate migrants lack a clear path to asylum in the US”, Inside Climate News, 21 May 2022.

<sup>17</sup> Transnational Institute, “Global climate wall: how the world’s wealthiest nations prioritise borders over climate action”, 25 October 2021. Available at <https://www.tni.org/en/publication/global-climate-wall>.

<sup>18</sup> Pörtner, H.O. et al., Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, H.O. Pörtner et al. (eds.), Cambridge University Press, Cambridge, United Kingdom of Great Britain and Northern Ireland.

<sup>19</sup> Human mobility is an overarching umbrella term that refers to three forms of population movement: (a) displacement, the primarily forced movement of persons; (b) migration, the primarily voluntary movement of persons; and (c) planned relocation, the process of settling persons or communities in a new location. See also United Nations Framework Convention on Climate Change decision 1/CP.16 para. 14 (f)).

<sup>20</sup> Submission by UNHCR.

13. It is estimated that, in 2020, 75 per cent of new displacements from Somalia to Kenya were as a result of climate change.<sup>21</sup> The International Rescue Committee noted that, in 2022, 60,000 Somalis had fled climate change and crossed into Kenya, where they are now located in Dadaab refugee camp.<sup>22</sup> According to UNHCR, in January 2022, Dadaab refugee camp hosted over 200,000 registered refugees and asylum-seekers and an uncounted number of unregistered refugees, many of whom had arrived in the preceding 12 to 18 months, fleeing the latest climate change-induced catastrophic drought in Somalia.<sup>23</sup>

14. In the dry corridor region of Central America, in particular in Guatemala, Honduras and El Salvador, it was noted in 2016 that over 3.5 million people needed humanitarian assistance due to an extended drought.<sup>24</sup> According to the World Food Programme, El Niño drought conditions that had started in 2014 caused a significant increase in irregular migration to the United States.<sup>25</sup> It found that there was a propensity for that displacement among the younger and more vulnerable people.<sup>26</sup> In addition to the economic problems that they faced as a consequence of the drought and their inability to feed their families properly, displaced people from middle and low socioeconomic strata had to acquire debts, with family assets used as collateral, to pay for the emigration journey to the United States or elsewhere.<sup>27</sup> In 2020, two severe hurricanes caused considerable damage to infrastructure, crops and livestock in Honduras, forcing people to be displaced across international borders.<sup>28</sup> One representative of a civil society organization from Latin America indicated that some people had been reluctant to identify as people displaced by climate change, even though they later admitted to that fact, as they would not have been given refugee status. They instead contrived stories to say that they had been subjected to harassment by gangs or militia groups in their country of origin.<sup>29</sup>

15. The Intergovernmental Panel on Climate Change projects population displacements by 2050 in Central and South America, sub-Saharan Africa and South Asia due to climate change to range from 31 million to 143 million people.<sup>30</sup> In February 2023, the Secretary-General stated that, for the hundreds of millions of people living in small island developing States and other low-lying coastal areas around the world, sea level rise is a torrent of trouble that would lead to a mass exodus of entire populations on a Biblical scale.<sup>31</sup>

<sup>21</sup> Amali Tower, "Climate change driving displacement as Somalia faces famine: an interview with the UN's Christophe Hodder", *Climate Refugees*, 8 June 2022. Available at [www.climate-refugees.org/perspectives/2022/6/8/somalia](http://www.climate-refugees.org/perspectives/2022/6/8/somalia).

<sup>22</sup> Madiha Raza, "Humanitarians needs mount as almost 60,000 refugees from Somalia arrive in Dadaab Refugee camp due to impact of climate change, warns IRC", *Reliefweb*, news release, 7 November 2022. Available at <https://reliefweb.int/report/kenya/humanitarian-needs-mount-almost-60000-refugees-somalia-arrive-dadaab-camp-due-impact-climate-change-warns-irc>.

<sup>23</sup> *Ibid.*

<sup>24</sup> Food and Agriculture Organization of the United Nations, "Dry corridor Central America, situation report", June 2016. Available at <https://www.fao.org/3/br092e/br092e.pdf>.

<sup>25</sup> World Food Programme, "Food security and emigration: why people flee and the impact on family members left behind in El Salvador, Guatemala and Honduras", research report, September 2017. Available at <https://docs.wfp.org/api/documents/WFP-0000019629/download/>.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> UNHCR, "In Honduras, climate change is one more factor sparking displacement", 9 November 2021. Available at <https://www.unhcr.org/news/stories/2021/11/61844eef4/honduras-climate-change-factor-sparking-displacement.html>.

<sup>29</sup> Testimony during an online event.

<sup>30</sup> Pörtner, H.O., et al., *Contribution of Working Group II*.

<sup>31</sup> United Nations, "Secretary-General's remarks to the Security Council debate on sea-level rise: implications for international peace and security", 14 February 2023. Available at [www.un.org/sg/en/content/sg/statement/2023-02-14/secretary-generals-remarks-the-security-council-debate-sea-level-rise-implications-for-international-peace-and-security](http://www.un.org/sg/en/content/sg/statement/2023-02-14/secretary-generals-remarks-the-security-council-debate-sea-level-rise-implications-for-international-peace-and-security).

#### IV. Human rights implications of persons displaced across international borders due to climate change

16. The human rights implications of climate change displacement, in particular for persons displaced across international borders due to climate change, are significant and disturbing. People displaced by climate change face multiple violations of their human rights. The climate change event may deprive people of their right to food, water, sanitation, housing, health, education and, for some, the right to life. Studies suggest that women and children are the most affected by disasters and the effects of climate change, as they are up to fourteen times more likely to be killed than men by a climate disaster, such as a hurricane, typhoon, cyclone or flood. In 2018, more than half of the 41 million people internally displaced were women. In addition, most early warning systems for disasters and other emergencies are designed and used by men without considering a gender perspective.<sup>32</sup>

17. The process of moving across international borders is fraught with rights violations. Large numbers of people displaced across borders die or go missing every year at both land and sea borders. Between 2014 and 2022, more than 50,000 people lost their lives during migratory movements. More than half of those deaths occurred on routes to and within Europe, including in the Mediterranean Sea.<sup>33</sup> A percentage of them were undoubtedly persons displaced across international borders due to climate change. According to the Inter-American Commission on Human Rights, death at the hands of criminal networks and armed groups is one of the greatest risks to migrants.<sup>34</sup> Some people crossing international borders face additional threats, as well as additional risks of human rights violations, because of personal characteristics, such as their age, gender identity, disability or health status.<sup>35</sup>

18. The testimonies made to the Special Rapporteur suggest that persons displaced across international borders due to climate change may be denied basic human rights and may face harassment and torture at the hands of armed gangs. Displaced children may be exposed to a variety of risks, such as abuse, violence, trafficking, exploitation and other forms of maltreatment.<sup>36</sup> The International Institute for Environment and Development reports that there is a clear link between climate-induced migration, displacement and modern slavery. The Institute noted that there was a lack of recognition of that relationship, resulting in an absence of strong, targeted policies, and therefore lack of protection for the people who need it the most.<sup>37</sup> This concern was also noted during the Special Rapporteur's visit to Bangladesh, where individuals and households displaced by climate change were targeted by traffickers and forced into exploitative labour and sex work.<sup>38</sup>

19. Studies by OHCHR in Libya suggest that there is systematic murder, torture, rape, threat of rape, killings, sexual violence, enslavement, racial abuse and beatings perpetrated against migrants by some State authorities, militias, armed groups and traffickers.<sup>39</sup> In 2022,

<sup>32</sup> Care International, "Evicted by climate change: confronting the gendered impacts of climate-induced displacement", July 2020. Available at <https://careclimatechange.org/wp-content/uploads/2020/07/CARE-Climate-Migration-Report-v0.4.pdf>.

<sup>33</sup> J. Black and Z. Sigman, "50,000 lives lost during migration: analysis of Missing Migrants Project data 2014–2022". IOM Global Migration Data Analysis Centre. Available at <https://missingmigrants.iom.int/sites/g/files/tmzbd1601/files/publication/file/2022%2050k%20deaths.pdf>.

<sup>34</sup> Ibid.

<sup>35</sup> OHCHR, Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations. Available at [www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf).

<sup>36</sup> United Nations Children's Fund, Guiding Principles for Children on the Move in the Context of Climate Change. Available at [www.unicef.org/globalinsight/media/2796/file/UNICEF-Global-Insight-Guiding-Principles-for-children-on-the-move-in-the-context-of-climate-change-2022.pdf](http://www.unicef.org/globalinsight/media/2796/file/UNICEF-Global-Insight-Guiding-Principles-for-children-on-the-move-in-the-context-of-climate-change-2022.pdf).

<sup>37</sup> Submission by the International Institute for Environment and Development.

<sup>38</sup> Bharadwaj, R et al., "Social protection and informal job market reform for tackling the climate migration nexus", International Institute for Environment and Development, working paper, September 2022. Available at <http://pubs.iied.org/21121IIED>.

<sup>39</sup> A/HRC/49/4.

there were more than 60,000 migrants in Libya, comprising more than 40 nationalities.<sup>40</sup> According to IOM, the top 10 countries of origin for migrants repatriated from Libya through the voluntary humanitarian return programme are Nigeria, Mali, the Niger, Bangladesh, Guinea, the Sudan, the Gambia, Côte d'Ivoire, Ghana and Senegal. In a focused study on the Gambia, climate change was identified as one of the drivers of the displacement of Gambians because of extreme climate and weather conditions, coastal erosion and flooding.<sup>41</sup> It is highly likely that a significant proportion of migrants from the other top 10 countries of origin are also persons displaced across international borders due to climate change.

20. The issue of the militarization of borders, and the subsequent human rights abuses of these militarized processes, was a major theme highlighted in a submission by one civil society organization. It suggested that, as more people are displaced across borders due to climate change, border personnel are becoming more and more brutal, heavily armed and restrictive. Domestic and gender-based violence is increasing, due to such measures, making women, children and lesbian, gay, bisexual, transgender, queer and intersex people highly endangered.<sup>42</sup>

21. Indigenous Peoples face particular challenges when they are displaced across international borders due to climate change. In 2018, it was estimated that there were 83,000 Indigenous "international migrants" in nine Central American countries, most of whom were women.<sup>43</sup> For these peoples, climate change has been identified as one of the drivers of international displacement.<sup>44</sup> Indigenous Peoples in such situations face a number of human rights violations, including extrajudicial killing, sexual assault and harassment.<sup>45</sup> They also face various health concerns, due to a lack of access to medical services.<sup>46</sup>

22. It should not be forgotten that some people are not able to move during a climate change event. Some people are trapped for a variety of reasons, including owing to their economic or social circumstances or their age.<sup>47</sup> Although it is beyond the scope of the present report to consider trapped populations, their plight should not be forgotten.

## V. Importance and necessity of a specific consideration of climate change displacement

23. Climate change is a global phenomenon that is only going to increase in its impact. The preamble to the Paris Agreement sets this out in clear terms:

*Acknowledging* 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, the empowerment of women and intergenerational equity.

24. The Special Rapporteur is of the view that climate change displacement is a global problem that must be addressed at the international level. It is evident that a limited number of countries are facing an unfair and unjust burden in dealing with situations of people

<sup>40</sup> OHCHR, "Nowhere but back: assisted return, reintegration and the human rights protection of migrants in Libya", November 2022. Available at [www.ohchr.org/sites/default/files/2022-12/Report-on-assisted-return-and-reintegration.pdf](http://www.ohchr.org/sites/default/files/2022-12/Report-on-assisted-return-and-reintegration.pdf).

<sup>41</sup> Ibid.

<sup>42</sup> Submission by the Centre for Feminist Foreign Policy.

<sup>43</sup> IOM Regional Office for Central and North American and the Caribbean, "5 key aspects on the migration of Indigenous Peoples". Available at <https://rosanjose.iom.int/en/blogs/5-key-aspects-migration-indigenous-peoples>.

<sup>44</sup> Ibid.

<sup>45</sup> Testimonies heard during online consultations.

<sup>46</sup> Ibid.

<sup>47</sup> Armelle Gouritin and Raul Pachero-Vega, "Aproximación al encuentro entre migración y efectos climáticos". in Armelle Gouritin (ed.), *Migrantes climáticos en México*, 2021, (México: FLACSO México).

displaced across international borders due to climate change. For instance, it was estimated in 2018 that just 10 – mostly very poor – countries now host more than 60 per cent of the world’s refugees, and presumably that included persons displaced across international borders due to climate change, with the entire developed world taking in only 15 per cent of those in need of asylum.<sup>48</sup>

25. It requires an international response, commensurate with the enormity of the issue, and a global sense of responsibility. To date, most reports and initiatives have been focused on internally displaced people. The Special Rapporteur stresses that it is now time for the international community to realize a responsibility to those displaced across international borders. Consistent with the Paris Agreement, the international community has a responsibility to find the necessary funding and technical and humanitarian support to assist those displaced across international borders due to climate change and uphold their rights.

26. The Special Rapporteur underscores that people displaced by climate change should be considered legally and procedurally different to those affected by geological disasters, such as earthquakes and tsunamis. Climate change is a global issue, with drivers created primarily by industrialized countries. This means that persons displaced across international borders due to climate change should be considered in the context of causality and responsibility. While the effects may be similar to those of geological disasters, the response mechanisms will be different, due to the international responsibility for climate change effects. Geological disasters are primarily the responsibility of the affected State to deal with. Whereas some international humanitarian support may be provided, it is often ad hoc and short lived. Some of the humanitarian responses may be similar for all types of disasters, nevertheless, the legal and procedural responsibility for persons displaced across international borders due to climate change requires differentiated treatment. Furthermore, financial assistance for those displaced by climate change should be different, due to obligations established under article 4 of the United Nations Framework Convention on Climate Change and article 8 of the Paris Agreement.

27. While in the past it has been claimed that it is difficult to differentiate between the causes of displacement, the effects of climate change are well documented. The Special Rapporteur is of the view that this claim is no longer valid. The science is very clear that extreme weather events today have a human-induced factor due to climate change. It is not too difficult to identify whether people have originated from areas subject to climate change effects. The World Meteorological Organization, for example, has the Global Climate Observing System,<sup>49</sup> which regularly assesses the status of global climate observations. Many of the processes reviewed in the present report retain the view that displacement due to climate change cannot be differentiated from other causes. This view appears to be motivated by outdated factual evidence and political motivations to deny climate change causality.

28. The political sensitivity around the issue of climate change displacement across international borders is highlighted by the fact that there is far more documentation and strategies written about people internally displaced by “disasters”. As has been stated previously, this tends to place the onus of response obligations on the affected State. When people are displaced across international borders, the guidance and legal protection mechanisms tend to evaporate, because of the political sensitivity around such occurrences. The Special Rapporteur is of the view that it is now time to put aside this denial and accept the fact that a large number of people are being displaced across international borders due to climate change and that there is an international legal responsibility to properly protect them.

---

<sup>48</sup> James C. Hathaway, “The global cop-out on refugees”, *International Journal of Refugee Law*, vol. 30, No. 4.

<sup>49</sup> See <https://gcos.wmo.int>.

## VI. Legal approaches to address the rights of people displaced across international borders due to climate change

### A. International approaches

29. There are a number of international human rights treaties that are relevant in providing protections for persons displaced across international borders due to climate change. In addition, transnational criminal law addresses criminal actions related to migration, in particular the United Nations Convention against Transnational Organized Crime, the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It should be noted that there are significant gaps in the ratification of these treaties, notably among small island developing States, and more significant gaps in their implementation.<sup>50</sup> Gaps in ratification may relate to reporting burdens.<sup>51</sup> Nevertheless, every effort should be made to encourage all countries to ratify these significant treaties.

30. The legal concept of non-refoulement, which aims to prevent a refugee from being forced to return to his or her country, is well founded in the Convention relating to the Status of Refugees. In addition, the concept appears to have been elevated to the level of customary international law and provides a legal obligation on all States to enforce this right.<sup>52</sup> Under international human rights law, the principle of non-refoulement entails an obligation not to remove a person, whatever his or her status, when there are substantial grounds for believing that he or she would be at risk of being subject to serious violations of human rights, including torture or other cruel, inhuman or degrading treatment or punishment.<sup>53</sup>

31. Other relevant human rights include the rights to life,<sup>54</sup> to leave and enter or return to one's country,<sup>55</sup> to food,<sup>56</sup> to adequate housing,<sup>57</sup> to health<sup>58</sup> and to water and sanitation.<sup>59</sup> Human rights gaps in the context of persons displaced across international borders due to climate change have also been addressed by the United Nations High Commissioner for Human Rights<sup>60</sup> and the Special Rapporteur on the human rights of migrants.<sup>61</sup>

32. Apart from general human rights obligations under the treaties listed above, there are some legal options available for the protection of people displaced across international borders due to climate change.

<sup>50</sup> For the status of ratification, see the United Nations Treaty Collection. Available at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en).

<sup>51</sup> Testimony by a representative for a small island developing State.

<sup>52</sup> Lauren Nishimura, "Climate change migrants: impediments to a protection framework and the need to incorporate migration into climate change adaptation strategies", *International Journal of Refugee Law*, vol. 27, No. 1.

<sup>53</sup> Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; International Covenant on Civil and Political Rights, art. 7; and International Convention for the Protection of All Persons from Enforced Disappearance, art. 16 (1).

<sup>54</sup> International Covenant on Civil and Political Rights, art. 6.

<sup>55</sup> *Ibid.*, art. 12.

<sup>56</sup> International Covenant on Economic, Social and Cultural Rights, art. 11.

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*, art. 12.

<sup>59</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 15 (2002) on the right to water; and General Assembly resolution 64/292.

<sup>60</sup> [A/HRC/38/21](#).

<sup>61</sup> [A/77/189](#).

## B. Regional approaches

33. Some regions have broadened the definition of refugees to provide an opportunity for persons displaced across international borders due to climate change to be potentially encompassed within the definition. For instance, the African Union defines the circumstances defining refugees to include events seriously disturbing public order in either part or the whole of his or her country of origin or nationality, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin or nationality.<sup>62</sup> The notion of events seriously disturbing public order could well be interpreted as a climate change event. Nevertheless, not all climate change events could be defined as disturbing public order; some events may have individual effects, which may not trigger the collective concept of public order. Furthermore, beyond the limits of these regional agreements, the refugee status of such people would be returned to the more limiting definition under the Convention relating to the Status of Refugees.

34. The Central America Four Free Mobility Agreement allows for the free movement of persons between the borders of Guatemala, Nicaragua, El Salvador and Honduras, without visas or passports and with limited migration and customs restrictions.<sup>63</sup> Regular migration categories under the Mobility Agreement include allowing foreigners to apply to renew their immigration status, taking into account national law, the post-disaster situation in the country of origin and the specific situation of each person, including his or her vulnerabilities.

35. The concept of non-refoulement was also confirmed by the Inter-American Court of Human Rights in an Advisory Opinion, in which it stated that the expression of international protection should be applied, *inter alia*, “to any foreign person based on international human rights obligations, and in particular the principle of non-refoulement, as well as complementary protection or other forms of humanitarian protection”.<sup>64</sup>

36. With respect to matters relating to the Convention on the Rights of the Child, the Inter-American Court of Human Rights identified the particular circumstances of children who were members of Indigenous communities when they had been displaced, voluntarily or forcibly, outside their territory and community, indicating that the measures of protection must be adopted and implemented taking their cultural context into consideration.<sup>65</sup>

37. In East Africa, the Protocol on Free Movement of Persons in the Intergovernmental Authority on Development Region was created to address issues of drought and desertification.<sup>66, 67</sup> The Protocol has yet to enter into force. Under the new Protocol, persons fleeing disasters will be allowed to seek refuge in a neighbouring country; they will not need to return until doing so is safe. This includes those who cross a border in expectation of, during or following a disaster.

38. The European Union applies a common European asylum system and uses the definition of refugee contained in the Convention relating to the Status of Refugees and therefore does not have a provision for people displaced across international borders due to climate change.<sup>68</sup> It affirms the principle of non-refoulement and recognizes the best interests

<sup>62</sup> Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

<sup>63</sup> Sistema de la Integración Centroamericana, “Un vistazo a la integración”. Available at [www.sica.int/sica/vista.aspx](http://www.sica.int/sica/vista.aspx).

<sup>64</sup> Inter-American Court of Human Rights, Advisory Opinion OC-21/14 of 19 August 2014, Requested by the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay on the Rights and Guarantees of Children in the context of Migration and/or in Need of International Protection.

<sup>65</sup> *Ibid.*

<sup>66</sup> Protocol to the Treaty Establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment.

<sup>67</sup> Member countries of the Intergovernmental Authority on Development include Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, the Sudan and Uganda.

<sup>68</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary

of the child, consistent with the Convention on the Rights of the Child. In addition, the Council of the European Union Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons expands the definition of refugee to include “persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights”.<sup>69</sup> The Special Rapporteur is of the view that the temporary nature of the protection provided by that Directive may allow for persons displaced across international borders due to climate change to be afforded temporary protection, but it would not be adequate for those displaced permanently due to slow onset events.

### C. National approaches

39. There are some circumstances where national Governments have afforded certain levels of protection for persons internationally displaced due to climate change.

40. Both Italy and Sweden have a specific protection status in place for reasons of calamity or natural disaster, for third-country nationals who do not qualify for refugee status or subsidiary protection status.<sup>70</sup> The residence permit that Sweden offers has similar conditions to the harmonized European Union refugee status, while that of Italy is comparable to European Union subsidiary protection, although the status offers less favourable conditions, such as in terms of the length of the residence permit.

41. The United States offers temporary protection status to foreign citizens located in the United States, consisting of temporary approval to remain in special situations determined by the Secretary of Homeland Security, namely, due to conditions in the country that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. The temporary protection status currently only applies to citizens of 15 countries.<sup>71</sup> The United States has provided temporary protection status for citizens of Honduras, for example, due to the environmental disaster and substantial disruption of living conditions caused by Hurricane Mitch and the fact that Honduras was unable, temporarily, to handle adequately the return of Honduran nationals.<sup>72</sup> A similar temporary protection status was applied to citizens of Nicaragua.

42. The United States also has deferred enforced departure, which allows certain individuals from designated countries and regions facing political or civic conflict or natural disaster to remain in the United States.<sup>73</sup>

43. In Argentina, South American nationals can apply for a residence visa due to humanitarian reasons.<sup>74</sup> Since 2022, the humanitarian reasons have included natural

---

protection, and for the content of the protection granted. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0095>.

<sup>69</sup> Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. Available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32001L0055>.

<sup>70</sup> European Migration Network, “Comparative overview of national protection statuses in the EU and Norway: EMN Synthesis Report for the EMN Study 2019”, May 2020. Available at [www.udi.no/globalassets/global/european-migration-network\\_i/studies-reports/emn\\_synthesis\\_report\\_nat\\_prot\\_statuses\\_final.pdf](http://www.udi.no/globalassets/global/european-migration-network_i/studies-reports/emn_synthesis_report_nat_prot_statuses_final.pdf).

<sup>71</sup> Afghanistan, Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Myanmar, Nepal, Nicaragua, Somalia, South Sudan, the Sudan, the Syrian Arab Republic, Ukraine, Venezuela (Bolivarian Republic of) and Yemen.

<sup>72</sup> United States, Immigration and Naturalization Service, INS No. 1964-98, AG Order No. 2201-98. Available at [www.govinfo.gov/content/pkg/FR-1999-01-05/html/98-34849.htm](http://www.govinfo.gov/content/pkg/FR-1999-01-05/html/98-34849.htm).

<sup>73</sup> Liberia, Venezuela (Bolivarian Republic of) and Hong Kong, China. See United States Citizenship and Immigration Services, Deferred enforced departure (<https://www.uscis.gov/humanitarian/deferred-enforced-departure>).

<sup>74</sup> Argentina, Law No. 25871 (2003), art. 24 (h); and decree No. 616/2010, art. 24 (h).

disasters.<sup>75</sup> The residence permit lasts six months, with the possibility of renewal before the expiration date. The Plurinational State of Bolivia has explicitly referenced climate change migration and the need to protect those migrating in its immigration law when there is a risk or threat to life, whether due to natural causes or environmental, nuclear, chemical, environmental or famine disasters.<sup>76</sup> Brazil provides humanitarian reception for two years, subject to renewal, in cases of an environmental disaster.<sup>77</sup> In Canada, special measures are applied to certain serious disasters; this included Typhoon Haiyan in the Philippines in 2013. Special measures apply mostly to people who can prove their link to the disaster and have immediate family members in Canada.<sup>78</sup>

44. There is jurisprudence to suggest that courts in at least one European country are taking a broader perspective with respect to providing protective measures for persons displaced across international borders due to climate change. For example, the Constitutional Court of Austria has concluded that disasters can be considered when analysing subsidiary protection, as well as country of origin. The Court has concluded that the drought in Somalia and the poor supply situation and country reports had to be considered for subsidiary protection. In relation to floods in Pakistan, the Court ruled that authorities were obliged to carefully assess the situation after a disaster and to explain on which sources the authority's findings were based.<sup>79</sup> While they were defined as disasters, the fact remains that those events were artefacts of climate change. The Supreme Court of Italy granted an appeal for a refugee, considering the serious environmental disaster in the Niger Delta.<sup>80</sup>

45. The rights to the claim of “climate change refugee” was tested in the case of a Kiribati citizen living in New Zealand. Ioane Teitiota sought refugee status under section 129 of the Immigration Act of 2009, on the basis that his homeland, Kiribati, was facing steadily rising sea water levels as a result of climate change. His claim was taken to the Immigration and Protection Tribunal. Although the Tribunal accepted that Mr Teitiota's concerns about Kiribati and its future were justified, it dismissed his appeal, holding that he was neither a refugee within the meaning of the Convention relating to the Status of Refugees, nor a protected person within the meaning of the International Covenant on Civil and Political Rights.<sup>81</sup> Mr. Teitiota took his case to the Human Rights Committee, which found that Mr. Teitiota, had not established that the assessment of the domestic authorities had been clearly arbitrary or erroneous in that regard or had amounted to a denial of justice.<sup>82</sup> Nevertheless, the Committee did state that, even where climate-induced asylum-seekers were not entitled to refugee status, receiving States had human rights obligations not to deport or to return them, when returning them to their State of origin would lead to the violation of their right to life.<sup>83</sup>

46. Notwithstanding the above-mentioned case, the Special Rapporteur is of the view that there is a growing body of law in some countries to suggest that people are being given some level of protection status when they are displaced across international borders due to climate change. Nevertheless, this protection is haphazard and signifies a general lack of uniformity at the international level on this issue.

<sup>75</sup> Argentina, Dirección nacional de migraciones, Disposición No. 891/2022. Available at [www.boletinoficial.gob.ar/detalleAviso/primera/262784/20220519](http://www.boletinoficial.gob.ar/detalleAviso/primera/262784/20220519).

<sup>76</sup> Plurinational State of Bolivia, Law No. 370 (2013). Available at [www.refworld.org/docid/55b636204.html](http://www.refworld.org/docid/55b636204.html).

<sup>77</sup> Brazil, Law No. 13.445 of 24 May 2017. Available at [www.refworld.org/es/pdfid/592c6f744.pdf](http://www.refworld.org/es/pdfid/592c6f744.pdf).

<sup>78</sup> Canada, Immigration and Refugee Protection Act of 2001. Available at <https://perma.cc/EYW7M5Ey>.

<sup>79</sup> Margit Ammer et al., “Disaster-related displacement into Europe: judicial practice in Austria and Sweden”, Ludwig Boltzman Institute and Raoul Wallenberg Institute of Human Rights and Humanitarian Law, April 2022. Available at <https://rwi.lu.se/wp-content/uploads/2022/04/ClimMobil-1.pdf>.

<sup>80</sup> Italian Supreme Court of Cassation, ordinance No. 5022/2021 of 12 November, 2020.

<sup>81</sup> Human Rights Committee, *Ioane Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016).

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

## VII. Policy approaches to address climate change displacement

47. There are a number of policies and soft law agreements related to persons displaced across international borders due to climate change. Some of these key policy instruments are set out below.

### A. Cartagena Declaration on Refugees

48. At the Latin American regional level, the Cartagena Declaration on Refugees, adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama in 1984, broadened the refugee definition for Latin America and proposed new approaches to the humanitarian needs of refugees and displaced people in the spirit of solidarity and cooperation. The Cartagena Declaration expands the regional definition of refugee in the Americas to include persons who have fled their countries because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights “or other circumstances that have seriously disturbed the public order”. Thirty years after the adoption of the Cartagena Declaration, in the Brazil Declaration and Plan of Action, parties encouraged new strategies to further enhance opportunities for local integration, resettlement, voluntary repatriation and regional labour mobility programmes, as well as guaranteed rights for refugees and the displaced.

### B. Guiding Principles on Internal Displacement

49. The Guiding Principles on Internal Displacement, developed by the Representative of the Secretary-General on internally displaced persons in 1998, defines internally displaced persons as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid, the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.<sup>84</sup> The Guiding Principles only apply to internally displaced persons, however they provide potentially useful guidance for the treatment of persons displaced across international borders due to climate change.

### C. Global Forum on Migration and Development

50. The Global Forum on Migration and Development was launched in 2007 and is a State-led, informal and non-binding process, which aims to shape the global debate on migration and development. The aim of the Forum is to allow Governments, in partnership with civil society, the private sector, local and regional governments, youth, the United Nations system and other relevant stakeholders to analyse and discuss sensitive issues, create consensus, pose innovative solutions and share policy and practices. In 2022, the Forum Chair chose “The impact of climate change on human mobility: preventive action, humanitarian action and development” as one of the priority areas of work.<sup>85</sup>

### D. United Nations Declaration on the Rights of Indigenous Peoples

51. The United Nations Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in 2007, establishes a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world, and it elaborates on existing human rights standards and fundamental freedoms as they apply to Indigenous Peoples. Article 36 of the Declaration states that Indigenous Peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations

<sup>84</sup> Global Protection Cluster, Global Database on IDP Laws and Policies ([www.globalprotectioncluster.org/old/global-database-on-idp-laws-and-policies/](http://www.globalprotectioncluster.org/old/global-database-on-idp-laws-and-policies/)).

<sup>85</sup> See <https://gfmdivcivilsociety.org/2022-2023-co-chairmanship/>.

and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

## **E. Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change**

52. The Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, resulting from the Nansen Initiative, was a State-led, consultative process designed in 2012 to identify effective practices and build consensus on key principles and elements to address the protection and assistance needs of persons displaced across borders in the context of disasters.<sup>86</sup> The Nansen Initiative identified at least 50 countries that, in recent decades, had received or refrained from returning people in the aftermath of disasters, in particular those caused by tropical storms, flooding, drought, tsunamis and earthquakes.<sup>87</sup> It suggested three priority areas for future efforts, including collecting data and enhancing knowledge, enhancing the use of humanitarian protection measures and strengthening the management of disaster displacement risk in the country of origin.<sup>88</sup>

## **F. Peninsula Principles on Climate Displacement within States**

53. The Peninsula Principles on Climate Displacement within States were developed by a civil society organization, Displacement Solutions, in 2013, in consultation with representatives from 10 countries. The Principles are aimed at providing a comprehensive normative framework, based on principles of international law, human rights obligations and good practice, within which the rights of climate-displaced persons can be addressed. Although the Principles primarily relate to internal displacement, they may have relevance for the treatment of persons displaced across international borders due to climate change.

## **G. 2030 Agenda for Sustainable Development**

54. Two of the key principles of the 2030 Agenda for Sustainable Development, adopted by the General Assembly in 2015, are to leave no one behind and reach those furthest behind first. The Sustainable Development Goals recognize the urgency of climate change; Goal 13 is to take urgent action to combat climate change and its impact. They also recognize the vulnerability of migrants to exploitation and abuse, specifically through the targets related to countering human trafficking, namely, target 5.2, to eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation, target 8.7, to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms, and target 16.2, to end abuse, exploitation, trafficking and all forms of violence against and torture of children.

## **H. Task Force on Displacement**

55. The Task Force on Displacement was established in 2015 at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. In its first phase, the Task Force developed recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change. In its third plan of action, the Task Force set out the aim to develop a technical guide, jointly with the expert group on non-economic losses, on averting, minimizing and addressing non-economic losses in the context of human mobility, including

---

<sup>86</sup> Nansen Initiative, “Agenda for the protection of cross-border displaced persons”.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

the effect on Indigenous or local knowledge, societal identity and cultural heritage, a technical guide on integrating the linkages between human mobility and climate change into relevant national climate change planning processes and a technical guide on access to finance for averting, minimizing and addressing the effects of displacement, in collaboration with the expert group on action and support.<sup>89</sup>

## **I. Migration Governance Framework**

56. In the Migration Governance Framework, of 2015, IOM sought to present, in a consolidated, coherent and comprehensive way, a set of three principles and three objectives which, if respected and fulfilled, would ensure that migration was humane and orderly and benefitted migrants and society.

## **J. Guidance for Protecting People from Disasters and Environmental Change through Planned Relocation**

57. The Guidance for Protecting People from Disasters and Environmental Change through Planned Relocation, developed through a joint initiative of Brookings, the Institute for the Study of International Migration of Georgetown University and UNHCR in 2015, is aimed at providing overarching principles for States and other actors to plan and implement planned relocations to protect people from disasters and environmental change. It includes a number of principles, including the principle that planned relocation should be carried out within a rights-based framework that safeguards both individual and collective civil, political, economic, social and cultural rights of relocated persons and other affected persons throughout all phases of the process. The rights to self-determination, preservation of identity and culture and control of land and resources are important, in particular for Indigenous communities.

## **K. Platform on Disaster Displacement**

58. The Platform on Disaster Displacement was developed to follow on from the work of the Nansen Initiative and to support States and other stakeholders to implement the recommendations of the Nansen Initiative.<sup>90</sup> The Platform promotes measures to address the protection and assistance needs of persons displaced across borders in the context of disasters and the adverse effects of climate change, including by making use of instruments such as humanitarian visas, temporary protection measures and other effective practices that States can use to provide humanitarian protection to cross-border disaster-displaced persons. It also aims to manage displacement risk in the country of origin. The Platform has produced a toolbox for States to use to better prevent and prepare for displacement before a disaster strikes.<sup>91</sup> The Special Rapporteur considers the Platform to be probably the most comprehensive programme currently available to address people displaced by disasters. Nevertheless, it fails to recognize the particular circumstances of persons displaced across international borders due to climate change, with respect to the international community's responsibility to address climate change harm. It continues to blur the boundaries between natural disasters and the effects of climate change and places the onus of responsibility on the affected State to respond to the "disaster". Countries affected by the effects of climate change are mostly those countries that have contributed the least to greenhouse gas emissions. In the Special Rapporteur's view, the Platform appears to perpetuate the unfair burden placed on affected States.

<sup>89</sup> United Nations Framework Convention on Climate Change, Third rolling plan of action of the task force on displacement for 2022–2024. Available at [https://unfccc.int/sites/default/files/resource/Third\\_rolling\\_PoA\\_TFD\\_%202022.pdf](https://unfccc.int/sites/default/files/resource/Third_rolling_PoA_TFD_%202022.pdf).

<sup>90</sup> Platform on Disaster Displacement, "Strategy 2019–2022."

<sup>91</sup> Ibid.

## **L. Global Compact for Safe, Orderly and Regular Migration**

59. The Global Compact for Safe, Orderly and Regular Migration, adopted by the General Assembly in 2018, is a non-legally binding, cooperative framework that builds on the commitments agreed upon by Member States in the New York Declaration for Refugees and Migrants. In paragraph 21 (h) of the Global Compact, Governments committed to cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible. The Global Compact is also aimed at building on existing national and regional practices for admission and stay of an appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin owing to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children and temporary work permits, while adaptation in or return to their country of origin is not possible.

## **M. Global Compact on Refugees**

60. The Global Compact on Refugees, affirmed by the General Assembly in 2018, is a non-legally binding framework developed by UNHCR and aimed at easing pressures on host countries, enhancing refugee self-reliance, expanding access to third-country solutions and supporting conditions in countries of origin for return in safety and dignity. It is aimed at facilitating more predictable and equitable responsibility-sharing, recognizing that a sustainable solution to refugee situations cannot be achieved without international cooperation. It is also aimed at providing a blueprint for Governments, international organizations and other stakeholders to ensure that host communities receive the support that they need and that refugees can lead productive lives. The Global Compact has only limited references to climate change and displacement in the final text. It states that while not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements.

## **N. Words into Action series of guidelines on disaster displacement**

61. The Words into Action series of guidelines on disaster displacement was developed through a partnership of the United Nations Office for Disaster Risk Reduction, the Platform on Disaster Displacement and the Norwegian Refugee Council and launched in 2019. The goal of the guidelines is to explain how Governments can practically implement the Sendai Framework for Disaster Risk Reduction 2015–2030, target E, to substantially increase the number of countries with national and local disaster risk reduction strategies by 2020, and thereby reduce the risk of disaster displacement and related human suffering. According to the guidelines, the first step is to map previous displacement and identify at risk populations, develop disaster risk reduction measures to increase resilience and reduce exposure and consider migration or planned relocation measures. The guidelines use the collective term of “disasters” to include climate change and, like other linked programmes such as the Platform on Disaster Displacement, the guidelines are focused on placing the onus on the affected State to address the disaster and build resilience.

## **O. Guidance note on regular pathways for admission and stay for migrants in situations of vulnerability**

62. The guidance note on regular pathways for admission and stay for migrants in situations of vulnerability was developed by the United Nations Network on Migration, in 2021, and is aimed at responding to the reality of many migrants who lack access to regular migration options but are compelled to leave their countries of origin due to, inter alia, lack of access to rights, separation from families, gender-based violence and inequalities, as well

as disasters, the adverse effects of climate change and environmental degradation. It is aimed at building capacity to analyse the need for, and strengthen the design, implementation, monitoring and review of, pathways for admission and stay for migrants in situations of vulnerability. It considers matters relating to the availability and flexibility of pathways, admission and stay procedures and the resulting conditions and duration of relevant measures. It indicates that, even where not strictly required by international law, extending pathways of admission or stay for compassionate, humanitarian or other considerations can also be done as an exercise of discretion, international cooperation and solidarity.

63. While evolutionary progress is being made in providing policy frameworks for people displaced across international borders, the Special Rapporteur is of the view that it is evident that many of the soft law processes reviewed above are primarily written from a developed country perspective, with a strong reluctance to accept climate change causality, and place climate change within an umbrella definition of “natural hazards” or “natural disasters”. One of the primary soft law processes reviewed in the present report, the Platform on Disaster Displacement, uses “natural hazards” as an all-embracing term.<sup>92</sup> Defining climate change within the context of natural hazards, deliberately and, in the Special Rapporteur’s view, irresponsibly, blurs the boundaries between human-induced climate change and geological disasters. For too long, the denial of climate change and reference to natural hazards or disasters has pervaded many policy instruments at the global and regional levels. The acknowledgement that climate change is a driver of migration, in the guidance note on regular pathways for admission and stay for migrants in situations of vulnerability, is progress. Nevertheless, it is only a guidance note, and it does not provide legal protection for persons displaced across international borders due to climate change.

## **VIII. Normative gaps in the protection of people displaced across international borders due to climate change**

64. While various human rights treaties provide general obligations to protect all people from various human rights violations, the particular circumstances and vulnerabilities of persons displaced across international borders is not well addressed. Most States have ratified the human rights treaties that have relevance to people displaced internationally due to climate change, with some notable exceptions. Nevertheless, the Special Rapporteur is of the view that there is a major omission in the protection of persons displaced across international borders due to climate change. There are far too many instances in which such persons are subject to abuse, exploitation, discrimination and other severe human rights violations. This is particularly the case for women and children. This is due not only to an absence of international instruments to give proper protection to persons displaced across international borders due to climate change, but also to the lack of effective implementation of those instruments that exist and appropriate international cooperation with respect to the policy instruments that apply to such persons. Without appropriate protection, persons displaced across international borders due to climate change continue to be subjected to numerous human rights violations. The Special Rapporteur is of the view that they fall through the cracks, as far as appropriate legal protection is concerned, once they cross international borders. International law does not address critical issues, such as the admission, stay and conditions for return of persons displaced across international borders due to climate change, with some exceptions, including non-refoulement obligations. While a small number of States have national laws or bilateral, regional or subregional agreements that specifically address the admission or temporary stay of foreigners displaced by climate change, the vast majority of countries lack any normative framework.<sup>93</sup> There are simply insufficient pathways for persons displaced across international borders due to climate change to move

<sup>92</sup> Platform on Disaster Displacement, “Key messages for COP 26”, 2021. Available at [https://disasterdisplacement.org/wp-content/uploads/2021/10/19102021\\_PDD\\_key\\_messages\\_for\\_COP26\\_screen\\_compressed-1.pdf](https://disasterdisplacement.org/wp-content/uploads/2021/10/19102021_PDD_key_messages_for_COP26_screen_compressed-1.pdf).

<sup>93</sup> IOM, “Protection of the human rights and fundamental freedoms of migrants and the specific needs of migrants in vulnerable situations”, 2017. Available at [https://www.iom.int/sites/g/files/tmzbd1486/files/our\\_work/ODG/GCM/IOM-Thematic-Paper-Protection-of-Human-Rights-and-Vulnerable-Migrants.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Protection-of-Human-Rights-and-Vulnerable-Migrants.pdf).

regularly across borders, and they are therefore put at significant risk to various human rights violations.<sup>94</sup>

65. Developing new normative arrangements to respect, protect and enforce the rights of persons displaced across international borders due to climate change should not be considered a threat to public order in receiving countries. It is simply a response to a growing problem caused by climate change. The Special Rapporteur is of the view that countries most affected by climate change should not bear the cost of protecting those who are affected and forced to flee and who face violence, exploitation, abuse and other rights violations. The international community has a duty of care to such people.

66. It is well recognized that the United Nations currently lacks a system-wide lead, coordination mechanism or strategy on people displaced across international borders as a consequence of climate change.<sup>95</sup> While temporary humanitarian protection measures are employed by a variety of United Nations agencies, long-term legal protection is lacking. There is a clear responsibility of the international community, established under article 8 of the Paris Agreement, to ensure cooperation and address loss and damage. While the term loss and damage is not defined in the Paris Agreement, it should give rise to expectations that the rights of people displaced by climate change should fall within the umbrella of this term.

67. The tragic growth in the number of children becoming persons displaced across international borders due to climate change demands urgent action and normative protection. In this respect, the United Nations Children's Fund (UNICEF) and IOM have developed the Guiding Principles for Children on the Move in the Context of Climate Change, including a rights-based approach, the best interests of the child, accountability, awareness of and participation in decision-making, family unity, protection, safety and security, access to education, health care and social services, non-discrimination and nationality. The Special Rapporteur is of the view that the Guiding Principles should become normative obligations for all States.

## IX. Conclusions and recommendations

68. **International normative protections should reflect the preambular text of the Paris Agreement, which obliges parties to respect the rights of various rights holders. There is an urgent need to provide a legal regime to protect the rights of persons displaced across international borders due to climate change. Considering that the Convention relating to the Status of Refugees comes close to affording the type of protections that are needed, it would seem logical to establish a new protocol under the Convention to give protection to persons displaced across international borders due to climate change. This would normalize existing informal arrangements that the United Nations High Commissioner for Refugees applies in some circumstances. It would be logical for UNHCR to take up the mantle of administering this new protocol, in collaboration with the Task Force on Displacement, IOM, UNICEF and other United Nations agencies.**

69. **As an interim measure, until such a protocol is developed, all nations should be encouraged to develop national legislation that provides humanitarian visas for persons displaced across international borders due to climate change. Regional human rights bodies should be encouraged to expand their definition of refugees to include such persons.**

70. **Critically, parties to the Paris Agreement should be developing funding arrangements to assist persons displaced across international borders due to climate change to address their vulnerabilities. Ad hoc humanitarian support is not adequate to meet the needs of such people. Funding arrangements could come under developmental work on the loss and damage fund.**

<sup>94</sup> A/77/170.

<sup>95</sup> United Nations Framework Convention on Climate Change, Report of the Task Force on Displacement, 2018. Available at <https://unfccc.int/documents/182429>.

71. **The Special Rapporteur recommends that:**

(a) **The Human Rights Council make a recommendation to the General Assembly to commence negotiations on an optional protocol to the Convention relating to the Status of Refugees to define and give legal protection to persons displaced across international borders due to climate change;**

(b) **UNHCR, IOM, UNICEF and other relevant United Nations agencies collaborate to provide guidance on the development of a new legal protocol as described in subparagraph (a) above;**

(c) **UNHCR, IOM, UNICEF and other relevant United Nations agencies commence consultations with national Governments, civil society organizations and other relevant institutions on the development of a new legal protocol as described in subparagraph (a) above;**

(d) **The Guiding Principles for Children on the Move in the Context of Climate Change should be incorporated into the new legal protocol;**

(e) **Regional organizations be encouraged to expand their legal arrangements to include the legal protection of persons displaced across international borders due to climate change and, in regions where there are no regional organizations, Governments within those regions should collaborate to explore options for developing such arrangements;**

(f) **National Governments be encouraged to develop national legislation providing for humanitarian visas for persons displaced across international borders due to climate change;**

(g) **Parties to the United Nations Framework Convention on Climate Change and the Paris Agreement be encouraged to develop appropriate financial arrangements to give support to persons displaced across international borders due to climate change through funding arrangements developed under the umbrella of the loss and damage fund;**

(h) **OHCHR be encouraged to continue developing education material, technical cooperation and simplified reporting procedures to encourage countries, in particular small island developing States, to accede to all the human rights treaties.**

---



# General Assembly

Distr.: General  
28 July 2023

Original: English

---

## Seventy-eighth session

Item 73 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Promotion and protection of human rights in the context of climate change**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, in accordance with Human Rights Council resolution [48/14](#).

---

\* [A/78/150](#).



**Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry**

**Exploring approaches to enhance climate change legislation, supporting climate change litigation and advancing the principle of intergenerational justice**

*Summary*

In the present report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, reviews current efforts by Governments to include human rights considerations in climate change-related legislation and reflect them in constitutions. He also reviews the application of human rights obligations in climate change litigation and explores the various limitations of litigation owing to substantive and procedural blockages. In the report, he notes the critical role of litigation in placing obligations on Governments, corporations and society as a whole to take decisive action to address climate change and the respective human rights obligations that underpin their corresponding responsibilities. Lastly, he explores the application of the principle of intergenerational equity and how it is evolving into intergenerational justice. The present report is a snapshot of current trends with respect to legislation, litigation and intergenerational justice. It is aimed at providing direction on incorporating human rights considerations into those three elements and is not intended to be a comprehensive review of those elements.

## I. Introduction

1. In recognition of their responsibilities under the United Nations Framework Convention on Climate Change and the Paris Agreement, countries around the world have enacted laws and adopted policies that prescribe national and international responses to climate change. The linkage between taking action to address climate change and respecting, promoting and considering human rights obligations is stipulated in the preamble of the Paris Agreement. Prior to these two treaties, climate change had been considered a common concern for the world when, in 1988, the General Assembly adopted its resolution 43/53, entitled “Protection of global climate for present and future generations of mankind”.

2. There is a growing body of work linking responsibilities on climate change to human rights treaties. Nevertheless, many countries have yet to make the link between climate change and human rights, even though they have clear obligations under international law that must be guaranteed in both of those legal fields. As such, States cannot ignore their human rights responsibilities when addressing climate change; this is of critical importance given the impacts that climate change is having on the rights and freedoms of people across the globe. As the Special Rapporteur stated in his previous thematic report, entitled “Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation” (A/77/226), the world is faced with a global crisis in the name of climate change. Climate change is negatively affecting and violating the rights of individuals, including their rights to life, water and sanitation, health, food, housing, a healthy environment and development, among many others. Furthermore, the climate change has a disproportionate impact on the poor, women and children, persons with disabilities, Indigenous Peoples and other disadvantaged rights holders. The impacts of climate change intersect with other factors, such as race, gender, age and socioeconomic status.

3. As the impacts of climate change on the rights of individuals continue to intensify, a rise in community frustration at the lack of urgency of Governments and corporations to take action to address climate change is being witnessed, including through various forms of public protest. In response, an increase in suppression of public dissent by Governments is also being observed. This has led to the arrest, imprisonment and extrajudicial killing of environmental rights defenders in various parts of the world, in developed and developing countries alike. This crackdown on dissent tends to create further frustration and escalate expressions of dissent. Article 19 of the International Covenant on Civil and Political Rights clearly states that people have the right to freedom of expression. This right must be respected.

4. In preparing the present report, the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, held extensive consultations online and in-person with Governments, United Nations entities and civil society organizations. These consultations were complemented by a call for inputs, to which the Special Rapporteur received more than 60 submissions. The Special Rapporteur would like to thank all those who made submissions or participated in the consultations.

## II. Considerations with regard to climate change and human rights in national constitutions

5. In many countries, the constitution outlines the structure and powers of the Government and provides the basis for national laws. Some constitutions have evolved quite rapidly and integrated new international and national legal norms. In

recent times, a number of countries have incorporated the right to a healthy environment in their constitutions. More than 150 countries have taken action on environmental constitutionalism. In addition, the following 11 jurisdictions have included a dedicated constitutional provision on climate, or “climate clauses”: Algeria, Bolivia (Plurinational State of), Côte d’Ivoire, Cuba, Dominican Republic, Ecuador, Thailand, Tunisia, Venezuela (Bolivarian Republic of), Viet Nam and Zambia.<sup>1</sup> In the Constitution of Zambia, for example, it is stated that: “The State shall, in the utilisation of natural resources and management of the environment ... establish and implement mechanisms that address climate change”.<sup>2</sup>

6. The Constitution of Zambia also establishes a number of human rights obligations, including the protection of young persons from exploitation, the right to life and the protection of the right to personal liberty. The Constitution of Cuba stipulates that the Government of Cuba will respond to climate change, given the threat that it poses to humans, while recognizing, among other things, the common but differentiated responsibilities principle.<sup>3</sup> It is further stated that all persons are equal before the law, receive the same protection and treatment from the authorities and enjoy the same rights, freedoms and opportunities, without discrimination of any kind on grounds of sex, gender, sexual orientation, gender identity, age, ethnic origin, skin colour, religious belief, disability, national or regional origin, or any other personal condition or circumstance that implies a distinction detrimental to human dignity.

7. In Latin America, some 45 per cent of countries and, in Africa, about 36 per cent of countries have a climate clause, while, in Europe and North America, there are none.<sup>4</sup> Nevertheless, no constitution directly recognizes the right to a stable climate per se or fully reflects the temperature targets of the Paris Agreement or reports of the Intergovernmental Panel on Climate Change.<sup>5</sup> While there are emerging trends in constitutional reform to integrate climate change considerations, the link between climate change and human rights obligations appears to be lacking in many countries. All countries, notably developed countries, need to review and amend their constitutions to encompass rights-based approaches to climate change and the protection of individuals against the impacts of climate change.

### III. Human rights in climate change legislation

8. Making the link between climate change and human rights considerations in domestic legislation is a relatively new phenomenon. A number of countries refer to human rights or the special considerations of rights holders in their legislation, although the coverage is not widespread or systematic. Many countries have indicated that their climate change legislation is for the purposes of meeting their obligations under the Paris Agreement. This connection is made in the National Climate Change Act, 2021 of Uganda, for example.<sup>6</sup> By referring to the Paris Agreement, the linkage between climate change and human rights is strengthened, thereby allowing for better implementation of human rights obligations in the context of climate change.

<sup>1</sup> Karla Martínez Toral and others, “The 11 nations heralding a new dawn of climate constitutionalism”, Grantham Research Institute on Climate Change and the Environment, 2 December 2021. Available at [www.lse.ac.uk/granthaminstitute/news/the-11-nations-heralding-a-new-dawn-of-climate-constitutionalism/](http://www.lse.ac.uk/granthaminstitute/news/the-11-nations-heralding-a-new-dawn-of-climate-constitutionalism/).

<sup>2</sup> See [https://climate-laws.org/documents/constitution-of-zambia\\_7667](https://climate-laws.org/documents/constitution-of-zambia_7667).

<sup>3</sup> Available at <http://cuba.cu/gobierno/NuevaConstitucion.pdf> (in Spanish).

<sup>4</sup> Karla Martínez Toral and others, “The 11 nations”.

<sup>5</sup> Ibid.

<sup>6</sup> Available at [https://cdn.climatepolicyradar.org/navigator/UGA/2021/national-climate-change-act-2021\\_54d82dea4d1d85dca314a17cba045210.pdf](https://cdn.climatepolicyradar.org/navigator/UGA/2021/national-climate-change-act-2021_54d82dea4d1d85dca314a17cba045210.pdf).

9. Much of the climate change legislation drafted by countries is focused on the implementation of nationally determined contributions. In this regard, a large percentage of the legislation reviewed is based on mitigation outcomes. Some countries have gone further by establishing systems of carbon markets. For example through its Climate Change and Carbon Market Initiatives Act, 2022,<sup>7</sup> the Bahamas has created a carbon market, while India has introduced a domestic carbon market through its Energy Conservation (Amendment) Act, 2022.<sup>8</sup>

10. According to the Grantham Research Institute on Climate Change and the Environment, at least 27 countries have passed domestic laws enshrining economy-wide net-zero commitments,<sup>9</sup> most of them on the basis of a 2050 target. The Climate Change Act of Nigeria, for example, contains an overarching objective of achieving net-zero emissions between 2050 and 2070.<sup>10</sup> Of particular note, is the Federal Act of Switzerland on climate protection goals, innovation and strengthening energy security,<sup>11</sup> by which all companies are required to become net zero in terms of direct and indirect emissions by 2050. Exceptions to the 2050 targets include the Federal Climate Change Act, 2019 of Germany, in which a net-zero target date of 2045 is set,<sup>12</sup> and the Climate Change Act, 2022 of Finland, establishing a “carbon neutral” target date of 2035.<sup>13</sup> Each of these net-zero or carbon-neutral targets are, at best, aspirational, as no Government currently in office will be in power in 2050, 2045 or 2035 and thus will not have the opportunity to enforce or witness the achievement of those targets. Such aspirational target-setting has already been called into question. For instance, the Government of Australia has described the target set by the previous Government as a “fantasy”.<sup>14</sup>

11. While setting clear mitigation outcomes relating to a 1.5 degree Celsius target, is important in order to achieve overall human rights benefits by reducing the impacts of climate change, very few specifics have been provided on how mitigation technologies may have an impact on human rights and how such impacts would be addressed. The impact of mitigation technologies has been noted by the Special Rapporteur in his previous report to the General Assembly (see [A/77/226](#)). One exception to this lack of action is Decree No. 9,571/2018 of Brazil, establishing national guidelines on business and human rights for medium-sized and large companies, including multinational companies conducting activities in Brazil.<sup>15</sup> The guidelines create corporate responsibility for protecting human rights in business activities and a responsibility to reduce greenhouse gas emissions. The European Union has proposed a directive on framing business decisions in terms of human rights, climate and environmental impact, as well as in terms of the company’s

<sup>7</sup> Available at [www.ilo.org/dyn/natlex/docs/ELECTRONIC/113259/141905/F-1761943569/BHS113259.pdf](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/113259/141905/F-1761943569/BHS113259.pdf).

<sup>8</sup> Available at <https://beeindia.gov.in/sites/default/files/2023-05/EC%20Act%2C%202022.pdf>.

<sup>9</sup> Tiffanie Chan and Catherine Higham, “Evolving regulation of companies in climate change framework laws”, Grantham Research Institute on Climate Change and the Environment, 21 February 2023. Available at [www.lse.ac.uk/granthaminstitute/news/evolving-regulation-of-companies-in-climate-change-framework-laws/](http://www.lse.ac.uk/granthaminstitute/news/evolving-regulation-of-companies-in-climate-change-framework-laws/).

<sup>10</sup> Available at [https://cdn.climatepolicyradar.org/navigator/NGA/2021/explanatory-memorandum-on-nigeria-s-climate-change-act\\_6c83884695bbf609fd795a49d196e89.pdf](https://cdn.climatepolicyradar.org/navigator/NGA/2021/explanatory-memorandum-on-nigeria-s-climate-change-act_6c83884695bbf609fd795a49d196e89.pdf).

<sup>11</sup> Available at [www.fedlex.admin.ch/eli/fga/2022/2403/fr](http://www.fedlex.admin.ch/eli/fga/2022/2403/fr) (in French).

<sup>12</sup> Available at [www.gesetze-im-internet.de/englisch\\_ksg/englisch\\_ksg.html](http://www.gesetze-im-internet.de/englisch_ksg/englisch_ksg.html).

<sup>13</sup> Available at <https://ym.fi/en/climate-change-legislation>.

<sup>14</sup> Giles Parkinson, “Bowen unveils sector by sector decarbonisation plan, but says no to 2035 net zero target”, Renew Economy, 18 July 2023. Available at <https://reneweconomy.com.au/bowen-unveils-sector-by-sector-decarbonisation-plan-but-says-no-to-2035-net-zero-target/>.

<sup>15</sup> Available at [www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2018/decreto/D9571.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/decreto/D9571.htm) (in Portuguese).

resilience in the longer term.<sup>16</sup> The directive is aimed at fostering the contribution of businesses to ensure respect for human rights and the environment in their own operations and through their value chains.

12. There appears to be less of a focus on adaptation, capacity-building and education needs and even less on procedures for addressing loss and damage. Each of these thematic issues should also incorporate a human rights focus. In particular, gender considerations and the rights of young people and children, Indigenous Peoples, persons with disabilities and other rights holders mentioned in the preamble of the Paris Agreement are not well covered in domestic legislation. An exception to this is the Climate Change and Carbon Market Initiatives Act of the Bahamas, in which the preamble of the Paris Agreement has been explicitly drawn from in order to reference particular rights holders.<sup>17</sup>

13. Very few countries have considered the issue of climate change displacement. Fiji is an exception; under its Climate Change Act of 2021<sup>18</sup> a task force on the relocation and displacement of communities vulnerable to the impacts of climate change has been established so as to respond to people being displaced by climate change events. The framework law No. 98/2021, on climate, of Portugal and the Climate Change (Management) Act 2015 of Papua New Guinea both include references to concerns about climate change-induced migration.<sup>19</sup>

14. The right to information on climate change is an important element in any consideration of the rights-based application of domestic legislation. In Viet Nam, the Law on Environmental Protection of 2014 states, in article 46, that the community “shall be vested with the right to provide and request the provision of information about climate change issues, exclusive of information specified in the list of state secret information”.<sup>20</sup>

15. A significant omission in most climate change legislation is any reference to loss and damage and how it can be addressed, although there are a few exceptions. In Azerbaijan, pursuant to article 6 of a 2001 law on protection of atmospheric air all legal entities and physical persons in Azerbaijan have the same right to compensation for damage caused to them as a result of air pollution.<sup>21</sup> While it is not directly related to climate change, most air pollution is caused by the burning of fossil fuels. In the Climate Change Act of Fiji it is specified that, as part of their duty to act with reasonable care and diligence under the Companies Act, directors must consider and evaluate climate change risks and opportunities to the extent that they are foreseeable and intersect with the interests of the company.

16. There are limited references to obligations to protect the human rights of various rights holders in climate change legislation, with some exceptions. In the National Climate Change Act 2021 of Uganda it is stated that gender and human rights issues must be taken into account; in Supreme Decree No. 003-2022-MINAM of Peru, on declaring the climate emergency as a matter of national interest, human rights and climate justice are identified as priority areas; the framework law No. 98/2021, on

<sup>16</sup> European Commission, proposal for a directive of the European Parliament and of the Council on corporate sustainability due diligence and amending Directive (EU) 2019/1937, document COM(2022) 71 final, 23 February 2022. Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

<sup>17</sup> Available at [https://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2022/2022-0015/ClimateChangeandCarbonMarketInitiativesAct2022\\_1.pdf](https://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/2022/2022-0015/ClimateChangeandCarbonMarketInitiativesAct2022_1.pdf).

<sup>18</sup> Available at <https://laws.gov.fj/Acts/DisplayAct/3290>.

<sup>19</sup> Submission by the Grantham Research Institute on Climate Change and the Environment.

<sup>20</sup> See [https://climate-laws.org/documents/law-on-environmental-protection-no-55-2014-qh13\\_cca6?q=%22human+rights%22&c=Legislation&o=10](https://climate-laws.org/documents/law-on-environmental-protection-no-55-2014-qh13_cca6?q=%22human+rights%22&c=Legislation&o=10).

<sup>21</sup> Submission by the Government of Azerbaijan.

climate, of Portugal contains a core objective to guarantee climate justice, respect for human rights, equality and collective rights over commons;<sup>22</sup> and Act No. 2019-40 of Benin, amending the Constitution, contains provisions devoted to the rights and duties of human beings.<sup>23</sup>

17. Few national climate change laws make reference to the rights of Indigenous Peoples or adherence to obligations under the United Nations Declaration on the Rights of Indigenous Peoples. One exception is the new Climate Change Act, introduced by Finland, establishing the Sámi Climate Council, which supports the preparation of climate change policy plans and identifies key issues with regard to the rights of the Sámi people. In the United States of America, the President has issued an executive order aimed at advancing environmental justice by, inter alia, addressing climate change and its effects, including in areas within the boundaries of “Tribal Nations”.<sup>24</sup> The inclusion of Indigenous Peoples is noteworthy given that the United States had originally opposed the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and has now lent its tacit support to the Declaration, with a number of interpretative caveats.

18. Civil society organizations are working on a climate change bill in Poland that will include the right to a healthy environment and the right to safe climate.<sup>25</sup> The Special Rapporteur highly commends this initiative as an important example of engagement by civil society.

19. Overall, the incorporation of human rights obligations in climate change legislation throughout the world appears to be a relatively recent development. For the majority of countries, however, many factors appear to be missing. The Special Rapporteur is proposing guidance for countries on incorporating human rights obligations in climate change legislation. Countries should incorporate substantive and procedural elements in the development of climate change legislation and are therefore encouraged to revise their climate change legislation so as to incorporate this guidance.

#### IV. Climate change litigation

20. Consideration of climate change litigation is important, as it is a means of analysing how Governments, corporations and members of the public are implementing obligations with respect to climate change and human rights. Climate change litigation can potentially drive legislative and policy changes in mitigation, adaptation, finance, and loss and damage efforts and positively influence future responses to climate change. Climate change litigation is expanding rapidly around the world. Courts are now starting to play a key role in defining appropriate climate change governance and thus directing regulatory decision-making, corporate behaviour and public understanding of the climate crisis. Domestic and transnational litigation has advanced the goals of the global climate framework, successfully raised awareness of the devastating effects of climate change and enhanced the visibility of marginalized groups.<sup>26</sup> The following section of the present report is focused

<sup>22</sup> Submission by the Grantham Research Institute on Climate Change and the Environment.

<sup>23</sup> Submission by the Government of Benin.

<sup>24</sup> United States of America, Executive Order on Revitalizing Our Nation’s Commitment to Environmental Justice for All, 21 April 2023. Available at [www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/](https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/21/executive-order-on-revitalizing-our-nations-commitment-to-environmental-justice-for-all/).

<sup>25</sup> Submission by a civil society organization in Poland.

<sup>26</sup> Maria Antonia Tigre, Natalia Urzola and Alexandra Goodman, “Climate litigation in Latin America: is the region quietly leading a revolution?”, *Journal of Human Rights and the Environment*, vol. 14, No. 1 (March 2023), pp. 67–93, p. 68.

primarily on how human rights obligations have been incorporated into climate change litigation. The Special Rapporteur also reviews the barriers to litigation and explores future trends.

21. In 2021, 266 new climate litigation cases were filed. The United States continues to be the country with the highest number of documented climate litigation cases, with 1,590 in total, followed by Australia, where 130 cases have been identified, and the United Kingdom of Great Britain and Northern Ireland, with 102. In addition, 67 cases have been filed before the Court of Justice of the European Union. Relatively high numbers of cases have also been documented in Germany (59), Brazil (40) and Canada (35).<sup>27</sup>

22. Climate change litigation is starting to influence corporate behaviour and shareholder responses to litigation. For instance, in a working paper of the London School of Economics and Political Science over 100 climate-related lawsuits from between 2005 and 2021 were examined. It was found that the filing of a climate-based litigation claim or corresponding unfavourable court decision reduced the market capitalization of the defendant company by about 0.41 per cent, on average. The study found that the mere filing of a climate-related lawsuit could decrease a company's market valuation by 0.35 per cent, while an actual court decision finding of liability on the part of the company reduced the defendant company's market capitalization by 0.99 per cent.<sup>28</sup> The Secretary-General has suggested that litigation is important to challenge "climate-wrecking corporations" such as fossil-fuel producers.<sup>29</sup>

23. The United Nations Environment Programme indicates that the climate cases that have been brought to date generally fall into one or more of the following six categories: (a) climate rights; (b) domestic enforcement; (c) keeping fossil fuels in the ground; (d) corporate liability and responsibility; (e) failure to adapt and the impacts of adaptation; and (f) climate disclosures and "greenwashing". The Global Climate Change Litigation Database lists cases under the following two categories: (a) "suits against Governments", which encompasses lawsuits on issues such as just transition, energy and power, environmental crimes, trade and investment, greenhouse gas emissions reduction and trading, access to information, environmental assessment and permitting, human rights, failure to adapt, protecting biodiversity and ecosystems, public assembly, and public trust; and (b) "suits against corporations, individuals", which involves lawsuits against corporations, protesters and others.<sup>30</sup> The evolution of climate change litigation may be considered as occurring in "three waves", the first wave being cases brought under administrative tort law, the second under human rights law and the third under commercial law, generating over 2,000 pro-climate cases in more than 40 countries and in nine international tribunals since 1986.<sup>31</sup>

<sup>27</sup> Ibid.

<sup>28</sup> Misato Sato and others, "Impacts of climate litigation on firm value", (2023) Centre for Climate Change Economics and Policy Working Paper No. 421/Grantham Research Institute on Climate Change and the Environment Working Paper No. 397 (London, London School of Economics and Political Science, 2023). Available at [www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/05/working-paper-397\\_-Sato-Gostlow-Higham-Setzer-Venmans.pdf](http://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/05/working-paper-397_-Sato-Gostlow-Higham-Setzer-Venmans.pdf).

<sup>29</sup> Jamey Keaten, "UN chief slams 'climate-wrecking' firms at human rights body", AP News, 27 February 2023. Available at <https://apnews.com/article/russia-ukraine-politics-new-york-city-climate-and-environment-antonio-guterres-cae595bc528caad4fa8b7da6fe3796f4>.

<sup>30</sup> Sabin Center for Climate Change Law, Global Climate Change Litigation database. Available at <http://climatecasechart.com/non-us-climate-change-litigation/>.

<sup>31</sup> Lauren Croft, "Many clouds remain' in climate litigation cases", *Lawyers Weekly*, 14 April 2023, Available at [www.lawyersweekly.com.au/biglaw/37101-many-clouds-remain-in-climate-litigation-cases](http://www.lawyersweekly.com.au/biglaw/37101-many-clouds-remain-in-climate-litigation-cases).

## Human rights invoked in climate change litigation

24. The consideration of human rights violations in climate change litigation is a growing trend, albeit a relatively nascent one. The Sabin Center lists over 125 climate change cases that are linked to human rights issues.<sup>32</sup> What follows is a selection of these cases for the purpose of highlighting the growing body of jurisprudence with respect to human rights and climate change and the procedural difficulties that litigants face in taking their concerns to the courts. The human rights at stake in this selection of cases include the rights to life, freedom, dignity, property, safe drinking water, food, health and an adequate standard of living (energy).

25. In 2015, 21 individual plaintiffs, all aged 19 years and under, filed a lawsuit, *Juliana v. the United States of America*, in the federal district court of the District of Oregon against the United States, the President and various federal officials and agencies.<sup>33</sup> The plaintiffs alleged that the “nation’s climate system” was critical to their rights to life, liberty and property and that the defendants had violated their substantive due process rights by allowing fossil-fuel production, consumption and combustion at “dangerous levels”.<sup>34</sup> The case has gone through numerous judicial processes and appeals and, at the time of writing the present report, had not been resolved. The case also highlights the extensive procedural blockages (discussed later in the present report) that respondents can leverage to deny access to justice by complainants who allege that their human rights have been violated. In the *Leghari v. Federation of Pakistan* case of 2015, Ashar Leghari, a Pakistan farmer sued the Federal Government of Pakistan, claiming that it should pursue climate mitigation or adaptation efforts and alleging that the Government’s failure to meet its climate change adaptation targets had resulted in immediate impacts on the water, food and energy security of Pakistan. Such impacts offended his fundamental right to life. The case is notable for the fact that the Lahore High Court, in its final order, nominated “climate justice” as the successor to “environmental justice” and was based on a human-centred approach and noted that “water justice” as a human right to access clean water and a subconcept of climate justice.<sup>35</sup> As a consequence, the Court ordered the establishment of the Climate Change Commission. Also in 2015, in *Urgenda Foundation v. State of the Netherlands*, a Dutch environmental group, the Urgenda Foundation, and 900 Dutch citizens sued the Government of the Kingdom of the Netherlands, seeking for it to do more to prevent global climate change. The court found in favour of the plaintiffs citing, inter alia, principles under the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights), the “no harm” principle of international law, the doctrine of hazardous negligence, the principle of fairness and the precautionary principle.<sup>36</sup>

26. In 2016, in China, the environmental non-governmental organization (NGO), the All-China Environment Federation brought a case against Dzhou Jinghua Group Zhenhua Decoration Glass Co. Ltd. The Federation claimed that Zhenhua should pay compensation for damage to public environmental interests caused by its excessive emissions of air pollutants. The court found for the plaintiff and ordered the company

<sup>32</sup> See <http://climatecasechart.com/non-us-case-category/human-rights/>.

<sup>33</sup> United States District Court, District of Oregon, *Juliana et al v. the United States of America et al.*, Case No. 6:15-cv-01517-TC, complaint, 12 August 2015. Available at <https://static1.squarespace.com/static/571d109b04426270152febe0/t/57a35ac5ebbd1ac03847eece/1470323398409/YouthAmendedComplaintAgainstUS.pdf>.

<sup>34</sup> See <http://climatecasechart.com/case/juliana-v-united-states/>.

<sup>35</sup> See <http://climatecasechart.com/non-us-case/ashgar-leghari-v-federation-of-pakistan/>.

<sup>36</sup> See <http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>.

to pay compensation.<sup>37</sup> While it was not directly related to climate change, it could be considered that the right to a healthy environment was upheld by the court. Nevertheless, it is contended that the majority of climate change litigation cases in China target companies that are mostly carbon emitters. However, instead of addressing climate change-related concerns per se, these cases are contract-based civil disputes and the plaintiffs are companies rather than individuals or NGOs.<sup>38</sup>

27. In 2018, in *Future Generations v. Ministry of the Environment and Sustainable Development and Others*, the Supreme Court of Colombia ruled in favour of a group of 25 children and young people, recognizing that their fundamental rights to life, health, a minimum standard of living, freedom and human dignity are substantially linked to and determined by the environment and the ecosystem.<sup>39</sup>

28. In 2019, a group of eight Australian nationals, all of them Torres Strait Islanders, and six of their children submitted a complaint against the Government of Australia to the Human Rights Committee. In *Billy et al. v. Australia*, the Torres Strait Islanders alleged that changes in weather patterns have direct harmful consequences on their livelihoods, their culture and their traditional ways of life. In 2020, the Government of Australia asked the Committee to dismiss the petition on the ground of inadmissibility. This request was rejected, and the Human Rights Committee found that the failure of the Government of Australia to adequately protect the Indigenous Torres Strait Islanders against the adverse impacts of climate change violated their rights to enjoy their culture and be free of arbitrary interferences with their private lives, their family and home. The Committee requested the Government of Australia to provide adequate compensation to the members of the Indigenous community for the harm suffered, engage in meaningful consultations with their communities to assess their needs and take measures to continue to secure the communities' safe existence on their respective islands.<sup>40</sup> In 2019, in *Milieudefensie et al. v. Royal Dutch Shell Plc*, the NGO Milieudefensie/Friends of the Earth Netherlands and its co-plaintiffs served Royal Dutch Shell a court summons alleging that Shell's contributions to climate change violated its duty of care under Dutch law and its human rights obligations. In its findings, the Hague District Court ordered Shell to reduce its emissions by a net 45 per cent from emissions from its own operations and those from the use of the oil it produces. The Court made its decision provisionally enforceable, meaning that Shell would be required to meet its reduction obligations even as the case is being appealed. During the case, the plaintiffs had argued that, stemming from this duty of care, Shell had an obligation to prevent dangerous climate change through its policies, and the Court applied the duty of care to the company's policies, emissions, the consequences of its emissions and its human rights and international and regional legal obligations.<sup>41</sup>

29. In 2020, a group of German young people filed a legal challenge in the Federal Constitutional Court against the Federal Climate Change Act of Germany, arguing that the target contained in the Act of reducing greenhouse gas emissions by 55 per cent from 1990 levels by 2030 was insufficient. The complainants alleged that the Act therefore violated their human rights, as protected under the Basic Law of Germany. The Court notably found that the legislature had not proportionally distributed the budget between current and future generations, noting that "one generation must not

<sup>37</sup> Yue Zhao, Shuang Lyu and Zhu Wang, "Prospects for climate change litigation in China", *Transnational Environmental Law*, vol. 8, No. 2 (July 2019), pp. 349–377.

<sup>38</sup> *Ibid.*

<sup>39</sup> Supreme Court of Colombia, *Future Generations v. Ministry of the Environment and Sustainable Development and others*, STC No. 4360-2018, judgment, 5 April 2018. See <http://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>.

<sup>40</sup> CCPR/C/135/D/3624/2019.

<sup>41</sup> See <http://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>.

be allowed to consume large portions of the [carbon dioxide emissions] CO<sub>2</sub> budget while bearing a relatively minor share of the reduction effort, if this would involve leaving subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom”.<sup>42</sup>

30. In 2022, the Federal Supreme Court of Brazil issued a ruling in the case *PSB et al. v. Brazil* brought by certain political parties, alleging that the Brazilian Federal Administration had not taken appropriate measures to ensure the allocation and use of funds from the Brazilian Climate Change Fund. By a majority, the Court found in the plaintiffs’ favour and ruled that the Paris Agreement was a human rights treaty, becoming the first court in the world to accord such status to the Paris Agreement, thereby setting an important precedent for Brazil and other countries.<sup>43</sup>

31. It can be seen from the examples provided above that the rise in climate change litigation associated with human rights violations has been primarily focused on the actions of Governments (or lack thereof), although some more recent cases have been brought against corporations. More attention is also being turned to financial institutions and their role in underwriting financing for the fossil-fuel industry.

## V. Barriers to climate change litigation

32. While climate change litigation is seen by many to advance action on climate change and address human rights violations, many barriers exist to accessing the courts in various parts of the world. From a legal standpoint, barriers can either be procedural (e.g. lack of standing to file a complaint) or material (e.g. the absence of cogent domestic norms on climate change).<sup>44</sup> Some of these procedural and material barriers are explored below. A lack of access to judicial processes denies individuals their right of redress against actions taken by Governments or corporations. It denies them the right to judicial remedy enshrined in the International Covenant on Civil and Political Rights.

### A. Standing

33. The ability of an individual or a group to have the right or capacity to bring an action or to appear in court, a concept known as standing, or *locus standi*, often constitutes a challenge in a number of jurisdictions and represents a significant barrier to litigation. Courts often require there to be a direct connection between the plaintiff and the harm suffered, thereby making it difficult for individuals or communities to demonstrate eligibility to bring a lawsuit. In Japan, for instance, environmental NGOs are not granted the right to initiate legal proceedings.<sup>45</sup> In Namibia, legal standing is limited to individuals with a “direct and substantial interest” in a matter.<sup>46</sup> In the General Court of the European Union, applicants must be “distinctively concerned”.<sup>47</sup> Only a quarter of countries guarantee the right of the child to be heard in legal proceedings.<sup>48</sup> In contrast, article 52 of the Constitution of Portugal provides for the

<sup>42</sup> See <http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/>.

<sup>43</sup> Federal Supreme Court of Brazil, *PSB et al. v. Brazil*, Case No. ADFP 708, Judgment, 4 July 2022. Available at [www.escri-net.org/sites/default/files/caselaw/final\\_judgement\\_portuguese.pdf](http://www.escri-net.org/sites/default/files/caselaw/final_judgement_portuguese.pdf) (in Portuguese).

<sup>44</sup> Submission by the Climate Change Law Specialist Group, World Commission on Environmental Law of the International Union for the Conservation of Nature and Natural Resources.

<sup>45</sup> Submission by the Kiko Network.

<sup>46</sup> Vanessa Boesak and Camelot Brinkman, “The growing tide of ESG litigation: what’s in store for Namibia?” *ENS Africa*, 1 June 2023.

<sup>47</sup> Submission by Gred Winter.

<sup>48</sup> Submission by Child Rights International Network.

right of *actio popularis*, or public action, recognizing that some damages (including environmental damages) are so diffuse that any person should have the right to request a judge to check the legality and the merits of the case.<sup>49</sup>

## B. Procedural delays and hinderances

34. Procedural delays and hinderances often stall litigation. Large corporations and powerful economic sectors often attempt to hinder or delay legal proceedings by investing significant resources in lobbying, political influence and legal challenges.<sup>50</sup> These tactics can be used by respondents in the hope that the plaintiff will give up or will have exhausted the funds to support the case. For instance, *Ali v. Federation of Pakistan* is a case that has been pending before the Supreme Court of Pakistan since 2016. In this case, a young girl filed a public interest petition seeking an injunction against the development of the Thar coalfield and coal-fired power plants.<sup>51</sup> Ali maintained that exploiting the coalfield would further destabilize the climate system and infringe citizens' constitutional rights to life, liberty, dignity, information, equal protection before the law, among others.

## C. High costs of litigation

35. The costs of legal representation, expert witnesses, research and evidence-gathering, and a lack of access to or the absence of legal aid, can impede individuals, the poor or marginalized communities from pursuing legal action. High court fees may also represent a significant barrier; bringing a case in the United States, for example, can be very expensive. In many countries, the lack of access to legal aid is a significant barrier. In the global South, litigants may be barred from meeting participation requirements if they do not have a bank account or a tax declaration.<sup>52</sup> In some countries, such as Switzerland, there is a lack of a pro bono culture, making it difficult for people to gain access to legal support.<sup>53</sup>

36. Furthermore, defendants may resort to procedural delays, such as motions, injunctions, extensions to the commencement date and other procedurally onerous processes (in particular, the expensive and resource-intensive discovery or disclosure process) to impose heavy burdens on activists and civil society organizations which, in turn, creates higher costs for proceedings. This appears to be the case in *Suncor Energy (USA) Inc., et al. v. Board of County Commissioners of Boulder, et al.*, as the respondents sought leave for the suit to be removed to federal court on the ground that their state-law claims should be recharacterized as claims arising under federal common law.<sup>54</sup> This type of "procedural jurisdiction jumping" appears to be a common tactic, in particular in the United States.

37. It has been noted that some courts impose very high limits on liability, meaning that litigants may fear bringing a case for fear of high costs being awarded against them.<sup>55</sup>

<sup>49</sup> Portugal, Constitution, seventh revision (2005).

<sup>50</sup> Submission by the climate justice working group of the Latin American Climate Lawyers Initiative for Mobilizing Action, or LACLIMA.

<sup>51</sup> See <http://climatecasechart.com/non-us-case/ali-v-federation-of-pakistan-2/>.

<sup>52</sup> Submission by HEKS/EPER.

<sup>53</sup> Ibid.

<sup>54</sup> Supreme Court of the United States of America, *Suncor Energy (USA) Inc., et al. v. Board of County Commissioners of Boulder, et al.*, No. 21-150.

<sup>55</sup> Submission by Child Rights International Network.

## D. Burden of proof and causal link

38. Climate change litigation relies on scientific evidence, which can be complex and technical, thereby posing difficulties in terms of making it accessible and understandable to the courts. Litigants face the challenge of providing strong evidence to demonstrate harm, defendant responsibility and the causal link between actions and impacts, in particular considering the long-term and diffuse nature of climate change.<sup>56</sup> In *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, the case was rejected by the Swiss courts because it was argued that the applicants' rights had not been individually and sufficiently affected, as they were not the only ones being affected by climate change.<sup>57</sup>

## E. Language barriers

39. In testimonies received by the Special Rapporteur a number of Indigenous Peoples' groups expressed concern that they were not able to gain access to courts in a language that they understood. In general, courts use complex legal language and proceedings are often conducted in colonial languages. This makes it difficult for Indigenous Peoples to engage in the court system. The same is true for linguistic minorities or people who have not been educated in colonial languages. In many cases, the courts are unable to take testimonies in languages that are not common to the court system. There are related aspects of intersectionality that limit access to courts. In Brazil, for example, certain regions are more vulnerable to the impacts of climate change and yet those regions are poorly represented in climate change litigation cases.<sup>58</sup>

## F. Fear of counter claims

40. Another limitation with regard to access to justice is the fear of counter claims. Such counter claims often materialize as strategic lawsuits against public participation, which generally refers to litigation brought by a corporation against private individuals or NGOs on a substantive issue of some political interest or social significance. The aim of this type of litigation is to shut down critical speech by intimidating critics into silence and draining their resources. Strategic lawsuits against public participation can also have personal and collective consequences, since they can deter organizations from carrying out their human rights-related work. Such lawsuits are often filed after defenders have expressed criticism of business actors by publishing a report, participating in an event or interview, launching a campaign, organizing a demonstration or posting on social media. Strategic lawsuits against public participation can have a "chilling effect" on the exercise of freedom of expression if others are afraid to speak out for fear of being sued. Such lawsuits also put significant pressure on public resources and cause judicial systems to waste time on superfluous legal processes. Companies use these strategic lawsuits to target a wide range of dissenting voices in order to suppress criticism. In many instances, the defendants are Indigenous leaders or community members protecting their lands and territories from large-scale projects, such as mining or oil pipelines, or even journalists covering the harmful activities of companies. Strategic lawsuits against

---

<sup>56</sup> Submission by Group Development Pakistan.

<sup>57</sup> Submission by World's Youth for Climate Justice.

<sup>58</sup> Submission by the climate justice working group of the Latin American Climate Lawyers Initiative for Mobilizing Action, or LACLIMA.

public participation generally include exorbitant claims for damages and allegations designed to smear, harass and overwhelm the campaigners.<sup>59</sup>

41. In April 2022, the European Commission unveiled a draft directive that would require States members of the European Union to put protections in place to guard against strategic lawsuits against public participation. The draft directive includes measures to allow defendants to ask for such lawsuits to be thrown out of court at an early stage, sanction those who engage in the use of strategic lawsuits against public participation and minimize the damage caused to lawsuit victims.<sup>60</sup> The Special Rapporteur highly commends the European Commission for its action on these types of lawsuits. He also takes notes of and supports the recommendations made by the Working Group on the issue of human rights and transnational corporations and other business enterprises in its report on guidance on ensuring respect for human rights defenders (A/HRC/47/39/Add.2).

## G. Judicial biases

42. Issues around judicial biases come in many forms. For example, concerns have been expressed to the Special Rapporteur that judges in Japan tend towards showing deference to the Government, rather than representing the public interest. Furthermore, there appears to be a regular rotation of judges and prosecutors who represent the Government in administrative litigation cases.<sup>61</sup> In Indonesia, it is claimed that the judiciary is reluctant to engage with human rights-related arguments. The judiciary in such cases claim that these issues are political, not legal.<sup>62</sup> Judicial biases may be derived from economic and political questions that adversely affect a country's litigation culture and undermine the effectiveness of access to climate change justice.<sup>63</sup> Authoritarian regimes may also create judicial biases, making it difficult for people to pursue climate change justice.<sup>64</sup> Furthermore, the fact that judges are elected in some jurisdictions, notably the United States, may give rise to questions regarding the appearance of independence, including potential perceptions of corruption or political bias.

## H. Other barriers

43. Many other barriers make it difficult for individuals to seek climate change justice, such as low levels of climate change literacy, a lack of training by the judiciary on climate change and human rights matters, a lack of available magistrates, a limited number of environmental lawyers, a lack of legislation and limited jurisprudence on climate change matters.

44. It is critically important that countries strive to overcome these barriers and allow for greater access to the court system by all individuals, irrespective of their

<sup>59</sup> Submission received by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for her thematic report on gender justice and the right to freedom of opinion and expression (A/76/258), submitted by the Indigenous Human Rights Defenders and Corporate Accountability Programme of the Water Protector Legal Collective and the Business and Human Rights Resource Centre, 14 June 2021.

<sup>60</sup> European Parliament, "Strategic lawsuits against public participation", briefing note, 2023. Available at [www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS\\_BRI\(2022\)733668\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733668/EPRS_BRI(2022)733668_EN.pdf).

<sup>61</sup> Submission by the Kiko Network.

<sup>62</sup> Submission by the Indonesia Center for Environmental Law.

<sup>63</sup> Submission by the Climate Change Law Specialist Group, World Commission on Environmental Law of the International Union for the Conservation of Nature and Natural Resources.

<sup>64</sup> Submission by J. R. Walsh.

race, gender, Indigenous origin or identity, age, religious beliefs or socioeconomic status. Some recommendations on how to overcome the barriers outlined above and ensure access to justice for all are provided in the present report.

## VI. Recent litigation trends and future directions

45. Over the past year, climate litigation has begun to evolve and cases have been directed towards financial institutions that underwrite the use of fossil fuels. Litigation has also been directed at actions taken by corporations. The legal community is seeing greater attention being paid to the liability and responsibility of corporate actors to take decisive action on climate change. While corporations face greater pressure to take climate change action, false claims of action, known as “greenwashing” or “climate-washing”, are also being witnessed. Cases are now being brought as a means of questioning the use of such tactics. The scope of litigation is also expanding as litigants explore extraterritorial harm; advisory opinions are being sought in a number of international jurisdictions to explore the obligations of States in that regard. Consideration is also being given to criminal liability for lack of action on climate change. These elements are discussed below.

### A. Actions against banks

46. Banks have become the target of climate change litigation for funding projects that are not consistent with reducing greenhouse gas emissions. In 2022, a Brazilian NGO, Conectas Direitos Humanos, filed a claim against the Brazilian National Bank for Economic and Social Development and BNDESPAR, its investment arm, which is responsible for managing the Bank’s shareholdings in various Brazilian companies. Conectas Direitos Humanos has asked the court to require the Bank and BNDESPAR to adopt transparency measures and to present, within 90 days, a plan establishing rules and mechanisms to commit their investments and divestments to the reduction of greenhouse gas emissions by the companies they finance.<sup>65</sup>

47. In 2023, the NGOs Oxfam France, Friends of the Earth France and Notre Affaire à Tous filed a lawsuit before the Judicial Court of Paris alleging that BNP Paribas, the largest bank in the eurozone, had violated the Act of 2017 on duty of care of parent and subcontracting companies, which was incorporated into articles L. 225-102-4 and L. 225-102-5 of the French Commercial Code.<sup>66</sup> The Act on duty of care provides that specific companies of a certain size must establish a plan to prevent human rights violations and environmental damage that may occur in the course of their business operations. In the summons sent to BNP Paribas multiple violations of the law are alleged, including that the plan established by BNP Paribas does not identify with sufficient clarity the climate risks derived from its activities. The plaintiffs are particularly concerned about the huge “carbon majors” that BNP Paribas has as clients, such as TotalEnergies, Chevron, ExxonMobil, Shell, BP, Eni, Repsol and Equinor. These companies are involved in more than 200 new fossil-fuel projects, scheduled for approval by 2025, which would collectively produce about 8.6 billion tons of carbon dioxide.

48. The above are two examples in which banks and financial institutions have been brought before the courts to account for their investments in the fossil-fuel industry and the resultant human rights violations. The Special Rapporteur believes this will be a growing area of litigation, as various Governments are creating disclosure

<sup>65</sup> See <http://climatecasechart.com/non-us-case/conectas-direitos-humanos-v-bndes-and-bndespar/>.

<sup>66</sup> See <http://climatecasechart.com/non-us-case/notre-affaire-a-tous-les-amis-de-la-terre-and-oxfam-france-v-bnp-paribas/>.

mechanisms to reveal where banks and other financial institutions are investing their money. Corporate accountability will be the subject of the Special Rapporteur's next report to the Human Rights Council, in 2024.

## B. Greenwashing and climate-washing

49. Another growing trend in climate change litigation relates to the issue of “greenwashing”, or “climate-washing”. Greenwashing is the practice of misrepresenting how sustainable or environmentally friendly a fund's or a company's practices are. According to a study conducted by the Grantham Research Institute on Climate Change and the Environment in early 2023, 26 climate-washing cases had been filed, in 2022. These cases are challenging various types of misinformation, such as the accuracy of corporate climate commitments or claims about product attributes, overstated investments or support for climate action, and failure to disclose climate risks.<sup>67</sup> In the past few years, there has been a significant increase in climate-washing cases being filed before the courts and administrative bodies, such as consumer protection agencies.

50. In early 2023, an individual brought a class action against Delta Air Lines Inc. in the United States District Court, Central District of California, alleging that Delta's carbon neutrality claim was demonstrably false, as it relied heavily on “junk carbon offsets” that did nothing to counteract the climate crisis. It was further alleged that customers would have purchased Delta tickets believing that they had no impact on the environment and that many would not have bought the tickets without the carbon neutrality claim.<sup>68</sup> The class action has links to a nine-month investigation conducted by *The Guardian*, the German weekly *Die Zeit* and the investigative group SourceMaterial, which found that, according to independent studies, the Verra rainforest credits used by Disney, Shell, Gucci and other big corporations were largely worthless and were often based on stopping the destruction of rainforests that were not threatened.<sup>69</sup> While the present report is focused primarily on false accounting, it is worth noting that numerous Indigenous Peoples' groups have expressed their concerns to the Special Rapporteur about the use of carbon offsetting in carbon markets and the impact that such schemes have on their human rights to life, food, water and housing.<sup>70</sup>

51. As a result of similar greenwashing behaviour in Europe, in 2021, the European Commission and national consumer authorities released the results of a screening (“sweep”) of websites, an exercise carried out each year to identify breaches of European Union consumer law with regard to online markets. It was the first time that the sweep had been focused on greenwashing.<sup>71</sup>

52. In 2023, the Australian Securities and Investment Commission released a statement announcing that it had launched its first proceedings in the Federal Court against Mercer Superannuation (Australia) Ltd for allegedly “making misleading statements about the sustainable nature and characteristics of some of its

---

<sup>67</sup> See [www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2023-snapshot/](http://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2023-snapshot/).

<sup>68</sup> See [www.courthousenews.com/wp-content/uploads/2023/05/berrin-vs-delta.pdf](http://www.courthousenews.com/wp-content/uploads/2023/05/berrin-vs-delta.pdf).

<sup>69</sup> Patrick Greenfield, “Delta Air Lines faces lawsuit over \$1bn carbon neutrality claim”, *The Guardian*, 30 May 2023. Available at [www.theguardian.com/environment/2023/may/30/delta-air-lines-lawsuit-carbon-neutrality-aoe](http://www.theguardian.com/environment/2023/may/30/delta-air-lines-lawsuit-carbon-neutrality-aoe).

<sup>70</sup> Testimonies received by the Special Rapporteur from Indigenous Peoples' groups.

<sup>71</sup> PubAffairs Bruxelles, “Screening of websites for ‘greenwashing’: half of green claims lack evidence”, 28 January 2021. Available at [www.pubaffairsbruxelles.eu/eu-institution-news/screening-of-websites-for-greenwashing-half-of-green-claims-lack-evidence/](http://www.pubaffairsbruxelles.eu/eu-institution-news/screening-of-websites-for-greenwashing-half-of-green-claims-lack-evidence/).

superannuation investment options”.<sup>72</sup> The Commission has alleged that, in spite of the representations made about the “Sustainable Plus” investment options, Mercer had investments in industries that it had said were excluded from its portfolio. Those investments included 15 companies involved in the extraction or sale of carbon-intensive fossil fuels.<sup>73</sup> The Commission has categorized such actions as greenwashing, which it has defined as “the practice of misrepresenting the extent to which a financial product or investment strategy is environmentally friendly, sustainable or ethical”.<sup>74</sup>

### C. Extraterritorial harm

53. There is growing interest in climate change litigation associated with transboundary harm. Transboundary environmental harm is not a new phenomenon. In the *Trail Smelter* case of 1938, it was established by special arbitration that fumes discharged from a smelter in Canada had caused damage in the state of Washington in the United States. The arbitration ruling ordered that Canada pay the United States the sum of \$350,000 for damages.<sup>75</sup> Transboundary climate change harm is currently being contested in *Luciano Lliuya v. RWE AG*, a complaint filed in 2015 by a Peruvian farmer who filed claims for declaratory judgment and damages in the District Court of Essen, Germany, against RWE, the largest electricity producer in Germany. The court dismissed the plaintiff’s requests for declaratory and injunctive relief, as well as his request for damages. However, in 2017, on appeal, the Higher Regional Court of Hamm declared the complaint admissible, thereby allowing the case to move into the evidentiary phase.<sup>76</sup>

54. The international community is also witnessing extraterritorial claims of liability for environmental, social and human rights-related concerns being brought before courts in the United Kingdom where there are allegations that a United Kingdom company owes a duty to those affected by other parties. In *Okpabi and others v. Royal Dutch Shell Plc and another*, in 2021, the Supreme Court of the United Kingdom reaffirmed that a British parent company may, in certain circumstances, owe a duty of care, for purposes of liability in a suit for negligence, towards persons affected by the operations of a foreign subsidiary. Specifically, the Court found a real issue to be tried as to whether Shell owed a duty of care to persons affected by spills from its subsidiary’s oil pipeline in Nigeria.<sup>77</sup> While the case was related to an oil spill, there is a potential that such obligations may also apply to greenhouse gas emissions.

<sup>72</sup> Australian Securities and Investments Commission, “ASIC launches first court proceedings alleging greenwashing”, 28 February 2023.

<sup>73</sup> Ibid.

<sup>74</sup> Australian Securities and Investment Commission, “How to avoid greenwashing when offering or promoting sustainability-related products”, information sheet No. 271, June 2022. Available at <https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/>.

<sup>75</sup> *Trail Smelter case (United States, Canada)*, Award of 16 April 1938 and 11 March 1941, Reports of International Arbitral Awards, vol. III, pp. 1905–1982. Available at [https://legal.un.org/riaa/cases/vol\\_III/1905-1982.pdf](https://legal.un.org/riaa/cases/vol_III/1905-1982.pdf).

<sup>76</sup> See <http://climatecasechart.com/non-us-case/liuya-v-rwe-ag/>.

<sup>77</sup> Supreme Court of the United Kingdom, *Okpabi and others v. Royal Dutch Shell Plc and another*, [2021] UKSC 3. Available at [www.supremecourt.uk/cases/uksc-2018-0068.html](http://www.supremecourt.uk/cases/uksc-2018-0068.html).

## D. Advisory opinions

55. A number of advisory opinions are being sought in various jurisdictions to test States' obligations with respect to transboundary climate change harm. One case that has been resolved is the advisory opinion of the Inter-American Court of Human Rights, requested by Colombia, concerning State obligations in relation to the environment. The Inter-American Court found "that States must ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of their jurisdiction, and that States are obliged to use all available means to avoid activities in their territory, or in any area under their jurisdiction, causing significant damage to the environment of another State".<sup>78</sup> The Inter-American Court drew from the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons.<sup>79</sup> The Inter-American Court's rationale regarding extraterritorial responsibility was adopted, in 2021, by the Committee on the Rights of the Child, in five cases – *Sacchi et al. v. Argentina, Brazil, France, Germany and Turkey*, respectively – although the Committee declared the cases inadmissible for failure to exhaust domestic remedies.<sup>80</sup>

56. A number of advisory opinions have been sought to clarify the legal obligations of States with respect to climate change, including from the International Tribunal for the Law of the Sea,<sup>81</sup> the Inter-American Court of Human Rights<sup>82</sup> and the International Court of Justice, with the latter possibly being the most notable of those three. The request for an advisory opinion of the International Court of Justice was spearheaded by the Government of Vanuatu and adopted by consensus by the General Assembly in its resolution 77/276 requesting an advisory opinion of the International Court of Justice on the obligations of States inter alia in respect of climate change.

57. There are clear principles and international and national jurisprudence which the International Court of Justice and others can draw upon in making their determinations. The international legal principle of *sic utere tuo ut alienum non leadas* (use your own property in such a way that you do not to harm that of another) and the notion of international "good neighbourliness" found in Article 74 of the Charter of the United Nations are core principles of international law to which the International Court of Justice could give considerable weight in its deliberations. Furthermore, there are various international cases, such as the *Trail Smelter* case, which addresses transboundary harm. The *Corfu Channel* case<sup>83</sup> has also been cited with respect to transboundary obligations and environmental protection. Another more recent case in which transboundary environmental damage has been cited is the

<sup>78</sup> Inter-American Court of Human Rights, "The environment and human rights", Advisory Opinion No. OC-23/17, 15 November 2017. Available at [www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf).

<sup>79</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 29.

<sup>80</sup> See <https://climaterightsdatabase.com/2021/09/22/crc-sacchi-et-al-v-argentina-et-al/>. See also *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019), *Sacchi et al. v. Brazil* (CRC/C/88/D/105/2019), *Sacchi et al. v. France* (CRC/C/88/D/106/2019), *Sacchi et al. v. Germany* (CRC/C/88/D/107/2019) and *Sacchi et al. v. Turkey* (CRC/C/88/D/108/2019).

<sup>81</sup> International Tribunal for the Law of the Sea, *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, No. 31, December 2022. Available at [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/](http://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/).

<sup>82</sup> Request for an advisory opinion of the Inter-American Court of Human Rights on the scope of the obligations of State in respect of responding to the climate emergency, submitted by Chile and Colombia, 9 January 2023. See <http://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/>.

<sup>83</sup> *Corfu Channel case*, Judgment of 9 April 1949, I.C.J. Reports 1949, p. 4.

judgment of 1997 in the *Gabčíkovo-Nagymaros Project* case.<sup>84</sup> The Special Rapporteur firmly believes that States have a distinct legal and moral responsibility to ensure that greenhouse gas emissions produced in one State do not harm another State. As this form of transnational harm is already occurring, it is inevitable that the “no harm” principle will be a key point of litigation now and in the future, with jurisprudence on this principle developing quite rapidly.

## E. Crimes against humanity

58. In 2021, the General Assembly adopted resolution [76/114](#), on crimes against humanity, triggering a process of at least two years of debate and discussion by the Sixth Committee on the draft articles on prevention and punishment of crimes against humanity adopted by the International Law Commission at its seventy-first session in 2019 (see [A/74/10](#)). At the current time, the draft articles do not include any reference to impacts on humanity owing to climate change. Nevertheless, there have been various calls to include climate change harm within the definition of ecocide, something to which the Special Rapporteur referred in his previous report to the Assembly, in 2022 (see [A/77/226](#)). Around the globe, many people are being denied the right to life as a consequence of climate change. This is due to direct impacts, such as floods, droughts, storm surges, heat stress, hurricanes, typhoons and cyclones, and indirect effects, such as being displaced from their homes owing to such events and having to confront the perils of migration, which may result in death.

## VII. Intergenerational equity and the rights of future generations

59. In the consideration of climate change justice, it is vitally important that the international community not only addresses the fate of current generations, but also protects the rights of future generations. The greenhouse gas pollutants that the global community is currently injecting into the atmosphere will have significant implications for many generations to come. The need to give consideration to future generations is embodied in the concept of intergenerational equity. This concept was first incorporated into treaty law in the preamble of the International Convention for the Regulation of Whaling of 1946, in which the importance of safeguarding for future generations the great natural resources represented by the whale stocks is highlighted. The concept was later incorporated into the Declaration of the United Nations Conference on the Human Environment (the Stockholm Declaration) of 1972 and the preamble of the Paris Agreement.

60. There have been some notable court cases reaffirming the notion of protecting the rights of future generations. In *Future Generations v. Ministry of the Environment and Sustainable Development and others*, 25 youth plaintiffs brought a case for constitutional protection against the Government of Colombia and several corporations. The plaintiffs asserted that the Government’s failure to comply with its international commitment to ensure net-zero deforestation in the Amazon rainforest by 2020 was a violation of their human rights. The Supreme Court of Colombia recognized that there was a substantial link between the Government’s commitment to reduce deforestation and greenhouse gas emissions and fundamental and constitutional rights, such as the rights to life, health, human dignity and a healthy environment.<sup>85</sup> It has been argued that the *Future Generations* case has opened the door to youth climate lawsuits by substantially expanding constitutional provisions

<sup>84</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7.

<sup>85</sup> Supreme Court of Colombia, *Future Generations v. Ministry of the Environment and Sustainable Development and others*.

to future generations, including by creating an “intergenerational pact” to reduce deforestation and greenhouse gas emissions.<sup>86</sup> Analogous to the *Future Generations* case, the petitioners in the *Álvarez et al. v. Peru* case of 2019 argued that intergenerational equity was embedded within the principle of sustainable development.<sup>87</sup>

61. From the few examples outlined above, it can be seen that there is a growing body of jurisprudence on intergenerational equity and justice. Nevertheless, a clear expression of the rights of future generations is generally missing at the international level. In an effort to bridge that gap, a group of legal experts produced the Maastricht Principles on the Human Rights of Future Generations. The authors state that the aim of the Maastricht Principles is to “clarify the present state of international law” as it applies to the human rights of future generations,<sup>88</sup> although it may be argued that the Principles are more prescriptive than clarificatory. Nevertheless, they provide a very useful basis for giving further consideration to how to develop legal norms on intergenerational equity at the international level. The General Assembly should give due consideration to the Maastricht Principles and explore how they could be incorporated into the Summit of the Future, to be held in 2024.

## VIII. Conclusions and recommendations

62. **In recognition of their responsibilities under the United Nations Framework Convention on Climate Change and the Paris Agreement, countries around the world have enacted laws and adopted policies in which they describe national and international responses to climate change. Despite such efforts, there are significant material and procedural barriers to undertaking decisive legal action on climate change. These barriers relate to inadequate climate change legislation, significant limitations with regard to pursuing climate change litigation and limited efforts to enshrine the concept of intergenerational equity at the international level. The Special Rapporteur proposes the set of recommendations outlined below for focused attention by the General Assembly and Member States.**

63. **The General Assembly is encouraged to give full and proper consideration to the Maastricht Principles on the Human Rights of Future Generations and prepare a resolution reflecting key elements of these Principles at its seventy-eighth session.**

64. **The United Nations Environment Programme, in collaboration with the World Commission on Environmental Law of the International Union for the Conservation of Nature and Natural Resources, is encouraged to develop simple and accessible multilingual training manuals and training programmes for judges on the linkages between climate change and human rights. It is also encouraged to develop simple and accessible multilingual guidebooks for judges on the science of climate change.**

65. **All countries that have yet to do so should revise their constitutions to incorporate recognition of the need to address climate change, the human rights implications of climate change and the right to a healthy environment.**

---

<sup>86</sup> Maria Antonia Tigre, Natalia Urzola and Alexandra Goodman, “Climate litigation in Latin America”.

<sup>87</sup> See <http://climatecasechart.com/non-us-case/alvarez-et-al-v-peru/>.

<sup>88</sup> See [www.ciel.org/issue/the-maastricht-principles-on-the-rights-of-future-generations/](http://www.ciel.org/issue/the-maastricht-principles-on-the-rights-of-future-generations/).

66. All countries are strongly urged to develop legislation to allow for improved access to the courts undertaking cases related to climate change and human rights. Such access should overcome the barriers identified in the present report.

67. All countries are strongly encouraged to develop new climate change legislation on the basis of the detailed guidance outlined below.

#### **General principles**

68. New climate change legislation should incorporate general principles with a view to:

- (a) Ensuring the equal participation of women in all aspects of climate change decision-making;
- (b) Respecting the rights of children and ensuring that the concept of intergenerational justice is enshrined in legislation;
- (c) Providing opportunities for young people and children to engage in climate change decision-making;
- (d) Guaranteeing to every individual in the country the right to life, food, water and sanitation, housing and other fundamental rights, irrespective of gender, race, religious belief or socioeconomic status;
- (e) Respecting the concept of common but differentiated responsibilities and respective capabilities;
- (f) Fully recognizing the precautionary principle and ensuring that this principle is applied in the context of causality in climate change litigation;
- (g) Accepting the polluter pays principle;
- (h) Guaranteeing the right to a safe, healthy and sustainable environment, a right that should be incorporated into national constitutions;
- (i) Guaranteeing the right of every individual to have access to the courts at minimal cost;
- (j) Establishing education and training programmes for businesses so that they can recognize their responsibilities with respect to human rights and climate change;
- (k) Respecting the rights of Indigenous Peoples in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, including by ensuring the incorporation of provisions on free, prior and informed consent.

#### **Mitigation**

69. With respect to mitigation, it should be ensured that new climate legislation:

- (a) Incorporates women's knowledge as a basis for decision-making in mitigation planning and implementation;
- (b) Establishes provisions on prior and informed consent with regard to Indigenous Peoples;
- (c) Ensures that businesses, corporations and financial institutions undertake environmental and human rights impact assessments of all mitigation projects;
- (d) Ensures that science and Indigenous knowledge are given primacy in decision-making processes associated with climate change mitigation actions;

(e) Ensures that mitigation target-setting is based on the best available opportunity to reduce emissions, taking into consideration the concept of common but differentiated responsibilities and respective capabilities;

(f) Ensures that all mitigation target-setting is based on a progression towards low targets within short turnaround time frames so as to make the best opportunity of advancing technologies and knowledge. New targets could be set by subordinate legislation using executive orders;

(g) Ensures access to environmental information, including through the use of full disclosure procedures regarding climate change mitigation decision-making, including information on economic modelling associated with such decisions;

(h) Removes subsidies for fossil fuels and tax avoidance schemes for major greenhouse gas emitting industries;

(i) Ensures that all significant greenhouse gas emitting enterprises produce climate change transition plans;

(j) Provides incentives for businesses, corporations and financial institutions to transition to renewable energy and energy efficiency activities;

(k) Ensures that climate change transition plans allow for a just transition and protects the labour rights of workers in high greenhouse gas emitting industries.

#### **Adaptation**

70. With respect to adaptation, new climate change legislation should:

(a) Provide for meaningful consultation and engagement in adaptation planning processes for those who are most vulnerable to the impacts of climate change, in particular people living in poverty, Indigenous Peoples, persons with disabilities, women and children;

(b) Ensure that persons in vulnerable situations are given priority with respect to adaptation plans and are given priority support to build their resilience to the impacts of climate change;

(c) Create early warning systems for climate change events. Such early warning systems should be designed to be accessible to people living in poverty or in remote communities.

#### **Right to information**

71. With respect to the right to information, new climate change legislation should:

(a) Ensure that all individuals have the right to information, consultation and participation in decision-making associated with matters related to climate change;

(b) Establish advisory committees constituted by vulnerable communities, Indigenous Peoples and other disadvantaged communities.

**Loss and damage**

72. With respect to loss and damage, new climate change legislation should:

- (a) Support processes for international cooperation on loss and damage based on the principle of solidarity entailing a duty of assistance without expectation of reciprocity;
- (b) Create provisions for compensation, liability and reparations to ensure that major greenhouse gas polluters – countries and corporations alike – pay for the harm they are causing. This should include domestic and transnational liability;
- (c) Ensure that individuals are granted freedom of movement and given full legal rights as though they were refugees if they are displaced across international borders as a consequence of climate change;
- (d) Develop affordable insurance and risk-pooling mechanisms to assist the most vulnerable;
- (e) Create mechanisms to assess, quantify and compensate for loss and damage for economic and non-economic losses, including human rights impacts;
- (f) Support the establishment of an international mechanism for processing loss and damage claims in an expedited manner.

**Climate change finance**

73. With respect to climate change finance, new climate change legislation should:

- (a) Facilitate easy access to international funds for mitigation, adaptation and loss and damage;
- (b) Ensure that compensation funding is provided to victims of climate change impacts;
- (c) Ensure that direct access to climate change finance is provided for communities and individuals.

**Corporate accountability**

74. With respect to corporate accountability, new climate change legislation should:

- (a) Ensure that businesses, corporations and financial institutions (including insurance and reinsurance companies) provide full disclosure of their investments in greenhouse gas intensive industries;
- (b) Ensure that businesses, corporations and financial institutions provide full disclosure of their exposure to climate change risks associated with climate change impacts;
- (c) Establish direct personal criminal liability for directors and chief executive officers of businesses, corporations and financial institutions for failing to address the life-cycle climate change impacts of their respective activities;
- (d) Ensure that businesses, corporations and financial institutions provide full details of any claims of climate neutrality or net-zero emissions and provide regular updates on progress towards achieving those claims.

### **Access to justice**

**75. With respect to access to justice, new climate change legislation should:**

**(a) Ensure that all individuals or groups of individuals have access to justice without legal hurdles, including any age restrictions on access to courts or limitations on standing;**

**(b) Ensure that adequate provision is made to allow all individuals access to court systems, including provisions for language services, limitation of costs and legal representation;**

**(c) Eliminate strategic lawsuits against public participation;**

**(d) Create provisions on civil liability for loss and damage that have domestic and transnational applicability and are therefore without jurisdictional limitations.**

### **Freedom of expression**

**76. New climate change legislation should ensure that all individuals can enjoy their right to freedom of expression with respect to actions or lack of action by Governments or businesses on climate change. In that regard, 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.<sup>89</sup>**

---

<sup>89</sup> See [A/HRC/37/59](#), annex, framework principle 4.



# General Assembly

Distr.: General  
8 August 2007

Original: English

---

## Sixty-second session

Item 72 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, submitted in compliance with Human Rights Council resolution 5/1, in which the Council decided that special procedures mandates were renewed until the date on which they would be considered by the Council according to the programme of work.

---

\* A/62/150.



## **Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

### *Summary*

The present report, submitted in accordance with Human Rights Council resolution 5/1, contains three main sections.

First, given a finite health budget, how does a State prioritize health interventions in a way that is respectful of human rights? Section II makes some preliminary observations on this complex question and urges all parties to give more attention to the challenging issue of health prioritization.

The Commission on Human Rights requested the Special Rapporteur to explore health impact assessments. Section III of the present report outlines a study he co-authored on that issue. It sets out a right-to-health impact assessment methodology and argues that such impact assessments are an aid to equitable, inclusive, robust and sustainable policymaking.

The right to the highest attainable standard of health encompasses medical care and the underlying determinants of health, such as water, sanitation, food, shelter and freedom from discrimination. There is a regrettable tendency to devote disproportionate attention to medical care at the expense of the underlying determinants of health.

Section IV focuses on two illustrative underlying determinants of health: access to safe water and adequate sanitation. It applies the right-to-health analytical framework to water and sanitation and makes a number of recommendations for States and other actors.

### **Contents**

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction . . . . .	1–10	3
II. Prioritization of health interventions and respect for human rights . . . . .	11–32	4
III. Impact assessments and the right to the highest attainable standard of health . . . . .	33–44	8
IV. Water, sanitation and the right to the highest attainable standard of health . . . . .	45–102	10
V. Conclusions and recommendations . . . . .	103–107	22

## I. Introduction

1. By its resolution 60/251 of 15 March 2006, the General Assembly concluded the work of the Commission on Human Rights and established the Human Rights Council. The mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (“right to the highest attainable standard of health” or “right to health”) is set out in Commission resolutions 2002/31 and 2004/27. The Human Rights Council, by its resolution 5/1, extended the mandate of the Special Rapporteur. The present report is submitted in accordance with that resolution.

2. In October 2006, the Special Rapporteur visited Peru, where he had meetings following up on his country mission of June 2004 (see E/CN.4/2005/51/Add.3). Following this visit, the Special Rapporteur sent a letter to the Government of Peru in August 2007 requesting further information about follow-up undertaken in response to the recommendations included in the report on his mission in 2004.

3. In February 2007, the Special Rapporteur visited Uganda. The mission had two principal objectives: to understand the role of Sweden, in particular the Swedish International Development Cooperation Agency, in relation to the highest attainable standard of health in Uganda; and follow-up to the mission that the Special Rapporteur had undertaken to Uganda in March 2005 (see E/CN.4/2006/48/Add.2). In October 2006, the Special Rapporteur also visited Washington, D.C., to meet the Nordic-Baltic Executive Directors at the World Bank and International Monetary Fund. The Special Rapporteur will submit a report thereon to the Human Rights Council.

4. In May 2007, the Special Rapporteur visited Ecuador. The mission to Ecuador was undertaken with the objective of investigating the health impact of the aerial spraying of glyphosate that has taken place along the border between Ecuador and Colombia; a report thereon will be submitted to the Council. In Ecuador, the Special Rapporteur also had consultations with civil society organizations on other right-to-health issues, regarding which the Special Rapporteur is preparing a letter to the Government. His correspondence, and any reply or replies from the Government, will be made public.

5. The Special Rapporteur visited Sweden in June 2007. The objective of the visit was to discuss the report on his mission to Sweden in January 2006, which was submitted to the Council at its fourth session, in March 2007 (A/HRC/4/28/Add.2). During his visit, the Special Rapporteur met with, *inter alia*, senior government officials and civil society representatives.

6. In November 2006, the Council, by its decision 2/108, requested the Special Rapporteur to identify and explore, from the perspective of the right to the highest attainable standard of physical and mental health, the key features of an effective, integrated and accessible health system. Between November 2006 and July 2007, the Special Rapporteur had a series of consultations on this issue with representatives of the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR); with non-governmental organizations, including Realizing Rights: the Ethical Globalization Initiative, Save the Children UK and Care-Peru; and with a number of academics, researchers and health

workers. The Special Rapporteur continues to research and hold consultations on the issue and will report to the Council thereon at a forthcoming session.

7. The Special Rapporteur has sent a number of urgent appeals and other communications to various Governments; he has also issued some press releases. He will report on the communications in his annual report to the Council.

8. Between January and July 2007, the Special Rapporteur participated in a number of meetings convened by international organizations, Governments and civil society. In January, he spoke at a meeting in London of the International Planned Parenthood Federation and also met with the Chairperson of the WHO Commission on Social Determinants of Health. In February, he attended the UNAIDS reference group meeting in Geneva and delivered a keynote speech at a Public Health Alliance conference in Belfast. In March, he spoke at an event, organized by the United Nations Population Fund and the Centre for Reproductive Rights, in New York, during the session of the Commission on the Status of Women, and delivered a lecture on maternal mortality and human rights at Trinity College, Dublin. During the same month, he visited the Netherlands, held consultations with Medecins Sans Frontières and spoke at the Universities of Tilburg and Utrecht. In March, the Special Rapporteur attended the fourth session of the Human Rights Council and gave a keynote speech at the Midsin Global Health Conference in Newcastle, United Kingdom. In April, he gave a talk at the international secretariat of Amnesty International and in May attended a meeting organized by Glaxo Smith Kline to discuss its role in providing access to HIV/AIDS medicines. In June, he attended the annual meeting of the Council special procedures, organized by OHCHR. During the same month, he gave a keynote speech at a conference held in Prato, Italy, organized by Monash University, Australia, and King's College, London, and also visited Poland to speak at a meeting organized by the Federation for Women and Family Planning. In July, he spoke at meetings in Wellington organized by the New Zealand Aid and International Development Agency, as well as the civil society organization Health Promotion Forum. He also taught on a health, development and human rights course organized by the Initiative for Health and Human Rights, University of New South Wales, Australia.

9. The Special Rapporteur continues to prepare draft guidelines for pharmaceutical companies on access to medicines and expects to have a draft for consultation in the coming weeks.

10. All United Nations documents relating to the work of the Special Rapporteur are available on the OHCHR website ([www.ohchr.org/english/issues/health/right/](http://www.ohchr.org/english/issues/health/right/)). For ease of reference, these documents, selected conference papers and other information can also be found on the website of the Right to Health Unit, Human Rights Centre, University of Essex ([www2.essex.ac.uk/human\\_rights\\_centre/rth.shtml](http://www2.essex.ac.uk/human_rights_centre/rth.shtml)).

## **II. Prioritization of health interventions and respect for human rights**

11. Throughout his mandate, the Special Rapporteur has argued that the right to the highest attainable standard of health should shape, and be integrated into, relevant national and international policies. If this is to happen, new human rights

techniques and tools are needed. The traditional human rights techniques — “naming and shaming”, letter-writing campaigns, using test cases, slogans and so on — are insufficient for the task. While they still have a crucial role to play in the vindication of the right to health,<sup>1</sup> alone they are not enough. One of the new techniques needed is a way of monitoring the progressive realization of the right to health. For that reason, the Special Rapporteur devoted a report in 2006 to a human rights-based approach to health indicators (E/CN.4/2006/48). Another tool that needs more attention is constituted by impact assessments; for that reason, the present report includes a section on that issue.

12. The integration of the right to health into national and international policymaking also presents other challenges. For example, faced with limited resources, decision makers have to choose between different health policies and programmes, all of which contribute in one way or another to the realization of the right to health. One of the most difficult questions the Special Rapporteur is asked while on country mission is: “Given a finite budget, how can the Minister of Health prioritize health interventions in a manner that is consistent with the Government’s national and international human rights obligations?”

13. Over many years, the health community has generated extensive literature and practice on prioritizing and rationing health interventions. Cost-effectiveness and equity are among the principles used by health economists and ethicists to help guide policymakers through this difficult terrain. Although they have not solved the dilemmas (far from it), they have given the issues considerable attention.

14. By contrast, the human rights community has not yet given these important issues the sustained attention they deserve. With a few honourable exceptions, there is little human rights literature on the topic.<sup>2</sup> United Nations treaty bodies offer no detailed guidance on how States can prioritize in a manner that honours their binding human rights obligations.

15. This state of affairs is surprising, because priority-setting raises profound human rights issues. In practice, prioritization has often privileged the health needs of wealthy, urban populations over the entitlements of the rural poor. It has often marginalized the health entitlements of women, persons with disabilities and other disadvantaged groups. This mirroring and deepening of patterns of inclusion and exclusion is offensive to the right to the highest attainable standard of health.

16. Nonetheless, some still maintain that the human rights community should not involve itself in issues of prioritization. Their response to the prioritization problem is simple: allocate more resources to health.<sup>3</sup> This response is partly right. Many countries spend far less than the \$34 per capita minimum health expenditure

<sup>1</sup> For example, see the report of the Special Rapporteur of January 2007 (A/HRC/4/28), sect. III.

<sup>2</sup> Some literature and court cases address the issue, such as *Soobramoney v. Minister of Health*, Constitutional Court of South Africa, case CCT 32/97, 26 November 1997; and F. Alvarez-Castillo, T. K. Sundari Ravindran and H. de Pinho, “Prioritisation”, in T. K. Sundari Ravindran and H. de Pinho, eds., *The Right Reforms? Health Sector Reforms and Sexual and Reproductive Health* (University of Witwatersrand, 2005).

<sup>3</sup> Consistent with the State’s obligation, in article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, to devote the maximum available resources to the right to health.

recommended by the WHO Commission on Macroeconomics and Health.<sup>4</sup> Thus, calls for greater investment in health, in both developing and developed countries, are usually entirely legitimate.

17. However, even when more resources are made available, it is unlikely that they will support all health needs. In other words, tough priority choices will still have to be made, although prioritization becomes meaningless if the available resources do not reach a basic minimum threshold. Consequently, a call for increased health resources — and nothing more — rarely satisfies those who wish to see the right to health animate policymaking processes.

18. The modest purpose of the present section is to urge all relevant parties to pay more attention to the complex, sensitive issue of how to set health priorities in a manner that is consistent with human rights, including the right to the highest attainable standard of health. With a view to stimulating this discussion, the paragraphs below provide some brief, preliminary observations.<sup>5</sup>

### **Preliminary observations**

19. Prioritization demands close collaboration between human rights specialists and health specialists, including epidemiologists and health economists.

20. Human rights will sometimes signal a particular substantive health outcome from the process of prioritization, but more frequently they will suggest a series of procedural considerations (for example, participation, monitoring and accountability) that have to be taken into account when setting priorities.

21. It would be very difficult, if not impossible, for a health authority to apply the right to health to the issue of prioritization if it were not also integrating human rights throughout its responsibilities. In short, a health authority cannot properly apply the right to health to the process of prioritization in isolation.

22. The right to health includes entitlements to medical care and to underlying determinants of health, such as adequate sanitation, water, nutrition and housing. Therefore, priority setting across a range of sectors, and not just the health sector, will have a profound bearing on the right to health. This underscores the crucial importance of intersectoral collaboration for the delivery of the right to the highest attainable standard of health.

23. The human rights approach does not make the unreasonable demand that all human rights must be realized overnight. In recognition of present realities, including resource constraints, it allows for the progressive realization of the right to health over a period of time. Prioritization must be conducted in this context of progressive realization.

24. Consequently, priority-setting must take place within the framework of a comprehensive national health strategy that spells out how the State expects to

---

<sup>4</sup> See Commission on Macroeconomics and Health, *Macroeconomics and Health: Investing in Health for Economic Development* (WHO, 2001).

<sup>5</sup> The information is based on papers prepared by Carla Clarke, Gunilla Backman, Rajat Khosla and Stephania Tripodi for an informal consultation organized by the International Federation of Health and Human Rights Organizations and the University of Essex in July 2005, as well as a draft chapter prepared by Judith Bueno de Mesquita later in the same year following additional consultations. Many thanks to all.

progressively implement the various elements of the right to the highest attainable standard of health. In turn, that strategy must be informed by a comprehensive and up-to-date baseline assessment of health status, and enjoyment of the right to health, throughout the jurisdiction.

25. Everyone has the right to participate in health-related decision-making that affects them.<sup>6</sup> The prioritization process must include the active and informed participation of all stakeholders, including marginalized groups, in agenda-setting, decision-making, and monitoring and accountability arrangements.

26. From the human rights perspective, priority-setting must give particular regard to improving the situation of populations, communities and individuals that are especially disadvantaged in the country in question, including those living in poverty. In other words, vulnerability and disadvantage are among the reasonable and objective criteria that must be applied when setting priorities. Regard must be given to both direct and indirect discrimination. Thus, data must be disaggregated as far as possible.

27. Monitoring and accountability mechanisms are needed in relation to the priority-setting process, as well as implementation of the selected priorities. For this purpose, appropriate indicators and benchmarks are essential.

28. The right to health includes some obligations of immediate effect that are not subject to progressive realization. These core obligations reflect minimum essential levels of the right to health, such as freedom from discrimination, the preparation of a comprehensive national health strategy, integrated primary health care (as set out in the Alma-Ata Declaration), and access to basic sanitation. Despite important insights provided by various authors, much more work still has to be done to clarify the content of these core obligations.<sup>7</sup> However, so far as they can be identified with sufficient clarity, the process of prioritization should not compromise the core obligations arising from the right to health.

29. Given the requirement of progressive realization, all elements of the right to health must at least maintain their current levels of implementation (the principle of “non-retrogression”).

30. In line with their human rights responsibilities of international assistance and cooperation, donor countries should help developing countries prioritize in a manner consistent with the right to health. Donors and international organizations, including international financial institutions, should ensure that their policies and programmes support national priorities of recipient countries that have been decided by democratic and participatory processes.

### Conclusions

**31. While human rights have a constructive contribution to make to prioritization, they are unlikely to provide neat answers to highly complex issues, any more than do ethics, economics or general theories of justice. They are likely to rule out some processes and some choices, leaving a number of options, all of which are legitimate.**

<sup>6</sup> E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 54.

<sup>7</sup> See *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Audrey R. Chapman and Sage Russell, eds. (Antwerp, Intersentia, 2002).

32. The preceding paragraphs are simply preliminary points for discussion. Much more work is needed to explore in detail the philosophical and practical contribution of human rights to health priority-setting. As the health and human rights movement matures, it is very important that it respond to this challenge. Moreover, applying human rights to the prioritization process will dispel some common misunderstandings about the right to the highest attainable standard of health and help to establish the very extensive common ground between public health, medicine and human rights.

### III. Impact assessments and the right to the highest attainable standard of health

33. Any modern policymaker, unless purely driven by ideology, will wish to consider, in a balanced, objective and rational manner, the likely impact of a proposed new policy, especially on those living in poverty. Moreover, before a State introduces a new proposal, it must ensure that the initiative is consistent with its existing national and international legal obligations, including those relating to human rights.

34. In these circumstances, there is a growing demand for Governments to carry out human rights impact assessments prior to adopting and implementing new policies, programmes and projects. To date, however, relatively little work has been done to develop methodologies and tools to help Governments undertake human rights impact assessments.

35. In his initial report to the Commission on Human Rights in 2003, the Special Rapporteur explained that he wished to examine impact assessments and the right to health (E/CN.4/2003/58, paras. 82-85). In response, the Commission specifically requested the Special Rapporteur to pursue his analysis of health impact assessments.<sup>8</sup> Since then, he has looked at impact assessments in relation to trade rules and policies.<sup>9</sup> While on country missions, he has also raised the issue of impact assessments in appropriate cases.<sup>10</sup>

36. In 2006, the Special Rapporteur co-authored, with Gillian MacNaughton, a report on impact assessments, poverty and the right to the highest attainable standard of health.<sup>11</sup> The United Nations Educational, Scientific and Cultural Organization (UNESCO) funded the research.<sup>12</sup> The purpose of the project was to contribute to the development of a human rights impact assessment methodology, with a particular focus on the right to the highest attainable standard of health. The report is over 60 pages in length and includes four detailed annexes. The present section serves as a brief introduction to the full report.

---

<sup>8</sup> See *Official Records of the Economic and Social Council, 2003, Supplement No. 3* (E/2003/23), sect. II.A, resolution 2003/28, para. 16.

<sup>9</sup> See E/CN.4/2004/49/Add.1, paras. 53-56.

<sup>10</sup> See, for example, A/HRC/4/28/Add.2, paras. 122 and 123.

<sup>11</sup> Paul Hunt and Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using the Right to the Highest Attainable Standard of Health* (UNESCO, 2006). The full report is available from the website of Essex University, Human Rights Centre, Right to Health Unit ([www2.essex.ac.uk/human\\_rights\\_centre/rth/projects.shtm](http://www2.essex.ac.uk/human_rights_centre/rth/projects.shtm)).

<sup>12</sup> The Special Rapporteur is most grateful to UNESCO and Ms. MacNaughton.

37. Human rights impact assessment is the process of predicting the potential consequences of a proposed policy, programme or project on the enjoyment of human rights. The objective of the assessment is to inform decision makers and the people likely to be affected so that they can improve the proposal to reduce potential negative effects and increase positive ones. Human rights impact assessment is a relatively recent concept. However, other forms of impact assessment, such as environmental and social impact assessments, are now well-established and routinely undertaken in many countries to evaluate proposed policies, programmes and projects. Similarly, such initiatives, prior to being adopted and implemented, should be assessed for their impact on human rights.

38. The report reviews and then draws key criteria from three pioneering human rights impact assessment initiatives: (a) the Handbook in Human Rights Assessment (2001) of the Norwegian Agency for Development Cooperation; (b) the Rights and Democracy initiative on human rights impact assessment (2007); and (c) the Health rights of women assessment instrument (2006) of the Humanist Committee for Human Rights.<sup>13</sup> The report focuses specifically on the obligation of Governments to undertake impact assessments in order to comply with their obligation to progressively realize human rights. Accordingly, it proposes a methodology specifically suited to assessments of governmental policies, programmes and projects.<sup>13</sup> Importantly, the methodology is intended to assess proposed initiatives: it does not consider impact assessments for initiatives that have already been implemented. Of course, developing such a methodology is a complicated undertaking and will require more work and discussion. Comments on the study would be most welcome.

39. In designing a methodology for impact assessments, there are at least two distinct approaches. The first approach is to develop a self-standing methodology for human rights impact assessments, just as has been done for environmental and social impact assessments. The other approach is to develop a methodology for integrating human rights into other existing types of impact assessments. The report proposes the second approach, consistent with mainstreaming human rights into all Government processes. The integration of human rights into existing impact assessments will require interdisciplinary collaboration between human rights professionals, experts in various types of impact assessment and others. The study contributes to this process by providing some human rights considerations and frameworks and by outlining a methodology.

40. The report presents a methodology in two parts. The first part sets out seven general principles for performing a rights-based impact assessment. These are: (a) to use an explicit human rights framework; (b) to aim for progressive realization of human rights; (c) to promote equality and non-discrimination in process and policy; (d) to ensure meaningful participation by all stakeholders; (e) to provide information and protect the right to freely express ideas; (f) to establish mechanisms to hold the State accountable; and (g) to recognize the interdependence of all human rights.

41. The second part of the methodology proposes six steps for integrating the right to health, as a starting point for integrating all human rights, into existing impact assessments. The steps are: (a) to perform a preliminary check on the proposed

---

<sup>13</sup> Some human rights assessments focus on non-governmental actors; for example, see the recent study on impact assessments and business (A/HRC/4/74).

policy to determine whether or not a full-scale right-to-health impact assessment is necessary; (b) to prepare an assessment plan and distribute information on the policy and the plan to all stakeholders; (c) to collect information on potential right-to-health impacts of the proposed policy; (d) to prepare a draft report comparing the potential impacts with the State's legal obligations arising from the right to health; (e) to distribute the draft report and engage stakeholders in evaluating the options; and (f) to prepare the final report detailing the final decision, the rationale for the choices made and a framework for implementation and evaluation.

42. Follow-up activities are proposed in the final section of the report. The Special Rapporteur is promoting the study during his country missions and it has already been presented at some workshops. Subject to further funding, it would also be helpful to distribute the report more widely for discussion. Later in 2007, the Special Rapporteur will present the report at the eighth International Health Impact Assessment Conference.

43. Further work is required to determine whether mainstreaming human rights, such as the right to health, into other existing impact assessments is feasible, including case studies with different types of impact assessments. The practical tools, such as checklists, interview guidelines and charts for connecting impacts to human rights obligations (all of which are found in the report), also need further development. There is a need to encourage Governments and impact assessment professionals to follow rights-based approaches to impact assessment and policymaking.

44. In conclusion, human rights impact assessments are an aid to equitable, inclusive, robust and sustainable policymaking. They are one way of ensuring that the right to health, especially of marginalized groups, including the poor, is given due weight in all national and international policymaking processes. From the right-to-health perspective, an impact assessment methodology is a key feature of a health system. Without such a methodology, a Government cannot know whether its proposed policies, programmes and projects are on target to progressively realize the right to the highest attainable standard of health, as required by international human rights law.

#### **IV. Water, sanitation and the right to the highest attainable standard of health**

45. The health of populations, communities and individuals requires more than medical care. Equally important are the social, cultural, economic, political and other conditions that make people need medical care in the first place.<sup>14</sup> A WHO commission is currently studying the social determinants of health, such as gender, poverty and social exclusion.<sup>15</sup> Other determinants of health include access to water, sanitation, nutrition, housing and education.

---

<sup>14</sup> See preamble to the Constitution of the World Health Organization and R. Beaglehole, "Overview and framework", in Roger Detels, ed., *Oxford Textbook of Public Health* (Oxford University Press, fourth edition, 2002).

<sup>15</sup> Information about the Commission can be found on the WHO website at [www.who.int/social\\_determinants/en/](http://www.who.int/social_determinants/en/).

46. In some quarters, the right to the highest attainable standard of health is narrowly understood to mean a right to medical care. However, this view is inconsistent with international human rights law, which encompasses both medicine and public health. The International Covenant on Economic, Social and Cultural Rights, for example, and the Convention on the Rights of the Child clearly affirm that the right to health is more than access to medical care. Specifically, article 24 of the Convention on the Rights of the Child states that the right to health includes access to nutritious food, clean drinking water, environmental sanitation and so on, as well as medical care. Equating the right to health with a right to medical care is a misinterpretation of international human rights law.

47. The right to the highest attainable standard of health is an inclusive right extending not only to timely and appropriate medical care but also to the underlying determinants of health, such as access to safe water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, access to health-related education and information, including on sexual and reproductive health, and freedom from discrimination.<sup>16</sup> In short, the right to health includes both medical care and the underlying determinants of health.

48. In his reports, the Special Rapporteur has consistently looked at medical care and the underlying determinants of health, including the impact of poverty and discrimination on health. However, he has noticed a definite tendency in some Governments, international organizations and elsewhere to devote a disproportionate amount of attention and resources to medical care at the expense of the underlying determinants of health. This is deeply regrettable because both are fundamental elements of the right to the highest attainable standard of health.

49. Although space constraints do not permit a detailed examination of all relevant issues, the present section focuses on two underlying determinants of health: access to safe water and adequate sanitation.<sup>17</sup> It adopts the right-to-health analytical framework that the Special Rapporteur has used in previous reports in relation to other health issues. Although confined to only two essential conditions of health, namely water and sanitation, the analysis is illustrative and relevant to other underlying determinants of health.

### **Water, sanitation and human rights**

#### *Water, sanitation and the right to health*

50. Safe water and adequate sanitation are two integral and closely related underlying determinants which are essential for the realization of the right to the highest attainable standard of health. Inadequate access to water and sanitation can threaten life, devastate health, destroy opportunities, undermine human dignity and cause deprivation.<sup>18</sup>

<sup>16</sup> E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 11.

<sup>17</sup> In this regard, similar but different terms are sometimes used, such as “safe and potable water and adequate sanitation” and “safe drinking water and basic sanitation”. For the purposes of the present section, “safe water and adequate sanitation” is used for the underlying health determinants of water and sanitation.

<sup>18</sup> See UNDP, *Human Development Report 2006* (<http://hdr.undp.org/hdr2006/report.cfm>).

51. It is estimated that 1.8 million people die each year from diarrhoeal diseases, including cholera; 90 per cent of these are children under 5 years of age, mostly in developing countries. According to WHO, 88 per cent of diarrhoeal disease is caused by unsafe water and inadequate sanitation. Improved water supply could reduce diarrhoea morbidity by up to 25 per cent, while improved sanitation could reduce it by 32 per cent.<sup>19</sup>

52. Approximately 1.3 million people die of malaria each year; 90 per cent of these are children under 5 years of age. Irrigation, dams and other water-related projects are primary contributors to this disease. Better management of water resources would reduce transmission of malaria and other vector-borne diseases.<sup>19</sup>

53. Similarly, 160 million people are infected with schistosomiasis, a disease causing tens of thousands of deaths every year, mainly in sub-Saharan Africa. The disease is strongly related to unsanitary excreta disposal and the absence of nearby sources of safe water. Basic sanitation could reduce the disease by up to 77 per cent.<sup>19</sup>

54. Some 6 million people worldwide are blind because of trachoma and more than 150 million people are in need of treatment. Improving access to safe water sources and better hygiene can reduce trachoma morbidity by 27 per cent.<sup>19</sup>

55. Access to safe water and adequate sanitation is crucial in the context of HIV/AIDS. In relation to HIV/AIDS, as with other medical conditions, water is needed for taking medication, bathing patients, washing soiled clothing and for essential hygiene that reduces exposure to infections. When children born to women living with HIV are ensured uninterrupted access to nutritionally adequate breast-milk substitutes that are prepared using safe water, they are at less risk of illness and death.<sup>20</sup> As the former Secretary-General Kofi Annan observed: "We shall not finally defeat AIDS, tuberculosis, malaria, or any other infectious diseases that plague the developing world until we have won the battle for safe drinking water, sanitation and basic health care."<sup>21</sup>

56. In the United Nations Millennium Declaration and the Plan of Implementation of the World Summit on Sustainable Development, the international community recognized the relationship between poverty, water, sanitation, health and human development by including water supply, sanitation and hygiene in the Millennium Development Goals. Target 10 of the goals is to halve by 2015 the proportion of people without sustainable access to safe drinking water and basic sanitation. However, according to the WHO/UNICEF Joint Monitoring Programme, on current trends the world will miss the sanitation target by more than half a billion people. Also, although the world as a whole is on track to achieve the drinking water target, the trend appears to be deteriorating.<sup>22</sup>

57. Achieving the target on water and sanitation would bring substantial economic benefits. According to a recent WHO study, each dollar invested would yield an economic return of between \$3 and \$34, depending upon the region. If the target for water and sanitation were met, the health-related costs avoided would reach

---

<sup>19</sup> See [www.who.int/water\\_sanitation\\_health/publications/facts2004/en](http://www.who.int/water_sanitation_health/publications/facts2004/en).

<sup>20</sup> UNAIDS/UNICEF/WHO, *HIV and Infant Feeding: Guidelines for Decision Makers*, 1998.

<sup>21</sup> Statement made by Kofi Annan to the fifty-fourth World Health Assembly, Geneva, 17 May 2001.

<sup>22</sup> WHO/UNICEF, *Meeting the Millennium Development Goal Global Water and Sanitation Target: the Urban and Rural Challenge of the Decade* (2006).

\$7.3 billion per year.<sup>23</sup> In other words, an improvement in water and sanitation is an investment that not only saves lives and enhances health, but also generates huge savings for both national health budgets and households.<sup>24</sup>

*Water, sanitation and other human rights*

58. In addition to the right to the highest attainable standard of health, water and sanitation contribute to the realization of several other economic, social and cultural rights.

59. In the context of the right to adequate food, for example, the Committee on Economic, Social and Cultural Rights has emphasized the importance of ensuring sustainable access to water for agriculture.<sup>25</sup> The Special Rapporteur on the right to food has also underscored the interdependence of water and the right to food, observing that clean drinking water is an essential part of healthy nutrition.<sup>26</sup> At the regional level, as part of the right to food security, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa requires States to ensure women's access to clean drinking water.

60. Both the Committee on Economic, Social and Cultural Rights and the Special Rapporteur on the right to education have emphasized that schools should have a supply of drinking water, as well as separate, private and safe sanitation facilities for girls.<sup>27</sup>

61. Sustainable access to safe water and adequate sanitation also constitutes a fundamental element of the right to adequate housing.<sup>28</sup> Principle 2 of the Programme of Action of the International Conference on Population and Development (Cairo, 1994) recognizes that all individuals have the right to an adequate standard of living for themselves and their families, including adequate water and sanitation (see A/CONF.171/13, chap. I, resolution 1, annex). Moreover, access to water and sanitation is a key element of the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and the Special Rapporteur on housing emphasizes that inadequate access to water is particularly devastating for women and children.<sup>29</sup>

62. In short, access to water and sanitation is integral to several human rights, including the right to the highest attainable standard of health.

*Water and sanitation as a human right*

63. The human right to water and sanitation is recognized as a self-standing right in a wide range of international documents, including treaties and declarations, as

<sup>23</sup> B. Evans et al., *Closing the Sanitation Gap: the Case for Better Public Funding of Sanitation and Hygiene* (OECD, 2004).

<sup>24</sup> J. Bartram et al., *Focusing on improved water and sanitation for health*, *Lancet*, vol. 365 (2005).

<sup>25</sup> E/2000/22-E/C.12/1999/11, annex V, general comment 12, paras. 12 and 13.

<sup>26</sup> A/56/210, paras. 58-71; see also E/CN.4/2003/54.

<sup>27</sup> E/CN.4/2006/45, para. 129.

<sup>28</sup> E/1992/23-E/C.12/1991/4, annex III, general comment 4, para. 8.

<sup>29</sup> See E/CN.4/2003/5 and E/CN.4/2002/59.

well as by governmental and non-governmental bodies and in various court decisions.<sup>30</sup>

64. While the International Covenant on Economic, Social and Cultural Rights makes no explicit reference to the right to water and sanitation, the Committee on Economic, Social and Cultural Rights takes the view that water is an independent right implicit in the Covenant and closely related to the rights to the highest attainable standard of health, adequate housing and food.

65. The Committee defines the right to water as the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.<sup>31</sup> It specifies that access to adequate sanitation constitutes one of the principal mechanisms for protecting the quality of drinking water and that States should progressively extend safe sanitation services to rural and deprived urban areas.<sup>32</sup> In its elaboration of the normative content of the right to water and the legal obligations that arise from it, the Committee notes that, during armed conflicts, emergency situations and natural disasters, the obligations of States encompass the right to water, as well as those provisions of international humanitarian law relating to water.<sup>33</sup>

66. For its part, in its resolution 2006/10, the Subcommission on the Promotion and Protection of Human Rights confirms the right to sufficient supplies of water to meet essential needs, as well as access to acceptable sanitation facilities that take account of the requirements of hygiene, human dignity, public health and environmental protection (see A/HRC/2/2, chap. II).

67. At the regional level, the right to a sufficient quantity of water to meet basic needs is recognized by the Council of Europe in paragraphs 5 and 9 of its recommendation 14 on the European Charter on Water Resources (2001). Similarly, at their recent summit, the Heads of State or Government of the Non-Aligned Movement acknowledged the right to water for all in their final document.

68. At the national level, the constitutions of certain countries (for example, South Africa and Uruguay) incorporate an explicit right to water. Moreover, a number of judicial decisions rely upon this human right. For instance, in the case of *Residents of Bon Vista Mansions v. Southern Metropolitan Local Council*, the South African High Court found that disconnecting a water supply represented a prima facie breach of the State's constitutional duty to respect the right to water. Similarly, in *Subhash Kumar v. State of Bihar*, the Indian Supreme Court held that the right to life was a fundamental right under Article 21 of the Constitution, and it included the right of enjoyment of pollution-free water and air for full enjoyment of life.

69. The *Human Development Report 2006* underscores the importance of adopting a rights-based approach to the provision of safe water and adequate sanitation, and emphasizes that access to water is a basic human need as well as a fundamental human right. According to the report, the right to water corresponds to a secure,

---

<sup>30</sup> See WHO, OHCHR, the Centre on Housing Rights and Evictions, *Water Aid* and the Center for Economic and Social Rights, *The Right to Water* (2003) ([www.who.int/water\\_sanitation\\_health/rtwrev.pdf](http://www.who.int/water_sanitation_health/rtwrev.pdf)).

<sup>31</sup> E/2003/22-E/C.12/2002/13, annex IV, general comment 15, para. 2.

<sup>32</sup> *Ibid.*, para. 29.

<sup>33</sup> *Ibid.*, para. 22.

accessible and affordable water supply.<sup>34</sup> The report emphasizes the responsibility of governments to recognize the right to water in enabling legislation and to work towards its progressive realization.

### **Right-to-health analytical framework**

70. In recent years, the Committee on Economic, Social and Cultural Rights, WHO, civil society organizations, academics and many others have developed a way of “unpacking” or analysing the right to health with a view to making it easier to understand and apply in practice to health-related policies, programmes and projects. For his part, the Special Rapporteur has tried to apply and refine this analytical framework in his country and other reports.<sup>35</sup> Importantly, however, the framework has general application to all aspects of the right to the highest attainable standard of health, including the underlying determinants of health, such as safe water and adequate sanitation.

71. While the analytical framework is discussed in detail elsewhere,<sup>36</sup> its key elements may be very briefly summarized as follows:

(a) Identification of the relevant national and international human rights laws, norms and standards;

(b) Recognition that the right to health is subject to resource constraints and progressive realization, requiring the identification of indicators and benchmarks to measure progress (or the lack of it) over time;

(c) Nonetheless, recognition that the right to health imposes some obligations that are subject to neither resource constraints nor progressive realization, but are of immediate effect, for example, the obligation to avoid discrimination;

(d) Recognition that the right to health includes freedoms (for example, freedom from discriminatory access to water) and entitlements (such as the provision of minimum essential levels of water and sanitation). For the most part, freedoms do not have budgetary implications, while entitlements do;

(e) All health services, goods and facilities shall be available, accessible, acceptable and of good quality (this scheme is briefly applied to water and sanitation in the context of the right to health in paras. 73 to 76 below);

(f) States have duties to respect, protect and fulfil the right to the highest attainable standard of health (this, too, will be briefly applied to water and sanitation in the context of the right to health in paras. 82 and 83 below);

(g) Because of their crucial importance, the analytical framework demands that special attention be given to issues of non-discrimination, equality and vulnerability;

(h) The right to health requires that there be an opportunity for the active and informed participation of individuals and communities in decision-making that has a bearing on their health;

<sup>34</sup> See UNDP, *Human Development Report 2006*.

<sup>35</sup> For example, see A/61/338; see also E/CN.4/2006/48/Add.2.

<sup>36</sup> See E/CN.4/2005/51.

(i) Developing countries have a responsibility to seek international assistance and cooperation, while developed States have some responsibilities towards the realization of the right to health in developing countries;

(j) The right to health requires that there be effective, transparent and accessible monitoring and accountability mechanisms available at the national and international levels.

72. By way of illustration, the present section will briefly apply elements of this framework to water and sanitation in the context of the right to health.

### **Responsibilities of States**

#### *Available, accessible, acceptable and quality*

73. The right to health requires a State to do all it can to ensure safe water and adequate sanitation is available to everyone in its jurisdiction. The quantity of water available for each person should correspond to the quantity specified by WHO.<sup>37</sup> Some individuals and groups may require additional water owing to health, climate and work conditions, and the State should therefore ensure that water is available in sufficient quantities to fulfil the needs of such groups and individuals. States should take measures against overconsumption and to ensure efficient water use. The right to health requires States to ensure that safe water is available for personal and domestic uses such as drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene.<sup>38</sup>

74. In addition to being available, the right to health requires that water and sanitation also be accessible to everyone without discrimination. In the context of water and sanitation, access has four dimensions:

(a) Water and sanitation must be within safe physical reach for all sections of the population, in all parts of the country. Water and sanitation therefore should be physically accessible within, or in the immediate vicinity of, the household, educational institution, workplace and health or other institution.<sup>39</sup> The inaccessibility of water within safe physical reach can seriously impair health, especially of women and children responsible for carrying water. Carrying heavy water containers for long distances can cause fatigue, pain and spinal and pelvic injuries, which may lead to problems during pregnancy and childbirth. Similarly, the absence of safe, private sanitation facilities subjects women to a humiliating, stressful and uncomfortable daily routine that can damage their health.<sup>40</sup> When designing water and sanitation facilities for refugee camps and those for internally displaced persons, special attention should be given to prevent gender-based violence. For example, facilities should be provided in safe areas near dwellings;<sup>41</sup>

(b) Water and sanitation must be economically accessible (that is, affordable), including to those living in poverty. Poverty is associated with inequitable access to health services, safe water and sanitation. If those living in

<sup>37</sup> See G. Howard and J. Bartram, *Domestic Water Quantity, Service Level and Health* (WHO, 2002).

<sup>38</sup> E/2003/22-E/C.12/2002/13, annex IV, general comment 15, para. 12 (a).

<sup>39</sup> E/CN.4/Sub.2/2005/25, guideline 1.3.

<sup>40</sup> See United Nations Millennium Project Task Force on Water and Sanitation, *Health, Dignity and Development: What Will it Take?* (2005).

<sup>41</sup> See UNHCR, *Access to Water in Refugee Situations* (2005).

poverty are not enjoying access to safe water and adequate sanitation, the State has a duty to take reasonable measures that ensure access to all;

(c) Water and sanitation must be accessible to all without discrimination on any of the prohibited grounds, such as sex, race, ethnicity, disability and socio-economic status;

(d) Reliable information about water and sanitation must be accessible to all so that they can make well-informed decisions.

75. As well as being available and accessible, the right to health requires that water and sanitation facilities be respectful of gender and life-cycle requirements and be culturally acceptable. For example, measures should ensure that sanitation facilities are mindful of the privacy of women, men and children.

76. The right to health requires that water services and sanitation facilities be of good quality. Water required for personal and domestic use should be safe and free from micro-organisms, chemical substances and radiological hazards which constitute a threat to a person's health.<sup>42</sup> States should establish water quality regulations and standards on the basis of the WHO Guidelines for drinking water quality.<sup>43</sup> Similarly, sanitation facilities should be of adequate quality. Each person should have affordable access to sanitation services, facilities and installations that are adequate for the promotion and protection of human health and dignity. Good health requires the protection of the environment from human waste; this can only be achieved if everyone has access to, and utilizes, adequate sanitation.<sup>44</sup> Good quality water and sanitation reduce susceptibility to anaemia and other conditions that cause maternal and infant mortality and morbidity.

*Combating discrimination, inequality and vulnerability*

77. Arising out of the concepts of non-discrimination and equality, international human rights law has a preoccupation with vulnerability and disadvantage. This requires a State to take measures in favour of disadvantaged communities and individuals. In the present context, non-discrimination and equality have numerous implications. For example, they require a State to establish a national water and sanitation policy that is mindful of national and local health priorities and includes policies and programmes that address the needs of the disadvantaged. Non-discrimination and equality also require a State to give attention to individuals and groups who have special water and sanitation needs owing to health, climate or other conditions.

78. The right to health therefore requires a State to design a national water and sanitation policy aimed at ensuring equitable access for vulnerable and disadvantaged individuals and groups, including women and children, ethnic minority and indigenous populations, persons living in poverty, persons living with HIV/AIDS, internally displaced persons, the elderly, persons with disabilities, prisoners and others.

<sup>42</sup> E/2003/22-E/C.12/2002/13, annex IV, general comment 15, para. 12 (b).

<sup>43</sup> WHO, "Guidelines for drinking water quality" (2006).

<sup>44</sup> See E/CN.4/Sub.2/2004/20, para. 44.

*Progressive realization and the obligations of immediate effect*

79. The right to the highest attainable standard of health — and thus the underlying determinants of health, such as safe water and adequate sanitation — are subject to progressive realization and resource availability, in accordance with article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights. Put simply, progressive realization means that a State is required to be doing better in two years time than it is doing today, while resource availability means that what is required of a developed State is of a higher standard than what is required of a developing State.

80. This has a number of important implications. For example, States need appropriate indicators and benchmarks so they know whether or not they are progressively realizing the right to health (see human rights-based approach to health indicators set out in document E/CN.4/2006/48). But it also has an important qualification: the right to health includes some core obligations of immediate effect that are not subject to progressive realization.<sup>45</sup> These are obligations without which it is considered that the right would be deprived of its *raison d'être*.<sup>46</sup> Under the right to health, for example, States have an immediate obligation to avoid discrimination and ensure access to basic sanitation,<sup>47</sup> as well as the minimum essential amount of water that is sufficient and safe for personal and domestic uses to prevent disease.<sup>48</sup>

81. In summary, while the State is required to progressively realize access to water and sanitation, it has a core obligation of immediate effect to make available and accessible the minimum essential amount of water that is sufficient and safe for personal and domestic uses, and basic sanitation,<sup>49</sup> throughout its jurisdiction. Retrogressive measures, which reduce people's access to water and sanitation, are only allowed when a State is able to demonstrate that such measures have been adopted after full consideration of alternatives and are "duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources".<sup>50</sup>

*Duties to respect, protect and fulfil*

82. States have duties to respect, protect and fulfil the right to the highest attainable standard of health. These duties are equally applicable to medical care and the underlying determinants of health. For example, in the context of the underlying determinants of safe water and adequate sanitation, the duty to respect obliges the State to refrain from polluting water or arbitrarily interfering with a person's access to water and sanitation. The duty to protect obliges the State to take

<sup>45</sup> E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 43.

<sup>46</sup> E/1991/23-E/C.12/1990/8 and Corr.1, annex III, general comment 3, para. 10.

<sup>47</sup> E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 36.

<sup>48</sup> There is a difference between the water core obligation in general comment 14, para. 36 and general comment 15, para. 37 (a). Here, the more modest of the two is used, i.e. general comment 15, para. 37 (a).

<sup>49</sup> Basic sanitation is defined by the United Nations Task Force on Water and Sanitation as "the lowest-cost option for securing sustainable access to safe, hygienic and convenient facilities and services for excreta and sillage disposal that provide privacy and dignity, while at the same time ensuring a clean and healthful living environment both at home and in the neighbourhood of users".

<sup>50</sup> E/2001/22-E/C.12/2000/21, annex IV, general comment 14, para. 32.

effective measures to stop third parties from interfering with access to water and sanitation. For example, a State must take effective steps to ensure that private service providers do not compromise access to safe water and adequate sanitation. The duty to fulfil requires a State to provide those living in poverty with the minimum essential amount of water and basic sanitation if they would otherwise be unable to access them.

83. In other words, whether the supply of water and sanitation facilities is entrusted to a public or a private company, a State remains responsible for the proper regulation of its water and sanitation systems, as well as for the health and well-being of the most disadvantaged in its jurisdiction.

#### *Participation*

84. The active and informed participation of individuals and communities in health policymaking that affects them is an important feature of the right to the highest attainable standard of health. The right requires that special efforts be made to ensure the participation of individuals and groups that have traditionally been excluded or marginalized. For instance, in the context of water and sanitation, even though women bear a disproportionate burden in the collection of water and disposal of family wastewater, they are often excluded from relevant decision-making processes. States should therefore take measures to ensure that women are not excluded from decision-making processes concerning water and sanitation management.

85. In most cases, communities and groups have a better sense of the kind of water and sanitation services they require and how those services should be managed. Therefore, when formulating its national water and sanitation policy and programmes, a State should take steps to ensure the active and informed participation of all those likely to be affected.

#### *International assistance and cooperation*

86. States have the obligation to take steps individually and through international assistance and cooperation towards the full realization of various rights, including the right to health. Depending upon the availability of resources, developed countries should provide financial and technical assistance to supplement the resources of developing countries with a view to ensuring that everyone has access, as promptly as possible, to safe water and adequate sanitation.

87. Given the massive public health challenge posed by the inadequacy of water and sanitation facilities in the developing world, the Special Rapporteur reminds States of the commitments made under the Millennium Declaration and the World Summit on Sustainable Development and emphasizes the need for a global partnership on water and sanitation, aimed at establishing an effective, integrated water and sanitation supply system delivering quality affordable water and sanitation for all.

#### *Monitoring and accountability*

88. The right to health brings with it the crucial requirement of accessible, transparent and effective mechanisms of monitoring and accountability. Those with right-to-health responsibilities must be held to account in relation to the discharge of

their duties, with a view to identifying successes and difficulties; so far as necessary, policy and other adjustments can then be made. There are many different forms of monitoring and accountability mechanisms: judicial, quasi-judicial, administrative and political. While a State will decide which are most appropriate in its particular case, all mechanisms must be effective, accessible and transparent.

89. A national water and sanitation policy must be subject to appropriate monitoring and accountability. This requires that the policy set out the Government's right-to-health obligations in relation to water and sanitation, as well as an implementation plan that identifies objectives, timelines, duty holders and their responsibilities, indicators, benchmarks and reporting procedures. From time to time, a suitable national body (such as a health ombudsperson or a water and sanitation regulator) will have to consider the degree to which those responsible for the implementation of the national water and sanitation policy have fulfilled their duties — not necessarily with a view to sanction and punishment, but with a view to establishing which policies and institutions are working and which are not, with the aim of enhancing access to water and sanitation for all.

### **Some key issues**

90. Ensuring access to water and sanitation for all gives rise to a wide range of specific, practical and important issues. By way of illustration, the present section briefly introduces some of these issues, keeping in mind the analytical framework signalled in preceding paragraphs.

#### *Water privatization*

91. In some quarters, privatization has been promoted as a way of responding to the global water crisis and ensuring access to all. However, experience shows that privatization may lead to price increases that do not take into account the ability of lower-income consumers to pay. For example, it is estimated that, after privatization, residents of Cochabamba in Bolivia were spending more than 25 per cent of their average household income on water, leading to violent protests in early 2000.<sup>51</sup> Similarly, privatization in the Philippines led to a 60 to 65 per cent increase in water tariffs, which meant that many people could not afford to pay them.<sup>52</sup>

92. The high cost of water may force households to use alternative sources of water of poorer quality that are a greater risk to health. Furthermore, the high cost of water may reduce the volume of water used by households to such an extent that hygiene and health are compromised.<sup>53</sup>

93. While international human rights law does not demand a particular form of service delivery or pricing policy, States must ensure that private water and sanitation providers do not compromise access to affordable, physically accessible water and sanitation.<sup>54</sup> Whether the supply of water and sanitation facilities is

---

<sup>51</sup> G. Dalton, *Private Sector Finance for Water Sector Infrastructure: What Does Cochabamba Tell Us About Using This Instrument*, Occasional Paper, No. 37 (University of London School of Oriental and African Studies, 2001).

<sup>52</sup> Marites Sison, "Philippines: awash in water bills after privatization", Inter Press Service, 22 January 2003.

<sup>53</sup> See WHO, loc. cit.

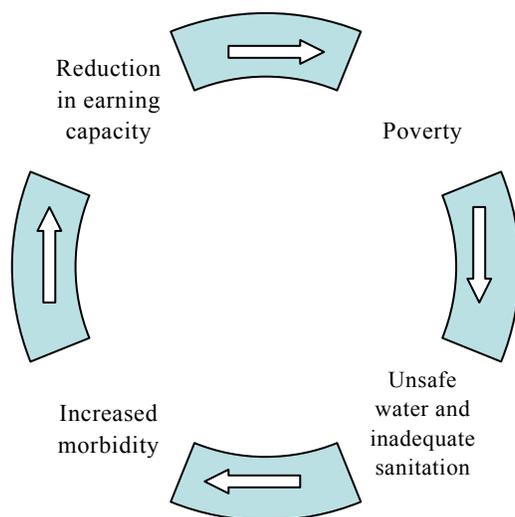
<sup>54</sup> See E/CN.4/2004/49/Add.1, para. 11.

entrusted to a public or private company, the State has an obligation to put an effective regulatory system in place to ensure, inter alia, that those living in poverty receive a minimum supply of drinking water and basic sanitation.<sup>55</sup>

### *Three key obstacles*

#### *1. Poverty*

94. The poor and other marginalized groups have the greatest difficulty in gaining access to safe water and adequate sanitation. Many poor people living in slums, informal settlements and rural communities have no water connection, so they use water from unsafe sources and have inadequate sanitation, resulting in increased levels of morbidity and mortality.



95. An increase in morbidity leads to a reduction in earning capacity, creating a vicious cycle of poverty and ill health that is devastating among the poorest (see figure above). Poverty renders women and men ill-equipped to protect themselves and their children from diseases or to seek treatment for illness. Poor health and an impaired ability to work, compounded by high health costs, deepens poverty.

96. Enhancing access to safe water and adequate sanitation is not only critical to reducing morbidity and mortality; it is also a vital strategy in the struggle against poverty.

#### *2. Gender inequality*

97. The relationship between poverty and gender inequality is well known. The traditional roles and tasks assigned to women, such as securing water for household needs, caring for children, the elderly and ill, mean that women are often unable to attend educational institutions and are denied labour opportunities, which may lead to impoverishment and poor health. In some societies, women are further burdened with the task of disposing of the family's wastewater and faeces, exposing them to

<sup>55</sup> E/2003/22-E/C.12/2002/13, general comment 15, para. 24.

severe health hazards. Thus, women are hit hardest by the inadequate availability of water and sanitation services.

98. The water and sanitation needs of women are different from those of men. For example, women tend to place a higher value on household toilets than men, yet women are often absent from decision-making and priority-setting processes. The result is that the distinctive water and sanitation needs of women and girls (for example during menstruation and during and after pregnancy) are often neglected in discussions about sanitation and hygiene.

99. Inadequate water supply and sanitation services severely prejudices the health, productivity, income-generating capacity, physical security and dignity of women living in poverty. The Special Rapporteur emphasizes the need to ensure women's participation in decision-making and priority-setting processes, and urges States to adopt a gender-sensitive approach in all relevant policymaking. Moreover, involving women in decision-making will lead to positive health benefits for the entire community.

### 3. *Global warming*

100. Those living in poverty are disproportionately affected by the adverse effects of global warming. Not only has global warming led to a decline in dependable access to water, it has also led to a disruption in natural ecosystems. Warmer and wetter conditions resulting from climate change are increasing the range and season of vectors, such as mosquitoes and tsetse flies, which spread diseases such as malaria, dengue and yellow fever, and encephalitis.<sup>56</sup>

101. Global warming will adversely affect the world's hydrological cycle and result in more droughts and floods. Drought poses serious threats to health.<sup>57</sup> As clean water sources evaporate, people resort to more polluted alternatives that may lead to epidemics of water-borne diseases. Likewise, floods not only increase the risk of drowning and destroying crops, they also spread disease by extending the range of vectors and by washing agricultural pollutants into drinking water supplies.<sup>57</sup>

102. Despite these disturbing trends, the international community has not yet confronted the health threats posed by global warming. The failure of the international community to take the health impact of global warming seriously will endanger the lives of millions of people across the world.

## V. Conclusions and Recommendations

103. **The conclusions and recommendations set out below focus on section IV.**

104. **The right to the highest attainable standard of health not only encompasses medical care but also underlying determinants of health, such as safe water, adequate sanitation, healthy occupational and environmental conditions, and freedom from discrimination. Too often, a disproportionate amount of attention is devoted to medical care, at the expense of the underlying determinants of health.**

<sup>56</sup> McMichael and others, "Climate change and human health" (WHO/UNEP/WMO, 2003).

<sup>57</sup> New Economics Foundation, *The End of Development* (2006).

105. While the present report gives particular attention to water and sanitation, it must be understood that the right to health encompasses numerous other underlying determinants. The analytical framework set out in the report can be applied to other underlying determinants of health.

106. Although fundamental to survival, development, economic growth and the right to health, water and sanitation are frequently neglected. Many States devote inadequate budgetary resources to water and sanitation and fail to develop adequate plans, policies, programmes and laws. Historically, international organizations have neglected water and sanitation, although WHO and OHCHR are both taking important strides towards redressing this imbalance. Also, donors have inadequately supported safe water and adequate sanitation initiatives, although there are some signs that this is beginning to change. Civil society organizations have made commendable progress in advancing debates on issues of water, sanitation and human rights.<sup>58</sup>

107. In order to redress this neglect, the Special Rapporteur makes the following recommendations:

(a) *Formal recognition.* All States should formally recognize that the right to the highest attainable standard of health includes access to safe water and adequate sanitation;

(b) *Laws, plans, policies, programmes and projects.* By way of participatory processes, States should formulate and implement laws, plans, policies, programmes and projects that enhance access to safe water and adequate sanitation for all;

(c) *National budgets and international assistance.* The vital importance of safe water and adequate sanitation to health — and the right to health — must be reflected in national budgets and international assistance and cooperation;

(d) *Disadvantaged groups and individuals.* Consistent with international human rights law, measures (both national and international) to enhance access to safe water and adequate sanitation must give particular attention to disadvantaged groups and individuals, such as the poor, as well as those living in rural communities and urban informal settlements, irrespective of their tenure status;

(e) *Gender.* In the context of water, sanitation and the right to health, it is extremely important that States, international organizations and others adopt a gender-sensitive approach to all relevant policymaking;

(f) *An integrated approach.* The right to the highest attainable standard of health requires an integrated approach whereby adequate sanitation and hygiene are included in water supply programmes;

(g) *Public information campaigns.* Large-scale public awareness health campaigns are needed to provide information relating to water and sanitation, for example on hygiene, safe water storage and monitoring water quality. This

<sup>58</sup> See, for example, the Right to Water Programme, Centre for Housing Rights and Evictions ([www.cohre.org](http://www.cohre.org)); Water Law Research Programme ([www.ielrc.org](http://www.ielrc.org)); and Water Aid ([www.wateraid.org](http://www.wateraid.org)).

is particularly important for low-income households that rely on small-scale water and sanitation facilities;

(h) *International Year of Sanitation (2008)*. The General Assembly recently declared 2008 the International Year of Sanitation to raise awareness about the importance of sanitation.<sup>59</sup> The Special Rapporteur urges States to seize this opportunity to take joint and concerted efforts towards the realization of the Millennium Development Goal water and sanitation target;

(i) *Monitoring and accountability*. One of the most important steps which many States need to take towards realization of the right to health generally, and access to water and sanitation in particular, is to establish an effective, transparent and accessible monitoring and accountability mechanism. This may be, for example, a national human rights institution, health ombudsperson or water and sanitation regulator. The mechanism should have the responsibility to monitor and hold all relevant public and private actors to account, in relation to the national water and sanitation policy, as well as access to water and sanitation for all;

(j) *Climate change*. 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;

(k) *The human right to water and sanitation*. To its credit, the Human Rights Council has begun to study the issue of human rights and access to water.<sup>60</sup> It is recommended that the Council appoint a special rapporteur on the right to water and sanitation to assist States understand their legal obligations, identify and disseminate best practices and monitor the progressive realization of this important human right. For their part, all States should recognize the human right to water and sanitation.

---

<sup>59</sup> General Assembly resolution 61/192.

<sup>60</sup> See A/HRC/L.3/Rev.3.



# General Assembly

Distr.: General  
5 August 2015

Original: English

---

## Seventieth session

Item 73 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Right to food

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to food, Hilal Elver, submitted in accordance with Assembly resolution 69/177.

---

\* [A/70/150](#).



## Interim report of the Special Rapporteur on the right to food

### *Summary*

The present report, submitted in accordance with General Assembly resolution 69/177, constitutes the second report to the Assembly of the Special Rapporteur of the Human Rights Council on the right to food. The report outlines the adverse impact of climate change on the right to food. It places particular emphasis on the geographic and socioeconomic vulnerabilities of those most affected and highlights the negative impact that current agricultural practices and food systems are having on climate change. The report concludes by stressing that in order to eradicate hunger and ensure the full realization of the right to food, more must be done to develop relevant, effective mitigation and adaptation policies and a human rights approach must be adopted as a means of achieving climate justice.

### Contents

	<i>Page</i>
I. Introduction . . . . .	3
II. Impact of climate change on the right to food . . . . .	4
III. Regions affected by food insecurity resulting from climate change . . . . .	7
IV. Effects on vulnerable populations and their livelihoods . . . . .	8
V. Impact of agriculture and food systems on climate change . . . . .	11
VI. The United Nations climate change regime and the right to food . . . . .	13
VII. Adverse impact of mitigation policies on the right to food . . . . .	16
VIII. Adaptation policies and measures . . . . .	19
IX. Agroecology: an alternative to industrial agriculture . . . . .	20
X. Conclusions and recommendations . . . . .	23

## I. Introduction

1. Climate change, sustainable resource management and food security are now widely considered to be among the most complex, interdependent and urgent global policy challenges. The world's scientific community predicts that average temperatures will rise by 2° to 4°C by the end of the century, posing multiple threats to agricultural production.

2. Climate change is already having a significant impact on approximately one billion of the world's poor. The most recent figures of the Food and Agriculture Organization of the United Nations (FAO) suggest that some 795 million people are hungry;<sup>1</sup> without the implementation of serious measures to combat climate change, this figure could rise some 20 per cent by 2050.<sup>2</sup>

3. The relationship between climate change and food systems is complex. Climate change has negative impacts on agriculture while current agricultural practices and food systems are responsible for harming the environment, affecting social and environmental determinants of health and accelerating human-induced climate change. Moreover, climate change is undermining the right to food, with disproportionate impacts on those who have contributed least to global warming and are most vulnerable to its harmful effects. Urgent action must be taken to prevent climate change from intensifying, to mitigate greenhouse gas emissions and to adapt to its unavoidable effects. A policy shift is necessary to respond to the challenges posed by climate change beyond mitigation and adaptation so as to respect peoples' human rights, including the right to food, while sustaining the Earth's renewable resources.

4. Although the threat posed by climate change to food security has been recognized by the global climate change regime, it has been cautious in its recognition of the need to adopt a human rights-based approach to addressing climate change. Gaps in the regime have already been identified, particularly in relation to the human rights implications of the clean development mechanism defined in article 12 of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and of reducing emissions from deforestation and forest degradation in developing countries as well as of measures affecting energy, biofuels and adaptation.

5. In the present report, the Special Rapporteur wishes to emphasize the need to adopt a human rights-based approach to climate change governance as a means of overcoming climate injustices that vulnerable people are experiencing in relation to the right to food. In her conclusion, the Special Rapporteur notes that the standard discourse on climate change tends to overlook the fundamental relevance of climate justice and human rights considerations in shaping its recommended response to the policy challenges it poses.

---

<sup>1</sup> FAO, International Fund for Agricultural Development (IFAD) and World Food Programme (WFP), *The State of Food Insecurity in the World 2015: Meeting the 2015 International Hunger Targets: Taking Stock of Uneven Progress* (Rome, 2015).

<sup>2</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability: Summary for Policymakers: Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2014).

## II. Impact of climate change on the right to food

6. In its general comment No. 12 (1999), the Committee on Economic, Social and Cultural Rights defined the necessary elements required for the right to food (i.e. the possibility either to feed oneself directly from productive land or other natural resources or to purchase food) as availability, accessibility and adequacy.

### Availability

7. Availability relates to the presence of sufficient food from natural resources or for sale on the market to meet the needs of the population. With rising temperatures and increased frequency of extreme weather events, the negative impact of climate change on crop, livestock, fisheries and aquaculture productivity on food availability will have significant global reach. Although tolerance of different crops to changes in temperature and water availability may vary considerably, climate change is expected to have mostly negative implications for crop yields and will “more likely than not” depress them by more than 5 per cent beyond 2050.<sup>3</sup>

8. Water scarcity and more frequent droughts are also expected in arid regions. If urgent additional climate change mitigation efforts are not initiated, heavy rainfall and resulting flooding could destroy entire crops as well as food stores and may affect agricultural land due to sedimentation. More frequent and intense extreme weather events will also complicate the logistics of food distribution during emergencies. In the short term, climate change is set to increase natural hazards, with more significant risks leading to environmental degradation over time.

9. An increase of just 1°C in temperature can have devastating impacts on crop yields and the ability to maintain current levels of agricultural production. Currently, negotiations within the United Nations Framework Convention on Climate Change are limiting projections to an increase of 2°C. However, this is not adequate, given that in some regions, including sub-Saharan Africa, summer temperatures are projected to reach 5°C above the baseline temperature by 2100.<sup>4</sup>

10. Acceleration in glacial melt is also expected to raise sea levels by up to 2 m by 2100,<sup>5</sup> affecting food availability in the coastal areas and river deltas that are home to 60 per cent of the world’s population. Inundation of coastal agricultural lands, especially where there is little capacity to build sea defences, will lead to increased groundwater salinization, thereby affecting the quantity and quality of water available for agricultural production.<sup>6</sup> As a result, significant climate-induced migration is expected to force people to move inland and to more food-secure places.

<sup>3</sup> Ibid.

<sup>4</sup> Potsdam Institute for Climate Impact Research and Climate Analytics, *4°: Turn Down the Heat: Climate Extremes, Regional Impacts, and the Case for Resilience* (Washington, D.C., International Bank for Reconstruction and Development/The World Bank, 2013).

<sup>5</sup> United Nations Development Programme, *Human Development Report 2014: Sustaining Human Progress: Reducing Vulnerabilities and Building Resilience* (New York, 2014).

<sup>6</sup> P. Krishna Krishnamurthy, Kirsty Lewis and Richard J. Choularton, “Climate impacts on food security and nutrition: a review of existing knowledge”, WFP and Met Office Hadley Centre, 2012. Available from <http://documents.wfp.org/stellent/groups/public/documents/communications/wfp258981.pdf>.

11. Increases in sea temperatures and the acidification of oceans owing to rising levels of concentration of carbon dioxide in the atmosphere are also expected to have major effects on the fisheries sector (A/67/268). Warming oceans can lead to increased and more severe outbreaks of algal blooms, which can have a devastating impact on fish populations. Calcifying organisms are also threatened, which in turn reduces dependent fish populations. A consensus exists that climate change will have a negative impact on fisheries' production, especially in developing countries in tropical areas.<sup>7</sup>

### Accessibility

12. Accessibility refers to both physical and economic access. Physical accessibility means that food should be accessible to all persons, including the physically vulnerable such as children, older persons and persons with a disability; economic accessibility means that food should be affordable without compromising other basic needs such as education, health care or housing.

13. Changes in food production and quality affect market prices and, in turn, price increases affect accessibility to food, especially for the poor. Socially vulnerable groups may have to alter their diet, substituting less nutritious and lower-quality food items and, as a result, diminishing dietary diversity owing to dependence on a few staple foods.

14. Sharp price increases for all major crops can be expected as a result of climate change accompanied by population growth, changing diets and increasing demand for non-food crops. Although it is difficult to predict food prices because of the many variables, the Intergovernmental Panel on Climate Change expects with medium confidence that global food prices will rise substantially by 2050.<sup>8</sup> The Intergovernmental Panel predicts that low-income agricultural economies that are net food importers could experience significant losses in food access through a "double negative" effect of reduced domestic agricultural production and increased food prices on global markets.<sup>9</sup> Furthermore, sudden shocks in prices and currency values, as well as extreme weather events, can also create obstacles to food distribution, making it difficult to deploy adequate responses to an increasingly frequent number of emergencies.

### Adequacy

15. Adequacy requires that food satisfy dietary needs (factoring in a person's age, living conditions, health, occupation, sex, etc.) and be safe for human consumption, free of adverse substances, culturally acceptable and nutritious.

16. In its *Fifth Assessment Report* the Intergovernmental Panel on Climate Change concluded with high confidence that climate change will have a substantial negative impact on food production and food nutritional quality and on per capita calorie availability. Increased droughts can have severe detrimental impacts on nutrition and rising carbon dioxide emissions are causing harm to staple food crops, reducing their nutrient content, including of zinc (zinc deficiency is responsible for a large

<sup>7</sup> Intergovernmental Panel on Climate Change, *Fifth Assessment Report* (2013-2014) (see note 2 above).

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

number of diseases worldwide). Heavy rainfall may also be linked to lower quality of crops owing to fungal infections. Over time, climate change is set to reduce food quality, decrease water availability and aggravate the prevalence of infectious vector-borne diseases and chronic intestinal infections, while food storage will also become problematic owing to warmer weather. It is estimated that 50-60 per cent of the world population will be exposed to dengue fever by 2085, further degrading their nutritional status.<sup>10</sup>

17. Moreover, childhood undernutrition and stunting will increase, provoking a rise in nutrition-related deaths in children in developing countries. Calorie availability in 2050 is likely to decline throughout the developing world, resulting in an additional 24 million undernourished children. It is expected that health losses will occur mainly in areas that are already food insecure. Climate change exacerbates undernutrition and undermines efforts to reduce poverty and resilience, particularly in sub-Saharan Africa. A recent drought-triggered famine in Somalia spurred food crises in neighbouring countries, illustrating the possible consequences of more frequent extreme weather events.<sup>11</sup>

18. Adaptation and mitigation strategies should address these challenges. So far, no broadly accepted and comprehensive analytical frameworks have been developed that analyse the impacts of climate change on food security and nutrition.

### **Sustainability**

19. While not specifically enunciated in general comment No. 12 (1999), sustainability is linked to hunger-reduction strategies and policies as it places emphasis on the principles of participation, non-discrimination, transparency and empowerment.

20. Sustainability is defined in connection with the notion of adequate food or food security, implying that food will be accessible for both present and future generations. Food sustainability and security are also dependent on an adequate diet, clean water, sanitation and health care, to reach a state of nutritional well-being where all physiological needs are met.<sup>12</sup>

21. The Intergovernmental Panel on Climate Change predicts with medium confidence that droughts will intensify in the twenty-first century, owing to reduced precipitation and/or increased evapotranspiration. Water is crucial to food security, as it is necessary for food production, preparation and processing, as well as the absorption of nutrients within the human body.

22. Freshwater sources include rainwater, surface water and groundwater, all of which are crucial to food security. When rainfall is insufficient, agriculture relies on irrigation. As some 40 per cent of all irrigation relies on groundwater sources,<sup>13</sup>

<sup>10</sup> Partnership for Maternal, Newborn and Child Health, "Protecting women and children's health from a changing climate", Knowledge Summaries, No. 32 (April 2015). Available from [www.who.int/pmnch/knowledge/publications/summaries/ks32.pdf?ua=1](http://www.who.int/pmnch/knowledge/publications/summaries/ks32.pdf?ua=1).

<sup>11</sup> M. C. Tirado and others, "Climate change and nutrition in Africa", *Journal of Hunger and Environmental Nutrition*, vol. 10, No. 1 (March 2015).

<sup>12</sup> FAO, "Food security", FAO Policy Briefs, No. 2 (June 2006). Available from [www.fao.org/forestry/13128-0e6f36f27e0091055bec28ebe830f46b3.pdf](http://www.fao.org/forestry/13128-0e6f36f27e0091055bec28ebe830f46b3.pdf).

<sup>13</sup> Ibid.

climate-induced impacts on the sustainability of groundwater sources have a tremendous impact on the potential for food production.

23. Water is also an important aspect of transportation, which affects the distribution of food and income generation. This in turn has an impact on the livelihoods of individuals and therefore their ability to purchase food. Climate change puts additional pressure on water resources on the supply side.<sup>14</sup> It also increases demand for water to sustain crop and livestock production increases in a progressively warming climate as well as having a tremendous impact on fisheries as a result of changes to water flows and temperatures.<sup>15</sup>

24. Communities can reduce food insecurity risks by complementing their traditional knowledge and practices with information and support from Governments and others, including rapid response systems and capacity-building for disaster preparedness, mitigation and management. Supporting local communities helps to maintain resilience and should be encouraged.

### III. Regions affected by food insecurity resulting from climate change

25. The Intergovernmental Panel on Climate Change has expressed with high confidence that, despite regional variabilities, climate change is likely to have an overall negative effect on yields of major cereal crops across Africa. Climate change is expected to interact with non-climate drivers and stressors to exacerbate vulnerability of agricultural systems on the continent, particularly in semi-arid areas. Global projections suggest that the number of people at risk of hunger will increase by 10-20 per cent by 2050 and that 65 per cent of them will be in sub-Saharan Africa.<sup>16</sup> Sub-Saharan Africa is often cited as the most impoverished region in the world because hunger is most prevalent there, affecting 25 per cent of the population.<sup>17</sup> Other African nations, including the Central African Republic and South Sudan, are similarly vulnerable to food insecurity, with the latter currently on the brink of famine.<sup>18</sup>

26. In Southern Africa, it is estimated that yields from rain-fed agriculture could decrease by up to 50 per cent between 2000 and 2020 (A/HRC/16/49). The Middle East and North Africa is expected to be the region most affected by climate change after sub-Saharan Africa. Average temperatures in that region are forecast to increase by 3°-4°C by the end of the century, faster than the global average.<sup>19</sup>

27. World hunger is not limited to Africa. The largest population of hungry people — 500 million — live in Asia and 98 per cent of the people living with food insecurity are in developing countries around the world. The impact of climate

<sup>14</sup> High Level Panel of Experts on Food Security and Nutrition, “Water for food security and nutrition”, May 2015. Available from [www.fao.org/fileadmin/user\\_upload/hlpe/hlpe\\_documents/HLPE\\_Reports/HLPE-Report-9\\_EN.pdf](http://www.fao.org/fileadmin/user_upload/hlpe/hlpe_documents/HLPE_Reports/HLPE-Report-9_EN.pdf).

<sup>15</sup> Ibid.

<sup>16</sup> WFP and Met Office Hadley Centre, “Climate impacts on food security and nutrition”, chap. II, note 7.

<sup>17</sup> FAO, IFAD and WFP, *The State of Food Insecurity in the World 2015*, chap. I, note 1.

<sup>18</sup> FAO, *Regional Overview of Food Insecurity*.

<sup>19</sup> Intergovernmental Panel on Climate Change, *Fifth Assessment Report*.

change makes it very difficult to combat hunger, especially in regions that are already under serious threat from both climate change and food shortage.

28. The Intergovernmental Panel on Climate Change further notes that in Central America, north-east Brazil and parts of the Andean region, increases in temperature and decreases in rainfall could lower productivity by 2030, aggravating food security among the poorest members of society.

#### IV. Effects on vulnerable populations and their livelihoods

29. Understanding the specific impacts of climate change on food security is challenging because vulnerabilities are unevenly spread across the world and depend ultimately on the ability of communities to manage risks and develop resilience. Moreover, climate change is undermining the right to food, having disproportionate impacts on those who have contributed least to global warming.

30. Developing countries are likely to be the hardest hit by climate change not only because of their geographical location but also because of the way people earn their livelihoods. The majority of people living in poverty in developing countries dwell in rural areas and many of them depend on agricultural activities to provide food for their families and generate income. Both aspects have implications for non-farm rural households, either through the availability of food, which can cause fluctuations in local prices, or as an indirect source of employment.<sup>20</sup>

31. Ensuring sustainable livelihoods is a crucial aspect of food security and one that is also threatened by climate change. FAO notes the dual role played by agricultural production in relation to food security: it not only produces the food that people eat, but also provides the primary source of employment for 36 per cent of the world's workforce. In some regions, including Asia and the Pacific, 40-50 per cent of the workforce is engaged in agriculture; in sub-Saharan Africa, two thirds of the working population is employed in agricultural labour.<sup>21</sup> Thus, if agricultural production is adversely affected by climate change, so too are the livelihoods of significant numbers of rural workers.<sup>22</sup>

32. While more affluent countries are better able to cope with the effects of climate change, nations with a higher proportion of people living in poverty may not have access to necessary infrastructure and resources and their populations have fewer opportunities to diversify their livelihoods and reduce their dependence on agriculture.<sup>23</sup> Within this group of vulnerable populations, small-scale farmers and indigenous peoples, particularly women who depend on climate-sensitive natural systems for their food and livelihoods, are expected to be particularly susceptible to the effects of climate change on their food security.

<sup>20</sup> Marcus Kaplan, Chinwe Ifejika-Speranza and Imme Scholz, "Commentary VII: promoting resilient agriculture in sub-Saharan Africa as a major priority in climate change adaptation", in *Trade and Environment Review 2013: Wake up Before it is Too Late: Make Agriculture Truly Sustainable Now for Food Security in a Changing Climate* (Geneva, United Nations Conference on Trade and Development, 2013).

<sup>21</sup> FAO, *Climate Change and Food Security: A Framework Document* (Rome, 2008).

<sup>22</sup> High Level Panel of Experts on Food Security and Nutrition, "Food security and climate change", June 2012. Available from [www.fao.org/3/a-me421e.pdf](http://www.fao.org/3/a-me421e.pdf).

<sup>23</sup> Kaplan, Ifejika-Speranza and Scholz, "Commentary VII".

### Smallholder farmers

33. Smallholder farmers constitute a significant portion of the world's population. Estimated to number 500 million worldwide, they represent 85 per cent of the world's farms but use no more than 20 per cent of the world's arable land.<sup>24</sup> They are responsible for growing over 70 per cent of the world's food and are critical to global food security. Yet, they are also estimated to represent half of the hungry.<sup>25</sup> Therefore, unless small-scale farmers are given the appropriate support and technology to confront climate change, the resulting negative impact on food production and increase in world hunger will be devastating.

34. Subsistence farmers often inhabit the most exposed and marginal landscapes, such as hillsides, deserts and flood plains, and may already suffer from chronic food insecurity. Other factors contributing to their food insecurity may include insecure land tenure and lack of crop insurance and irrigation options. They may also lack access to formal social safety nets and have unpredictable and uneven exposure to markets and finance. They often have no access to information and technology to explain how the local climate is changing and how to adjust their farming strategies accordingly. Despite being skilful and resilient in dealing with nature, the current speed and intensity of climate change is outpacing their capacity to adapt.<sup>26</sup>

### Women

35. As farm labourers, vendors and unpaid care workers, women are responsible for food preparation and production in many countries and regions around the world and play a vital role in food security and nutrition. Nevertheless, women and girls continue to be disproportionately affected by climate change, poverty and malnutrition. Women in rural areas are particularly affected as the number of female-headed households continues to grow, exceeding 30 per cent in some developing countries, while women own only 2 per cent of agricultural land and have limited access to productive resources.<sup>27</sup> According to FAO, women are responsible for 50 per cent of the world's food production, most of which is for family consumption.

36. In addition to the many challenges they face in relation to food production, women face significant barriers in tackling climate change because of their gender. Their vulnerability to climate change-related risks is exacerbated by discriminatory practices in the agricultural sector, where gender discrimination may affect women's access to financing, technical support and other necessary resources. They may also have less bargaining power in or be excluded from decision-making on land use or

<sup>24</sup> Celia A. Harvey and others, "Extreme vulnerability of smallholder farmers to agricultural risks and climate change in Madagascar", in *Philosophical Transactions B: Achieving Food and Environmental Security: New Approaches to Close the Gap*, vol. 369, No. 1639 (5 April 2014).

<sup>25</sup> International Federation of Organic Agriculture Movements, "IFOAM highlights the plight of smallholder farmers on Earth Day", 22 April 2014. Available from [www.ifoam-eu.org/sites/default/files/pr\\_earth\\_day\\_0.pdf](http://www.ifoam-eu.org/sites/default/files/pr_earth_day_0.pdf).

<sup>26</sup> IFAD, "Climate change and the future of smallholder agriculture", discussion paper prepared for the round table on climate change held at the thirty-first session of the IFAD Governing Council, Rome, 14 February 2008.

<sup>27</sup> Isabella Rae, *Women and the Right to Food: International Law and State Practice* (Rome, FAO, 2008).

preparedness and adaptation strategies.<sup>28</sup> Migration as a result of natural disasters, climate change and conflict also has a disproportionate effect on women, increasing the difficulties of providing for their families, including children and the elderly. This affects in particular women living in rural areas and among the urban poor.

37. The empowerment of women by way of education, secure property rights and technology is paramount to tackling climate change and at the same time eliminating hunger and poverty by using the knowledge and experience of local women. At the national and local levels, rights-based practices can contribute to climate justice. For example, women in Maradi, Niger, traditionally lacked access to rights, making them particularly vulnerable to food crises caused by recurrent droughts. Rights-based approaches have been used at the community level to improve women's access to and control over land as well as their access to information and credit. Enabling women to adapt their agricultural practices improves household nutrition and generates income. Helping women and other vulnerable groups to claim their rights is therefore essential to climate justice.<sup>29</sup> Similarly, the Consultative Group for International Agricultural Research, in Behar, India, organized a series of training programmes to promote women's empowerment and leadership to fill the knowledge gap in climate change.<sup>30</sup>

### **Indigenous peoples**

38. Indigenous peoples are already among the world's most vulnerable and marginalized communities in many parts of the world owing to discriminatory policies. They are highly dependent on natural resources, with subsistence agriculture, hunting and gathering forming a core part of their livelihoods, and they often have very limited additional income from other activities. Additionally, they may face situations where the land tenure and access rights of their communities are not legally recognized.

39. Indigenous peoples often live in physically isolated and harsh environments and rely on fragile ecosystems that are particularly susceptible to climate change and natural disasters. Such ecosystems include tropical rainforests, arctic regions, deserts, low-lying and coastal areas, small islands, open grasslands and mountainous areas. Damage to these ecosystems threatens indigenous peoples' resource bases and traditional ways of securing food. As a result of a decline in biodiversity, traditional subsistence food is being lost in these regions, along with access to medicinal plants traditionally used to ward off pests and disease.

40. The Intergovernmental Panel on Climate Change has recognized that climate change in polar regions will affect the informal, subsistence-based economy of indigenous peoples, with changing sea ice conditions likely to reduce their ability to hunt the marine mammals that are a significant source of both food and livelihood.<sup>31</sup>

<sup>28</sup> FAO, "FAO Programme: Food Security". Available from [www.fao.org/gender/gender-home/gender-programme/gender-food/en/](http://www.fao.org/gender/gender-home/gender-programme/gender-food/en/).

<sup>29</sup> Mary Robinson Foundation — Climate Justice, "Human rights and climate justice", position paper, 27 June 2014. Available from [www.mrfcj.org/media/pdf/PositionPaperHumanRightsandClimateChange.pdf](http://www.mrfcj.org/media/pdf/PositionPaperHumanRightsandClimateChange.pdf).

<sup>30</sup> Dharini Parthasarathy and Cecilia Schubert, "Empowering women to take the lead on climate change adaptation", 3 March 2014. Available from <https://ccafs.cgiar.org/blog/empowering-women-take-lead-climate-change-adaptation#.VZuStxaEzzJ>.

<sup>31</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability: Part B: Regional Aspects* (see note 2 above).

Similarly, indigenous peoples living in mountainous areas will suffer a depletion of food sources owing to the loss of alpine flora. Coastal erosion on Pacific islands is threatening agricultural practices while traditional cattle and goat farming is being endangered in arid regions. There is considerable concern that the impacts of climate change may overstrain indigenous and traditional peoples' capacity to cope and adapt (A/HRC/29/19).

## V. Impact of agriculture and food systems on climate change

41. The previous sections illustrate how climate change can undermine the right to food. The following section will provide an overview of the ways in which agriculture and food systems can negatively affect climate change, endangering the full enjoyment of the right to food.

### Greenhouse gas emissions

42. The food system as a whole is a significant contributor of greenhouse gas emissions. Crop and livestock agriculture currently account for about 15 per cent of global emissions.<sup>32</sup> Direct greenhouse gas emissions from agriculture include methane (CH<sub>4</sub>) emissions from flooded rice fields and livestock, nitrous oxide (N<sub>2</sub>O) emissions from the use of organic and inorganic nitrogen fertilizers and carbon dioxide (CO<sub>2</sub>) emissions from loss of soil and organic carbon in croplands as a result of agricultural practices and in pastures as a result of increased grazing intensity.<sup>33</sup> In addition to these direct emissions, agriculture and food production are also responsible for an increase in indirect emissions that are accounted for in other sectors (industry, transport, energy supply, etc.), which can misleadingly understate the environmental footprint of agriculture. The production of fertilizers, herbicides and pesticides as well as energy consumption for tillage, irrigation, fertilization, harvesting and transport contribute to 60 per cent of total food system emissions globally, although there is significant regional variation. The expansion of agricultural areas and changes in land use contribute an additional 15-17 per cent of emissions. It is further estimated that future income and population growth will increase agricultural emissions dramatically unless low-emissions growth strategies for agriculture are found.<sup>34</sup>

### Role of livestock

43. The world's current consumption pattern of meat and dairy products is a major driver of climate change and climate change can only be effectively addressed if demand for these products is reduced. Livestock systems are the source of 33 per cent of the protein in human diets, while 30 per cent of land worldwide is used to

<sup>32</sup> Rob Bailey, Antony Froggatt and Laura Wellesley, "Livestock — Climate Change's Forgotten Sector: Global Public Opinion on Meat and Dairy Consumption" (London, Royal Institute of International Affairs, 2014). Available from [http://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/20141203LivestockClimateChangeBaileyFroggattWellesley.pdf](http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20141203LivestockClimateChangeBaileyFroggattWellesley.pdf).

<sup>33</sup> High Level Panel of Experts on Food Security and Nutrition, "Food security and climate change", see chap. IV, note 25.

<sup>34</sup> Rani Molla, "How much of the world's greenhouse-gas emissions come from agriculture?", *Wall Street Journal*, 29 September 2014.

raise livestock.<sup>35</sup> With increased population growth and an expanding middle class, these numbers are expected to at least double by 2050.<sup>36</sup> It is argued that in the absence of climate change the livestock sector could support the increased demand for meat and milk without major price increases in this period.<sup>37</sup> However, with climate change already having a significant impact on the environment, livestock production will require major technological and ecological interventions in order to maintain stability.

44. Projections indicate that most climate-related changes are associated with animal deaths.<sup>38</sup> Experts suggest that creative solutions must be sought to mitigate the impact of climate change on livestock, and vice versa. For example, research from Chile, the Netherlands and New Zealand has revealed that the intensification of grassland and forage use may lead to more efficient, more profitable and more sustainable ecosystems that can meet demands for increased dairy and beef production.<sup>39</sup> Nations with emerging economies must increase awareness of the implications of meat consumption,<sup>40</sup> while developed countries should demonstrate a willingness to modify consumption behaviour and avoid food waste.

#### **Impact on the ecosystem, biodiversity and desertification**

45. Additional negative consequences of agriculture include loss of biodiversity, soil degradation and depletion of ground and surface water (agriculture consumes 60-70 per cent of freshwater resources globally). Desertification and soil degradation are also major threats to food security. As two thirds of Africa is desert or arid, the continent as a whole is heavily exposed to further desertification. One study predicts that by 2080 as much as one fifth of Africa's farmland will be severely stressed.<sup>41</sup>

46. The link between land degradation and climate change requires attention and focus from the parties to the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa and the United Nations Framework Convention on Climate Change. The United Nations Convention to Combat Desertification was originally designed "to forge a global partnership to reverse and prevent desertification/land degradation and to mitigate the effects of drought in affected areas in order to support poverty reduction and environmental sustainability".<sup>42</sup> With some 250 million people and a third of the Earth's land surface affected by desertification, the parties to the Convention have recently made significant strides towards

<sup>35</sup> P. Havlik and others, "Livestock in the XXI century: alternative futures", paper prepared for the Livestock, Climate Change and Food Security Conference, Madrid, 19-20 May 2014.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> P. K. Thornton and others, "The impacts of climate change on livestock and livestock systems in developing countries: a review of what we know and what we need to know", *Agricultural Systems*, vol. 101, No. 3 (July 2009).

<sup>39</sup> O. Oenema and others, "Intensification of grassland and forage use: driving forces and constraints", paper prepared for the Livestock, Climate Change and Food Security Conference, Madrid, 19-20 May 2014.

<sup>40</sup> Bailey, Froggatt and Wellesley, "Livestock — Climate Change's Forgotten Sector".

<sup>41</sup> <http://foreignpolicy.com/2011/04/25/the-new-geopolitics-of-food/>.

<sup>42</sup> Report of the Conference of the Parties to the United Nations Convention to Combat Desertification on its eighth session, Part two (ICCD/COP(8)/16/Add.1), decision 3/COP.8, annex, para. 8.

addressing this challenge in the context of food security and climate change.<sup>43</sup> Given that more than 75 per cent of the world's poorest people live in rural areas and that 2.5 billion people live on small farms and are entirely dependent on agriculture for their survival, the fact that 30 per cent of the Earth's surface is affected by the degradation of fragile drylands poses a significant problem.<sup>44</sup> Poverty and food security should be addressed by adopting sustainable land management practices and the collaborative work by the parties to the two important international conventions is encouraging. The inclusion of a human rights approach to this work will introduce a climate-justice dimension that will be of benefit to people living in acute vulnerability.

## **VI. The United Nations climate change regime and the right to food**

47. The United Nations Framework Convention on Climate Change, the main international treaty governing the global climate change regime, and its implementing mechanism, the Kyoto Protocol, outline the main objectives, principles and guidelines for industrialized and developing States to combat the detrimental effects of climate change.

48. The United Nations Framework Convention requires States to adopt national and regional programmes and policies to mitigate and adapt to climate change (art. 4 (1) (b)) and calls on them to take precautionary measures to anticipate, prevent or minimize its causes (art. 3 (3)). It recognizes that climate change is fundamentally an intergenerational problem and refers to the protection of future generations (art. 3 (1)). Articles 3 and 4 recognize the specific needs of developing countries, especially those that are particularly vulnerable to the adverse effects of climate change.

49. Despite the inclusion in the United Nations Framework Convention of these principles and the acknowledgement of the link between food security and climate change, these elements are not part of the prevailing philosophies in climate change policymaking and many of the principles and commitments outlined in the Convention fall short of what is needed, owing to vagueness and the absence of enforcement mechanisms. For instance, the Compliance Committee of the Kyoto Protocol focuses on monitoring the achievement of emission reduction goals, rather than ensuring accountability for human rights violations.<sup>45</sup> More specifically, the mitigation and adaptation policies implemented under the United Nations Framework Convention do not take into account their effects on vulnerable populations, who are the most food insecure.

50. The impact of climate change on food security was recognized in the United Nations Framework Convention on Climate Change (art. 2), but received little attention until the spike in food prices in 2007. The Intergovernmental Panel on

<sup>43</sup> Chris Arsenault, "Bureaucratic infighting hampers action on droughts: U.N. official", 10 March 2015. Available from [www.businessinsider.com/r-bureaucratic-infighting-hampers-action-on-droughts-un-official-2015-3](http://www.businessinsider.com/r-bureaucratic-infighting-hampers-action-on-droughts-un-official-2015-3).

<sup>44</sup> Ibid.

<sup>45</sup> Elisabeth Caesens and Maritere Padilla Rodríguez, *Climate Change and the Right to Food: A Comprehensive Study*, Publication Series on Ecology, vol. 8 (Berlin, Henrich Böll Stiftung, 2009).

Climate Change for the first time in its assessments included a section on food security in the *Fifth Assessment Report*. Article 2 of the United Nations Framework Convention states that ecosystems must be allowed sufficient time to adapt naturally to climate change so as to “ensure that food production is not threatened”. Several international organizations have also acknowledged the link between food security and climate change. Nevertheless, the inclusion of a rights-based approach to food security has yet to be realized.

51. As early as 1999, in its general comment No. 12, the Committee on Economic, Social and Cultural Rights acknowledged that “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”. In accordance with the International Covenant on Economic, Social and Cultural Rights, most States accept the responsibility for fulfilling the right to food, designing and implementing policies that support its progressive realization and ensure access to adequate food. In the context of climate change, States must avoid policies and actions that undermine people’s ability to produce their own food or to access food for themselves and their families.<sup>46</sup>

52. States must also endeavour to support policies that limit and overcome negative effects on the right to food. A human rights framework requires all States to seek to reduce harmful emissions into the global atmosphere, with a view to reducing their negative effect on the enjoyment of human rights. In addition, in its statement on the world food crisis ([E/C.12/2008/1](#)), the Committee on Economic, Social and Cultural Rights pressed States parties to adopt “strategies to combat global climate change that do not negatively affect the right to adequate food and freedom from hunger, but rather promote sustainable agriculture”. This statement is in harmony with article 2 of the United Nations Framework Convention on Climate Change. Unfortunately, while it does mention the strategies that States should employ to develop mitigation and adaptation strategies, the United Nations Framework Convention refers to the use of “appropriate methods” to minimize “adverse effects on the economy, on public health and on the quality of the environment” (art. 4 (1) (f), rather than referencing human rights.

53. Since 2008, the Human Rights Council has regularly highlighted the negative implications of climate change on human rights. Furthermore, at the request of the Council, the Office of the United Nations High Commissioner for Human Rights (OHCHR) presented a report in 2009 that addressed the adverse effects of climate change on specific rights, including the direct relationship between the right to adequate food and climate change ([A/HRC/10/61](#), paras. 25-27). The Council reiterated the negative impact of climate change on the right to food in subsequent resolutions adopted in 2009, 2011, 2014 and, most recently, in June 2015.<sup>47</sup>

54. In 2010, the States parties to the United Nations Framework Convention on Climate Change, citing Human Rights Council resolution 10/4, agreed, in the

---

<sup>46</sup> Olivier De Schutter, Mary Robinson and Tara Shine, “Human rights: their role in achieving climate justice and food and nutrition security”, paper presented at the conference entitled “Hunger, nutrition, climate justice 2013 — A new dialogue: putting people at the heart of global development”, Dublin, 15-16 April 2013.

<sup>47</sup> Resolutions 10/4, 18/22, 26/27 and 29/15.

outcome document adopted by the Conference of the Parties at its sixteenth session, held in Cancun, Mexico, “that Parties should, in all climate change related actions, fully respect and protect human rights”.<sup>48</sup> This was reiterated at the seventeenth session of the Conference of the Parties, held in Durban, South Africa, in November/December 2011.

55. Furthermore, the 2014 report of Working Group II of the Intergovernmental Panel on Climate Change<sup>49</sup> addresses the impacts of climate change on people in the context of food security, health, access to water and personal security, noting that the poor and marginalized are most vulnerable.

56. The negotiations leading up to the twenty-first session of the Conference of the Parties, to be held in Paris in December 2015, the objective of which is to achieve a legally binding, universal agreement on climate change, are an opportunity to ensure that a human rights-based approach is adopted that identifies and satisfies the most pressing needs of vulnerable persons. A new climate agreement should strengthen the commitment made in Cancun and should include clear references to the human rights principles of equality, non-discrimination, accountability, participation, empowerment, solidarity and transparency.

57. In an open letter to the States parties to the United Nations Framework Convention on Climate Change, a number of special rapporteurs, including the Special Rapporteur on the right to food, called on States to ensure full coherence between human rights obligations and efforts to address climate change and to include clear human rights language in the agreement to be concluded in Paris.<sup>50</sup> Most recently, at the closing plenary meeting of the eighth session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action, held in February 2015 in Geneva, 18 countries signed a voluntary agreement on human rights and climate action, the Geneva Pledge for Human Rights in Climate Action, pledging to facilitate the sharing of best practice and knowledge between human rights and climate experts at the national level.<sup>51</sup>

### **Legal and judicial developments**

58. Significant political, legal and judicial initiatives have been taken with a view to the next round of climate negotiations to take place in Paris. For instance, a recent study involving 66 countries found that most jurisdictions have taken important legislative steps to mitigate climate change. However, despite the fact that a considerable number of climate change-related laws and regulations have been adopted in several regions, they have rarely been enforced.

59. An example of a State entity reaffirming the human rights obligation to mitigate climate change was the ruling issued by a court in the Netherlands that

<sup>48</sup> Decision 1/CP.16, para. 8.

<sup>49</sup> Available from <https://ipcc-wg2.gov/AR5/report/full-report/>.

<sup>50</sup> Available from [www.ohchr.org/Documents/HRBodies/SP/SP\\_To\\_UNFCCC.pdf](http://www.ohchr.org/Documents/HRBodies/SP/SP_To_UNFCCC.pdf).

<sup>51</sup> The Ad Hoc Working Group was established by decision 1/CP.17 of the Conference of the Parties to the United Nations Framework Convention on Climate Change at its seventeenth session (see [FCCC/CP/2011/9/Add.1](http://unfccc.int/essential_documents/items/13FEB2015.pdf)). The Geneva Pledge was signed by Chile, Costa Rica, France, Guatemala, Ireland, Kiribati, Maldives, Marshall Islands, Micronesia (Federated States of), Mexico, Palau, Panama, Peru, Philippines, Samoa, Sweden, Uganda and Uruguay. The text is available from <http://carbonmarketwatch.org/wp-content/uploads/2015/02/The-Geneva-Pledge-13FEB2015.pdf>.

ordered the Government to cut emissions by at least 25 per cent in the next five years. The ruling relied on the international no-harm norm, the European Union's approach to the precautionary principle and the Oslo Principles on Global Climate Change Obligations to determine that the Netherlands did not meet its legal obligations to act on climate change. While this was a landmark decision, citizens and civil society around the world are bringing similar legal claims. By the end of 2013, over 420 pieces of climate change litigation had been resolved in the United States of America alone,<sup>52</sup> while in Australia approximately 40 per cent of total litigation is climate related.<sup>53</sup>

## VII. Adverse impact of mitigation policies on the right to food

60. Climate change mitigation refers to efforts to reduce or prevent greenhouse gases. Mitigation measures may be problematic when they rely on resources that are currently devoted to food production and have a negative impact on the right to food. One of the most significant examples of this is the production of biofuel as a method of reducing greenhouse gas emissions.

### Agriculture for biofuel production

61. Biofuels are biomass-derived fuels designed to replace petroleum. As they depend on soil and water, these resources may be diverted from agricultural purposes and therefore diminish impoverished communities' ability to grow the food they require. In less than a decade biofuel production has increased fivefold and has contributed to high volatility in food prices as well as increases in prices of staple foods.<sup>54</sup> This is of particular concern for low-income countries reliant on international food markets. In recent years, there has been an alarming increase in the number of large-scale land deals for the purpose of producing biofuels.<sup>55</sup> Forced relocations as a result of large-scale land acquisitions and long-term leases pose a particular threat to smallholder farmers and indigenous populations, especially when land rights and tenure are weak. Evidence also indicates that efficient biofuel production depends on capital-intensive farming, which favours large agricultural producers who are better connected to the markets, leaving small-scale farmers in poor countries unable to compete effectively.

62. First-generation biofuels are of particular concern, as they are responsible for developing "food v. fuel conflicts". While the shift towards second-generation biofuels is an improvement, it does not necessarily solve the problem. In seeking to

<sup>52</sup> Meredith Wilensky, "Climate change in the courts: an assessment of non-U.S. climate litigation", academic paper prepared for the Sabin Center for Climate Change Law of Columbia Law School in 2015. Available from [https://web.law.columbia.edu/sites/default/files/microsites/climate-change/white\\_paper\\_-\\_climate\\_change\\_in\\_the\\_courts\\_-\\_assessment\\_of\\_non\\_u.s.\\_climate\\_litigation.pdf](https://web.law.columbia.edu/sites/default/files/microsites/climate-change/white_paper_-_climate_change_in_the_courts_-_assessment_of_non_u.s._climate_litigation.pdf).

<sup>53</sup> Ibid.

<sup>54</sup> High Level Panel of Experts on Food Security and Nutrition, "Biofuels and food security", June 2013. Available from <http://www.fao.org/3/a-i2952e.pdf>.

<sup>55</sup> Kerstin Nolte, Martin Ostermeier and Kim Schultze, "Food or fuel: the role of agrofuels in the rush for land", *GIGA Focus*, International Edition English, No. 5 (Hamburg, Germany, German Institute of Global and Area Studies 2014). Available from [http://www.giga-hamburg.de/en/system/files/publications/gf\\_international\\_1405\\_0.pdf](http://www.giga-hamburg.de/en/system/files/publications/gf_international_1405_0.pdf).

achieve positive greenhouse gas mitigation outcomes, climate-mitigation strategies deprive some of the poorest people on the planet of food security.<sup>56</sup>

### **Bioenergy**

63. Biomass energy can be derived from (usually woody) feedstock by means of processes that run the gamut from simple combustion in a cookstove to biochemical conversion. Bioenergy may be able to displace fossil fuels. However, a critical approach is required to combining biomass energy with carbon capture and storage. This technology involves growing crops that absorb carbon dioxide, burning them to produce energy and capturing and storing the carbon that results from the combustion. The main challenges facing the bioenergy industry is avoiding negative impacts on food production or ecosystem services.

### **Water diversion for climate-friendly energy production**

64. Other examples of reallocation of resources for the benefit of clean energy at the expense of food security are cleaning coal and constructing dams for the generation of hydroelectric power. Cleaning coal requires large amounts of water that could otherwise be used for irrigating arable land, while the construction of dams for hydroelectricity may affect water supply for agricultural activities downstream and also flood land that could otherwise be used for food production.<sup>57</sup> Indeed, any mitigation and adaptation policies that affect water resources must carefully consider competing water uses and the various implications for food security. Measures that mitigate one type of adverse impact could exacerbate another.<sup>58</sup>

65. Hydropower is presented as a climate-friendly option and a way to increase water storage infrastructure. However, hydropower can also create conflicts between water for energy and water for agriculture.<sup>59</sup> For example, indigenous communities have raised serious objections to the hydroelectric plant in the Alta Verapaz region in Guatemala owing to violations of environmental and human rights norms. The affected people allege that they were never consulted, as required by Guatemalan law and the rules of the clean development mechanism registration process.<sup>60</sup> Another example is the Barro Blanco Hydroelectric Power Plant Project in Panama. It has significantly affected the Ngabe Bugle people who live alongside the Tabasara River. Construction commenced despite evidence that it would impact cultural and religious sites and access to medicinal plants highly valued by the Ngabe people.<sup>61</sup>

<sup>56</sup> T. Searchinger and others, “Do biofuel policies seek to cut emissions by cutting food?”, *Science*, vol. 347, No. 6229 (27 March 2015).

<sup>57</sup> Caesens and Padilla Rodríguez, *Climate Change and the Right to Food*, chap. VI, note 51.

<sup>58</sup> High Level Panel of Experts on Food Security and Nutrition, “Water for food security and nutrition”, chap. II, note 16.

<sup>59</sup> *Ibid.*, para. 1.5.2.

<sup>60</sup> Adriana Herrera Garibay and Fabrice Edouard, *Tenure of Indigenous Peoples Territories and REDD+ as a Forestry Management Incentive: The Case of Mesoamerican Countries* (Rome, FAO, 2012). UN-REDD is the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in developing countries.

<sup>61</sup> Carbon Market Watch, “Local realities of CDM projects: a compilation of case studies”, November 2013. Available from [http://carbonmarketwatch.org/wp-content/uploads/2013/11/case-studies-06-mail-2-dec-2013\\_final\\_light.pdf](http://carbonmarketwatch.org/wp-content/uploads/2013/11/case-studies-06-mail-2-dec-2013_final_light.pdf). CDM refers to the clean development mechanism.

### Emission reduction strategies

66. Climate change mitigation strategies that aim to reduce emissions from land use may also have a negative impact on food production methods. The clean development mechanism was established to encourage industrialized States to fund carbon reduction projects in developing countries. It has generated many projects and in 2012 it was estimated to have generated approximately \$215 billion for developing countries. Yet the mechanism has been criticized for failing to ensure human rights protections and to prevent the approval of projects that have negative human rights impacts, including on food security, owing to a lack of a rigorous impact assessment procedure for prospective projects.<sup>62</sup> Activities have been proposed that would change land use patterns to reduce carbon emissions or promote carbon capture and storage; it is claimed that such projects have led to the displacement of small-scale farmers and indigenous peoples and that farmers may not be directly compensated for the carbon credits derived from their activities.<sup>63</sup>

67. The United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation encourages developed countries and their companies to make investments in forest preservation in developing countries and provides incentives for developing countries to sustainably manage their forests and enhance forest carbon stocks. However, concerns have been raised about the validity of this process, as communities that live in and are dependent on forests for their livelihoods and subsistence have been negatively affected by some of the projects, especially those initiated without the consent of the population concerned.<sup>64</sup>

68. Recent evidence from the REDD-plus mechanism shows that smallholder coffee farmers and forest communities can make a significant contribution to the mitigation of climate change. However, existing mechanisms have failed to offer effective avenues for benefiting these actors and in some cases even threaten to undermine their livelihoods.<sup>65</sup> The principal method for compensating these actors would be a system of carbon credits; however, such a system is unlikely to be suitable to support the mitigation potential of traditional agriculture given the high transaction costs and low returns. In some cases, participating in the REDD-plus process has backfired terribly. For example, according to reports received, the indigenous Dayak community, which participated in the Kalimantan Forests and Climate Partnership through the REDD-plus process, lost access to the forest and its resources and questions have been raised as to whether the project adhered to the requirement of prior informed consent.<sup>66</sup> Similarly, a massive palm oil farm in Cameroon has inflamed tensions between locals, investors and the State as a result

<sup>62</sup> International Bar Association, Climate Change Justice and Human Rights Task Force, *Achieving Justice and Human Rights in an Era of Climate Disruption* (London, International Bar Association, July 2014).

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Andrew Davis and V. Ernesto Méndez, "Prioritizing food security and livelihoods in climate change mitigation mechanisms: experiences and opportunities for smallholder coffee agroforestry, forest communities and REDD+", *PRISMA, Salvadoran Research Program on Development and Environment*, Policy Brief, 2011.

<sup>66</sup> "In the REDD: Australia's carbon offset project in Central Kalimantan", Friends of the Earth, December 2011.

of environmental destruction and resource conflicts as well as uncertainties about who will ultimately be the beneficiary of the carbon credits.<sup>67</sup>

69. While some indigenous and small farmer groups support REDD-plus solutions, others reject these and all other market solutions and urge global organizations to recognize and support the sustainable agriculture of family farmers and indigenous people as a way of maintaining global biodiversity and mitigating greenhouse gas emissions. In fact, some observers contend that, if well supported and scaled up, projects involving peasants and indigenous peoples could reduce current global emissions by 75 per cent by increasing biodiversity, recuperating soil organic matter, replacing industrial meat production with small-scale diversified food production, expanding local markets, halting deforestation and practising integrated forest management.<sup>68</sup>

## VIII. Adaptation policies and measures

70. Climate change adaptation policies aim to reduce the vulnerability of social and biological systems by preventing or minimizing the damage caused. Adaptation policies related to food production should focus on helping farmers reduce their exposure and vulnerability to these impacts and strengthen their resilience.

71. The United Nations Framework Convention on Climate Change requires wealthier nations to provide “new and additional financial resources” (art. 4 (3)) to poorer countries to allow them to manage climate change, but the provision has not had a meaningful impact. Article 11 of the Convention establishes a financial mechanism to provide funds to parties for the effective implementation of the Convention. Three funds have been established: the Special Climate Change Fund, the Least Developed Countries Fund and the Adaptation Fund. However, these mechanisms have failed to secure adequate funding as they are based largely on voluntary pledges and contributions from States parties. There is also a lack of public participation in terms of the allocation of funds.<sup>69</sup> Various funding options have been proposed, including levies on aviation and shipping, carbon taxes, a tax on the carbon market and a financial transactions tax, but none has yet gained significant support.

72. The challenges are huge and each region is facing its own climate change issues. Approaches to food security and adaptation to climate change must be mutually supporting; they must have the common objective of empowering socially and economically excluded groups to reduce their vulnerability and increase their resilience. Climate change is leading to significant increases in the price of food; therefore, because the poor in the global South devote up to 80 per cent of their budget to food, the economically disadvantaged are much more vulnerable in this regard than those in the developed world. Public and private investments that improve options for the poor, such as improved agricultural production technologies, better-adapted financial instruments, diversified income opportunities, broader economic adjustments, the creation of specialized markets for the poor,

<sup>67</sup> Christiane Badgely, “When Wall Street went to Africa”, *Foreign Policy* (11 July 2014).

<sup>68</sup> Miguel A. Altieri and Victor Manuel Toledo, “The agroecological revolution in Latin America: rescuing nature, ensuring food sovereignty and empowering peasants”, *Journal of Peasant Studies*, vol. 38, No. 3 (July 2011).

<sup>69</sup> Caesens and Padilla Rodríguez, *Climate Change and the Right to Food*, chap. VI, note 51.

development of local knowledge and expansion of irrigation and storage infrastructure will likely be critical in adapting food security to a changing climate.

## IX. Agroecology: an alternative to industrial agriculture

73. It is important that adaptation policies focus on ensuring the right to food for both present and future generations through sustainable agricultural practices. This implies moving away from industrialized agricultural practices. Agroecology is an ecological approach that integrates agricultural development with relevant ecosystems. It focuses on maintaining productive agriculture that sustains yields and optimizes the use of local resources while minimizing the negative environmental and socioeconomic impacts of modern technologies.<sup>70</sup> Recycling nutrients and energy rather than augmenting nutrients with external inputs, integrating crops and livestock and improving interactions and productivity throughout the agricultural system rather than focusing on individual species are also important components of agroecology.<sup>71</sup> It is a system that foregoes the use of synthetic inputs, such as synthetic fertilizers and pesticides, veterinary drugs, genetically modified seeds and breeds, preservatives, additives and irradiation.<sup>72</sup>

### Benefits of agroecology on soil quality, plant health and biodiversity

74. Small-scale farmers and agroecological practices play a central role in conserving crop diversity and developing varieties of plants that are adapted to a range of weather conditions, including droughts. During a drought in Guangxi, China, in 2010 when many of the modern crop varieties (hybrids) were destroyed, the better-adapted traditional varieties, such as drought- and wind-resistant maize, were able to survive.<sup>73</sup> When a hurricane in West Bengal, India, in 2009 turned large swathes of farmland into salt ponds, only traditional salt-tolerant varieties of rice, preserved by a handful of farmers, survived.<sup>74</sup> By returning to traditional varieties and planting different varieties, farmers have become more resilient to the impact of climate change and more independent from commercial seed breeders, and can avoid using expensive chemical inputs that are required for modern hybrid seeds.<sup>75</sup>

### Increased resilience of crops and farms

75. Locally developed crops have been shown to be extremely adaptable and robust because they have been bred over generations specifically to cope with

<sup>70</sup> See [http://nature.berkeley.edu/~miguel-alt/what\\_is\\_agroecology.html](http://nature.berkeley.edu/~miguel-alt/what_is_agroecology.html).

<sup>71</sup> Olivier De Schutter, "Commentary VI: Agroecology: a solution to the crises of food systems and climate change", in *Trade and Environment Review 2013: Wake up Before it is Too Late: Make Agriculture Truly Sustainable Now for Food Security in a Changing Climate* (Geneva, United Nations Conference on Trade and Development, 2013).

<sup>72</sup> See [www.fao.org/organicag/oa-faq/oa-faq1/en/](http://www.fao.org/organicag/oa-faq/oa-faq1/en/).

<sup>73</sup> Krystyna Swiderska and others, "The role of traditional knowledge and crop varieties in adaptation to climate change and food security in south-west China, Bolivian Andes and coastal Kenya", paper prepared for the United Nations University-Institute for the Advanced Study of Sustainability workshop "Indigenous peoples, marginalized populations and climate change: vulnerability, adaptation and traditional knowledge", Mexico City, 19-21 July 2011.

<sup>74</sup> Debal Deb, "Valuing folk crop varieties for agroecology and food security", *Independent Science News* (26 October 2009).

<sup>75</sup> Krystyna Swiderska and others, "The role of traditional knowledge and crop varieties".

difficult ecological and social conditions.<sup>76</sup> For example, “farmer rice varieties” are often more productive than imported varieties of rice and can grow with less input than modern varieties and require less maintenance.<sup>77</sup> Furthermore, research has shown that farms run on agroecological principles can be more resilient in response to natural disasters such as hurricanes. Farms in Nicaragua, Honduras and Guatemala that relied on sustainable agricultural methods suffered considerably less damage than conventional farms following Hurricane Mitch in 1998, with sustainable farms retaining up to 40 per cent more topsoil and suffering less economic loss than neighbouring conventional farms.<sup>78</sup> Similar studies conducted in Mexico following Hurricane Stan and in Cuba following Hurricane Ike had similar findings.<sup>79</sup> Agroecological farms were also able to recover faster after the hurricane.<sup>80</sup>

### Proven success of agroecology

76. Agroecology is particularly beneficial and well suited to the needs of poor rural communities, as it is relatively labour intensive, most effectively practised on small plots of land and relies on locally produced inputs, thereby reducing dependence on access to external inputs and on subsidies. It is also of particular benefit to vulnerable groups such as smallholder farmers, women and indigenous peoples, owing to their reliance on local inputs and practices. The shift being advocated builds on the skills and experience of the world’s small farmers. Farmers living in harsh environments in Africa, Asia and Latin America have developed traditional knowledge and skills that facilitate resilience and sustainability.<sup>81</sup> One of the virtues of agroecology is that it combines local knowledge with innovative technology.

77. Brazil’s agroecology policies have already experienced success. Approximately 100,000 family farms have adopted agroecological farming practices. These farms have had average yield increases of 100-300 per cent and demonstrated greater resilience to irregular weather patterns.<sup>82</sup> Brazil has also developed programmes that provide access to low-interest credit for family farmers and also offered technical support for 2.3 million families in 2010. It has stimulated

<sup>76</sup> Alfred Mokuwa and others, “Robustness and strategies of adaptation among farmer varieties of African rice (*Oryza glaberrima*) and Asian rice (*Oryza sativa*) across West Africa”, *PLoS ONE*, vol. 8, No. 3 (1 March 2013).

<sup>77</sup> SciDev.Net, “Local rice makes the grade in West Africa”, 25 March 2013. Available from <http://www.scidev.net/global/biotechnology/news/local-rice-makes-the-grade-in-west-africa.html>.

<sup>78</sup> Eric Holt-Giménez, “Measuring farmers’ agroecological resistance after hurricane Mitch in Nicaragua: a case study in participatory, sustainable land management impact monitoring”, *Agriculture, Ecosystems and Environment*, vol. 93, Nos. 1-3 (December 2002).

<sup>79</sup> Stacy M. Philpott and others, “A multi-scale assessment of hurricane impacts on agricultural landscapes based on land use and topographic features”, *Agriculture, Ecosystems and Environment*, vol. 128, Nos. 1-2 (October 2008).

<sup>80</sup> Peter Michael Rosset and others, “The *campesino-to-campesino* agroecology movement of ANAP in Cuba: social process methodology in the construction of sustainable peasant agriculture and food sovereignty”, *Journal of Peasant Studies*, vol. 38, No. 1 (2011). ANAP stands for Asociación Nacional de Agricultores Pequeños (National Association of Small Farmers).

<sup>81</sup> Kaplan, Ifejika-Speranza and Scholz, “Commentary VII”.

<sup>82</sup> Avery Cohn and others, eds., *Agroecology and the Struggle for Food Sovereignty in the Americas* (International Institute for Environment and Development, Yale School of Forestry and Environmental Studies and Commission on Environmental, Economic and Social Policy, 2006).

agroecological systems by providing technical support for crop diversification techniques and irrigation systems.<sup>83</sup>

78. Similarly, in Cuba, farmers have embraced agroecology through initiatives that support the sharing of experiences and the creation of networks. From 1995 to 2004, Cuba increased its food production by 37 per cent through agricultural development policies, farmer networks and sharing of information rather than through a reliance on the use of chemical fertilizers and heavy machinery.<sup>84</sup>

79. Agroecology is beneficial not only for developing countries. In September 2014, the National Assembly of France adopted a project for the future of agriculture, food and forests that calls for the implementation of agroecology through agricultural initiatives that take the environment into consideration. Under the multi-year project agroecological actions will be undertaken that aim to improve the economic, social and environmental performance of farming operations and promote innovation and agricultural experimentation.<sup>85</sup> An example of a local initiative is the law passed by the City of San Francisco, California, requiring mandatory recycling and composting of organic material rather than sending it to landfills. The city currently diverts 80 per cent of its waste to recycling and composting, with the goal of “zero waste” by 2020.<sup>86</sup>

80. Despite the availability of widely endorsed good practices, many Governments, development agencies, donors and policymakers are still focusing on large-scale, high-input solutions that marginalize small-scale farmers because of existing political biases, trade rules and policies that limit the ability of Governments to support smallholder farmers and agroecological practices through investment, research funding and legal solutions to land tenure.

81. Food security involves much more than just food production. However, agribusiness investment is increasingly being seen as the only way to address hunger and poverty in a time of climate change. Within this context, “climate-smart agriculture” was introduced as a series of adaptation policies that sustainably increase productivity and resilience, while reducing greenhouse gas emissions and enhancing the achievement of national food security and development goals. These claims are questioned by several non-governmental and peasant organizations on basis of the absence of criteria to assess sustainability; the absence of a right to food concept; a limited conception of resilience; the misplaced focus on climate change mitigation; and the failure to recognize the historical responsibility of the developed countries for producing greenhouse gas emissions. More importantly, there is a lack of clarity around the concept of climate-smart agriculture that could be misleading,

---

<sup>83</sup> Rafael Guimaraens and Clarita Rickli, *A New Rural Brazil: Ministry of Agrarian Development 2003-2010* (Brasilia, Ministry of Agrarian Development, 2010).

<sup>84</sup> Ben McKay, “A socially inclusive pathway to food security: the agroecological alternative”, *International Policy Centre for Inclusive Growth Research Brief*, No. 23 (19 June 2012).

<sup>85</sup> *Projet de loi d'avenir pour l'agriculture, l'alimentation et la forêt, texte adopté no. 402* (11 September 2014).

<sup>86</sup> San Francisco Department of the Environment, *Mandatory Recycling and Composting*, ordinance No. 100-09 (9 June 2009).

offering leeway for socially and environmentally detrimental practices to be pursued under the guise of climate-smart agriculture.<sup>87</sup>

## X. Conclusions and recommendations

### Conclusions

82. **Climate change poses unique and distinct threats to all aspects of food security, including availability, accessibility, adequacy and sustainability. Moreover, these threats are poised to affect a huge number of people, with 600 million additional people potentially vulnerable to malnutrition by 2080. Manifestations of climate change, such as an increase in the frequency and intensity of extreme weather, global warming, a rise in sea levels and a decrease in the availability of water, have significant impacts on food security. As a result, crop failures and adverse impacts on livestock, fisheries and aquaculture will have an overall negative effect on people's livelihoods, with climate-induced food price volatility, nutritional deficiencies and diminishing quality of land and soil suitable for agricultural production a daunting reality. The consequences of failing to enact appropriate policies will pose a threat to global peace and security. As we are all living ever more interconnected lives, climate change should not be considered as affecting only those living in remote places.**

83. **The imperative to feed the world in a time of climate change resonates strongly with food policymakers and has resulted in a push for large-scale agricultural models to respond to the future demand for food. However, it has been proven that more food production does not necessarily result in fewer people suffering from hunger and malnutrition. The world has long produced enough food, sufficient not only to meet the caloric requirements of the existing global population of over 7 billion, but also to meet the needs of a population expected to reach 9 billion in 2050. Hunger and malnutrition are a function of economic and social problems, not production. Moreover, not all of the calories produced go to feed humans: one third are used to feed animals, nearly 5 per cent are used to produce biofuels and as much as one third are wasted all along the food chain.**

84. **A strong "agropessimism" has emerged, partly as a result of the significant adverse effects of agricultural activities responsible for triggering climate change and degrading natural resources and partly as a result of the difficulty of the task of feeding a growing global population in the face of substantial challenges. As a result, the view has emerged that humankind will not be able to feed itself unless current industrial modes of agriculture are expanded and intensified.**

85. **This approach is wrong and counterproductive and will only serve to exacerbate the problems experienced by the current mode of agriculture. Rather, agriculture and food systems need to be reformed to ensure that they are more responsive to the challenges of climate change and environmental degradation, as evidenced by reduced reliance on fossil fuel-intensive**

<sup>87</sup> Coopération internationale pour le développement et la solidarité (CISDE), "Climate-smart agriculture: the emperor's new clothes?", CIDSE discussion paper (October 2014). Available from [www.cidse.org/articles/item/640-climate-smart-agriculture.html](http://www.cidse.org/articles/item/640-climate-smart-agriculture.html).

production methods. More importantly, the reform should ensure that the right to adequate food of people is protected through appropriate levels of production as well as equitable access and just distribution.

86. It is therefore necessary to recognize the existence of inadequate mitigation and adaptation policies within the climate change regime and to ensure that the right policies are promoted through technical and legal solutions. Food security and adaptation to climate change are mutually supportive; in many situations, strategies to reduce vulnerability to climate change will also increase food security.

87. As outlined in the present report, there is a need to encourage a major shift from current industrial agriculture to transformative activities such as conservation agriculture (agroecology) that support the local food movement, protect smallholder farmers, empower women, respect food democracy, maintain environmental sustainability and facilitate a healthy diet.

88. Finally, because the harm caused by climate change is felt predominantly by people and regions that are minimally responsible in the first place, climate change policies should be designed to minimize, if not overcome, these fundamental injustices. Some of the climate change policies described in the report, justified on the grounds that they help to reduce greenhouse gas emissions, undermine human rights. Unequal capabilities and exposure to the dangers make climate change the biggest human rights and justice problem of our time; solving it should be obligatory, not voluntary and aspirational. Whether there will be sufficient political will to implement the recommended shift in agricultural policy is the haunting uncertainty that casts a long shadow over the future of food security and the realization of the right to food. There are two dominant conclusions in the present report, the necessity of encouraging agroecological approaches to food security and the need to integrate the commitment to climate justice and human rights in the climate change regime, which cannot be realized without the support of civil society.

#### **Recommendations:**

89. In this context, the Special Rapporteur recommends that:

(a) Parties to the United Nations Framework Convention on Climate Change respect, protect, promote and fulfil human rights in all climate change-related actions and ensure that human rights language is included in the climate agreement to be reached in Paris;

(b) Policy coherence at the international level be ensured by fostering cooperation between the parties to the United Nations Framework Convention on Climate Change and other international treaties relevant to climate change and food security, while providing a human rights approach in the entire agenda to promote climate justice and the right to food;

(c) Public policies that promote subsidies and production targets resulting in artificial increases in the demand for biofuel production be reviewed in light of their negative impact on the right to food and questionable impact on emission reduction;

(d) A separate category of “climate refugees” be recognized in international law and the necessary legal adjustments made to avoid further human catastrophe;

(e) A human rights impact assessment be carried out before mitigation and adaptation projects are authorized and public participation therein facilitated;

(f) Prior “zoning” exercises be undertaken to ensure that land used for food production is not threatened;

(g) Alternative energy and mitigation policies, including biofuel and biomass mandates, be scaled back to eliminate perverse incentives and that strict sustainability criteria be applied for both first- and second-generation biofuels;

(h) Alternative energy and other non-food production agriculture that requires the acquisition of large tracts of land be regulated and local communities protected against asymmetrical negotiations with multinational companies while extraterritorial implementation of human rights is put in place;

(i) The pivotal roles in food production of smallholder farmers, women and indigenous and local communities be recognized and protected and their acute vulnerability to climate change acknowledged;

(j) Knowledge and information as well as technology transfer and appropriate training in relation to changing climatic conditions be prioritized and available to smallholder farmers, women and indigenous communities;

(k) Social protection measures be prioritized as a means of eliminating hunger and avoiding food insecurity in a time of climate change;

(l) Scientific research institutions and Governments greatly increase financial allocations to agroecology so as to demonstrate that it can feed the world without destroying the environment and at the same time reduce the adverse impact of climate change;

(m) Governments evaluate their agricultural and trade policies to avoid price volatility and financial vulnerabilities in a time of climate change;

(n) The adaption of culturally appropriate diets that rely less on resource-intensive food be promoted by civil society and Governments as a means of reducing excessive consumption and eliminating food waste.



# General Assembly

Distr.: General  
25 January 2018

Original: English

---

## Human Rights Council

### Thirty-seventh session

26 February–23 March 2018

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## Report of the Special Rapporteur on the right to food

### Note by the Secretariat

The report focuses on the right to food in the context of natural disasters, and follows the interim report devoted to the humanitarian system and the right to food in conflict situations (A/72/188). Based on country-specific examples, the report contextualizes direct and indirect impacts of natural disasters on the right to food and people's livelihoods. The Special Rapporteur then discusses how disasters contribute to hunger and what should be done to reduce human rights violations and damage to the environment. The report also underlines the importance of achieving a convergence between emergency food aid, food assistance and development cooperation, to ensure the realization of the right to food. Finally, she argues that in order to achieve these goals, the common understanding whereby voluntarism is seen as central to humanitarian response efforts needs to change.



## Contents

	<i>Page</i>
I. Introduction .....	3
II. Impact of disasters on the right to food .....	4
III. Impact of disasters on people with special needs .....	8
IV. Human rights law in disaster settings .....	11
V. Food assistance and the role of the international community .....	15
VI. Conclusions and recommendations .....	19
A. Conclusions .....	19
B. Recommendations .....	21

## I. Introduction

1. The 2017 report entitled *The State of Food Security and Nutrition in the World*, of the Food and Agriculture Organization of the United Nations (FAO), declares that currently 815 million people (11 per cent of the global population) are affected by hunger, an increase from 777 million in 2015. This represents a drastic increase after a prolonged decline. Hunger kills more people every year than malaria, tuberculosis and AIDS combined. At this rate, it might be difficult to reach Sustainable Development Goal 2, which is aimed at achieving a world without hunger and malnutrition by 2030.
2. The main causes reversing the progress towards eliminating hunger are armed conflicts, natural disasters and climate change-induced extreme weather events, economic slowdown, and failure of effective social protection and poverty elimination policies. Often, all of the above reasons reinforce each other, creating severe food insecurity despite global cereal production and stocks being at historic highs.
3. Global warming triggers or prolongs natural disasters, causing significant effects on food security. In 2015 and 2016, drought caused by one of the harshest El Niño events on record led to significant crop and livestock losses in sub-Saharan Africa, affecting the livelihoods of farmers and agricultural communities; consecutive failed harvest seasons resulted in wide-scale dependence on food aid, high rates of debt and massive depletion of household seed supplies. African countries are particularly vulnerable to climate impacts on agriculture, since less than 5 per cent of the continent's cropped area is irrigated.
4. Severe floods in 2017 continued to affect at least 8 million people, causing deaths and injuries, loss of livestock and food supplies, and damage to housing and farming infrastructure. Besides destroying food supplies and sources, such disasters also impact the food production system as a whole, affecting food prices, and have important consequences on communities' livelihoods. Such situations are likely to continue to affect a large number of people, given that 80 per cent of hungry people currently live in disaster-prone and environmentally degraded areas.<sup>1</sup>
5. Although the immediate obligation to provide food, water, shelter and medical aid is the duty of governments, in times of emergency the international community has the responsibility to help countries in dire situations. It is clearly asserted in general comment No. 12 (1999) on the right to adequate food, of the Committee on Economic, Social and Cultural Rights, that States are obliged to provide disaster relief and humanitarian assistance in times of emergency. These responsibilities are universal, normative and ethical, and are also essential to sustainable world peace, which can only be achievable when hunger and malnutrition are eliminated.
6. In recent decades, the international humanitarian response system has been essential in reducing the negative effects of conflict and natural disasters on food security and in lowering death tolls. While it is larger than ever in terms of financial and human resources, concurrent major emergencies have overstretched its humanitarian operational capacity and ability to meet global demands.
7. According to FAO, worldwide economic losses from natural disasters have reached a staggering average of \$250 billion to \$300 billion a year. Yet, we know comparatively little about the full impact of such disasters on the agricultural sectors.
8. The World Food Programme (WFP) estimates that food aid expenditures more than doubled between 2009 and 2016, from \$2.2 billion to \$5.3 billion. Even though international food assistance has risen in response to escalating humanitarian crises, it still falls about \$3 billion short. Almost all foreign aid for food security goes to short-term relief operations just to keep people alive, therefore there are no available funds devoted to agricultural investment and rural development, which could raise the quality of food

---

<sup>1</sup> See <https://www.wfp.org/content/how-disasters-drive-hunger>.

security and build resilience in regions vulnerable to climate change and conflict crises.<sup>2</sup> According to the World Bank, natural disasters push 26 million people into poverty each year, eroding development gains and increasing dependency on aid.<sup>3</sup>

9. Although encouraging pledges were made at the World Humanitarian Summit in 2016 to address shortcomings of humanitarian assistance, due to the recent increase in the number of such disasters and conflicts, the humanitarian emergency system has been experiencing difficulties, including a dire funding gap, and challenges in terms of leadership, coordination, functionality and efficiency. However, it is important to underline that regarding food assistance in particular, efforts have been made in recent decades to deliver more context-specific food aid, to increase local participation and avoid dependency or the disruption of local food systems, and to implement a human rights-based approach to disaster relief efforts.

10. Following the Special Rapporteur's interim report devoted to the humanitarian system and the right to food in conflict situations (A/72/188), the present report focuses on the right to food in the context of natural disasters. Based on country-specific examples of extreme weather events, such as droughts, desertification and floods, as well as sudden disasters such as hurricanes, wildfires, tsunamis and earthquakes, the report evaluates the direct and indirect impact on the right to food and on people's livelihoods, how these events contribute to hunger, and what should be done to reduce human rights violations and long-term resource depletion. The Special Rapporteur concludes that despite some of the positive outcomes of the World Humanitarian Summit, there is a need to improve preparedness and to ensure that greater attention is paid to building the resilience of the most affected and vulnerable communities as well as to establishing sustainable food systems. The report also highlights the importance of achieving a real convergence between emergency food aid, food assistance and development cooperation, while ensuring that the right to food both of individuals and of communities is met not only by short-term responses to emergency situations but also with due regard for long-term impacts. In order to achieve these goals, the common understanding among donor communities that humanitarian responses are currently treated as voluntary acts should be replaced by negotiating a legal obligation in the form of a comprehensive, multilateral treaty of general application.

## II. Impact of disasters on the right to food

11. Natural disasters and climate change are closely linked. The negative impact of climate change, such as global warming, not only hampers crop, livestock, fisheries and aquaculture productivity, but also influences the frequency of extreme weather events and natural hazards.<sup>4</sup> Those events are expected to become more frequent in coming years, and according to predictions their strength and magnitude are likely to intensify.

12. Intensification and recurrence of natural disasters also magnify their impacts on populations, thereby risking impairment of human rights given that "more frequent and intense extreme weather events will also complicate the logistics of food distribution during emergencies".<sup>5</sup>

13. The years 2015 and 2016 were especially difficult in terms of serious natural disasters. El Niño had devastating effects on countries throughout Southern Africa, leaving 12 million people food insecure.<sup>6</sup> In 2016, El Niño reduced rainfall, causing intense and prolonged droughts in some areas, while heavy rains in other areas created catastrophic floods. These conditions had severe impacts on crop production, livestock, and agricultural livelihoods, reduced agricultural trade and led to food price spikes, especially in countries

<sup>2</sup> Rosamond L. Naylor, "The elusive goal of global food security", *Current History* (January 2018).

<sup>3</sup> World Bank, *Unbreakable: Building the Resilience of the Poor in the Face of Natural Disasters*, (Washington, 2017).

<sup>4</sup> See A/70/287, p. 4.

<sup>5</sup> *Ibid.*

<sup>6</sup> Food Security Information Network, *Global Report on Food Crises 2017*.

with inadequate capacities to respond and among populations characterized by low resilience.<sup>7</sup>

14. The Secretary-General of the United Nations appointed two special envoys to investigate the impact of El Niño and climate change. Their report asserts that the El Niño episode “severely affected more than 60 million people around the world” and “led 23 countries to appeal for international humanitarian assistance in East and Southern Africa, Central America, the Caribbean and the Pacific. The most vulnerable groups bore the brunt of the emergency, including women, children, the elderly, the disabled and people living with HIV/AIDS.”<sup>8</sup>

15. In times of disaster, while the impacts on food availability are often of immediate concern, the gradual effects of natural hazards on accessibility, adequacy and sustainability are of equal importance — they may be less visible and yet more enduring.

## 1. Availability

16. The agricultural sector and its subsectors are very important for rural people, who farm for both food consumption and income. Although the main impacts vary significantly, depending on the kind of disaster and the region, the total percentage of losses and damage absorbed by the agriculture sector in developing countries has been estimated to be 22 per cent.<sup>9</sup> While crops are more likely to be destroyed by floods and storms, livestock is usually affected by droughts, and the fisheries and aquaculture sector is affected the most by storms, hurricanes and cyclones. At the regional level, drought was at its most harmful in sub-Saharan Africa and the Near East; whereas Asia and Latin American and Caribbean countries were most affected by floods.<sup>10</sup>

17. Natural disasters also destroy essential infrastructure, tools and equipment, irrigation systems, livestock shelters and veterinary facilities. During Hurricane Matthew in Haiti, in some of the worst affected regions, close to 100 per cent of the crops were destroyed.<sup>11</sup> In Puerto Rico, “Hurricane Maria wiped out most of the island’s crops. Banana and coffee — the island’s most valuable exports — were the hardest hit.” Due to the storm, the population faced “immediate food shortages but also long-term consequences from the destruction of the entire agricultural infrastructure”.<sup>12</sup>

18. In the context of tsunamis or hurricanes, for example, workers in the fishing sector are themselves at serious risk, while their tools and boats face damage or the risk of being washed away. Following the 2004 tsunami, it was reported that in the Indonesian province of Aceh around 10 per cent of fisherfolk had been killed. In addition, estimates showed that 50 per cent of fishing boats had been either damaged or lost.<sup>13</sup> Following her country visit to the Philippines in 2014 after typhoon Haiyan, the Special Rapporteur reported that fisheries production in the country had declined significantly.<sup>14</sup>

19. The impact of extreme weather events and droughts also affects livestock — from spreading disease to loss of animals. Recent droughts in Ethiopia in 2016 resulted in a high rate of livestock morbidity and mortality, as well as a modification of animals’ migration patterns.<sup>15</sup> In Malawi, drought induced by El Niño impacted the production of various

<sup>7</sup> Ibid., p. 18.

<sup>8</sup> “Preventing El Niño Southern Oscillation episodes from becoming disasters: a ‘blueprint for action’” (2016), p. 2.

<sup>9</sup> FAO, *The Impact of Disasters on Agriculture and Food Security* (Rome, 2015), p. 11, available at [www.fao.org/3/a-i5128e.pdf](http://www.fao.org/3/a-i5128e.pdf).

<sup>10</sup> Ibid., p. 31.

<sup>11</sup> See <https://wfp-americas.exposure.co/a-timeline-of-wfps-response-to-hurricane-matthew-in-haiti>.

<sup>12</sup> See [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22326&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22326&LangID=E).

<sup>13</sup> FAO, “*An Overview of the Impact of the Tsunami on Selected Coastal Fisheries Resources in Sri Lanka and Indonesia*” (Bangkok, 2007), p. 31.

<sup>14</sup> See A/HRC/31/51/Add.1.

<sup>15</sup> FAO, *El Niño Response Plan 2016*, p. 10, available at [www.fao.org/fileadmin/user\\_upload/emergencies/docs/FAO-Ethiopia-ElNino-Response-Plan-2016.pdf](http://www.fao.org/fileadmin/user_upload/emergencies/docs/FAO-Ethiopia-ElNino-Response-Plan-2016.pdf); and FAO, “Ethiopia situation report — April 2016”, available at

cereals, including maize, rice, sorghum and millet, leading to significantly below-average levels of crop production for 2015 and 2016.<sup>16</sup>

20. Seeds are essential to ensure the next planting seasons and future harvests. If not well protected, seeds are likely to be either damaged or completely destroyed.<sup>17</sup> Floods can damage seed storing facilities, and the seeds themselves may become wet, thus jeopardizing their potential use. After the earthquake in Nepal in 2015, it was reported that many seeds had been damaged or lost and that storage facilities had been damaged.<sup>18</sup>

## 2. Accessibility

21. Natural disasters affect access to food in a number of ways. They contribute to food price inflation in local markets because of scarcity of commodities. They may also lead to increased unemployment or declining wages for farm workers, thus diminishing their purchasing power.<sup>19</sup> Such developments produce an erosion of livelihood, especially in rural areas.

22. In Pakistan in 2010, intense monsoons induced floods, which affected more than 20 million people and seriously impacted the circulation of food commodities inside the country as both roads and the rail network had been damaged.<sup>20</sup> In addition, in some regions a reduction in market capacity was reported, because market sellers' vending and storage facilities had been damaged by the floods.<sup>21</sup>

23. In Lesotho in 2016, El Niño-related drought disturbed the harvest season, leading to low production and food price inflation. In this context, the pressures on livelihoods pushed many households to borrow or to obtain credit in order to buy food, and even drove people to resort to illegal activities.<sup>22</sup>

24. In 2015 and 2016 in Ethiopia, food insecurity, partly caused by El Niño, prolonged intense drought, pushed many small-scale farmers to use last-resort coping strategies such as selling their livestock and agricultural assets.<sup>23</sup> Negative coping strategies have long-term consequences on achieving the right to food. When assets are lost, the already low capacity of small-scale farmers and fisherfolk to invest in quality equipment or seeds may be negatively affected. Some may not be able to reinvest in such assets due to the absence of insurance or the unavailability of credit, and others may decide to go for less sustainable options as regards crop choice or agricultural technology.<sup>24</sup>

## 3. Adequacy

25. Adequacy requires that food satisfy dietary needs (factoring in a person's age, living conditions, health, occupation, sex etc.) and that it be safe for human consumption, free of adverse substances, culturally acceptable and nutritious. Natural disasters negatively affect food adequacy, especially by potentially causing reductions in the quality of food consumed, which increases prospects of malnutrition.

26. As will be discussed further in the present report, when a natural disaster hits poor communities, the nutritional status of children is a major concern, both in the immediate

---

[www.fao.org/fileadmin/user\\_upload/emergencies/docs/FAO%20Ethiopia%20Situation%20Report%20-%20April%202016.pdf](http://www.fao.org/fileadmin/user_upload/emergencies/docs/FAO%20Ethiopia%20Situation%20Report%20-%20April%202016.pdf).

<sup>16</sup> Food Security Information Network, *Global Report on Food Crises 2017*, p. 83.

<sup>17</sup> Tejendra Chapagain and Manish N. Raizada, "Impacts of natural disasters on smallholder farmers: gaps and recommendations", *Agriculture and Food Security*, vol. 6, No. 1 (2017).

<sup>18</sup> See [http://nepal.unfpa.org/sites/default/files/pub-pdf/PDNA\\_volume\\_BFinalVersion.pdf](http://nepal.unfpa.org/sites/default/files/pub-pdf/PDNA_volume_BFinalVersion.pdf).

<sup>19</sup> FAO, *The Impact of Disasters on Agriculture and Food Security*.

<sup>20</sup> WFP, "Pakistan flood impact assessment" (2010), p. 8, available at <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp225987.pdf>.

<sup>21</sup> *Ibid.*, p. 9.

<sup>22</sup> Food Security Information Network, *Global Report on Food Crises 2017*, p. 75.

<sup>23</sup> *Ibid.*, p. 28.

<sup>24</sup> Anastasia Telesetsky, "An evolving role for law and policy in addressing food security before, during and after a disaster", *Research Handbook on Disasters and International Law*, Susan C. Breau and Katja L.H. Samuel, eds. (Edward Elgar, 2016), p. 265.

aftermath and over the long term. According to WFP, more than 20 per cent of the variation in height in developing countries is determined by environmental factors, particularly by droughts since these have a severe impact on dietary diversity and reduce overall food consumption.<sup>25</sup>

27. Following many kinds of natural disasters, food in the affected areas may become contaminated, with an increase in the risk of foodborne diseases. Poor sanitation, lack of clean water, destruction of infrastructure and lack of suitable conditions for preparing food have led to mass outbreaks of foodborne diseases.<sup>26</sup> Crops can also be contaminated by heavy metals, chemicals, bacteria and mould. In many cases, it is difficult to determine which contaminants are in crops submerged in floodwater.<sup>27</sup>

#### 4. Sustainability

28. Natural disasters can have a long-term impact on the right to food by threatening key environmental resources and entire ecosystems that are vital for sustainable food production. Contamination of soil and water is an important environmental impact of storms, tsunamis and floods. Salinization of water bodies such as rivers, wells, inland lakes and groundwater aquifers affects the fertility of agricultural lands, which reduces crop yields in the medium and long term.<sup>28</sup>

29. Disasters also reduce nature's defence capacity, amplifying the impacts of future hazards. The disappearance of natural barriers, such as forests that provide protection against wind, and mangroves that stave off erosion, are likely to increase the exposure of certain areas to natural hazards.<sup>29</sup> FAO reported that following the floods in Pakistan in 2010, the impact on natural resources included "damaged or destroyed trees, forests and forestlands, plantations, forest nurseries, mangroves, wetlands, wildlife resources and other natural assets that sustain agriculture and livelihoods".<sup>30</sup>

30. Landslides cause significant damage to soil, agricultural infrastructure, seeds and food stocks. Prevention measures such as forest conservation activities or watershed management are important to cope with such situations and prevent erosion.<sup>31</sup>

31. Biodiversity is essential for the preservation of ecosystems. As highlighted in a recent report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, "biodiversity is especially crucial to the stability and resilience of food sources" and contributes to overall food security.<sup>32</sup> While erosion of biodiversity is among the consequences affecting ecosystems in times of disaster, a rich biodiversity "can play a crucial role in disaster risk management before, during and after an event by fostering resistance, building resilience and assisting recovery".<sup>33</sup> Also, direct loss of biodiversity may lessen the availability of wild foods — a coping strategy relied upon by some in response to disasters.<sup>34</sup>

32. Resilience can be built by providing livestock assistance at the onset of emergencies, for instance through vaccination services and by providing mobile feeding stations to facilitate herd mobility. Disbursement of seed banks to help restore farmers' seed systems can also form an effective part of an emergency response, as can facilitating the establishment of microgardens to allow displaced families to cultivate food wherever they

<sup>25</sup> See [www.wfp.org/disaster-risk-reduction/how-disasters-affect-hunger](http://www.wfp.org/disaster-risk-reduction/how-disasters-affect-hunger).

<sup>26</sup> World Health Organization, "Ensuring food safety in the aftermath of natural disasters", available at [www.searo.who.int/entity/emergencies/documents/guidelines\\_for\\_health\\_emergency\\_fsadvice\\_tsunami.pdf?ua=1](http://www.searo.who.int/entity/emergencies/documents/guidelines_for_health_emergency_fsadvice_tsunami.pdf?ua=1).

<sup>27</sup> See [www.fda.gov/Food/RecallsOutbreaksEmergencies/Emergencies/ucm112723.htm](http://www.fda.gov/Food/RecallsOutbreaksEmergencies/Emergencies/ucm112723.htm).

<sup>28</sup> See [www.sms-tsunami-warning.com/pages/tsunami-effects#.Wiqg\\_PIN-k4](http://www.sms-tsunami-warning.com/pages/tsunami-effects#.Wiqg_PIN-k4).

<sup>29</sup> FAO, *The Impact of Disasters on Agriculture and Food Security*, p. 17.

<sup>30</sup> *Ibid.*, p. 22.

<sup>31</sup> See [www.fao.org/emergencies/emergency-types/landslides/en/](http://www.fao.org/emergencies/emergency-types/landslides/en/).

<sup>32</sup> See A/HRC/34/49, para. 19.

<sup>33</sup> See [http://apps.who.int/iris/bitstream/10665/174012/1/9789241508537\\_eng.pdf](http://apps.who.int/iris/bitstream/10665/174012/1/9789241508537_eng.pdf).

<sup>34</sup> *Ibid.*

are, often without having to acquire additional land (e.g. a “garden on the roof” or a “garden in a bag”).

33. Providing fishing equipment and training has also proven helpful to people trapped in conflict or natural disasters, who are forced to acquire their own food. Other initiatives focus on ensuring the continued functioning of markets — for example by encouraging traders and providing support to them to supply essential food items and strengthen delivery networks, or by investing in irrigation projects to help sustain agricultural and pastoral livelihoods during times of crisis.

### III. Impact of disasters on people with special needs

34. Natural disasters affect the most vulnerable in a disproportionate manner, making the enjoyment of the right to food in disaster and post-disasters contexts even more challenging for those with special needs. More than 75 per cent of the world’s poor depend directly on natural resources to sustain their livelihoods.<sup>35</sup> These people have limited savings, depend on agriculture for a living and face increasing exposure to disaster risks. According to the World Bank, poor people are typically more exposed to natural hazards, lose a greater portion of their wealth and are often unable to draw on support from family, friends, financial systems, or even from their government.<sup>36</sup>

35. In particular, marginalized local and traditional communities, such as nomadic and indigenous peoples, as well as peasants, are affected by denial of access to land, fishing and hunting; deprivation of access to adequate and culturally acceptable foods; loss of traditional knowledge; and loss of biodiversity and degraded ecosystems.

36. Subsistence farmers, peasants and indigenous communities tend to be dependent on the lowest-quality land, including hillsides, deserts and floodplains, and often already suffer from chronic food insecurity. They also might not have access to formal social safety nets. In the face of natural disasters, individuals and communities that are already vulnerable have less capacity to cope with natural disasters, and may have to incur crippling debts and resort to other more extreme measures.

37. People with disabilities, the elderly, people living with HIV/AIDS or those who are ill and living in poverty, as well as internally displaced people, migrants and refugees, are exceptionally vulnerable. Natural disasters are one of the major reasons that people leave their homes in search of liveable conditions, often becoming refugees. In her prior report, the Special Rapporteur paid specific attention to internally displaced persons and refugees in the context of conflicts, highlighting potential additional consequences on host communities and affirming that those fleeing were “often forced to leave behind their assets” and their “economic independence may be hampered by the costs of transit, few income opportunities and limited rights in the host State”.

#### 1. Children

38. Children face acute vulnerability due to their inherently limited access to food, as they rely on caregivers to ensure their daily food intake, especially in the first 1,000 days of their life.<sup>37</sup> Appropriate nutrition during this window is vital in order to overcome life-threatening childhood diseases.<sup>38</sup> During natural disasters, household income may be seriously diminished, thus affecting caregivers’ capacity to fulfil children’s basic nutritional needs.

39. According to the United Nations Children’s Fund (UNICEF), “an estimated 535 million children — nearly one in four — live in countries affected by conflict or disaster,

<sup>35</sup> FAO, *The Future of Food and Agriculture: Trends and Challenges* (Rome, 2017), p. 68, available at [www.fao.org/3/a-i6583e.pdf](http://www.fao.org/3/a-i6583e.pdf).

<sup>36</sup> World Bank, *Unbreakable*, p. 26.

<sup>37</sup> Carolyn Kousky, “The future of children”, *Children and Climate Change*, vol. 26, No. 1 (2016), pp. 73–92, see pp. 75–76.

<sup>38</sup> See A/71/282, p. 5.

often without access to medical care, quality education, proper nutrition and protection”.<sup>39</sup> Children who lack adequate nutrients and vitamins may have long-term impacts on their development and adult life, including impairment of their immune systems that leads to disease, long-term illness or death. In addition, malnourishment exacerbates children’s vulnerability to natural disasters.<sup>40</sup>

40. For example, a study has shown that in Peru, after the heavy rainfalls induced by the 1997–1999 El Niño episode, children experienced inadequate growth.<sup>41</sup> The same study also showed that in those areas, at the time of the disasters, households experienced many challenges, including food shortages, lack of adequate health care, lack of clean water, increases in malaria and diarrhoeal diseases, and loss of crops and livestock which led to reduced income.<sup>42</sup>

41. In the Philippines over the last two decades, 15 times more infants have died in the 24 months following typhoon events than as a result of the typhoons themselves — most of whom were infant girls.<sup>43</sup>

42. In November 2017, Viet Nam was hit by a major typhoon that caused direct impacts on the nutritional status of 150,000 children.

43. Studies from Bangladesh show increased wasting and stunting rates among preschool children after floods, due to reduced access to food, increased difficulties in providing proper care and greater exposure to contaminants.<sup>44</sup>

44. According to WFP in Zambia, children born in drought conditions are up to 12 per cent more likely to have below-average height and weight than children born in non-crisis years.

45. In Madagascar, in the summer of 2016, UNICEF reported that “the nutritional status of children (was) still challenged by drought and post-drought conditions”. Given limited rainfall, the population faced special challenges — such as puddles where the population collected scarce, yet contaminated, water.<sup>45</sup>

46. Moreover, as a consequence of natural disasters, poor children are likely to be taken out of or prevented from going to school, and pushed into the workforce. After Hurricane Mitch in 1998, in Nicaragua, it was demonstrated that labour force participation increased by 58 per cent (an increase of 8.5 percentage points) among children in areas affected by the hurricane.<sup>46</sup>

## 2. Women

47. Women and girls worldwide already face many inequalities that are embedded in social practices and laws, constraining their access to resources and affecting their food security and nutrition.

48. As the Special Rapporteur mentioned in her 2016 report (A/HRC/31/51), the vulnerability of women is higher than that of men in post-disaster contexts. In times of natural disaster, women’s household responsibilities increase while access to resources decreases. The daily work involved in providing food, water and fuel for households after a disaster requires intensive labour, the bulk of which is borne by women. In many rural areas, women and girls spend the majority of their time engaged in subsistence farming and the

<sup>39</sup> See [www.unicef.org/media/media\\_93863.html](http://www.unicef.org/media/media_93863.html).

<sup>40</sup> UNICEF, *Children’s Vulnerability to Climate Change and Disaster Impacts in East Asia and the Pacific* (Bangkok, 2011); see also A/71/282, p. 4.

<sup>41</sup> See Carolyn Kousky, p. 79; and Heather E. Danysh and others, “El Niño adversely affected childhood stature and lean mass in northern Peru”, *Climate Change Response* 1 (2014), pp. 1–10.

<sup>42</sup> Heather E. Danysh and others, “El Niño adversely affected childhood stature and lean mass in northern Peru”.

<sup>43</sup> See [www.wfp.org/disaster-risk-reduction/how-disasters-affect-hunger](http://www.wfp.org/disaster-risk-reduction/how-disasters-affect-hunger).

<sup>44</sup> Ibid.

<sup>45</sup> UNICEF, “Madagascar: El Niño drought, humanitarian situation report No. 2” (July 2016).

<sup>46</sup> See Carolyn Kousky, p. 86.

collection of water and fuel. As a result of disasters, these tasks become more time-consuming.

49. During the 2015 earthquakes in Nepal, the impact on the traditional division of roles tended to intensify, making the workload of women even greater in a country where women already work up to 16 hours a day.<sup>47</sup> This, in turn, decreases the time available for food production and preparation, and threatens women's health and safety, with consequences for household food security and nutritional well-being.<sup>48</sup>

50. Impacts of decreased water quality as a result of disasters are also gender-differentiated. Women are more physically vulnerable to waterborne diseases due to their role in supplying household water and responsibility for domestic chores. Decreased water resources may also cause women's health to suffer as a result of the increased work burden and reduced nutritional status. For instance, in Peru following the 1997/98 El Niño event, malnutrition among women was a major cause of peripartum illness.<sup>49</sup>

51. It is also important to highlight the fact that climate change itself intensifies psychological stress associated with disasters, increasing women's risks of situations of violence, sexual harassment and trafficking. Because women are forced into prostitution, an increased HIV prevalence exists in drought-ridden areas of rural Africa.<sup>50</sup>

52. Women in refugee camps or in situations where they are internally displaced experience particular difficulties. Women cannot easily flee disasters or dangerous areas when they are pregnant, responsible for children and elderly people or restrained by social mores that inhibit their presence in public spaces or demand restrictive dress. If they do escape the immediate disaster area, women are vulnerable to abuse in camps for refugees or internally displaced persons, including increased risk of sexual and gender-based violence, unequal access to training and economic opportunities, and little or poor reproductive health care. Pre-existing patterns of discrimination against women in these areas are intensified, contributing to violations of women's rights to housing, land and property.<sup>51</sup>

### 3. People living with HIV/AIDS

53. People living with HIV/AIDS in disaster and post-disaster areas are especially vulnerable, because a lack of food, and especially of basic nutrients, may result in a faster progression from HIV to AIDS.<sup>52</sup> The energy requirements of people living with HIV are higher than for healthy non-infected persons in similar physical condition and of the same age and sex.<sup>53</sup>

54. Sub-Saharan Africa has a high HIV/AIDS rate and suffers from frequent natural disasters. Moreover, rates in HIV-endemic rural areas have increased "by 11 per cent for every recent drought".<sup>54</sup>

55. As UNAIDS mentioned in a recent factsheet focusing on the Eastern and Southern African regions, "risk and vulnerability are often heightened by income shocks and food insecurity — particularly among women and girls — due to a range of factors such as migration in search of work, early marriage of girls and young women to older men to

<sup>47</sup> See [http://norlha.org/wp-content/uploads/2015/04/Impact\\_of\\_natural\\_disaster\\_on\\_girls\\_and\\_women\\_Norlha\\_June\\_2015.pdf](http://norlha.org/wp-content/uploads/2015/04/Impact_of_natural_disaster_on_girls_and_women_Norlha_June_2015.pdf).

<sup>48</sup> World Bank, FAO, International Fund for Agricultural Development, *Gender in Agriculture Sourcebook* (Washington, 2009), pp. 455–456.

<sup>49</sup> See A/70/287.

<sup>50</sup> Marshall Burke, Erick Gong and Kelly Jones, "Income shocks and HIV in Africa", *The Economic Journal*, vol. 125, issue 585 (2015), pp. 1157–1189.

<sup>51</sup> See A/HRC/23/44, paras. 21–22.

<sup>52</sup> Fiona Samuels, Paul Harvey and Thobias Bergmann, "HIV and AIDS in emergency situations: synthesis report", Overseas Development Institute (2008).

<sup>53</sup> United States Agency for International Development (USAID), "Nutrition and HIV/AIDS: evidence, gaps, and priority actions" (2004).

<sup>54</sup> UNAIDS, "Building resilience to drought and disease: how UNAIDS is supporting Eastern and Southern Africa in the face of El Niño" (2016).

increase economic security, and transactional sex for food or money”.<sup>55</sup> This also engenders higher risks of disease transmission resulting from last-resort coping strategies in some regions.

56. Natural disasters may also contribute to a rising rate of gender-based violence, including of sexual violence,<sup>56</sup> and may increase diseases. Such risks are exacerbated if condoms are unavailable or scarce.<sup>57</sup> Also, mother-to-child transmission, including through breastfeeding, increases under the impact of natural disasters.

## IV. Human rights law in disaster settings

### 1. Disaster response law

57. Natural disasters create large-scale human suffering, and responding properly to disaster situations is challenging. Besides human rights law, other branches of laws, such as disaster response law, humanitarian law, environmental law, climate change law, refugee law, trade law, development law and economic law, as well as non-binding texts and General Assembly resolutions developed by governmental and non-governmental humanitarian actors, contain norms that are of relevance for natural and human-made disasters. Nonetheless, no comprehensive, holistic, multilateral disaster response treaty of general application currently exists.

58. Although the legal landscape is fragmented and uncertain, there have recently been positive moves toward implementing a human rights approach in disaster situations, including in regard to food aid and assistance. A human rights-based approach has crucial advantages in disaster settings, such as avoiding discrimination, prioritizing vulnerable communities, and providing measurable and enforceable obligations through accountability mechanisms. Yet, accountability remains challenging at the national and international levels due to the complexity of the humanitarian system.

### Defining emergencies and disasters

59. There is a tendency to exaggerate the distinction between natural disasters and human-made disasters. Most natural disasters cannot be simply defined as “natural”, which would effectively release direct and indirect perpetrators from the burdens of responsibility: most of the time the two are linked. Interaction between nature and human activity needs to be better understood conceptually and with respect to policy goals, and on this matter a preventive approach is appropriate in respect of both. Considering that most of the time natural disasters take a heavier toll on poor and underprivileged people, it is important to define what “disaster” means legally and who will be responsible for the consequences of the disaster.

60. The Human Rights Council Advisory Committee, in a recent study, has referred to “emergencies” as situations where, in the context of natural disasters or conflicts, “local families and communities cannot cope with or recover from (the disaster) on their own”.<sup>58</sup> The International Law Commission defines disasters as “a calamitous event or series of events resulting in widespread loss of life, great human suffering and distress, mass displacement, or large-scale material or environmental damage, thereby seriously disrupting the functioning of society”.<sup>59</sup>

61. From the perspective of food security, “disaster” means that besides directly affecting a large part of the population and impairing the availability of and access to nutritious, culturally acceptable and safe food, the consequences of such events, as indicated earlier, may include the weakening of governance structures, destabilization of

<sup>55</sup> Ibid.

<sup>56</sup> Fiona Samuels, Paul Harvey and Thobias Bergmann, “HIV and AIDS in emergency situations: synthesis report”, p. vii.

<sup>57</sup> Ibid., p. 11.

<sup>58</sup> See A/HRC/28/76.

<sup>59</sup> See A/71/10, para. 48.

the food market and the destruction of livelihoods, thus making food-insecure populations even more susceptible to suffering future crises.<sup>60</sup> The occurrence of a disaster usually leads to an emergency response that is ill-suited to addressing root causes or long-term consequences. In fact, emergency responses are part of what may be referred to as the “disaster cycle”.<sup>61</sup>

62. Due to the absence of binding legal mechanisms, discrepancies among various interpretations and the increased number of disaster situations worldwide, the International Law Commission has produced 21 draft articles on subjects ranging from the role of the affected State in coordinating an international disaster response to the recognition of human rights in the context of a natural disaster. The Commission’s 2016 draft articles on the protection of persons in the event of disasters explicitly adopt a rights-based approach, including the affirmation of human dignity, to address vulnerability in emergencies.<sup>62</sup> The Commission’s Special Rapporteur on the topic commented on the debate within the humanitarian community, noting that the “rights-based” and more traditional “needs-based” approaches were not necessarily mutually exclusive, but complementary.<sup>63</sup> Moreover, while he recognizes the primary responsibility of the disaster-affected State, he takes a fresh approach by suggesting that human rights responsibilities might be on the verge of being “deterritorialized” by declaring and establishing an international duty of cooperation.<sup>64</sup> The draft articles clearly remind the international community of the responsibilities of external actors towards disaster-affected people. At the same time, the draft articles primarily cover the rights and obligations of States, as opposed to non-State actors,<sup>65</sup> while they invoke the phrase “international community” to describe the assemblage of relevant actors: third States, intergovernmental organizations and non-governmental organizations (NGOs) that are empowered to offer humanitarian assistance.<sup>66</sup>

63. Unlike the International Law Commission’s draft articles, the dominant view for international community disaster relief is still based on voluntarism and assumes that disaster-affected people remain dependent on the vagaries of altruism, which is often unreliable, politically partisan, and arbitrary.<sup>67</sup>

64. It is notable that the Human Rights Council Advisory Committee report (A/HRC/28/76) does not refer to the work of the International Law Commission on the protection of persons in the event of disasters, nor to the work on the international legal obligations of States and non-State actors undertaken by the Commission’s Special Rapporteur. For a truly coordinated approach within the United Nations regarding human rights norms, it is essential to achieve cross-fertilization of concepts, research and activities.<sup>68</sup>

## 2. The human rights system

65. Various United Nations Charter-based and treaty-based mechanisms, as well as institutional arrangements and procedures such as the International Law Commission, the Human Rights Council and its universal periodic review process, the thematic mandates

<sup>60</sup> FAO, “The right to adequate food in emergency programmes” (Rome, 2014), p. 3.

<sup>61</sup> Daniel A. Farber, “International law and the disaster cycle”, *The International Law of Disaster Relief*, (Cambridge University Press, 2014), p. 9.

<sup>62</sup> See A/71/10, para. 48.

<sup>63</sup> Commentary on art. 2.

<sup>64</sup> Therese O’Donnell and Craig Allan, “Identifying solidarity: the ILC project on the protection of persons in disasters and human rights”, *George Washington International Law Review*, vol. 49, No. 1, pp. 53–95 (2016).

<sup>65</sup> Dug Cubie and Marlies Hesselman, “Accountability for the human rights implications of natural disasters: a proposal for systemic international oversight”, *Netherlands Quarterly of Human Rights*, vol. 33/1 (2015), p. 18.

<sup>66</sup> See A/71/10, p. 70.

<sup>67</sup> Therese O’Donnell and Craig Allan, “Identifying solidarity: the ILC project on the protection of persons in disasters and human rights”.

<sup>68</sup> Dug Cubie and Marlies Hesselman, “Accountability for the human rights implications of natural disasters: a proposal for systemic international oversight”, p. 24.

and the treaty-body monitoring committees, address the linkages between human rights and disasters, although not in a coordinated or consistent manner. General human rights provisions can apply to disaster-affected populations, but they are not focused upon the typical difficulties arising from disasters.<sup>69</sup> Instead, each and every human rights violation, such as access to food, clean water, health and shelter, is considered separately, without taking the broader context into account, including communal stress.

66. The United Nations human rights system did not address natural disasters in a systematic manner until 2013. Human Rights Council resolution 22/16, calling for research on best practices and challenges in the promotion and protection of human rights in post-disaster and post-conflict situations, is the first formal act of recognition relating to the human rights implications of natural and human-made disasters. However, pre-disaster preparedness is not addressed in the text.

67. The same year, General Assembly resolution 67/87 focused on the accountability of humanitarian actors. Considering that numerous human rights violations can occur as a result of humanitarian operations — including unequal access to assistance, discrimination in aid provisions, enforced relocation, sexual and gender-based violence, loss of documentation, recruitment of children into fighting forces, unsafe or involuntary return or resettlement, and issues of property restitution — the accountability of humanitarian actors is vital.<sup>70</sup> The invocation of the Convention on the Privileges and Immunities of the United Nations by the Secretary-General to avoid potential compensation claims against the United Nations for the introduction of cholera by United Nations peacekeepers following the Haiti earthquake illustrates the difficulty of establishing accountability mechanisms applicable to humanitarian actors.<sup>71</sup>

### State obligations

68. As the Committee on Economic, Social and Cultural Rights has pointed out, “States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations ... to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons. Each State should contribute to this task to the maximum of its capacities.”<sup>72</sup> It is important to note that the recognition of the indivisibility of the rights in regard to disaster is part of the emerging jurisprudence on State responsibility.<sup>73</sup> In times of emergency, unlike with civil and political rights, there is no derogation clause to suspend State obligations pertaining to the right to food, as well as other economic, social and cultural rights.<sup>74</sup>

69. The right to food in emergencies needs positive action by States not only to respect and protect, but also to fulfil the normative content of international human rights principles. The obligation to fulfil requires States to take affirmative steps to facilitate the capacity of its people to feed themselves, identifying, in particular, its most vulnerable populations to ensure their access to food, and supplying food directly when individuals or groups are unable, for reasons beyond their control (e.g. natural disasters and armed conflict), to secure adequate food through their own means and resources. Article 11 of the Covenant does not make any differentiation about the causes of difficult times in relation to State obligation.<sup>75</sup>

<sup>69</sup> Therese O’Donnell and Craig Allan, “Identifying solidarity: the ILC project on the protection of persons in disasters and human rights.

<sup>70</sup> Inter-Agency Standing Committee, *Operational Guidelines on Human Rights and Natural Disasters* (June 2006), p. 8.

<sup>71</sup> Dug Cubie and Marlies Hesselman, “Accountability for the human rights implications of natural disasters: a proposal for systemic international oversight”, p. 23.

<sup>72</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, paras. 40 and 65, and general comment No. 12 (1999) on the right to adequate food, para. 38.

<sup>73</sup> Cubie and Hesselman, “Accountability for the human rights implications of natural disasters: a proposal for systemic international oversight”, p. 16.

<sup>74</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 12, para. 6; and A/72/188, paras. 48–50.

<sup>75</sup> See A/72/188, paras. 47–61.

70. The Committee on Economic, Social and Cultural Rights, in its general comment No. 19 (2007) on the right to social security, also deals with the human rights implications of financial preparedness for disasters, stating that States parties should consider establishing insurance schemes, such as crop or natural disaster insurance, which are accessible by the victims of a disaster.<sup>76</sup> Although the Committee recognizes that various human rights in the International Covenant on Economic, Social and Cultural Rights need particular action by States in the context of disasters, and has started to clarify obligations in this regard, it has not yet provided specific guidance on the human rights implications of natural disasters in the form of a dedicated general comment, which would be a helpful further step.<sup>77</sup>

71. When a State, which bears the primary duty, is unable or unwilling to provide humanitarian assistance to its suffering population, then other States and NGOs have a subsidiary responsibility to act. These multidimensional challenges have to be taken care of through disaster relief and humanitarian assistance.<sup>78</sup>

72. Even though external humanitarian assistance should be provided upon request of the States affected by natural disasters, or at least with their consent, States' arbitrary refusal to receive humanitarian assistance should be treated as a violation of international human rights law. Indeed, general comment No. 12 of the Committee on Economic, Social and Cultural Rights includes, among the violations of the right to adequate food, "the prevention of access to humanitarian food aid in internal conflicts or other emergency situations".<sup>79</sup> Moreover, where the denial would threaten the lives of the affected population, the State would be in violation of the right to life. In fact, in 2008, when Cyclone Nargis struck Myanmar, the military regime initially rejected all offers of international humanitarian assistance. This reignited a debate over the apparent conflict between the right of a sovereign State to refuse assistance and the right of people to receive humanitarian relief in the context of natural disasters. Some controversially contended that Myanmar's neglecting or refusing to accept humanitarian assistance could amount to a crime against humanity.<sup>80</sup>

### Treaty bodies

73. Treaty bodies also deal with disaster situations, in relation to specific areas of protection. The Committee on the Elimination of Discrimination against Women has raised concerns to the Government of Indonesia on issues relating to rural women's protection and access to assistance, in response to tsunamis and earthquakes. Furthermore, the Committee has expressed concern about the impact of tsunamis and earthquakes in Chile, urging that reconstruction plans take a gender perspective into proper account.<sup>81</sup>

74. Similarly, the Committee on the Elimination of Racial Discrimination, which monitors the International Convention on the Elimination of All Forms of Racial Discrimination, expressed concern regarding Hurricane Katrina, in the United States of America, critically noting the slow and inadequate protection of the right to housing after the hurricane, especially for low-income African Americans.<sup>82</sup>

75. The Committee on the Rights of the Child has recommended that effective protection of children include: (a) the implementation of disaster preparedness in school curricula; (b) the development and implementation of action plans or strategies on assistance and protection; and (c) the setting up of "strategic budgetary lines" protecting

<sup>76</sup> See paras. 28–50.

<sup>77</sup> Dug Cubie and Marlies Hesselman, "Accountability for the human rights implications of natural disasters: a proposal for systemic international oversight", p. 27.

<sup>78</sup> Committee on Economic, Social and Cultural Rights, general comment No. 12, para. 38.

<sup>79</sup> *Ibid.*, para. 19.

<sup>80</sup> Matias Thomsen, "The obligation not to arbitrarily refuse international disaster relief: a question of sovereignty", *Melbourne Journal of International Law*, vol. 16 (2015), p. 3.

<sup>81</sup> Cited in Dug Cubie and Marlies Hesselman, "Accountability for the human rights implications of natural disasters: a proposal for systemic international oversight", p. 28.

<sup>82</sup> *Ibid.*

vulnerable and disadvantaged children “even in situations of economic crisis, natural disasters or other emergencies”.<sup>83</sup>

76. Finally, the Committee on the Rights of Persons with Disabilities has created informal working groups to monitor the protection of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and natural disasters.<sup>84</sup>

## V. Food assistance and the role of the international community

### History and structure

77. Food assistance is one of the oldest forms of international support and it has saved many lives during severe humanitarian crises. It is a remedy for emergency situations, to provide food for those who are caught in the midst of a disaster situation.

78. At the same time, poorly designed, charity-based food aid can do more harm than good, can have negative effects on small-scale farmers in recipient countries by exerting downward pressure on domestic food prices, and can adversely affect trade, production incentives and labour markets. In some cases, food aid practices might even violate the right to food, if the food aid were distributed unfairly or if the most vulnerable were not prioritized. Food aid should serve the best interests of recipient country’s food and agricultural policy, provide long-term livelihoods for people and uphold environmental best practices. The very simplistic “if people are hungry, we should simply give them food” argument, which is frequently heard, is an example of inappropriate use of food aid.<sup>85</sup> Volunteerism with respect to food assistance is also humiliating to the recipients, and by definition inconsistent and frequently manipulated for political gain.

79. In the 1950s, food aid was dominated by the United States, Canada and Australia, which together accounted for over 90 per cent of the total. During the cold war, international commitments to food aid were only partly about humanitarianism, being often driven by high-priority geopolitical and economic interests. The food aid programmes of that era largely provided grain in the form of bulk commodities — often agricultural surpluses that were accumulating in donor countries.<sup>86</sup>

80. In the 1970s, the European Community and Japan also began to provide international food aid. Since then, the European Union has become the second-largest food aid donor. One third of the European Union’s annual humanitarian aid budget is used to provide emergency food assistance. The European Union has a flexible policy that it adapts to specific cases by providing cash-based as well as in-kind assistance.

81. Although official development assistance (ODA), emergency humanitarian aid, food aid and food assistance have different targets, priorities and funding, and are run by different organizational structures, all three programmes have significant impacts on the local economy, on the local agricultural structure, and on people’s right to food, both individually and as a community. Most of the time, long-term recipients of ODA and food aid/assistance become dependent in ways that impede balanced, sustainable development.

82. Over the last 50 years, the character of food aid policies and practices has changed, in parallel to global structural changes in agriculture and changing geopolitical conditions. Firstly, the absolute value and relative importance of food aid has declined dramatically. In the 1960s, food aid represented approximately 20 per cent of all ODA, but by the early 2000s that figure had fallen to about 5 per cent.<sup>87</sup>

<sup>83</sup> Ibid., p. 29.

<sup>84</sup> Ibid.

<sup>85</sup> Christopher B. Barrett and Daniel G. Maxwell, *Food Aid After Fifty Years: Recasting its Role* (New York, Routledge, 2005).

<sup>86</sup> Jennifer Clapp, *Hunger in the Balance: The New Politics of International Food Aid* (Cornell University Press, 2012).

<sup>87</sup> Jennifer Clapp, “Food aid”, *Handbook of Globalisation and Development* (2017), p. 394.

83. Secondly, in the aftermath of the cold war, donors began to direct their food aid or assistance towards the poorest countries, rather than prioritizing geopolitical considerations. More frequent, more severe and longer-lasting human-made and natural disasters worldwide have refocused food aid on the challenge of feeding emergency victims. By the early 2000s, over 60 per cent of food aid was in response to emergency situations.<sup>88</sup> In recent years, 80 per cent of disasters have been climate change-related extreme weather events, which have severely hit places that already have food insecurity, such as countries in South Asia, sub-Saharan Africa, the Middle East and Central America. Yet, those countries' contribution to global warming is close to zero. Therefore, disaster relief systems and humanitarian aid almost go hand in hand with climate change policies, and should be factored into adaptation and mitigation remedies.<sup>89</sup>

84. Thirdly, donor countries have gradually moved from direct transfer of commodity surpluses to sourcing food aid on open markets. The United States, as the biggest donor, provides roughly 50 per cent of all food aid worldwide, reaching approximately 50 million people in 56 countries at an average annual cost of US\$2 to 3 billion. But in real terms, the food aid budget of the United States is less than a third of what it was in 1965. The United States spends more than half of its international food aid budget transporting life-saving commodities through a complex system that is responsive to special interests and hampered by bureaucratic obstructions.<sup>90</sup> As Oxfam has documented, such a process is outdated and inefficient from the perspective of getting food to people in need.<sup>91</sup> During sudden emergencies such as the earthquake in Haiti and the hurricane in Puerto Rico, delays cost lives. In recent years, several reform efforts have been taking place to correct such situations.

85. As part of the larger humanitarian structure, food assistance intrinsically suffers from more general shortcomings that plague the humanitarian system. Rather than being carefully coordinated and deliberately engineered, the humanitarian structure evolved from fragmentary endeavours and is composed of a multitude of autonomous entities with separate governance and accountability structures — including NGOs,<sup>92</sup> United Nations humanitarian agencies, the International Red Cross and Red Crescent Movement, recipient and donor government agencies, humanitarian arms of regional intergovernmental organizations, military forces, religious institutions and private sector entities.<sup>93</sup> This disparate system, which lacks leadership and coordination, is susceptible to inefficiencies, poor communication, bureaucratic restrictions, corruption, and costly duplicative administrative systems that prevent rapid, flexible and effective responses to changing needs.<sup>94</sup>

86. Funding shortages are an important concern as the number of disaster- and conflict-prone areas is increasing. Donor countries have promised to spend 0.7 per cent of their gross national income as aid. According to Organization for Economic Cooperation and Development records, many rich countries have failed to reach their agreed obligations; only a few have met their commitments.<sup>95</sup>

87. Food from supply-driven rather than demand-driven food aid programmes frequently goes to people who do not want to eat it, do not know how to cook it or have no real use for it.<sup>96, 97</sup> Furthermore, the quality of the food has been often contentious, with

<sup>88</sup> Ibid.

<sup>89</sup> See A/70/287.

<sup>90</sup> For instance, in the case of Africa, 70% of the budget goes on transportation. See Medill and *USA Today*, "Hunger pains: U.S. food program struggles to move forward".

<sup>91</sup> See [www.oxfamamerica.org/take-action/campaign/food-farming-and-hunger/food-aid/](http://www.oxfamamerica.org/take-action/campaign/food-farming-and-hunger/food-aid/).

<sup>92</sup> Some financially powerful NGOs are World Vision, CARE and Catholic Relief Services.

<sup>93</sup> Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP), *The State of the Humanitarian System*, 2015 edition, p. 19.

<sup>94</sup> ALNAP, *The State of the Humanitarian System*, 2015 edition.

<sup>95</sup> See [www.oecd.org/dac/financing-sustainable-development/development-aid-rises-again-in-2016-but-flows-to-poorest-countries-dip.htm](http://www.oecd.org/dac/financing-sustainable-development/development-aid-rises-again-in-2016-but-flows-to-poorest-countries-dip.htm).

<sup>96</sup> Rob Bailey, Chatham House, cited in "Hunger pains: U.S. food program struggles to move forward".

respect to genetically modified seeds, or the provision of fortified foods that have never been tested on large populations.

### **Food Assistance Convention of 2012**

88. The Food Assistance Convention, of 2012, is the only legally binding international treaty addressing “the food and nutritional needs of the most vulnerable populations” in emergency situations.<sup>98</sup> It has in fact been in operation since 1967 and has been continuously reformulated over the years. In 1991, there was a fundamental shift in approach, expanding the traditional focus on tied in-kind food aid to a much broader form of assistance that included a stronger focus on the nutritional aspects of food aid, the protection of livelihoods, and the use of cash transfers and vouchers.

89. In 2012, there was a change in the convention’s title from “aid” to “assistance”, revealing a certain shift. Longer-term development assistance seems to be reflected through the 2012 Convention’s change in the emergency framework, which includes all forms of food assistance. This has the potential to prevent distortions of local markets and to generate benefits for local producers, thereby combining emergency responses with broader development goals of food security in recipient countries.

90. This change appears to have been shaped by previous international commitments, most notably the Paris Declaration on Aid Effectiveness, of 2005, which placed strong emphasis on recipient countries’ ownership of their development policies and strategies while at the same time recognizing the responsibility of donors to take account of food policies in recipient countries.<sup>99</sup>

91. The shift towards assistance, with greater possibilities for beneficiaries’ participation, and explicit recognition of the right to food, suggests that the Food Assistance Convention has the potential to contribute to developing a governance regime.<sup>100</sup> However, a number of areas of reform stand out. For instance, the extent to which beneficiaries have actually participated in practices and policies relating to food assistance remains unclear.<sup>101</sup> Similarly, beneficiary States can now also become parties to the Convention, but while a number of non-State parties have attended sessions of the Food Assistance Committee as observers, no beneficiary countries have yet become parties to the Convention.

### **Right to food approach**

92. The 2012 Convention has an explicit reference to the right to food.<sup>102</sup> It has been observed that there is increasing recognition generally among donor States of the usefulness of a human rights lens when addressing issues of food insecurity.<sup>103</sup> Acknowledging the right to food in the preamble is indeed a positive step, however the preamble emphasizes the role of beneficiary States and not of donor States.<sup>104</sup> The Convention also adds a new reference to upholding the dignity of the beneficiaries of assistance, indirectly invoking this fundamental underpinning human rights principle.<sup>105</sup>

93. Similarly, several provisions of the Convention draw upon the text of the 2004 Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, of 2004. Both the Voluntary Guidelines and the

<sup>97</sup> Frederic Mousseau, “Food aid or food sovereignty? Ending world food hunger in our time” (The Oakland Institute, 2005).

<sup>98</sup> Ratified by Austria, Canada, Denmark, Finland, Japan, Switzerland and the United States, and by the European Union, in 2012.

<sup>99</sup> See the Paris Declaration on Aid Effectiveness, para. 14.

<sup>100</sup> See the Food Assistance Convention (2012), art. 2 (c) (ii).

<sup>101</sup> See [www.foodassistanceconvention.org/downloads/sumrec/fac2015nr.pdf](http://www.foodassistanceconvention.org/downloads/sumrec/fac2015nr.pdf), pp. 6–16.

<sup>102</sup> See the Food Assistance Convention, preamble.

<sup>103</sup> See [www.tafad.org](http://www.tafad.org).

<sup>104</sup> Annamaria La Chimia, “Food security and the right to food: finding balance in the 2012 Food Assistance Convention”, *International and Comparative Law Quarterly*, vol. 65, No. 1 (2016), pp. 99–137.

<sup>105</sup> See the Food Assistance Convention, art. 2 (c) (iv).

2012 Convention recognize the importance of targeting vulnerable groups for food assistance (art. 2 (c) (i) of the Convention), supporting the long-term food security objectives of beneficiary States (art. 2 (a) (ii) of the Convention), supporting the long-term rehabilitation and development objectives (art. 2 (a) (ii) of the Convention), avoiding dependency on food assistance (art. 2 (a) (iv) of the Convention) and preventing disruption of local food production (art. 2 (a) (v) of the Convention).

94. By translating elements of the Voluntary Guidelines into principles to guide parties' interventions, the 2012 Convention is constructing the foundation of an increasingly rights-based perspective applicable to emergency assistance. The 2012 Convention can provide an example of how the "State duty to assist" can be fulfilled in a specific context.<sup>106</sup>

95. Although the principles of assistance reflect a rights-based approach, it is difficult to measure their current impact on parties' practices. An ad hoc example of compliance is seen in the Food Assistance Committee's 2016 annual report, in which the European Union's activities in West Africa following the Ebola crises focused on the communities most affected by the disease, in compliance with the principle of giving priority to vulnerable groups in line with article 2 (c) (i) of the 2012 Convention. However, recent research shows that with respect to food assistance to the Syrian Arab Republic between 2012 and 2015, the Convention was not mentioned at all.<sup>107</sup> In the 100 interviews conducted with representatives of humanitarian organizations engaged in food assistance in the region, interviewees did not regard the Convention as an important consideration.

96. The Convention also does not contain an effective evaluation mechanism. Its article 2 (d), on principles of food assistance accountability, leaves evaluation to the parties, and the Convention does not refer to a systematic mechanism for monitoring and evaluating the outcomes and impact of assistance interventions (see art. 2 (d) (ii) of the Convention).

97. Considering the increased role of private entities, States should follow the Guiding Principles on Business and Human Rights (pillar I) with respect to interventions of private sector partners in emergency contexts. This is relevant to the role of States parties in developing legislation, monitoring and enforcing domestic obligations. Private companies should also align their interventions with the Guiding Principles (pillar II). Recent guidance is provided in Committee on Economic, Social and Cultural Rights general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. The Committee on Economic, Social and Cultural Rights is well placed to request information from national governments as to their compliance with extraterritorial obligations.

### **World Humanitarian Summit**

98. In May 2016, the first World Humanitarian Summit was convened by the United Nations to develop a more global, accountable and robust humanitarian system, and for reform of the humanitarian aid industry. The World Humanitarian Summit has been groundbreaking, as it has encouraged more flexible funding, greater local ownership and greater accountability. Agreements were made to use less earmarking, to make greater use of cash transfers and to raise the ceiling of the Central Emergency Response Fund.

99. Despite clear evidence that preparedness, early warning, and monitoring systems save lives, targeted funding by the international community remains weak. Between 1991 and 2010, less than 0.5 per cent of ODA was spent on disaster risk reduction, and only a fraction of that was spent on preparedness.<sup>108</sup> Recognizing this shortcoming, the new Global Partnership for Preparedness was launched at the World Humanitarian Summit to provide predictable funding. However it has already met serious obstacles, with not a single State

<sup>106</sup> Annamaria La Chimia, "Food security and the right to food: finding balance in the 2012 Food Assistance Convention".

<sup>107</sup> José Ciro Martínez and Brent Eng, "The unintended consequences of emergency food aid: neutrality, sovereignty and politics in the Syrian civil war, 2012-2015", *International Affairs*, vol. 92, No. 1 (2016), pp. 153-173.

<sup>108</sup> Jan Kellett and Alice Caravani, "Financing disaster risk reduction: a 20-year story of international aid" (Overseas Development Institute, 2013).

having pledged to provide long-term funding and donors continuing to be hesitant about making unearmarked contributions to such a common fund.<sup>109</sup>

100. While in many instances it is too early to assess how the wide-ranging set of commitments will be implemented and monitored, the first progress reports illustrate mixed results. Progress has been uneven, with most developments focusing on localization, cash programming and improved linkages with private sector networks, with less progress on participation and earmarking.<sup>110</sup>

101. Considering the humanitarian sector's structural deficiencies, critics argue that the limits of possible reform have been reached. They have, for example, condemned the Summit for failing to agree on meaningful structural reform of the United Nations system,<sup>111</sup> and some are calling for a radical rethinking of the entire humanitarian system to make it more anticipatory, adaptive, participative and accountable. The wide-ranging suggestions include a unified United Nations "super emergency agency"; the establishment of a centralized capacity at the international level to provide stronger leadership; or alternatively, a major devolution to local and regional levels to make operating modalities more responsive to realities on the ground.

## VI. Conclusions and recommendations

### A. Conclusions

102. **Climate-related disasters are increasing in frequency and intensity. Their number has almost doubled in the past decade (there are now, on average, 335 events annually). Their impacts can be devastating for any State, even a wealthy one. In 2017, overall losses from storms and fires in the United States and widespread flooding in South Asia reached \$330 billion.<sup>112</sup> Hurricane Harvey in Texas was the most expensive natural disaster in 2017, costing \$85 billion. The impact on agriculture from devastating wildfires in California is yet to be calculated.**

103. **Territory with poor infrastructure, a deprived population, compromised building safety standards and an underresourced health system undoubtedly add to the human suffering resulting from severe natural disasters. In 2017, Hurricanes Irma and Maria caused significant damage in Cuba, Haiti and Puerto Rico. The drought in the Horn of Africa pushed more than 11 million people into severe food insecurity in Ethiopia, Kenya and Somalia. Flooding in Nepal and Bangladesh left 10 million people food-insecure.**

104. **Many of the negative effects of disasters may be prevented with appropriate planning and investment in infrastructure, or if the root causes are dealt with properly and take vulnerability variations into account. Most of the weather-related disasters that are "often dismissed as 'climatic accidents' turn out to be not so accidental at all".<sup>113</sup> Therefore, effective and meaningful policies and regulations require "a much more holistically minded approach which recognizes historical contingencies and wealth inequality".<sup>114</sup>**

105. **Severe food insecurity can be averted or substantially reduced if the right investments in agriculture are made in post-disaster periods. This would require, both more typical humanitarian "emergency" responses as well as "development" and capacity-building activities. Even at the earliest stages of a response, when the**

<sup>109</sup> Matthew Serventy and Petra Jaervinen, "Global Preparedness Partnership: update on progress since the World Humanitarian Summit".

<sup>110</sup> Global Public Policy Institute, "Independent grand bargain report", 8 June 2017.

<sup>111</sup> See [www.irinnews.org/analysis/2016/05/26/world-humanitarian-summit-winners-and-losers](http://www.irinnews.org/analysis/2016/05/26/world-humanitarian-summit-winners-and-losers).

<sup>112</sup> See [www.nytimes.com/2018/01/04/climate/losses-natural-disasters-insurance.html](http://www.nytimes.com/2018/01/04/climate/losses-natural-disasters-insurance.html).

<sup>113</sup> Therese O'Donnell and Craig Allan, "Identifying solidarity: the ILC project on the protection of persons in disasters and human rights".

<sup>114</sup> Ibid.

emphasis is on providing urgent life-saving food assistance, it is crucial to strengthen the resilience of the communities affected.

106. Food assistance, although having a vital role as part of the humanitarian system, suffers from serious financial constraints and lack of coordination. Solving chronic hunger in a situation of natural disasters combined with other calamities requires various forms of assistance — deploying a range of humanitarian, economic, political and even military tactics. This will only be possible if there are coordinated political and financial commitments by developed countries. The effects of such disasters can be overwhelming, with historically high numbers of victims in terms of migrants and refugees forced to leave their homes.

107. The root causes of food insecurity in the context of natural disasters and post-disaster settings needs to be understood and addressed together with other global problems. Climate change has long-term and deeper impacts on food insecurity that eventually could bring conflicts to countries that have limited capacity to cope, which could then become trapped in a vicious cycle of conflict, disaster and food insecurity. At the same time, while such countries have contributed only minimally to greenhouse gas emissions, most of the countries that donate to food assistance are significantly responsible for climate change. Therefore, increasing finance to support developing countries in tackling climate change impacts, through adaptation and by addressing loss and damage, is essential.

108. Recognizing the negative impacts that human rights violations have on the effectiveness of relief operations, humanitarian reform efforts are increasingly seeking to incorporate a rights-based approach in the programming, targeting and distribution of food assistance. Beyond the implicit ideas of the interdependence and indivisibility of human rights, the participation of affected populations in decision-making processes, cultural appropriateness, non-discrimination, the protection of vulnerable groups, and gender-based assessments will be helpful to improve fragmented systems and to reform disaster management governance.

109. It is important to consider the right to food as a collective right as well as an individual right, as disasters and emergency situations have an impact on society as a whole, as well as on distinct communities. This approach can be found in several United Nations instruments, such as the United Nations Declaration on the Rights of Indigenous Peoples, the Declaration on the rights of peasants and other people working in rural areas, article 11 of the International Covenant on Economic, Social and Cultural Rights, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), and agenda 21, chapter 26, from the 1992 United Nations Conference on Environment and Development (Rio Summit).

110. Interpreting the right to food in a humanitarian context as a collective right would give a holistic approach to improving food systems, provide additional legal protection to communities for their access to resources and assets, protect and strengthen traditional food systems and local knowledge, coincident with recovering from emergencies. In other words, emergencies offer an opportunity to introduce food sovereignty principles as part of the human right to food while dealing with disaster and post-disaster recovery efforts. It is essential that disasters should not be treated by donors as an opportunity to change traditional food and agricultural systems and impose industrial agriculture. On the contrary, while responding to the most urgent food needs, post-disaster contexts should be an occasion to support or introduce food sovereignty that primarily supports locals, smallholder farmers, fisherfolk, indigenous communities, and women.

## B. Recommendations

111. With a view to achieving an integrated and systemic approach to the right to adequate food in disaster and post-disaster contexts, the Special Rapporteur recommends that States:

- (a) Develop national laws and monitoring systems on disaster management (prevention, response and recovery) to incorporate a human rights-based approach;
- (b) Adopt necessary legislative and budgetary measures to focus on prevention and disaster risk reduction measures, in order to avoid environmental degradation and consequences on ecosystems and biodiversity, which should include forest conservation activities and watershed management;
- (c) Develop legislation and monitoring and enforcing mechanisms at the national level following the Guiding Principles on Business and Human Rights with respect to the participation of the private sector in emergency contexts;
- (d) Regulate and monitor agricultural investments in disaster settings, privileging local ownership and food sovereignty and not interfering with the local market;
- (e) Consider establishing “crop and natural disaster insurance” that is accessible for victims after a disaster, and adopting measures for the protection of seeds;
- (f) Prioritize the needs of the most vulnerable, especially children, and those most at risk, by setting up budgetary priorities that apply even in situations of economic crisis or natural disaster or other emergencies;
- (g) Set policies that pay particular attention to the role of women in disaster and post-disaster situations, acknowledging their transformative role and leadership capacity.

112. Further, the international community should:

- (a) Enhance coordination between existing humanitarian institutions, and between United Nations bodies that each have specific mandates but none of which exclusively deals with disaster settings, in order to regulate the entire system;
- (b) Consider the negotiation of a comprehensive, multilateral treaty to respond to disaster situations in a coordinated and effective manner. The treaty should:
  - Remind States that they bear a responsibility to protect people and the environment in times of severe emergency and large-scale natural disaster, rather than relying on voluntarism;
  - Acknowledge that such obligations should be aligned with human rights principles sensitive to justice, human dignity and equality;
  - Establish a centralized institution at the international level to provide stronger leadership with respect to the humanitarian agenda;
  - Provide innovative funding mechanisms to close the financial gap;
  - Establish accountability mechanisms for all humanitarian actors, including NGOs and private sector actors.

113. The Committee on Economic, Social and Cultural Rights should prepare a general comment focused on human rights remedies in times of disaster and in post-disaster situations, as well as on preventive measures to clarify the obligations of States and international communities.

**Human Rights Council****Forty-first session**

24 June–12 July 2019

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Climate change and poverty****Report of the Special Rapporteur on extreme poverty and human  
rights\****Summary*

Climate change will have devastating consequences for people in poverty. Even under the best-case scenario, hundreds of millions will face food insecurity, forced migration, disease and death. Climate change threatens the future of human rights and risks undoing the last 50 years of progress in development, global health and poverty reduction.

Staying the course will be disastrous for the global economy and pull vast numbers into poverty. Addressing climate change will require a fundamental shift in the global economy, decoupling improvements in economic well-being from fossil fuel emissions. It is imperative that this is done in a way that provides necessary support, protects workers and creates decent work.

Governments and too many in the human rights community have failed to seriously address climate change for decades. Sombre speeches by government officials have not led to meaningful action and too many countries continue taking short-sighted steps in the wrong direction. States are paying only marginal attention to human rights in the conversation on climate change.

Although climate change has been on the human rights agenda for well over a decade, it remains a marginal concern for most actors. However, it represents an emergency without precedent and requires bold and creative thinking from the human rights community and a radically more robust, detailed and coordinated approach.

\* The present report was submitted after the deadline in order to reflect the most recent developments.



## I. Introduction<sup>1</sup>

1. There is no shortage of alarm bells ringing over climate change, but they seem to have remained largely unheard so far. In accepting the 2018 Nobel Prize for Economics, William Nordhaus described climate change as a “Colossus that threatens our world” and the “ultimate challenge for economics”.<sup>2</sup> The 2001 winner of the same prize, Joseph Stiglitz, referred to it more recently as the third world war.<sup>3</sup> Pope Francis has declared a global climate emergency, and warned that failure to take urgent action would be “a brutal act of injustice toward the poor and future generations”.<sup>4</sup> Climate change threatens truly catastrophic consequences across much of the globe and the human rights of vast numbers of people will be among the casualties. By far the greatest burden will fall on those in poverty, but they will by no means be the only victims. To date, most human rights bodies have barely begun to grapple with what climate change portends for human rights. However, as a full-blown crisis bears down on the world, “business as usual” is a response that invites disaster.

2. The present report focuses on the impact of climate change on human rights and especially the rights of people living in or near poverty; the response so far by the human rights community and its reluctance to engage robustly with climate change; and the necessary response to this existential challenge. It contends that genuinely transformative change is needed both in the ways societies and economies are currently structured and in the human rights regime.

## II. The scale of the challenge

3. David Wallace-Wells began *The Uninhabitable Earth* by observing that global warming “is worse, much worse, than you think”. Carbon is being added to the atmosphere 100 times faster than at any point in pre-industrial human history and more damage has been done in the three decades since the United Nations established the Intergovernmental Panel on Climate Change in 1988 than in the whole of human history up to that time.<sup>5</sup>

4. The last five years have been the hottest in the modern record<sup>6</sup> and global carbon dioxide emissions began rising again in 2017 after three years of levelling off.<sup>7</sup> World energy consumption is projected to grow 28 per cent between 2015 and 2040.<sup>8</sup> The consequences today are attested to by record temperatures, rapidly melting icecaps, unprecedented wildfires, frequent so-called “thousand year” floods and devastating, more frequent hurricanes.<sup>9</sup> Millions face malnutrition due to devastating drought and many more will have to choose between starvation and migration.<sup>10</sup> Rising ocean temperatures are killing marine ecosystems that support food systems for hundreds of millions of people<sup>11</sup>

<sup>1</sup> The Special Rapporteur is grateful for the superb research and analysis undertaken by Bassam Khawaja and Rebecca Riddell for the present report.

<sup>2</sup> William Nordhaus, “Climate change: the ultimate challenge for economics”, *American Economic Review*, vol. 109, No. 6 (2019).

<sup>3</sup> Joseph Stiglitz, “The climate crisis is our third world war. It needs a bold response”, *The Guardian*, 4 June 2019.

<sup>4</sup> “Pope Francis declares ‘climate emergency’ and urges action”, *The Guardian*, 14 June 2019.

<sup>5</sup> David Wallace-Wells, *The Uninhabitable Earth* (London, Allen Lane, 2019).

<sup>6</sup> See National Aeronautics and Space Administration (NASA), “2018 fourth warmest year in continued warming trend, according to NASA, NOAA”, 6 February 2019.

<sup>7</sup> See United Nations Environment Programme (UNEP), *Emissions Gap Report 2018*, p. xiv.

<sup>8</sup> See US Energy Information Administration, “EIA projects 28% increase in world energy use by 2040”, 14 September 2017.

<sup>9</sup> See Jason Samenow, “It was 84 degrees near the Arctic Ocean this weekend as carbon dioxide hit its highest level in human history”, *Washington Post*, 14 May 2019.

<sup>10</sup> Oxfam, “How climate change is helping fuel a massive hunger crisis in East Africa”, 27 April 2017.

<sup>11</sup> See Lijing Cheng and others, “How fast are the oceans warming?” *Science*, vol. 363 (January 2019).

and climate change is threatening food production and posing dire economic and social threats.<sup>12</sup>

5. The most widespread scientific benchmark for measuring global warming is the rise in temperature relative to pre-industrial levels, already 1°C.<sup>13</sup> The 2015 Paris Agreement aims to ensure no higher than a 2°C rise by 2100 and endeavours to limit it to 1.5°C, but even those increases would be catastrophic for many people.<sup>14</sup>

6. A rise of only 1.5°C rather than 2°C could mean reducing the number of people vulnerable to climate-related risks by up to 457 million; 10 million fewer people exposed to the risk of sea level rise; reducing exposure to floods, droughts, and forest fires; limiting damage to ecosystems and reductions in food and livestock; cutting the number of people exposed to water scarcity by half; and up to 190 million fewer premature deaths over the century.<sup>15</sup>

7. However, the scale of change required to limit warming to 1.5°C is historically unprecedented and could only be achieved through “societal transformation” and ambitious emissions reduction measures.<sup>16</sup> Even 1.5°C of warming – an unrealistic, best-case scenario – will lead to extreme temperatures in many regions and leave disadvantaged populations with food insecurity, lost incomes and livelihoods, and worse health.<sup>17</sup> As many as 500 million people will be exposed and vulnerable to water stress, 36 million people could see lower crop yields and up to 4.5 billion people could be exposed to heat waves.<sup>18</sup> In all of these scenarios, the worst affected are the least well-off members of society.

### III. The impact on human rights, poverty and inequality

#### A. Human rights

8. Climate change threatens the full enjoyment of a wide range of rights (A/HRC/31/52, paras. 23–32). Rapid action and adaptation can mitigate much of this, but only if done in a way that protects people in poverty from the worst effects.<sup>19</sup>

9. According to the World Bank, at 2°C of warming, 100–400 million more people could be at risk of hunger and 1–2 billion more people may no longer have adequate water.<sup>20</sup> Climate change could result in global crop yield losses of 30 per cent by 2080, even with adaptation measures.<sup>21</sup> Between 2030 and 2050, it is expected to cause approximately 250,000 additional deaths per year from malnutrition, malaria, diarrhoea and heat stress.<sup>22</sup> With people in poverty largely uninsured, climate change will exacerbate health shocks that already push 100 million into poverty every year.<sup>23</sup>

10. People in poverty face a very real threat of losing their homes (see A/64/255). By 2050, climate change could displace 140 million people in sub-Saharan Africa, South Asia

<sup>12</sup> See “Nature’s dangerous decline ‘unprecedented’; species extinction rates ‘accelerating’” 6 May 2019, available from [www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/](http://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/).

<sup>13</sup> See Intergovernmental Panel on Climate Change, “Special report: global warming of 1.5°C, summary for policymakers” (2018).

<sup>14</sup> See Carbon Brief, “The impacts of climate change at 1.5°C, 2°C and beyond” (2018); and *The Uninhabitable Earth*, p. 13.

<sup>15</sup> See Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5°C* (2018), pp. 447, 452, 464.

<sup>16</sup> *Ibid.*, p. 448.

<sup>17</sup> *Ibid.*, p. 447.

<sup>18</sup> *Ibid.*, p. 453.

<sup>19</sup> See World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty* (2016), p. 17.

<sup>20</sup> See World Bank, *World Development Report 2010: Development and Climate Change*, p. 5.

<sup>21</sup> See World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty*, pp. 4 and 6.

<sup>22</sup> See World Health Organization, *Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s* (2014).

<sup>23</sup> See World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty*, p. 9.

and Latin America alone.<sup>24</sup> Flooding and landslides can weaken already degraded infrastructure and housing, especially for people living in unplanned or unserviced settlements.<sup>25</sup> In 2017, 18.8 million people were displaced due to disasters in 135 countries – almost twice the number displaced by conflict.<sup>26</sup> Since 2000, people in poor countries have died from disasters at rates seven times higher than in wealthy countries.<sup>27</sup> In addition, the authorities have a history of prioritizing wealthier areas for protection, further endangering people in poverty.<sup>28</sup>

## B. Poverty

11. Climate change will exacerbate existing poverty and inequality.<sup>29</sup> It will have the most severe impact in poor countries and regions, and the places where poor people live and work. Developing countries will bear an estimated 75–80 per cent of the cost of climate change.<sup>30</sup>

12. People in poverty tend to live in areas more susceptible to climate change and in housing that is less resistant; lose relatively more when affected; have fewer resources to mitigate the effects; and get less support from social safety nets or the financial system to prevent or recover from the impact. Their livelihoods and assets are more exposed<sup>31</sup> and they are more vulnerable to natural disasters that bring disease, crop failure, spikes in food prices and death or disability.<sup>32</sup>

13. Climate change threatens to undo the last 50 years of progress in development, global health<sup>33</sup> and poverty reduction.<sup>34</sup> Middle-class families, including in developed countries, are also being rendered poor.<sup>35</sup> The World Bank estimates that without immediate action, climate change could push 120 million more people into poverty by 2030, likely an underestimate, and rising in subsequent years.<sup>36</sup> In South Asia alone, 800 million people live in climate hotspots and will see their living conditions decline sharply by 2050.<sup>37</sup>

## C. Inequality

14. Perversely, the richest people, who have the greatest capacity to adapt and are responsible for and have benefited from the vast majority of greenhouse gas emissions, will be the best placed to cope with climate change, while the poorest, who have contributed the least to emissions and have the least capacity to react, will be the most harmed. The poorest half of the world's population – 3.5 billion people – is responsible for just 10 per cent of

<sup>24</sup> See World Bank, *Groundswell: Preparing for Internal Climate Migration* (2018).

<sup>25</sup> See David Wallace-Wells, *The Uninhabitable Earth*, p. 24.

<sup>26</sup> See Internal Displacement Monitoring Centre and Norwegian Refugee Council, *Global Report on Internal Displacement* (2018), pp. v and 2.

<sup>27</sup> See Centre for Research on the Epidemiology of Disasters and United Nations Office for Disaster Risk Reduction, “Economic losses, poverty & disasters 1998–2017”, p. 3.

<sup>28</sup> UNEP and Sabin Center for Climate Change Law, Columbia University, “Climate change and human rights” (2015).

<sup>29</sup> See Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5°C*, p. 451.

<sup>30</sup> See World Bank, *World Development Report 2010: Development and Climate Change*, p. xx.

<sup>31</sup> Food and Agriculture Organization of the United Nations, *The State of Food Security and Nutrition in the World: Building Climate Resilience for Food Security and Nutrition* (2018), p. xiv.

<sup>32</sup> See World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty*, pp. 1–2 and 4.

<sup>33</sup> See Nick Watts and others, “Health and climate change: policy responses to protect public health”, *The Lancet*, vol. 386, No. 1006 (November 2015).

<sup>34</sup> See World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty*.

<sup>35</sup> See Erin McCormick, “Claws out: crab fishermen sue 30 oil firms over climate change”, *The Guardian*, 4 November 2018.

<sup>36</sup> See World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty*, p. 12.

<sup>37</sup> See World Bank, *South Asia's Hotspots: Impacts of Temperature and Precipitation Changes on Living Standards*, (2018).

carbon emissions, while the richest 10 per cent are responsible for a full half. A person in the wealthiest 1 per cent uses 175 times more carbon than one in the bottom 10 per cent.<sup>38</sup>

15. In addition to the economic benefits rich countries have already reaped from fossil fuels, one recent study found that climate change itself has already worsened global inequality and that the gap in per capita income between the richest and poorest countries is 25 percentage points larger than it would be without climate change.<sup>39</sup>

#### **IV. The response of the human rights community**

16. Although climate change has been on the human rights agenda for well over a decade, it remains a marginal concern. Despite a flurry of reports and statements, it is generally one on a long laundry list of issues. Despite the extraordinarily short time period available in which to avoid catastrophic human rights consequences, it remains an optional add-on or niche issue and most international rights organizations have not devoted urgent attention to it or made it an integral part of their mainstream work.

##### **Human Rights Council**

17. The Council has adopted resolutions on climate change regularly since 2008, including those establishing and extending the special procedures mandate on human rights and the environment.<sup>40</sup>

18. The most recent comprehensive example is resolution 38/4 (5 July 2018) on human rights and climate change, in which the Council takes particular account of women's rights. Its operative provisions offer a good indication of the current state of the art. First, it acknowledges the "urgent importance of continuing to address ... the adverse consequences of climate change". However, there is nothing to differentiate the urgency of action in this case from the comparable urgency noted regarding various other issues on the agenda. The Council gives no other indication that the matter is a true priority. Second, the resolution expresses particular concern for the negative impacts "particularly in developing countries and for the people whose situation is most vulnerable to climate change". While States are called upon to provide international cooperation and assistance to developing countries, the issue of differentiated responsibilities is entirely avoided, and people living in poverty are noticeably invisible, despite being the prime victims in practice.

19. More generally, the resolution proceeds as if the challenge is to manage the negative consequences of climate change for particular groups, rather than recognizing that the enjoyment of all human rights by vast numbers of people is gravely threatened. Those threatened by climate change do not divide up neatly into categories such as developing/developed nations or men/women. A much broader framework is required. Finally, there is no recognition of the need for the deep social and economic transformation, which almost all observers agree is urgent if climate catastrophe is to be averted. The actions prescribed by the Council are entirely inadequate and reflect a deep denial of the real gravity of the situation.

##### **Office of the United Nations High Commissioner for Human Rights**

20. Within the United Nations system, the Office of the High Commissioner for Human Rights (OHCHR) has prepared reports on climate change in general, on its relationship to the right to health, to the rights of the child, to migration, and to the rights of women.<sup>41</sup>

<sup>38</sup> See Oxfam, "World's richest 10% produce half of carbon emissions while poorest 3.5 billion account for just a tenth", 2 December, 2015.

<sup>39</sup> Noah Diffenbaugh and Marshall Burke, "Global warming has increased global economic inequality", *Proceedings of the National Academy of Sciences of the United States of America*, vol. 116, No. 20 (May 2019).

<sup>40</sup> For a list of resolutions adopted, updated through 2016, see [www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRCAction.aspx](http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRCAction.aspx).

<sup>41</sup> See A/HRC/10/61, A/HRC/32/23, A/HRC/35/13, A/HRC/37/35 and A/HRC/41/26 respectively.

Expert meetings have been organized, the High Commissioner has noted that States have “an obligation to strengthen their mitigation commitments in order to prevent the worst impacts of climate change”<sup>42</sup> and the current OHCHR management plan for the period 2018 to 2021 lists climate change as one of five “frontier issues”. However, the bottom line is that climate change advocacy remains marginal to the major concerns of the Office.

21. Lest it be observed that double standards are at play, the same is true of the previous work by the Special Rapporteur.

### **Treaty bodies**

22. The Committee on Economic, Social and Cultural Rights has produced the most extensive and focused response to date by a treaty body, affirming in 2018 that the “failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so” by a State could constitute a breach of its legal obligations.<sup>43</sup> In the same year, 42 per cent of the Committee’s concluding observations on State reports addressed climate change.<sup>44</sup>

23. In its general comment No. 36 (2018) on the right to life, the Human Rights Committee broke important new ground by recognizing that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”. The Committee called for sustainable resource use, substantive environmental standards, impact assessments, consultation with and notification of other States, access to information and due regard to the precautionary approach. Perhaps most importantly, it called for measures by States to preserve and protect the environment, including in relation to “climate change caused by public and private actors”.

24. Treaty bodies have recommended that States set national targets for greenhouse gas emissions, intensify efforts to reach targets, transition to renewable energy, regulate private actors, mitigate the impact of natural disasters and protect vulnerable populations. However, in-depth analysis of the three most engaged treaty bodies (the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women) shows that just 9 per cent of references to climate change since 2008 have dealt with mitigation, the issue of greatest importance for reversing the current trajectory. These bodies appear far more comfortable in addressing adaptation, impacts on particular groups and procedural rights than confronting the core causes of climate change itself. And while the Committee on Economic, Social and Cultural Rights has pushed developing countries to seek assistance, treaty bodies have by and large not taken a role in determining the responsibility of wealthier countries to provide financial and technical assistance for climate action.<sup>45</sup>

### **Special procedures**

25. A number of Special Rapporteurs have written on climate change, including about the impact on housing, food, internal displacement, migration, and indigenous peoples.<sup>46</sup> In 2016, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment wrote in a landmark report that “States have obligations to adopt legal and institutional frameworks that protect against, and respond to, environmental harm that may or does interfere with the enjoyment of human rights” (A/HRC/31/52). In the near future, the Coordination Committee of

<sup>42</sup> See open letter from the United Nations High Commissioner for Human Rights on integrating human rights in climate action to the Permanent Missions in New York and Geneva, 21 November 2018.

<sup>43</sup> Committee on Economic, Social and Cultural Rights, “Climate change and the International Covenant on Economic, Social and Cultural Rights”, 8 October 2018.

<sup>44</sup> See Centre for International Environmental Law and the Global Initiative for Economic, Social and Cultural Rights, “States’ human rights obligations in the context of climate change: 2019 update” (February 2019).

<sup>45</sup> Ibid.

<sup>46</sup> See A/64/255, A/70/287, A/66/285, A/67/299 and A/HRC/36/46 respectively.

Special Procedures should ensure a systemic response to climate change that considers the full range of options for coming up with a more creative, urgent and system-wide approach, led by the Special Rapporteur on the environment.

### Regional human rights bodies

26. At the regional level, the European Court of Human Rights has not directly addressed climate change.<sup>47</sup> In contrast, the Inter-American Court of Human Rights has characterized the human right to a healthy environment as fundamental for the existence of humankind and having both individual and collective dimensions, including obligations owed to both present and future generations. It concluded that the rights to life and personal integrity, on their own, require States “to prevent significant environmental damages within and outside their territory” and that this, in turn, requires them to “regulate, supervise and monitor the activities under their jurisdiction that could cause significant damage to the environment; carry out environmental impact assessments ... prepare contingency plans ... and mitigate any significant environmental damage ...”.<sup>48</sup>

### Civil society

27. A diverse array of civil society groups and human rights defenders are working on climate change issues. However, among international human rights groups there has been rather minimal engagement to date and limited collaboration between human rights and environmental groups remains a missed opportunity. A detailed survey is beyond the scope of the present report, but the track records of major organizations are instructive.

28. Since 2009, Amnesty International has called for a global agreement to curb climate change and joined the Global Call for Climate Action.<sup>49</sup> Publicly available records indicate that in 2015, the senior leadership team “decided that although climate change was not ... a priority in Amnesty’s strategic goals for 2016–2019, Amnesty would need to engage more deeply on the issue in the medium and long term”.<sup>50</sup> By June 2017, a draft climate change policy had been prepared, but has yet to be adopted. In 2018, Amnesty called upon Governments to “commit to much more ambitious emissions reduction targets ... or bear responsibility for loss of life and other human rights violations and abuses on an unprecedented scale”.<sup>51</sup> More recent media reports indicate that Amnesty International plans to make climate change a key priority and to increase its advocacy on the subject.<sup>52</sup>

29. Human Rights Watch has worked on climate change within its broader programme on the environment. While it has taken careful note in a number of reports of issues related to climate change, such as illegal logging, the right to food, child marriage and the Zika virus, and in one report directly documented the challenges of climate change,<sup>53</sup> little attention has been paid to the overall impact of climate change on human rights or to the obligations of Governments to undertake mitigation. As a result, the voice of a key actor in international debates has been largely absent.

<sup>47</sup> See Heta Heiskanen, “Climate change and the European Court of Human Rights: future potentials”, *The Routledge Handbook of Human Rights and Climate Governance* (London and New York, Routledge, 2018).

<sup>48</sup> Inter-American Court of Human Rights, advisory opinion OC-23/17, 15 November 2017.

<sup>49</sup> See Amnesty International, “Climate change”, available at [www.amnesty.org/en/what-we-do/climate-change/](http://www.amnesty.org/en/what-we-do/climate-change/).

<sup>50</sup> Amnesty International 33rd International Council meeting, “Circular 10: human rights aspects of climate change”.

<sup>51</sup> Amnesty International, “Failure to act swiftly on climate change risks human rights violation on massive scale”, 8 October 2018.

<sup>52</sup> See Sean O’Neill, “Amnesty International expands remit to include climate change”, *The Times*, 30 April 2019.

<sup>53</sup> Human Rights Watch, “There is no time left. Climate change, environmental threats, and human rights in Turkana County, Kenya” (2015).

## V. Paths to transformation

### A. Understanding the failure to act

#### 1. The failure of governmental leadership

30. Sombre speeches by government officials at regular conferences are not leading to meaningful action. Thirty years of conventions appear to have done very little. From Toronto to Noordwijk to Rio to Kyoto to Paris, the language has been remarkably similar, as States continue to kick the can down the road. The essential elements of climate change were understood in the 1970s and scientists and advocates have been ringing alarm bells for decades. However, States have marched past every scientific warning and threshold, and what was once considered catastrophic warming now seems like a best-case scenario.<sup>54</sup>

31. Even today, too many countries are taking short-sighted steps in the wrong direction. In Brazil, President Bolsonaro has promised to open up the Amazon rainforest for mining, end demarcation of indigenous lands and weaken environmental agencies and protections.<sup>55</sup> China is moving to end reliance on coal, while exporting coal-fired power plants abroad<sup>56</sup> and failing to implement its regulations for methane emissions at home.<sup>57</sup> In the United States of America, until recently the world's biggest producer of global emissions, President Trump has placed former lobbyists in oversight roles,<sup>58</sup> adopted industry talking points,<sup>59</sup> presided over an aggressive rollback of environmental regulations<sup>60</sup> and is actively silencing and obfuscating climate science.<sup>61</sup>

32. The 2015 Paris Agreement on Climate Change represents the most promising step in addressing climate change to date. However, the commitments States have adopted in pursuit of the Agreement are woefully insufficient and would lead to a devastating 3°C of warming by 2100.<sup>62</sup> Efforts would need to be tripled just to limit global warming to 2°C and increased fivefold to hold warming at 1.5°C. Time is running out to limit global warming to either threshold and States are failing to meet even their current inadequate commitments.<sup>63</sup>

#### 2. Failure on the part of corporate actors

33. Some look with hope to the private sector for innovations or strategically engage with corporations in the light of decades of inaction by States. However, the track record of the fossil fuel industry makes clear that overreliance on profit-driven actors would almost guarantee massive human rights violations, with the wealthy catered to and the poorest left behind. If climate change is used to justify business-friendly policies and widespread privatization, the exploitation of natural resources and global warming may be accelerated rather than prevented.

<sup>54</sup> Nathaniel Rich, "Losing Earth: the decade we almost stopped climate change", *New York Times Magazine*, 1 August 2018.

<sup>55</sup> Dom Phillips, "Jair Bolsonaro launches assault on Amazon rainforest protections", *The Guardian*, 2 January 2019.

<sup>56</sup> Michael Lelyveld, "China pushes coal-fired power plants abroad", *Radio Free Asia*, 24 July 2017.

<sup>57</sup> Scott Miller and others, "China's coal mine methane regulations have not curbed growing emissions", *Nature Communications*, vol. 10 (January 2019).

<sup>58</sup> Lisa Friedman, "Trump says he'll nominate Andrew Wheeler to head the E.P.A.", *New York Times*, 16 November 2018.

<sup>59</sup> Environmental Data and Governance Initiative, "Changes to EPA's 'natural gas extraction – hydraulic fracturing' webpage", 9 October 2018.

<sup>60</sup> Nadja Popovich, Livia Albeck-Ripka and Kendra Pierre-Louis, "78 environmental rules on the way out under Trump", *New York Times*, 28 December 2018.

<sup>61</sup> Sabin Center and Climate Science Legal Defense Fund, "Silencing Science Tracker".

<sup>62</sup> See Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5°C*, summary for policymakers, p. 18.

<sup>63</sup> UNEP, *Emissions Gap Report 2018*, pp. xiv–xv.

34. Fossil fuel companies are the main drivers of climate change: in 2015, the fossil fuel industry and its products accounted for 91 per cent of global industrial greenhouse emissions and 70 per cent of all human-made emissions.<sup>64</sup> The industry has known for decades about their responsibility for rising CO<sub>2</sub> levels and the likelihood that the rise would lead to catastrophic climate change.<sup>65</sup> From 1979 to 1983, the American Petroleum Institute ran a task force originally entitled the CO<sub>2</sub> and Climate Task Force. In one meeting in 1980, it reviewed a report describing “strong empirical evidence” that a rise in CO<sub>2</sub> was caused “mainly from fossil fuel burning”. The author of the report cautioned that a 3 per cent annual growth rate of CO<sub>2</sub> could lead to a 2.5°C increase that would bring “world economic growth to a halt in about 2025” and a “likely” 5°C rise by 2067, with “globally catastrophic effects”.<sup>66</sup>

35. However, the industry took no action to change its business model. From 1988 to 2015, fossil fuel companies doubled their contribution to global warming, producing in 28 years the equivalent of their emissions in the prior 237 years since the Industrial Revolution.<sup>67</sup> During that time, just 100 companies produced 71 per cent of global greenhouse gas emissions.<sup>68</sup>

36. Fossil fuel companies also embarked on an ambitious campaign to prevent meaningful change and thwart the imposition of binding emissions commitments. When the Kyoto Protocol was open for signature in the 1990s, the American Petroleum Institute worked to ensure that the United States did not ratify the treaty, arguing in correspondence to the White House that it “would be extremely harmful to the U.S. economy”.<sup>69</sup> The Institute also took the lead on what it called a “global climate science communications plan” to convince the public of significant uncertainties in climate science, defeat the Kyoto Protocol and put an end to further initiatives.<sup>70</sup> According to one count, the fossil fuel industry spent \$370 million lobbying on United States climate change legislation from 2000 to 2016<sup>71</sup> and even more funding think tanks, research institutions and industry scientists. Within the United States, this was depressingly effective: the Kyoto Protocol was never ratified, public understanding about climate change dropped precipitously and President Trump has referred to climate change as a “hoax” created to hurt domestic manufacturing.

### 3. Governmental complicity with corporate emissions

37. Even today, States subsidize the fossil fuel industry to the tune of \$5.2 trillion per year, or 6.3 per cent of global GDP.<sup>72</sup> Another trillion goes to support natural resource overexploitation.<sup>73</sup> Efficient fossil fuel pricing in 2015 would have reduced global carbon emissions by 28 per cent.<sup>74</sup>

38. The failures of States to protect people from climate change in the 1990s and 2000s stand in stark contrast to their willingness to extend extraordinary protections to investors

<sup>64</sup> See CDP, “The carbon majors database. CDP carbon majors report 2017”.

<sup>65</sup> See, for example, Naomi Klein, *This Changes Everything: Capitalism vs. the Climate* (New York, Simon and Schuster, 2014), pp. 31–64; Neela Banerjee, Lisa Song and David Hasemyer, “Exxon: the road not taken”, *Inside Climate News*, 16 September 2015; and Business and Human Rights Resource Centre, “Turning up the heat: corporate legal accountability for climate change” (2018).

<sup>66</sup> Minutes of the Task Force meeting, 29 February 1980, available at [www.climatefiles.com/climate-change-evidence/1980-api-climate-task-force-co2-problem/](http://www.climatefiles.com/climate-change-evidence/1980-api-climate-task-force-co2-problem/).

<sup>67</sup> CDP, “The carbon majors database”.

<sup>68</sup> *Ibid.*

<sup>69</sup> Letter from William F. O’Keefe to Laura D’Andrea Tyson, 20 March 1996, available at [www.climatefiles.com/trade-group/american-petroleum-institute/1996-api-white-house-greenhouse/](http://www.climatefiles.com/trade-group/american-petroleum-institute/1996-api-white-house-greenhouse/).

<sup>70</sup> See John Cushman Jr., “Industrial group plans to battle climate treaty”, *New York Times*, 26 April 1998.

<sup>71</sup> See Yale Environment 360, “Fossil fuel interests have outspent environmental advocates 10:1 on climate lobbying”, 19 July 2018.

<sup>72</sup> See International Monetary Fund (IMF), “Global fossil fuel subsidies remain large: an update based on country-level estimates”, Working Paper 19/89 (May 2019).

<sup>73</sup> UN Environment and others, *Green Industrial Policy: Concept, Policies, Country Experiences* (2017), p. 29.

<sup>74</sup> See IMF, “Global fossil fuel subsidies remain large”.

through the conclusion of a dizzying number of international trade and investment treaties during the same period – ignoring apparent contradictions such as how the travel of goods would affect emissions. The trade and climate regimes advanced simultaneously, but with a vast difference in the weight and enforceability of commitments. For example, while the United States has never made a binding commitment to reduce carbon emissions, it has concluded a plethora of binding international agreements that provide investors with substantive rights and the ability to haul the United States into secretive international arbitration. Globally, policymakers have accepted the need for such treaties but have failed to honour them.<sup>75</sup>

## B. The need for economic transformation

39. States, politicians, and corporations have consistently used bad economic arguments to stall climate action. Various Governments have argued that it would alter markets, threaten economic growth, harm citizens' way of life, and kill jobs. That is a cynical and short-sighted approach.

40. The vast majority of economic growth, development and poverty reduction since the industrial revolution has depended on the exploitation of natural resources, despite the social and environmental costs. Fossil fuels have driven access to energy, transportation and quality of life improvements. Jobs in many sectors rely on extraction and emissions.<sup>76</sup> Developing countries have watched as wealthier countries grew rich by burning an irresponsible amount of fossil fuels. But that growth is already under threat from the disastrous implications of climate change, dwindling natural resources, changing ecosystems and environmental hazards.<sup>77</sup> Maintaining the current course will not result in continued growth, but is a recipe for long-term economic catastrophe.

41. On its current track, climate change will decimate the global economy.<sup>78</sup> According to the Intergovernmental Panel on Climate Change, at 2°C of warming, the world would experience socioeconomic losses amounting to 13 per cent of global GDP and \$69 trillion of damage.<sup>79</sup> Accounting only for the rise in temperature, and not the associated extreme weather events, one study found that unmitigated warming is expected to reduce average global incomes by roughly 23 per cent by 2100 and widen income inequality.<sup>80</sup> In the United States alone, there have been 241 weather and climate disasters since 1980 that have each exceeded \$1 billion in damage costs, with a cumulative cost of \$1.6 trillion.<sup>81</sup>

42. According to the International Labour Organization (ILO), 1.2 billion jobs – 40 per cent of global employment – rely on a sustainable and healthy environment. In what many regard as the best-case scenario (1.5°C of warming by 2100), heat stress will reduce global working hours by 2 per cent by 2030 alone – the equivalent of 72 million full-time jobs and most likely this is an underestimate. Pollution and environmental degradation will affect workers' productivity, health, income and food security.<sup>82</sup>

43. Addressing climate change will require a fundamental shift in the global economy and how States have historically sought prosperity,<sup>83</sup> decoupling improvements in economic well-being and poverty reduction from resource depletion, fossil fuel emissions

<sup>75</sup> Naomi Klein, *This Changes Everything: Capitalism vs. the Climate*, p. 76.

<sup>76</sup> UN Environment and others, *Green Industrial Policy: Concept, Policies, Country Experiences*.

<sup>77</sup> International Labour Organization (ILO), *Greening with Jobs. World Employment Social Outlook 2018*, pp. 9 and 17.

<sup>78</sup> *Ibid.*, pp. 2, 7 and 27.

<sup>79</sup> See Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5°C*, pp. 264 and 453. See also Marshall Burke, W. Matthew Davis and Noah S. Diffenbaugh, "Large potential reduction in economic damages under UN mitigation targets", *Nature*, vol. 557 (May 2018).

<sup>80</sup> See Marshall Burke, W. Matthew Davis and Noah S. Diffenbaugh, "Global non-linear effect of temperature on economic production", *Nature* (November 2015).

<sup>81</sup> See Adam B. Smith, "2018's billion dollar disasters in context", *National Oceanic and Atmospheric Administration*, 7 February 2019.

<sup>82</sup> See ILO, *Greening with Jobs. World Employment Social Outlook 2018*, pp. 2, 7 and 27.

<sup>83</sup> *Ibid.*

and waste production. That will entail radical and systemic changes, including incentives, pricing, regulation and resource allocation, in order to disrupt unsustainable approaches and reflect environmental costs in entire economic subsystems, including energy, agriculture, manufacturing, construction and transportation.<sup>84</sup>

44. Economic prosperity, decent work and environmental sustainability are fully compatible. Studies have found that it is possible to rely on wind, water and solar energy for all new energy projects by 2030 and transition the entire energy system to renewable energy by 2050 with current technology and at a similar cost as fossil fuels.<sup>85</sup> Fiscal policy and carbon pricing can incentivize low-carbon investment and emissions mitigation, generate revenue to bolster social protection and support people in poverty, and incentivize the creation of good green jobs.<sup>86</sup>

45. The World Bank sees no reason that a low-carbon path must slow economic growth.<sup>87</sup> There is strong evidence that reducing emissions will mitigate the economic harm of climate change by trillions of dollars.<sup>88</sup> Renewable energy will create jobs while energy-efficient investments can lead to greater energy savings and fewer emissions. Climate adaptation and a sustainable economy would also reduce the costs of health care and environmental degradation, restore overused and exhausted resources, increase food and water security, and reduce poverty and inequality.<sup>89</sup> Studies have shown that the benefits of reducing pollution for health and agriculture alone could make up for the cost of mitigation, at least until 2030.<sup>90</sup>

46. Twenty-three countries have already decoupled economic growth from emissions through the use of renewable energy, carbon pricing and green subsidies and jobs, meaning their economies are growing faster than their emissions or resource use. On average, they have done so while reducing poverty faster than other countries.<sup>91</sup> The barriers are social and political, not technological or economic.

#### Private sector

47. The response to global warming requires transformational change, and while some see a chance to address inequalities and fulfil basic rights, others seem to see an opportunity for long-sought, investor-friendly reforms. The World Bank and the United Nations Development Programme have jointly begun an initiative, “Invest4Climate”, to “identify policy and regulatory barriers to scaled up investment and develop solutions and political support to address them”.<sup>92</sup> The Organization for Economic Cooperation and Development (OECD) has called for “resilient investment” policies that are difficult to distinguish from the recommendations such institutions have been issuing for years and that have got us to this point: Governments must ensure that the economy is “open to competitive investment”, ensure labour markets are “flexible”, embrace “core investment principles such as not discriminating against foreign investors” and eliminate tariffs and local-content obligations.<sup>93</sup>

<sup>84</sup> See UN Environment and others, *Green Industrial Policy: Concept, Policies, Country Experiences*.

<sup>85</sup> See Mark Z. Jacobson and Mark A. Delucchi, “Providing all global energy with wind, water, and solar power, part I: technologies, energy resources, quantities and areas of infrastructure, and materials”, *Energy Policy*, vol. 39, No. 3 (March 2011); and Energy Watch Group, “100% renewable electricity worldwide is feasible and more cost-effective than the existing system”, 8 November 2017.

<sup>86</sup> See UNEP, *Emissions Gap Report 2018*, pp. xxi–xxii.

<sup>87</sup> World Bank, *World Development Report 2010: Development and Climate Change*, p. 7.

<sup>88</sup> See Marshall Burke, W. Matthew Davis and Noah S. Diffenbaugh, “Large potential reduction in economic damages under UN mitigation targets”.

<sup>89</sup> UN Environment and others, *Green Industrial Policy: Concept, Policies, Country Experiences*, pp. 26, 27 and 31; and Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5°C*, summary for policymakers, p. 21.

<sup>90</sup> World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty*, p. 23.

<sup>91</sup> ILO, *Greening with Jobs. World Employment Social Outlook 2018*, pp. 7, 13 and 15.

<sup>92</sup> See World Bank, “About Invest4Climate” (February 2019).

<sup>93</sup> OECD, *Investing in Climate, Investing in Growth* (2017), pp. 185, 187–188, 209 and 215–216.

48. There is little doubt that companies will play a role in providing and implementing solutions to climate change, but an overreliance on voluntary, private sector efforts would be a mistake. Climate change is a market failure and voluntary emissions reduction commitments will only go so far. As of May 2019, 554 companies had committed to reductions in greenhouse gas emissions as a part of the “Science Based Target initiative”, but the initiative is essentially toothless and relies entirely on self-reporting<sup>94</sup>.

49. Massive amounts of money will likely be funnelled to and through the private sector, including by international financial institutions and climate finance mechanisms, risking corporate giveaways or the sell-off of public goods. Corporate-friendly efforts to address emissions have created “perverse incentives” and rewarded manufacturers for producing greenhouse gases to, in turn, get paid to destroy them, or inspired “grifters and hustlers” to seek out communities in biologically rich countries to secure land rights with promises of carbon credit revenues.<sup>95</sup>

50. Climate change-related privatization also poses risks to the rights of people in poverty. In its climate implementation plan, the International Finance Corporation (IFC) aims to “scale climate investments” to 28 per cent of its financing by 2020 and “catalyse” \$13 billion in private sector capital annually, including through public-private partnerships.<sup>96</sup> Between 2012 and 2016, the IFC closed 21 climate-related public-private partnership transactions, mobilizing \$2.9 billion.<sup>97</sup> The IFC identifies public-private partnerships as a form of “climate-smart urban water infrastructure” and claims the private sector “will help ensure sustainable access to water services”.<sup>98</sup> The assumption that privatization will promote access to water in a time of growing water scarcity is profoundly troubling, given that privatization inevitably prioritizes profit and sidelines considerations such as equality and non-discrimination, marginalizing poor people and communities (see A/73/396).

51. Rather than helping the world adapt to climate change, privatizing basic services and social protection may be a form of maladaptation. When Hurricane Sandy wrought havoc in New York in 2012, stranding low-income and vulnerable New Yorkers without access to power and health care, the headquarters of Goldman Sachs was protected by tens of thousands of its own sandbags and power from its own generator.<sup>99</sup> Private white-glove firefighters have been dispatched to save the mansions of high-end insurance customers from wildfires.<sup>100</sup> An overreliance on the private sector could lead to a climate apartheid scenario in which the wealthy pay to escape overheating, hunger and conflict, while the rest of the world is left to suffer.

### Climate finance

52. Hundreds of billions of dollars or more will need to be mobilized to avert human suffering and losses in the trillions. The commitment by developed countries to mobilize \$100 billion a year by 2020 is “only a fraction of the finance needed to keep the average temperature increase to 2°C”.<sup>101</sup> It is also insufficient for adaptation needs, which in developing countries are expected to total between \$140 and \$300 billion annually by 2025–2030<sup>102</sup> and between \$280 and \$500 billion a year by 2050.<sup>103</sup> According to one analysis of existing figures, estimated assistance is lower than reported, grant-based

<sup>94</sup> See <https://sciencebasedtargets.org/about-the-science-based-targets-initiative/>.

<sup>95</sup> See Naomi Klein, *This Changes Everything: Capitalism vs. the Climate*, pp. 219–220.

<sup>96</sup> International Finance Corporation (IFC), “IFC climate implementation plan” (April 2016), p. 1.

<sup>97</sup> *Ibid.*, p. 23.

<sup>98</sup> IFC, *Creating Markets for Climate Business* (2017), p. 94.

<sup>99</sup> See Jessica Pressler, “Goldman has the power”, *New York Magazine*, 3 November 2012.

<sup>100</sup> Naomi Klein, *This Changes Everything: Capitalism vs. the Climate*, p. 52.

<sup>101</sup> Michael I. Westphal and others, “Getting to \$100 billion: climate finance scenarios and projections to 2020”, World Resources Institute (May 2015), p. 5.

<sup>102</sup> Oxfam, “Climate finance shadow report 2018”, p. 6.

<sup>103</sup> See UNEP, “Cost of adapting to climate change could hit \$500 billion per year by 2050”, 10 May 2016.

assistance lags far behind loans and only a small fraction goes to the least developed countries.<sup>104</sup>

53. Mitigation and adaptation projects that are supported by climate funds also have the potential to undermine a range of procedural and substantive human rights (see A/HRC/WG.2/19/CRP.4). Climate finance can exacerbate gender inequality if funders are not attuned to the gendered impacts of climate change and systematic discrimination that women face (A/HRC/41/26, para. 47). Experts have called for the safeguards of the various climate funds and mechanisms to be “made uniform and revised to fully account for human rights considerations” (A/HRC/31/52, para. 61).

### C. Societal transformation

54. Much of post-industrial poverty reduction and economic growth has been based on unsustainable resource extraction and exploitation. Certain people and countries have become incredibly wealthy through emissions without paying for the costs to the environment and human health, which are borne disproportionately by people in poverty. Staying the course will not preserve growth in the long term, but will be disastrous for the global economy and pull hundreds of millions into poverty. Climate action should not be viewed as an impediment to economic growth but as an impetus for decoupling economic growth from emissions and resource extraction, and a catalyst for a green economic transition, labour rights improvements and poverty elimination efforts.

55. Climate change will require deep structural changes in the world economy. It is imperative that this is done in a way that provides the necessary support, protects workers, creates good jobs and is guided by international labour standards. A robust social safety net and a well-managed transition to a green economy will be the best response to the unavoidable harms that climate change will bring.<sup>105</sup>

56. Climate change should be a catalyst for States to fulfil long-ignored and overlooked economic and social rights, including to social security, water and sanitation, education, food, health care, housing and decent work. Revenue from climate action, including emissions control and tax restructuring, should be used to fund social protection programmes to protect those affected.

57. Taking the necessary action to address climate change will likely lead to job losses in certain carbon-intensive sectors. However, according to ILO, they will be more than offset by the new jobs required to limit global warming to 2°C. Transitioning to clean energy alone will create an estimated net increase of 18 million jobs through renewable energy, growth in electric vehicles and increases in the energy efficiency of buildings. Shifting from an economy predicated on consumption to a circular economy underpinned by reuse, recycling and remanufacturing is projected to create another 6 million jobs and a shift to sustainable agriculture presents additional job opportunities.<sup>106</sup>

58. The shift will require robust policies at the local level to support displaced workers, facilitate their transition and ensure that new jobs are of good quality. Those policies should include cash transfers, unemployment protection, placement support and relocation grants.<sup>107</sup> Unavoidable changes to the economy and the workforce make a strong case for universal job guarantee programmes that provide rights-based work, creating the assets, services and infrastructure for a green transition and disaster mitigation in exchange for a stable income.<sup>108</sup>

59. If the transition to a sustainable economy is well managed, it could create new and better jobs, move workers into the formal sector, provide education and training, reduce

<sup>104</sup> Oxfam, “Climate finance shadow report 2018”, p. 3.

<sup>105</sup> Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5°C*, p. 464.

<sup>106</sup> ILO, *Greening with Jobs. World Employment Social Outlook 2018*, p. 1.

<sup>107</sup> See ILO, “Guidelines for a just transition towards environmentally sustainable economies and societies for all” (2015).

<sup>108</sup> See ILO, *Greening with jobs. World Employment Social Outlook 2018*, p. 110–111.

poverty, protect economic well-being and address discrimination and inequality.<sup>109</sup> There is also an opportunity for developing countries to skip fossil fuel-driven growth and leapfrog into decentralized, renewable energy and more efficient agriculture and construction technologies. However, if the transition is managed poorly, it will mean job losses, disastrous impacts for poor people, entrenched labour discrimination and a breakdown of social and labour protections.<sup>110</sup>

60. Governments, and too many in the human rights community, have failed to seriously address climate change for decades. The size, scope, and brutality of the problem make it difficult to envision. Corporations have obscured the facts and opposed intervention in pursuit of short-term profits.<sup>111</sup> The worst outcomes are too far away to draw our focus and those in power are unable to look past the next election. We have reached a point where the best-case outcome is widespread death and suffering by the end of this century and the worst case puts humanity on the brink of extinction.<sup>112</sup>

61. There have, however, been some positive developments. Forty-nine countries have already seen their emissions begin to decline. More than 7,000 cities, 245 regions and 6,000 companies have committed to climate mitigation. Coal is no longer competitive and renewable energy is quickly becoming cheaper.<sup>113</sup> The case brought by the Urgenda Foundation against the Government of the Netherlands was the first in the world in which citizens established that their Government had a legal duty to prevent climate change.<sup>114</sup> In Australia, a court rejected an appeal seeking permission to develop a new coal mine, in part because the mine would contribute to global warming.<sup>115</sup> In the United States, legislators have introduced proposals for a Green New Deal to achieve net-zero emissions, while investing in green jobs and infrastructure<sup>116</sup> and 16-year-old climate activist Greta Thunberg has spurred an international movement of climate strikes.<sup>117</sup> In addition, Extinction Rebellion protests took over the United Kingdom of Great Britain and Northern Ireland this year causing the Welsh, Scottish and United Kingdom parliaments to declare climate emergencies.<sup>118</sup>

## D. Transforming the international human rights regime

62. An extraordinary challenge demands an extraordinary response. It cannot be dealt with solely through traditional approaches. Climate change is an emergency without precedent and requires bold and creative thinking from the human rights community. But that group is notoriously averse to innovation and assumes that the next major challenge, no matter how different or dramatic, can be dealt with on the basis of established means.

### 1. Acknowledge the urgency of transformational change

63. The first steps in overcoming inertia is to acknowledge not just that transformational action is urgent, but that human rights can and must be part of the solution. The delusion that climate change is really a technical issue, or solely a political matter, and that human rights law has only a minor role to play must be abandoned.

<sup>109</sup> See ILO, “Guidelines for a just transition towards environmentally sustainable economies and societies for all”.

<sup>110</sup> See UN Environment and others, *Green Industrial Policy: Concept, Policies, Country Experiences*.

<sup>111</sup> See Business and Human Rights Resource Centre, “Turning up the heat: corporate legal accountability for climate change”.

<sup>112</sup> See David Wallace-Wells, *The Uninhabitable Earth*, p. 29.

<sup>113</sup> See UNEP, *Emissions Gap Report 2018*, p. xx.

<sup>114</sup> Urgenda, “Climate case” (2019).

<sup>115</sup> See Marcos Orellana, “Australia court rules it is the ‘wrong time’ for coal”, *Human Rights Watch*, 10 February 2019; and *Gloucester Resources Limited v. Minister for Planning* [2019] NSWLEC 7.

<sup>116</sup> See H.Res.109 – Recognizing the duty of the Federal Government to create a Green New Deal, available at [www.congress.gov/bill/116th-congress/house-resolution/109/text](http://www.congress.gov/bill/116th-congress/house-resolution/109/text).

<sup>117</sup> See Ilze Filks, “Swedish student Greta’s climate ‘school strike’ goes global”, *Reuters*, 11 March 2019.

<sup>118</sup> “‘Climate emergency’ declared by Welsh Government”, *BBC*, 29 April 2019.

64. If a threat that is likely to challenge or undermine the enjoyment of almost every human right in the international bill of rights does not bring concerted action by human rights proponents, they will have rendered themselves marginal or irrelevant to humanity's most pressing short-, medium- and long-term challenge.

65. While some activists, lawyers, affected communities and occasionally Governments, have undertaken promising, creative and urgently needed strategies for bringing human rights to bear on climate change, the dominant response has been one of immense caution, if not abdication. The community as a whole, as well as each of its component parts, needs to step up and engage determinedly and creatively with climate change.

## **2. Acknowledge the threats to democracy and civil and political rights**

66. Consideration of the likely risks that will flow from climate change invariably focuses primarily if not exclusively on the rights to life, water and sanitation, health, food and housing, yet democracy and the rule of law, as well as a wide range of civil and political rights, are just as much at risk.<sup>119</sup> Many commentators have insisted that climate change should be considered an emergency, and that Governments and others should act accordingly.<sup>120</sup> While this might not be intended to suggest the formal declaration of a state of emergency that would justify limitations on human rights, States may very well respond to climate change by augmenting government powers and circumscribing some rights. That will be a very fraught process and require great vigilance on the part of Governments, human rights institutions and national and regional courts.

67. Additionally, the uncertainty and insecurity in which many populations will be living, combined with large-scale movements of people both internally and across borders, will pose immense and unprecedented challenges to governance.<sup>121</sup> The risk of community discontent, of growing inequality and of even greater levels of deprivation among some groups will likely stimulate nationalist, xenophobic, racist and other responses. Maintaining a balanced approach to civil and political rights, whether in a society that is determinedly seeking to mitigate climate change or one that is in denial, will be extremely complex.

## **3. Revitalize economic and social rights**

68. As people's access to food, land, water, health care, housing and education are threatened or destroyed, there will be an ever greater need for principled policies that ensure respect for economic and social rights. The sorts of transformational policies called for, with the concomitant need for a more equal distribution of resources and the satisfaction of essential needs, will also demand much more systematic engagement with these rights than most Governments or human rights groups have so far considered. Coping with the unavoidably dramatic impacts of climate change will be much harder if people's economic and social rights are not protected. That applies doubly in the case of those living in poverty, whose plight is almost certain to be greatly exacerbated. There is a strong case for advance planning and strategizing around these challenges, but very little evidence of that being undertaken.

## **4. Take regulatory responsibility**

69. The dominant neoliberal economic orthodoxy, reflected in the push supported by international organizations including the United Nations, the World Bank and the International Monetary Fund, favouring privatization, deregulation and austerity in the form of fiscal consolidation means that governmental regulation is very much out of vogue. However, it is clear that corporate actors cannot and will not, of their own accord, be capable of promoting a comprehensive approach that ensures the sort of economic and

<sup>119</sup> See Amnesty International, "Climate change".

<sup>120</sup> David Spratt and Ian Dunlop, "What lies beneath: the understatement of existential climate risk" (2018) p. 39.

<sup>121</sup> See Ayşem Mert, "Democracy in the Anthropocene: a new scale", in *Anthropocene Encounters: New Directions in Green Political Thinking*, Frank Biermann and Eva Lövbrand, eds. (Cambridge, Cambridge University Press, 2019).

social transformation that climate change mitigation demands. Through the actions of the fossil-fuel industry in particular, and highly successful corporate lobbying to downplay or ignore climate change in many countries, the private sector has demonstrated its inability to take any sort of leadership role in climate change mitigation. That is true, even though companies and major investment funds are now acutely aware of the upheavals on the horizon.<sup>122</sup> The result is that Governments, individually and collectively, need to take responsibility for implementing a comprehensive transformative programme aimed at mitigation. The human rights community needs to push strongly for Governments to move rapidly in that direction.

## 5. Rethinking human rights responses

### Transcending traditional techniques

70. The international human rights field is dominated by lawyers, who tend to channel their energy into a handful of tried and tested approaches. These include litigation; drafting reports; submitting complaints; advocacy before government agencies, tribunals or treaty bodies; and issuing press releases.

71. They also seek to develop jurisprudence defining the scope and implications of particular rights. Some progress has already been made in clarifying the human rights obligations of States in the context of climate change. An array of courts and other bodies have asserted that climate change poses serious threats to human rights, that States must abide by human rights law in addressing climate change, that they must anticipate and address the foreseeable harms that climate change will bring and that they must strengthen their mitigation commitments. However, much more needs to be done to fill in significant gaps and uncertainties about the obligations of States.

72. With regard to emissions, human rights actors have set broad standards, such as a requirement to “reduce emissions as rapidly as possible, applying the maximum available resources”.<sup>123</sup> That is an important initial step, but greater clarity is required as to what it means in practice. It does not give States and other actors clear guidance, allowing them to get away with vague commitments and tepid action. Human rights actors must be willing to translate the obligations of States in a way that more clearly engages with policymaking choices, or they will lose relevance in this debate.

73. Litigation is important and more than 850 climate change cases have been filed in 24 countries.<sup>124</sup> The bulk of these seek to hold Governments and companies accountable for emissions and pursue remedies for harms caused by their failure to reduce emissions they knew would be harmful. There is a recent and important uptick in cases brought to hold actors accountable for failures to adapt to the foreseeable effects of climate change.<sup>125</sup> Those cases put States on further notice that they must take into account loss of livelihoods, displacement, food insecurity and other effects of climate change, but litigation is only one small part of an overall strategy.

### Community activism

74. Much human rights activity is bureaucratized and sanitized, satisfying itself with formal procedural outcomes that might have little direct real-world impact. The roots of human rights and the real driving force for progress can only come from community mobilization. Governments overwhelmingly stand for the status quo and are thus unlikely to take a strong lead when radical change is needed. Much of the human rights community retains strong grass-roots links and is well placed to encourage and facilitate community

<sup>122</sup> See Georgi Kantchev and Sarah Kent, “Funds say climate change is now part of their investing equation”, *Wall Street Journal*, 10 June 2019; and CDP, “Major risk or rosy opportunity: are companies ready for climate change?” (2019).

<sup>123</sup> Mandate of the Special Rapporteur on the environment, “Statement on the human rights obligations related to climate change, with a particular focus on the right to life”, 25 October 2018.

<sup>124</sup> UN Environment, “The status of climate change litigation: a global review” (2017), p. 10.

<sup>125</sup> *Ibid.*, pp. 16 and 23.

mobilization. Without it, the natural complacency of governmental elites and the vested interests of financial elites will lead them to continue sleep-walking towards catastrophe.

### **Building coalitions**

75. Human rights actors need a more robust, detailed and coordinated interdisciplinary approach that brings together law, climate science, labour rights and economics to tackle issues around emissions, mitigation, social protection and just transition head-on, and provide a path forward that States can follow. Major human rights actors must tackle questions about the emissions, resource allocation and energy and economic policy that States are grappling with and where there is a real need for detailed, actionable recommendations. Human rights treaty bodies and other mechanisms have a role to play in setting standards for these decisions that are informed by human rights law. Failing to do so while sticking to broad truisms that are difficult to act on will leave the human rights community sidelined on critical climate change decisions.

76. There are positive developments in the coordination between environmental advocates and human rights actors, including by bringing climate concerns into the United Nations treaty body system and the use of human rights in climate litigation. There is a real opportunity to leverage the technical expertise of environmental and climate scientists to bring detail and precision into human rights recommendations and legal standards, which have so far largely lacked the specificity that would facilitate meaningful government incorporation.

### **Human rights-compliant solutions**

77. The Paris Agreement is the first climate change agreement to explicitly recognize the relevance of human rights. In it, States parties are called upon to respect, promote and consider their respective obligations on human rights when taking action to address climate change. However, the Katowice “rulebook”, developed to guide implementation of the Agreement, omitted any reference to human rights.<sup>126</sup> Despite growing attention from the human rights community, States are giving only marginal attention to human rights in the conversation on climate change.

78. The human rights community could play an important role in clarifying the legal requirements around climate action, facilitating the participation of affected communities, ensuring that strategies employed for attaining targets and adapting to climate change comply with human rights law and advocating for their implementation and enforcement through both litigation and traditional human rights advocacy.

79. It is crucial that climate action is pursued in a way that respects human rights, protects people in poverty from negative impacts and prevents more people from falling into poverty. That would include ensuring that vulnerable populations have access to protective infrastructure, technical and financial support, relocation options, training and employment support, land tenure, and access to food, water and sanitation and health care. Women face particular challenges in the face of climate change (see A/HRC/41/26).

80. Failing to pursue a human rights-focused climate response could have regressive impacts. Climate action also needs to be structured to correct for current disparities, not reinforce them. People in poverty are already left out of decisions that affect them and political inequality means that they risk being marginalized within the climate response.

### **Bringing the United Nations human rights mechanisms to life**

81. Human rights treaty bodies and others should weigh in on questions that are already hotly contested in courthouses and parliaments, including how human rights obligations can be used to define the legal duties of States to reduce greenhouse gas emissions individually and at a global level, what the minimum actions are that States must take in line with the

<sup>126</sup> See Centre for International Environmental Law, “Katowice COP24 outcome incompatible with Paris Agreement. Ambition, equity, and human rights left behind in Poland climate talks”, 25 December 2018.

latest scientific guidance and whether human rights law gives rise to a certain threshold of action below which a State is in violation of its obligations.

82. Human rights law requires a remedy for violations and climate change is no different.<sup>127</sup> Given what is now known about the widespread harm and human rights impact of either 2°C or even 1.5°C of warming, it is also necessary to determine what measures States must take to provide the required remedies for the all-but-certain human rights violations that climate change will bring. Human rights actors have an important role in identifying what such remedies will require.

83. Each and every human rights body should consider what it can do to make use of its existing procedures to highlight the urgency of the obligation to combat climate change. It is true that this risks overlap or duplication, but such a risk seems almost inconsequential in light of the magnitude and urgency of the threat.

84. It is beyond the scope of the present report to provide detailed recommendations in that regard, but a few examples can suffice. The Human Rights Council can no longer afford to rely only on the time-honoured techniques of organizing expert panels, calling for reports that lead nowhere, urging others to do more but doing little itself and adopting wide-ranging but inconclusive and highly aspirational resolutions. It should commission an urgent expert study to identify the options available and organize a high-level working group to propose and monitor specific actions.

85. Treaty bodies should reconsider whether the general comments or general recommendations they have adopted on this issue are anywhere near sufficient, given the size and nature of the challenge. They should hold meetings to discuss what sort of recommendations might be included in their concluding observations in order to press States parties to take the type of measures that can no longer be delayed. They should also reflect on how best to promote in a truly meaningful way the measures they have already adopted in relation to climate change.

86. The Human Rights Committee recently asked the United States to directly address “significant threats to the right to life posed by impacts of climate change, such as flash floods, coastal flooding, wildfires, infectious disease, extreme heat and air pollution” (CCPR/C/USA/QPR/5, para. 15). In principle, this is a breakthrough but in practice, the terms are so open-ended and non-specific that it amounts to little more than ticking the climate change box. The challenge is to reflect on what the next level of recommendation might entail, in order to provide some sort of meaningful guidance as to the measures needed, or at least as to the procedures that might be adopted at the national level to pursue such questions.

87. Similarly, the Committee should build on its pioneering statements relating to climate change in its general comment No. 36. It has already been reported that a communication has been submitted to the Committee on this issue.<sup>128</sup> The Committee should explore innovative ways to respond constructively and not opt for an approach that sidesteps responsibility. Civil society groups need to inform and encourage the Committee in terms of these options and can take the opportunity provided by rule 96 of the Committee’s new rules of procedure to submit “information and documentation ... which may be relevant for the proper determination of the case” (see CCPR/C/3/Rev.11).

## VI. Conclusion

88. **The human rights community, with a few notable exceptions, has been every bit as complacent as most Governments in the face of the ultimate challenge to mankind represented by climate change. The steps taken by most United Nations human rights bodies have been patently inadequate and premised on forms of incremental**

<sup>127</sup> Human Rights Council, “Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment”, p. 9.

<sup>128</sup> “Islanders complain to U.N. over Australia’s climate change inaction”, *Reuters*, 13 May 2019.

**managerialism and proceduralism that are entirely disproportionate to the urgency and magnitude of the threat. Ticking boxes will not save humanity or the planet from impending disaster. In the present report, the Special Rapporteur has identified a range of steps that should be taken in order to begin to rectify the failure to face up to the fact that human rights might not survive the coming upheaval. It has also sought to highlight the fact that the group that will be most negatively affected across the globe are those living in poverty. Climate change is, among other things, an unconscionable assault on the poor.**

---



# General Assembly

Distr.: General  
10 August 2020

Original: English

---

## Seventy-fifth session

Item 72 (b) of the provisional agenda\*

### **Promotion and protection of human rights: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Field of cultural rights\*\***

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur in the field of cultural rights, Karima Bennouna, in accordance with Human Rights Council resolution [37/12](#). The Special Rapporteur is submitting the present report together with an annex containing the legal framework and examples, available on the website of the Office of the United Nations High Commissioner for Human Rights.<sup>1</sup>

---

\* [A/75/150](#).

\*\* The present document was submitted after the deadline in order to reflect the most recent developments.

<sup>1</sup> [www.ohchr.org/EN/Issues/CulturalRights/Pages/AnnualReports.aspx](http://www.ohchr.org/EN/Issues/CulturalRights/Pages/AnnualReports.aspx).



## **Report of the Special Rapporteur in the field of cultural rights, Karima Bennoune**

### *Summary*

In the present report, the Special Rapporteur in the field of cultural rights, Karima Bennoune, addresses the cultural and cultural rights dimensions of the current climate emergency, which have too often been overlooked. She considers the negative impacts of climate change on human cultures and on the enjoyment of cultural rights, and the positive potential of cultures and the exercise of cultural rights to serve as critical tools in responding to the climate emergency.

## I. Introduction

### Climate change, culture and cultural rights

1. Even during the COVID-19 pandemic, which commands so much international attention, the climate emergency remains one of the greatest threats that humanity has ever faced and must be addressed with urgency.<sup>2</sup> While infection rates climbed around the world, so too did record temperatures.<sup>3</sup> Climate change-related disasters such as locust swarms and floods hit populations already contending with the virus. “We find ourselves living in a time when we must take on two vital tasks simultaneously – battling the acute trauma of COVID-19 while addressing the chronic crisis of climate change.”<sup>4</sup> We cannot wait until the pandemic is over. The climate emergency remains an existential threat to life, to human rights and to human cultures. This is why the Special Rapporteur has decided to focus her report on the nexus of climate change, culture and cultural rights.

2. The mandate on cultural rights was established to protect not culture and cultural heritage per se, but rather the conditions allowing all people, without discrimination, to access, participate in and contribute to cultural life through a process of continuous development. These conditions are greatly jeopardized by the climate emergency. “The universality of human rights, including cultural rights, has no meaning today without a liveable environment in which they can be enjoyed.”<sup>5</sup> Climate change is having and will continue to have a grave impact on the cultures and cultural heritages of all humankind and hence on the related human rights of billions of people. While most human rights are affected by climate change, cultural rights are particularly drastically affected, in that they risk being simply wiped out in many cases. This reality has not been adequately acknowledged in current climate change initiatives. It must be recognized as a matter of international legal obligation and addressed as a priority.

3. These effects on cultural rights are already visible. During the Special Rapporteur’s mission to Maldives, she visited a centuries-old cemetery reportedly containing the graves of those involved in bringing Islam to Maldives. That cemetery is less than 100 metres from the ocean; sea level is rising. Locals fear the site will be gone in 10 years. A 15-year-old Maldivian environmental and cultural heritage activist said to the Special Rapporteur on that site: “I fear for the survival of my country.”<sup>6</sup> No one, least of all a young person, should have to face such fears.

4. In Tuvalu, the Special Rapporteur visited the country’s only library, 20 metres from the shore and threatened by sea level rise. She met the librarian determined to save its collection. It contains historical documents such as the letter officially recognizing the country’s independence, but also meteorological and tide records that are critical tools for climate research. Its loss would impact Tuvaluans most, but would also harm us all. A Tuvaluan official asked: “If we are not here anymore, what will happen to our culture?”

<sup>2</sup> See [www.ohchr.org/EN/NewsEvents/Pages/OHCHRanalyticalstudyClimateChange.aspx](http://www.ohchr.org/EN/NewsEvents/Pages/OHCHRanalyticalstudyClimateChange.aspx).

<sup>3</sup> See, e.g. World Weather Attribution, “Prolonged Siberian heat of 2020” (15 July 2020). Available at [www.worldweatherattribution.org/wp-content/uploads/WWA-Prolonged-heat-Siberia-2020.pdf](http://www.worldweatherattribution.org/wp-content/uploads/WWA-Prolonged-heat-Siberia-2020.pdf).

<sup>4</sup> Joyce Lee, “Earth Day during COVID-19: green tips for closed museums”, American Alliance of Museums, 22 April 2020.

<sup>5</sup> A/73/227, para. 38.

<sup>6</sup> A/HRC/43/50/Add.2, para. 79.

5. As the present report was finalized, a quarter of Bangladesh was flooded, devastating the lives of millions of people living in poverty and washing away cultural sites and public spaces.<sup>7</sup>

6. Many of the myriad grave human rights impacts of the climate emergency have been well documented, including by other special rapporteurs.<sup>8</sup> The Special Rapporteur on human rights obligations relating to the enjoyment of the right to a safe, clean and sustainable environment, and many scientific experts, have repeatedly spelled out the facts. These include: warming of 1°C to date, and higher increases in specific locations such as the Arctic, where the rate is double the global average; even more warming to come – its intensity depending on our actions; major impacts on livelihoods and rights; increasing extreme weather events and natural disasters; declining diversity of life on earth; increased disease and threats to health; loss of lives and mass displacement.<sup>9</sup>

7. The impacts hit specific peoples and places disproportionately, posing particular threats to the rights and cultures of populations of low-lying small island developing States, indigenous peoples, rural people, women, persons with disabilities, those living in poverty and others. The Intergovernmental Panel on Climate Change observed that “people who are socially, economically, culturally, politically, institutionally or otherwise marginalized are especially vulnerable to climate change”.<sup>10</sup> Those with pronounced cultural connections to land, sea, natural resources and ecosystems, including indigenous, rural and fisher peoples, face disproportionate devastation of their individual and collective cultural lives.

8. Women already face many obstacles to the enjoyment of their cultural rights,<sup>11</sup> and climate change worsens these inequalities. Susceptibility to climate impacts and disasters is gendered, with women facing higher vulnerability to casualties, often due to factors related to culture such as inability to swim, clothing that restricts mobility and culturally assigned gender roles.<sup>12</sup> Climate change magnifies existing gender inequalities between girls and boys, and raises cultural rights-related obstacles for girls, including increased difficulties accessing education.<sup>13</sup> However, women and girls are often also the first responders in their localities, working to protect traditions and ways of life from the negative effects of climate change. Women are catalysts for climate change activism and play a leading role in creating culture anew and driving new ways of life to adapt to the climate crisis.<sup>14</sup>

9. Climate change is “the most significant intergenerational equity issue of our time. Children and future generations are bearing, or will come to bear, the brunt of its impact on a polluted, degraded planet.”<sup>15</sup> Youth must be recognized not just as

<sup>7</sup> Somini Sengupta and Julfikar Ali Manik “A quarter of Bangladesh is flooded. Millions have lost everything.” *New York Times* (30 July 2020).

<sup>8</sup> See, e.g., [A/74/161](#); [A/HRC/31/52](#); [A/HRC/41/39](#); and [A/HRC/36/46](#).

<sup>9</sup> See [A/74/161](#) and [A/HRC/31/52](#).

<sup>10</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report* (2 November 2014), p. 54. Available at [www.ipcc.ch/site/assets/uploads/2018/02/SYR\\_AR5\\_FINAL\\_full.pdf](http://www.ipcc.ch/site/assets/uploads/2018/02/SYR_AR5_FINAL_full.pdf).

<sup>11</sup> See [A/67/287](#).

<sup>12</sup> Md. Sadequr Rahman, “Climate change, disaster and gender vulnerability: a study on two divisions of Bangladesh”, *American Journal of Human Ecology*, vol. 2, No. 2 (2013), pp. 72–82 and 75. Gender impacts intersect with other factors, including age and class to make some women especially hard hit. “Climate change is brutal for everyone, but worse for women”, *Wired*, 25 November 2019. Available at [www.wired.com/story/climate-change-and-gender/](http://www.wired.com/story/climate-change-and-gender/).

<sup>13</sup> Sadequr Rahman, “Climate change, disaster and gender vulnerability”.

<sup>14</sup> See contribution by International Action Network for Gender Equity and Law. Available at [www.ohchr.org/EN/Issues/CulturalRights/Pages/ClimateChange.aspx](http://www.ohchr.org/EN/Issues/CulturalRights/Pages/ClimateChange.aspx).

<sup>15</sup> Plan International, “Climate change: focus on girls and young women (September 2019), p. ii. See also [A/HRC/37/58](#).

representatives of the future, but as full participants in making climate policy in the present.<sup>16</sup>

10. The climate emergency also threatens humanity in its entirety and all human cultures and cannot be comprehended purely in sectoral terms.<sup>17</sup> The response therefore needs to manifest both globally and locally, displaying both universality, in the form of a concerted global response, but also diversity, in terms of addressing specific impacts, actors and opportunities.

11. Moreover, we must be clear about the sources of this emergency. “The poorest half of the world’s population, 3.9 billion people, generate only 10 per cent of global emissions. Conversely, the richest 10 per cent produce half of global emissions.”<sup>18</sup> However, the lives and cultures of all have been put at risk, with those having contributed the least to creating the problem often most at risk. Three quarters of global emissions are produced by 20 States.<sup>19</sup> Taking into account historical emissions, some nations are disproportionately responsible for the climate crisis. The United States has produced 25 per cent of global emissions since 1751, followed by China with 12 per cent.<sup>20</sup> These facts have important ramifications for the human rights obligations of developed States, which must reduce emissions more rapidly and pay the lion’s share of the costs to assist developing States.<sup>21</sup>

12. “Instability and abnormality are the new normal.”<sup>22</sup> The factual case is clear. However, to date, we have collectively failed to take the necessary effective action to protect ourselves. The Secretary-General and the Intergovernmental Panel on Climate Change have indicated that such action is still possible, and many steps are being taken. However, the window of time in which to avoid catastrophic climate change is closing rapidly, likely by the end of the present decade. In this context, the Special Rapporteur wishes to add her voice to the great chorus of youth, scientists, advocates and ordinary people around the world calling for urgent action to ensure a safe climate for humanity and its cultures – now.

13. Such urgent action is the only way to protect human rights, including cultural rights, in 2020 and beyond. Business as usual is not possible, even in the United Nations human rights system.<sup>23</sup> Continuing to consistently focus on this issue during the current pandemic is the only way we can succeed in:

- (a) Responding to the health situation;
- (b) (Re)constructing in a more rights-protecting manner;
- (c) Perhaps even preventing further such outbreaks in future. All relevant actors at the international and national levels must act with determination. No country can do so effectively by itself.

14. While climate change has been exhaustively defined and mapped as a human rights crisis, the cultural and cultural rights dimensions have been too often overlooked by climate and human rights experts, on the one hand, and those in the

<sup>16</sup> Under principle 21 of the Rio Declaration on Environment and Development, “The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.”

<sup>17</sup> See [A/HRC/41/39](#).

<sup>18</sup> [A/74/161](#), para. 13.

<sup>19</sup> See [A/74/161](#), para. 14.

<sup>20</sup> Our World in Data, “CO<sub>2</sub> and Greenhouse Gas Emissions”, sect., Cumulative CO<sub>2</sub> emissions (December 2019). Available at <https://ourworldindata.org/co2-and-other-greenhouse-gas-emissions#the-long-run-history-cumulative-co2>.

<sup>21</sup> See [A/74/161](#), para. 14.

<sup>22</sup> See contribution by Minority Rights Group International.

<sup>23</sup> See [A/HRC/41/39](#), para. 83.

cultural fields on the other. This is a gap that must be filled. The negative impacts of climate change on human cultures and on the enjoyment by all of their internationally guaranteed cultural rights, and the positive potential of our cultures and the exercise of our cultural rights to serve as critical tools in our response to the climate emergency, must both be placed on the international agenda and be subjects of further study.

15. Sweeping cultural change will be necessary to alter the trajectory of catastrophic climate change. The status quo is unsustainable. Since culture is not static,<sup>24</sup> such change – if participatory and carried out in line with human rights standards – is a part of the enjoyment of cultural rights. More attention must be given to fostering the transformational, paradigm-shifting change that experts have stressed is needed to address climate change,<sup>25</sup> to changing rapidly the way we live, produce and consume, and to doing so in a rights-respecting way, as well as to coping with any negative side-effects that may result for cultural rights. The aim of the present report is to contribute towards achieving these priority goals and bring together some important work already undertaken in the field.

16. Even as it is imperilled, culture remains an important key to successful climate adaptation. Traditional knowledge about how to interact with and care for natural systems is indispensable. Indigenous understanding in particular will be pivotal to stabilizing the climate. Contradictory on the surface but often complementary in practice, a rising culture of change pushes for local and global responses that prioritize climate mitigation and adaptation through changed consumer behaviours, new green infrastructure and a just distribution of access to resources. Implementing these pre-emptive changes will be critically important for effectively preserving the climate as humans have known it throughout the history of the species.<sup>26</sup> “Society’s response to every dimension of global climate change is mediated by culture.”<sup>27</sup>

17. This includes the cultural underpinnings of the causes of climate change, as well as adaptation, mitigation and interpretation of science. “Culture itself is a process that allows us to understand, interpret and transform reality.”<sup>28</sup> Culture shapes climate change and in turn climate change transforms culture.

18. Climate change and cultural rights share a clear nexus. Culture is closely connected to ecosystems, especially for indigenous peoples, rural and “traditional” populations. Both cultures and the environment are often place-based.<sup>29</sup> “Culture influences our understanding of the environment and our relationship with it on a deep level. Concern for the welfare of future generations is already explicitly environmental; it should also be cultural.”<sup>30</sup>

19. The work of cultural rights defenders, human rights defenders who defend cultural rights in accordance with international standards, is a sine qua non for protecting cultural rights and cultures from climate change, and for developing and

<sup>24</sup> See A/HRC/14/36, paras. 30 and 34.

<sup>25</sup> See A/74/161, para. 16.

<sup>26</sup> Justine Massey, “Climate Change, Culture and Cultural Rights”, memorandum, University of California, Davis School of Law, 20 May 2020.

<sup>27</sup> W. Neil Adger and others, “Cultural dimensions of climate change impacts and adaptation”, in *Nature Climate Change*, vol. 3 (2013), p. 112.

<sup>28</sup> United Cities and Local Governments, “Culture 21: Actions – commitments on the role of culture in sustainable cities”, approved by the Committee on Culture of United Cities and Local Governments at its first culture summit (Bilbao, 18–20 March 2015), para. 2.

<sup>29</sup> Climate Change and Cultural Heritage Working Group of the International Council on Monuments and Sites, *The Future of Our Pasts: Engaging Cultural Heritage in Climate Action* (2019).

<sup>30</sup> United Cities and Local Governments, “Culture 21: Actions”, p. 24.

advancing the use of cultural rights and cultural initiatives to combat it.<sup>31</sup> Their work often intersects with the work of indigenous human rights defenders and environmental human rights defenders.<sup>32</sup> It is dangerous and difficult.<sup>33</sup> Environmental human rights defenders are among those most at risk,<sup>34</sup> so at risk that they were the subject of Human Rights Council resolution 40/11. In that resolution, the Council strongly condemned reprisals and violence against these defenders, including by non-State actors. As one of the best-known examples among many, in Honduras, Berta Cáceres was murdered in 2016 for her role in protesting against the construction of a dam that threatened sacred Lenca land, in an effort to protect both the land and culture of her people.<sup>35</sup> “Increasing the attention and assistance given to cultural rights defenders would increase the realization of the potential of culture and heritage to drive climate action. This in turn would enhance the valorization of the work of cultural rights defenders.”<sup>36</sup>

20. Both the protection of human rights, including cultural rights, and of the environment are “indispensable for sustainable development. Each human being depends on ecosystems and the services they provide, such as food, water, disease management, climate regulation, spiritual fulfilment and aesthetic enjoyment. At the same time, all human activities have an impact on the environment.”<sup>37</sup>

21. However, many environmental policies do not address culture,<sup>38</sup> while many cultural policies do not refer to the environment. Both sets of policies may fail to incorporate a human rights approach. Submissions also identified a lack of relevant laws that cover this nexus.<sup>39</sup> What is needed is a tripartite integration of environmental, cultural and human rights perspectives on climate change, in policy and expertise, at the international, regional, national and local levels, and the creation of channels of communication and institutionalized cooperation between policymakers, officials, government agencies, international organizations, experts and civil society groups in all three areas. These conversations have begun in some places but “climate change and culture” is only beginning to be recognized as a specific field.<sup>40</sup> It is already a step forward to bring two of these categories together,<sup>41</sup> but essential to combine them with human rights. Only this synthesis can give us the holistic approach essential for responding to the climate emergency, the most significant threat on the human horizon today.

22. In preparation for writing the report, the Special Rapporteur participated in person in the “Climate heritage mobilization” held during the Global Climate Action Summit, held in San Francisco in 2018, and by video in the launch of the Climate

<sup>31</sup> See A/HRC/43/50.

<sup>32</sup> Ibid., para. 43.

<sup>33</sup> See A/71/281. Front Line Defenders stated in its annual report that 304 human rights defenders were killed in 2019, of whom 40 per cent worked on land, indigenous rights and environmental issues (Front Line Defenders, “Global Analysis 2019” (January 2020). Available at [www.frontlinedefenders.org/sites/default/files/global\\_analysis\\_2019\\_web.pdf](http://www.frontlinedefenders.org/sites/default/files/global_analysis_2019_web.pdf)).

<sup>34</sup> United Nations Environment Programme (UNEP), “Promoting greater protection for environmental defenders”, policy paper (2018), pp. 1 and 2.

<sup>35</sup> JUA HND 2/2016.

<sup>36</sup> See contribution by International Council on Monuments and Sites.

<sup>37</sup> Office of the High Commissioner for Human Rights (OHCHR) and UNEP, “Human rights and the environment: Rio+20: joint report OHCHR and UNEP” (2012), background document for OHCHR-UNEP joint side event on “human rights at the centre of sustainable development – honouring Rio Principle 1”, at the United Nations Conference on Sustainable Development, Rio de Janeiro, 2012, p. 6.

<sup>38</sup> See, e.g., contributions by: the Commissioner for Human Rights of Poland; Portugal; and Ukraine.

<sup>39</sup> See, e.g., contributions by Portugal and Ukraine.

<sup>40</sup> See contribution by Greece.

<sup>41</sup> See contribution by Julie’s Bicycle.

Heritage Network in Edinburgh in 2019. She carried out missions to countries facing particularly difficult climate impacts, such as Maldives and Tuvalu. She also distributed a related questionnaire in April 2020. She was gratified to receive a number of responses, which are available on the website of the Special Rapporteur.<sup>42</sup> Additionally, she was pleased to consult experts around the world. She thanks all contributors. The report should be read in conjunction with its annex.<sup>43</sup>

## II. International legal framework

23. The relevant international legal frameworks are covered in the annex owing to a word limit.

## III. Negative impacts of climate change on culture, cultural heritage and cultural rights

24. The climate emergency is the greatest of many contemporary threats to cultures and cultural rights around the world. The damage that it can and will do is fast-growing, widespread, long-term and potentially existential. It can wipe out centuries of human cultural achievement and render ongoing cultural practices virtually impossible in the future. Climate change impacts pose a threat to meaningful spaces for cultural interactions, including natural spaces,<sup>44</sup> and to the continuity of ways of life.

25. Imagine the cultural site or practice most precious to you wiped out by climate change. Consider the prospect of losing nearly all of your people's cultural achievements. Many in the world today face these stark realities. Now, think what it would mean to know that this is happening owing to choices made far away about which you were never consulted and owing to the abject failure of Governments, corporations and your fellow human beings to act when they knew very well that this was likely to happen. That is what we must contemplate. Inventorying ongoing and expected cultural losses should help us better understand what is at stake, further motivate us to change our cultures and take necessary, sometimes difficult, action to mitigate these harms and force us to think now about how we adapt culturally going forward.

26. Taking seriously the climate-cultural rights nexus also requires a transnational approach committed to climate culture justice, as those most affected by climate change and who have often done the least to contribute to it have fewer resources to protect their cultures from its effects. This could result in a terrible climate culture apartheid, and a catastrophic "editing" process, in which much of the history and cultural traces of the biggest victims of climate change are allowed to disappear while the traces of those most responsible for it are more protected and more likely to survive. This is unacceptable and a clear violation of the spirit of the Charter of the United Nations itself. We cannot be passive observers of cultural extinction. International cooperation, information-sharing, solidarity and funding, partnered with local empowerment and participation, are essential to ensure that this does not occur.

27. There are myriad negative impacts across many areas of cultural life, only some of which can be surveyed here, complemented by selected examples in the annex. Particular attention will be paid to cultural heritage, which has been more widely addressed than other aspects, including in submissions. One of the challenges is to

<sup>42</sup> [www.ohchr.org/EN/Issues/CulturalRights/Pages/ClimateChange.aspx](http://www.ohchr.org/EN/Issues/CulturalRights/Pages/ClimateChange.aspx).

<sup>43</sup> [www.ohchr.org/EN/Issues/CulturalRights/Pages/AnnualReports.aspx](http://www.ohchr.org/EN/Issues/CulturalRights/Pages/AnnualReports.aspx).

<sup>44</sup> See A/74/255.

ensure a comprehensive approach to all aspects of culture, cultural rights and cultural heritage and to all regions. More progress has been made with regard to considering climate impacts on tangible cultural heritage than any other aspect, though even it remains inadequately recognized as an at-risk item.<sup>45</sup> Adequate analysis and documentation, including a complete mapping of cultural and cultural rights damage, and the development of comprehensive strategies for preventing and responding to it, are essential tasks at the international and national levels going forward.

## A. Cultural heritage

28. Climate change is having and will continue to have grave repercussions for the cultural heritage<sup>46</sup> of all humankind<sup>47</sup> and hence for the related human rights of millions of human beings. The climate emergency will affect all of the values associated with heritage, including its intrinsic, touristic and economic values, as a marker of identity and attachment to place and as “an embodiment of accumulated knowledge”.<sup>48</sup> Losses are not only physical but also economic, social and cultural. “Some cultural heritage places are the sole providers of work or food, and therefore they are essential to the survival of a community: when such places are at risk, the survival of associated communities is threatened.”<sup>49</sup>

29. Cultural heritage is a human rights issue, and many rights – from the right to access and enjoy heritage to the right to education – may be gravely affected. The effects also pass through time. History and past achievements of humanity are lost. In the present, people cannot enjoy their rights, including that of learning that history. Future generations will inherit these losses as their connections to the past, to place and to practices are stolen from them by choices made today. Therefore, an environmentally conscious human rights approach to all aspects of heritage is essential.<sup>50</sup>

30. Tangible heritage sites face threats, including irreversible damage and loss of outstanding universal value, from, inter alia, temperature changes, soil erosion, sea level rise and storms.<sup>51</sup> Natural heritage sites face developments such as increasing fires, ocean acidification, bleaching events and habitat changes. A 2005 survey by the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Centre found that climate change was a threat to 72 per cent of the natural and cultural heritage sites about which responses were received from States parties to the World Heritage Convention.<sup>52</sup> In 2014, an academic study found that more than 130 World Heritage cultural sites were at long-term risk from sea level rise, from the archaeological site of Carthage in Tunisia to the Elephanta Caves in India.<sup>53</sup> Archaeological sites may be affected by increasing soil temperature, wind damage

<sup>45</sup> See contribution by Julie’s Bicycle.

<sup>46</sup> See [A/71/317](#) and [A/HRC/17/38](#).

<sup>47</sup> A. Markham and others, *World Heritage and Tourism in a Changing Climate* (UNESCO, Union of Concerned Scientists and UNEP, 2016).

<sup>48</sup> Climate Change and Cultural Heritage Working Group of the International Council on Monuments and Sites, *The Future of Our Pasts* (see footnote 29), p. 26.

<sup>49</sup> See contribution by International Council on Monuments and Sites.

<sup>50</sup> Ibid.

<sup>51</sup> Sabine von Schorlemer and Sylvia Maus (eds.), *Climate Change as a Threat to Peace: Impacts on Cultural Heritage and Cultural Diversity* (Frankfurt, Peter Lang, 2014).

<sup>52</sup> UNESCO World Heritage Centre, *Climate Change and World Heritage: Report on Predicting and Managing the Impacts of Climate Change on World Heritage and Strategy to assist States Parties to Implement Appropriate Management Responses*, World Heritage report No. 22 (2007), p. 26.

<sup>53</sup> A. Markham, *World Heritage and Tourism in a Changing Climate* (Nairobi, UNEP and UNESCO 2016), p. 14.

and rising sea levels. Underwater heritage may be harmed by changing sea currents.<sup>54</sup> Globally, archives and libraries, great repositories of human knowledge, culture and history are at risk as well.<sup>55</sup>

31. Through its reactive monitoring process, established under the 1972 UNESCO World Heritage Convention, the World Heritage Centre provides reports to the intergovernmental World Heritage Committee on world heritage sites impacted by climate change, in order to provide the best advice possible to States Parties, and authorities, and establish the most appropriate mitigation measures. The Centre collects data on climate change impacts on World Heritage properties, and reports, together with the advisory bodies, to the World Heritage Committee on the most pressing cases.<sup>56</sup> The World Heritage Committee is currently updating its policy document on the impacts of climate change on World Heritage properties, which will be presented to the forty-fourth session of the Committee.<sup>57</sup> “The relevance of the processes of the World Heritage Convention such as nominations, periodic reporting and reactive monitoring must be reviewed and suitably adjusted.”<sup>58</sup> UNESCO should be fully resourced to address these urgent issues; and States parties to the 1972 Convention should do more to comply with its provisions and related guidelines. The project of creating an adequately funded climate vulnerability index for world heritage properties, as proposed by a number of organizations, should be given serious consideration.

32. The management plans of all sites potentially threatened by climate change should be updated to ensure sustainable conservation. Appropriate monitoring and vulnerability assessment processes must be undertaken. Potential mitigation measures at specific sites, and across the network of world heritage sites, should also be considered. The importance of climate change threats also justifies the implementation of appropriately tailored risk-preparedness measures. Site-specific assessment, mitigation and adaptation, as well as broader regional and transboundary strategies to tackle the vulnerability of all sites within larger landscapes and seascapes are needed.

33. A holistic assessment of heritage impacts is essential. Not only tangible and natural heritage but also “practice and transmission of a host of rich intangible cultural heritage practices – from oral traditions, to performing arts, social practices, rituals, festive events, traditional craftsmanship, and interactions and relationships with nature” are at risk.<sup>59</sup> Extreme weather events will disrupt not just daily life, but also sustained traditions and events, such as Mardi Gras or Lunar New Year festival. Tangible, intangible and natural heritage are largely porous categories, and human beings enjoy their related rights across them, often in a holistic way. The effects should also be assessed holistically.

34. For instance, the changing availability of plant and animal species will lead to the loss of ecological knowledge and related language vital for the transmission of living heritage concerning food and medicinal plants, such as the Andean world view of the Kallawayas, which is on the Representative List of the Intangible Cultural Heritage of Humanity. Indigenous peoples and others living in vulnerable environments, such as small islands, high-altitude zones, desert margins, the Sahel

<sup>54</sup> See UNESCO, *Convention on the Protection of the Underwater Cultural Heritage* (2001).

<sup>55</sup> See contribution by International Council on Archives, section on archives and human rights.

<sup>56</sup> See [http://whc.unesco.org/en/soc/?action=list&id\\_threats=130%2C129%2C128%2C127%2C24-4%2C126%2C131](http://whc.unesco.org/en/soc/?action=list&id_threats=130%2C129%2C128%2C127%2C24-4%2C126%2C131).

<sup>57</sup> See contribution by UNESCO.

<sup>58</sup> *Climate Change and World Heritage*, p. 10.

<sup>59</sup> See contribution by UNESCO.

and the circumpolar Arctic, are often disproportionately affected.<sup>60</sup> Losses reported include the ability to live on ancestral lands; guardianship of sacred sites; folklore, song and dance; traditional medicine; religious rites; and cultural knowledge (including indigenous knowledge and practice).<sup>61</sup> Less documentation, monitoring and analysis of intangible heritage impacts have been undertaken; these are urgently needed. “Identifying knowledge and belief systems at risk must become a priority.”<sup>62</sup> Popular engagement, citizen science and appropriate use of traditional and indigenous knowledge in monitoring processes should be encouraged.<sup>63</sup>

35. The documentation for nominations to the lists of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage is one potential source for understanding threats posed to intangible cultural heritage by climate change. The forms for nomination to the Representative and Urgent Safeguarding Lists should contain specific requests for consideration of the potential impact of climate change as among threats to continued transmission.<sup>64</sup> The 2015 operational directives for the 2003 Convention are focused on fostering grass-roots resilience to natural hazards and climate change. States are encouraged to “fully integrate communities, groups and individuals who are bearers of such knowledge into systems and programmes of disaster risk reduction, disaster recovery and climate change adaptation and mitigation.”<sup>65</sup> UNESCO and States parties to the Convention should maximize the use of criterion (v) of the Operational Guidelines for Implementation of the World Heritage Convention, concerning heritage that “has become vulnerable under the impact of irreversible change.”<sup>66</sup>

36. Climatic activity has always affected cultural heritage; however, climate change has fast tracked damage, disasters and in some cases disappearance. Climate change fuels the slow, yet progressive eradication of buildings and places of cultural practice and the ability to dedicate time to a full cultural life. Moreover, climate change is a “threat multiplier” which magnifies existing threats to cultural heritage, such as by fuelling poverty, political instability and resource conflicts in which heritage destruction may take place.<sup>67</sup>

37. Small island States and low-lying areas face catastrophic climate-induced destruction of their natural and cultural heritage which is often closely tied to broader destruction. The cultural identities and traces of entire nations may be at risk,<sup>68</sup> facing the threat of cultural extinction, including through the total disappearance of human settlements and related ancestral cultures. This threat was created transnationally and requires a transnational response. Those facing such levels of damage to their cultural lives are entitled to robust international solidarity, support, cooperation and compensation

<sup>60</sup> See also Douglas Nakashima and others, *Weathering Uncertainty: Traditional Knowledge for Climate Change Assessment and Adaptation* (Paris, UNESCO, and Darwin, United Nations University, 2012). Available at <http://unesdoc.unesco.org/images/0021/002166/216613e.pdf>.

<sup>61</sup> See contribution by Climate TOK project.

<sup>62</sup> See contribution by International Council on Monuments and Sites.

<sup>63</sup> Ibid.

<sup>64</sup> See contribution by UNESCO.

<sup>65</sup> UNESCO, “Operational directives for the implementation of the Convention for the Safeguarding of the Intangible Cultural Heritage”, para. 191 (c) (ii). Available at [https://ich.unesco.org/doc/src/ICH-Operational\\_Directives-7.GA-PDF-EN.pdf](https://ich.unesco.org/doc/src/ICH-Operational_Directives-7.GA-PDF-EN.pdf).

<sup>66</sup> See <https://whc.unesco.org/en/criteria/>.

<sup>67</sup> Von Schorlemer, *Climate change as a threat to peace* (see footnote 51).

<sup>68</sup> H.E. Kim, (2011) “Changing climate, changing culture: adding the climate change dimension to the protection of intangible cultural heritage” in *International Journal of Cultural Property*, vol. 18, pp. 259–290.

38. Movement away from homelands results in removal from people's tangible cultural heritage (and often damage or disappearance of that heritage), but also threatens the maintenance of cultural practices that may be linked to certain sites or natural resources, such as the land, and the possibility of caring for heritage. The conservation and transmission of such intangible cultural heritage must also be considered. Moreover, analogous to the impact of destruction during armed conflict, the damage and destruction of cultural heritage when those most closely connected to it are suffering from other severe impacts of climate change also takes away a key cultural resource that can build resilience, preserve memory and identities and help these people cope.

39. Sadly, some heritage losses due to climate change are now inevitable. That must be handled in rights-respecting ways. Other losses can and must be prevented. Damage to heritage must be systematically surveyed. Future losses must be predicted and strategies developed to prevent and respond to them in a participatory and inclusive manner.

40. Heritage losses should be commemorated in ways that preserve memory and knowledge, make creative use of culture, create memory reservoirs and anchor points<sup>69</sup> and spur preventive action.<sup>70</sup> Possibilities include farewell ceremonies and opportunities for visiting submerged sites. It will also be essential to find creative, appropriate methods for maintaining certain traditions and living heritage, as well as creating new traditions aiming at maintaining memory, including in diasporas, especially in the face of large-scale losses. This can also help overcome discrimination, including in the cultural sphere, and loss of identity, that migrants may face.<sup>71</sup> A participatory, inclusive human rights approach will be essential, "ensuring that decisions to accept loss are transparent and take a people-centred approach and that local communities have a voice in deciding which sites should be prioritized and which losses are acceptable."<sup>72</sup>

41. The following considerations must be carefully borne in mind: "climate change requires difficult choices. The sheer scale of loss and damage threatened... must be considered in the context of climate justice and equity. For example, priorities must be established to determine which sites can be saved or protected and those in which documentation or archaeological salvage and research can be carried out. There is a danger that climate action may be undertaken in ways that perpetuate existing inequalities, including in the context of heritage."<sup>73</sup>

## B. Cultural diversity and cultural survival

42. In addition to the effects on cultural heritage, "climate change is likely to affect cultural diversity and socio-cultural interactions by forcing communities to change their work habits and ways of life, to compete for resources or to migrate elsewhere."<sup>74</sup> According to the UNESCO Universal Declaration on Cultural Diversity, "A source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature."<sup>75</sup> Nonetheless, the impact of climate change on the diversity of cultural expressions is under-assessed.<sup>76</sup>

<sup>69</sup> *The Future of Our Pasts* (see footnote 29), p. 41.

<sup>70</sup> See [A/HRC/25/49](#).

<sup>71</sup> See contribution by South American Network for Environmental Migrations (Resama).

<sup>72</sup> *The Future of Our Pasts*, p. 42.

<sup>73</sup> *Ibid.*, p. 20.

<sup>74</sup> *Climate Change as a Threat to Peace*, p. 13.

<sup>75</sup> UNESCO, Universal Declaration on Cultural Diversity, art. 1.

<sup>76</sup> See contribution by UNESCO.

43. Climate displacement threatens cultural survival itself and jeopardizes traditional livelihoods. “Mobility in relation to climate change is taking place on a continuum between forced and voluntary migration, and the distinction between the two is rather blurred.”<sup>77</sup> “Some may be unable to depart, others practising ‘voluntary immobility,’ ‘an important coping device, helping to strengthen cultural and spiritual agency among those facing the loss of their homeland’.”<sup>78</sup> However, the cost for this in human rights terms may become unbearably high, leaving people with terrible choices between remaining with the cultures which sustain them and departing to protect their lives and livelihoods. Cultural losses related to migration will be especially serious for those living in entirely unique landscapes. As one expert asked, where can the Inuit find another Arctic environment? It is essential to engage in educational, participatory and consultative processes at the earliest opportunity with populations facing such situations, to consider options.

44. Creative ways to respect, protect, ensure and fulfil the cultural rights of persons who become displaced in the context of disasters and climate change must be developed.<sup>79</sup> Cultural rights are a primordial component of “migration with dignity.”<sup>80</sup> This will also require innovative approaches to recognizing, and allowing space for expression and preservation of, the collective identities and shared cultures of large groups which may be displaced, including entire national populations.

### C. Traditional knowledge and ways of life

45. Climate change negatively affects the practice of traditional knowledge in many places, including the very know-how and techniques needed to respond to such change. This is due to unpredictable weather and changing seasons which impair and may render increasingly obsolete such things as knowledge around navigation, calendars, meteorology, wind patterns, movements of sand, planting and harvests, fishing and food.<sup>81</sup>

46. Impacts on food are gendered given the particular nutritional needs of breastfeeding or pregnant women and cultural norms regarding the partitioning of food.<sup>82</sup> When traditional agriculture or fishing is no longer feasible, or is impacted by climate change, women who participate in these practices can feel the loss of cultural ties, as well as food or income.<sup>83</sup>

47. Nomadic pastoralism as a way of life may be entirely at risk in some areas. Ways of life that are in harmony with the natural environment, from which we need to learn to deal with climate change, are themselves being eroded, as an environmental human rights defender told the Special Rapporteur in Maldives. Migration and concentration into urban areas resulting from climate change will have further impacts on every aspect of cultural life.

<sup>77</sup> Minority Rights Group International, *Minority and Indigenous Trends 2019: Focus on Climate Justice*, p. 57.

<sup>78</sup> *Ibid.*, p. 64, citing Carol Farbotko, “‘Voluntary immobility: indigenous voices in the Pacific’”, *Forced Migration Review* No. 57, (February 2018), p. 82.

<sup>79</sup> UNHCR, Climate change and disaster displacement. Available at [www.unhcr.org/en-us/climate-change-and-disasters.html](http://www.unhcr.org/en-us/climate-change-and-disasters.html).

<sup>80</sup> See [www.sierraclub.org/sierra/2016-6-november-december/feature/kiribati-former-catholic-nun-has-become-sort-paul-revere-for](http://www.sierraclub.org/sierra/2016-6-november-december/feature/kiribati-former-catholic-nun-has-become-sort-paul-revere-for).

<sup>81</sup> See contribution by Indonesia.

<sup>82</sup> World Health Organization (WHO), *Gender, Climate Change and Health* (Geneva, 2014), p. 17.

<sup>83</sup> See contribution by International Action Network for Gender Equity and Law.

## D. Harmful cultural practices

48. Climate change has been reported to play a role in increasing harmful practices against women such as child marriage of girls and female genital mutilation.<sup>84</sup> Humanitarian assistance such as in disasters attendant on climate change tends to ignore caste dynamics and caste-related power structures, thus exacerbating existing caste-based exclusion.<sup>85</sup>

## E. Cultural rights of women

49. The gendered impacts of climate change, resource scarcity and disasters, which may result for women in increased caretaking responsibilities<sup>86</sup> and time poverty,<sup>87</sup> may create further obstacles to their ability to participate in cultural life and access educational opportunities. The resulting increased poverty makes it harder for women to continue education, to have time to participate in cultural life, and to have resources (such as money or transportation) to engage in cultural events and activities. Cultural restrictions on women's mobility can limit their access to environmentally friendly methods of transportation such as cycling.<sup>88</sup> Climate change and poverty together increase the barriers to access and enjoyment of cultural rights.<sup>89</sup> Work towards gender equality, including with regard to culture, is vital for improving climate change response.

## F. Impact on cultural rights of indigenous peoples

50. Climate change-induced damage and destruction of culture and cultural heritage can have a particularly significant effect on indigenous peoples, for whom connections to place, land and landscape and relationships with culturally important animals, plants, habitats and ecosystems play such an important role in shaping heritage, laws, worldviews, practices and identity.<sup>90</sup> The Special Rapporteur was grateful to receive numerous submissions regarding effects on indigenous peoples' cultural rights. Some submissions stressed both commonalities in the experiences of indigenous peoples and their diversities.

51. Lack of respect for land rights and rights to natural resources exacerbates the vulnerabilities of indigenous peoples to grave cultural losses due to climate change. As explained in one submission: "There has been no life for us since we moved out of the forest."<sup>91</sup> Structural causes of the disproportionate impacts of climate change must be addressed.

52. The implications of climate change for food, agricultural practices and land tenure security, such as limited ability to harvest culturally relevant foods, are also of

<sup>84</sup> Minority Rights Group International, *Minority and Indigenous Trends 2019* (see footnote 77), pp. 84 and 85.

<sup>85</sup> International Dalit Solidarity Network, "Equality in aid: addressing caste discrimination in humanitarian response" (September 2013), p. 3.

<sup>86</sup> Climate change, disaster and gender vulnerability (see footnote 12), 72–82.

<sup>87</sup> Women's Earth and Climate Action Network, International (WECAN), "Unleashing the power of women in climate solutions". Available at [www.wecaninternational.org/why-women](http://www.wecaninternational.org/why-women).

<sup>88</sup> WHO, *Gender, Climate Change and Health*, p. 23.

<sup>89</sup> See contribution by International Action Network for Gender Equity and Law.

<sup>90</sup> Kathryn Norton-Smith and others, *Climate Change and Indigenous Peoples: A Synthesis of Current Impacts and Experiences* (United States Department of Agriculture, 2016), pp. 12 and 13; See also contribution by British Columbia Assembly of First Nations.

<sup>91</sup> See contribution by Minority Rights Group International.

particular concern to pastoralist and other indigenous peoples.<sup>92</sup> Where milder winters are an issue, this may lead to a rise in invasive insects that threaten culturally important tree species. Sacred and cultural sites are at times inaccessible, or even lost, owing to a variety of meteorological phenomena, such as excessive snow or flooding. Linguistic diversity and indigenous languages, aspects of which are rooted in water-based and land-based contexts, may also be threatened.<sup>93</sup>

53. All these developments also have a gendered impact. Some indigenous women have particular responsibility for caring for the land, making them especially affected.<sup>94</sup> Indigenous women face specific consequences of the resource scarcity of traditional foods and medicines.

54. Taken together, the results of the climate emergency are significant changes to the social and cultural fabric of entire groups, and put their very cultural survival at risk.<sup>95</sup> As a consequence, they may suffer from eco-grief, eco-paralysis, solastalgia (existential distress caused by climate change) and eco-anxiety,<sup>96</sup> which underscores the intersection of culture, climate and health.

55. Unfortunately, as the Special Rapporteur on the rights of indigenous peoples has warned, mitigation and adaptation measures undertaken in response to climate change without the free, prior and informed consent of affected indigenous peoples or without their participation, may further undermine their cultural rights.<sup>97</sup> This may, in particular, create obstacles for indigenous land ownership<sup>98</sup> and livelihood rights.

56. While all of humanity is threatened, many groups are specially affected by climate change. The overall losses and the specific ones must all be addressed. However, there is a tendency to list groups together, such as indigenous and local groups, in ways that may cause confusion. The Special Rapporteur notes the objection of some representatives of indigenous peoples to this approach, and the importance of recognizing the particular international legal status of indigenous peoples, due to the application of the right to self-determination, and the specific legal framework which applies to them under the United Nations Declaration on the Rights of Indigenous Peoples and other relevant standards.

## G. Human rights impact of mitigation and adaptation measures

57. Effective measures to mitigate and adapt to climate change are required by international environmental law, and essential to dealing with the climate emergency and to protecting culture and cultural rights from it.<sup>99</sup> However, they may also have negative consequences for culture and cultural rights that must be taken into consideration such as, for example, the displacement of indigenous peoples that might be caused through well-intended ecological or other conservation programmes. To comply with their international human rights obligations, States should apply a rights-

<sup>92</sup> Minority Rights Group International, *Minority and Indigenous Trends 2019*, (see footnote 77), p. 36. See also contributions by Indigenous Climate Action and the Union of British Columbia Indian Chiefs, and [A/HRC/45/34/Add.1](#), para. 102.

<sup>93</sup> See contribution by Indigenous Climate Action and the Union of British Columbia Indian Chiefs.

<sup>94</sup> See contribution by South American Network for Environmental Migrations (Resama).

<sup>95</sup> See [A/HRC/36/46](#), in particular, para. 9.

<sup>96</sup> See contribution by Women of the Métis Nation. These are conditions also experienced by others facing existential climate-related cultural losses.

<sup>97</sup> See [A/HRC/36/46](#).

<sup>98</sup> *Ibid.*, para. 50.

<sup>99</sup> See [A/74/161](#).

based approach to all aspects of climate change and climate action.<sup>100</sup> This approach must include consideration of cultural rights and cultural impacts.

58. Culture has a critical role to play in humanity's reaction to climate change. In this time of forced editing of cultural practices, individuals and their values will be put to the test. What will be preserved? What will be sacrificed? What people decide to prioritize individually, locally, regionally and internationally will determine what change will look like.<sup>101</sup>

59. Many necessary mitigation and adaptation measures, such as those related to kicking our addiction to fossil fuels,<sup>102</sup> may require cultural change, under human rights norms. Human cultures are inherently dynamic. As stressed by the Committee on Economic, Social and Cultural Rights, cultural life "is an explicit reference to culture as a living process, historical, dynamic and evolving", and "the concept of culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity."<sup>103</sup>

60. Cultural rights may be subjected to limitations in certain circumstances.<sup>104</sup> As stressed by the Committee on Economic, Social and Cultural Rights, limitations should be a last resort only and should be in accordance with certain conditions as established under international human rights law. Such limitations must be in pursuit of a legitimate aim, be compatible with the nature of the right and be strictly necessary for the promotion of general welfare in a democratic society, in accordance with article 4 of the International Covenant on Economic, Social and Cultural Rights. Any limitations must be proportionate, meaning that, when several types of limitations may be imposed, the least restrictive measures must be taken. Fully participatory and consultative approaches, and the free, prior and informed consent of indigenous peoples, are critical.

61. Social and cultural values can contribute to climate change and will need to evolve. It is also essential to acknowledge that certain objections to climate action in the name of culture, for example related to the automobile or cattle-raising, may also have to be overridden in accordance with human rights norms, to protect the rights of humanity in the face of the climate emergency. Human rights law also contains vital prohibitions which disallow using one's own rights as a sword "aimed at the destruction of any of the rights and freedoms" of others.<sup>105</sup>

62. Nevertheless, it is vital to recognize that real tensions may arise between essential environmental goals and lived cultures and traditions. This requires both a commitment to the imperative of effective climate action and sensitive human rights approaches, including dialogue with all stakeholders, education to help shift mindsets, economic, social and cultural support, documentation of heritage losses and the participation of and engagement with affected populations.<sup>106</sup>

<sup>100</sup> Ibid., para. 62.

<sup>101</sup> See Intergovernmental Panel on Climate Change, "Global warming of 1.5°C", pp. 51, 52, 72, 73 and 449.

<sup>102</sup> See [A/74/161](#).

<sup>103</sup> Committee on Economic, Social and Cultural Rights, general comment No. 21 (2009) on the right of everyone to take part in cultural life, paras. 11 and 12.

<sup>104</sup> See [A/HRC/31/59](#), paras. 25 and 26.

<sup>105</sup> International Covenant on Civil and Political Rights, art. 5; Universal Declaration of Human Rights, art. 30.

<sup>106</sup> See contribution by WetFutures Ireland.

63. The environment has always shaped human cultures. In the Anthropocene, human cultural practices also shape the environment and can do so for good or ill. Cultural rights are central to the choices we make in this regard.

#### **IV. Positive potential of culture, cultural heritage and cultural rights to enhance responses to climate change**

64. Cultures and cultural rights are not only potential casualties of climate change. They are also part of the solution, and offer a set of crucial tools for implementing climate change mitigation and adaptation strategies.<sup>107</sup> Indeed, they are vital for enabling the necessary societal transformation called for by the Intergovernmental Panel on Climate Change to meet the 1.5°C degree target. The Panel defines resilience as “the ability of a social or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity of self-organization, and the capacity to adapt to stress and change.”<sup>108</sup> The exercise of cultural rights in accordance with international standards is necessary to achieve such resilience in the face of climate change vulnerabilities. Resilience is ingrained in many aspects of cultural life, and in artistic and cultural practice.

65. Culture can help humanity explore the different scenarios previewed by the Intergovernmental Panel on Climate Change in safe ways so as to make the best choices among them. “Culture and climate change: scenarios” was a project launched at the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Paris in 2015.<sup>109</sup> The project uses art to start public conversations about future climate scenarios. According to those involved, “the arts and humanities support a fuller understanding of what it means to craft shared futures with others through ‘conscious social transformations’, or indeed to ‘make and unmake futures that impact on all life on this planet’”<sup>110</sup> “Culture allows us to reimagine the world.”<sup>111</sup> Moreover, culture also determines how people respond to adaptation.

66. “Climate change cannot be addressed exclusively through technical and technological measures, but rather requires an approach that encompasses human beliefs, values and behaviour”<sup>112</sup> It requires coordinated and transversal efforts that include the cultural sector along with many others.<sup>113</sup> It is argued in the Culture 21 Actions toolkit, adopted by the United Cities and Local Governments in 2015, that “culture influences our understanding of the environment and our relationship with it on a deep level ... People modify the ecosystems around them through cultural practices, values and visions of the world.”<sup>114</sup> Hence, the global response to climate change should likewise be inspired by cultural values and strengthened through cultural practices, in close coordination with efforts in other areas.

67. Cultural heritage, traditional knowledge and creativity are climate assets and should be recognized as such. Arts, culture and heritage are sources of creativity and

<sup>107</sup> Selected examples are included in the annex.

<sup>108</sup> Intergovernmental Panel on Climate Change, *Climate Change 2007: Synthesis Report*, p. 86.

<sup>109</sup> Renata Tyszcuk and Joe Smith, “Culture and climate change scenarios: the role and potential of the arts and humanities in responding to the ‘1.5 degrees target’”, *Current Opinion in Environmental Sustainability*, vol. 31, p. 59.

<sup>110</sup> *Ibid.*, p. 60.

<sup>111</sup> United Cities and Local Governments, “Culture 21: Actions” (see footnote 28), p. 30.

<sup>112</sup> Secretariat of the Committee on Culture of United Cities and Local Governments, “Culture 21 – culture, climate change and sustainable development: briefing”, p. 3.

<sup>113</sup> *Ibid.*, p. 2.

<sup>114</sup> *Ibid.*, p. 2.

inspiration that can help shape the acceptability of policy or system change. “Local knowledge supports contemporary mitigation options, from low-carbon, locally adapted approaches to decarbonizing buildings and cultural landscapes to pointing the way to low-carbon settlement patterns for developing peri-urban areas to the role of indigenous science in climate-smart agriculture.”<sup>115</sup>

68. Traditional knowledge can “form the basis of a balanced, sustainable interaction between culture and natural ecosystems”<sup>116</sup> and can inform our understanding of climate impacts and human rights-respecting and appropriate adaptation strategies.<sup>117</sup> Experts suggest that this can provide holistic understandings of a range of issues, such as changes to soil moisture and species migration, that may be unavailable in most scientific data.<sup>118</sup> Traditional knowledge, including that of indigenous peoples, peasants and fisher people, such as traditional fire management and agricultural techniques, should be considered as a complement to science, where appropriate, in developing adaptation responses.<sup>119</sup>

69. Traditional land management and land monitoring systems and traditional construction and planning techniques may also be relevant. Where relevant and appropriate human rights-respecting traditional knowledge systems exist, every effort should be made to integrate these into heritage site disaster management plans.<sup>120</sup>

70. Endogenous, local ways of low-impact resource use connected with tangible heritage and intangible practices include: agriculture (semi-natural habitats, cultural landscapes), traditional fishing, forest use, traditional soil management (no-till farming, mulching, cover cropping, crop rotation), use of native plants, traditional livestock management and animal husbandry approaches that contribute to decarbonization. Examples include traditional fishing and semi-natural habitats management.<sup>121</sup>

71. We must think broadly about the relationship between culture and addressing climate change, including

- (a) Through cultural change;
- (b) Related to our ways of interacting with nature;
- (c) The promotion of green cultures. Such efforts require the marshalling of cultural resources.<sup>122</sup>

72. “The Sustainable Development Goals and the Paris Agreement recognize that cultural heritage can guide choices that promote human action in ways that support resilience and sustainability and by extension climate-resilient development pathways.”<sup>123</sup> “Healthy” World Heritage sites can contribute considerably to “healthy” landscapes and seascapes that are better able to buffer climate change

<sup>115</sup> See contribution by International Council on Monuments and Sites.

<sup>116</sup> “Culture 21 – Culture, climate change and sustainable development: briefing”, p. 3.

<sup>117</sup> Terry Williams and Preston Hardison, “Culture, law, risk and governance: contexts of traditional knowledge in climate change adaptation” in *Climatic Change* Vol. 120, pp. 531–544; and Norton-Smith, *Climate Change and Indigenous Peoples* (see footnote 90), pp. 13 and 14.

<sup>118</sup> See, e.g., Margaret Redsteer, and others “Increasing vulnerability of the Navajo People to drought and climate change in the southwestern United States: accounts from tribal elders”, in Douglas Nakashima, Igor Krupnik, Jennifer T. Rubis, eds., *Indigenous Knowledge for Climate Change Assessment and Adaptation; and Climate Change and Indigenous Peoples*, p. 14.

<sup>119</sup> “Culture 21 – Culture, climate change and sustainable development: briefing”, p. 2.

<sup>120</sup> UNESCO World Heritage Centre, *Managing Disaster Risks for World Heritage* (2010), p. 40.

<sup>121</sup> See contribution by International Council on Monuments and Sites.

<sup>122</sup> Tyszcuk, “Culture and climate change scenarios” (see footnote 109).

<sup>123</sup> *The Future of Our Pasts* (see footnote 29), p. 2.

impacts.<sup>124</sup> In some countries, cultural heritage is increasingly being incorporated into responses to climate change.<sup>125</sup> Such laudable initiatives must look at tangible, intangible and natural heritage; sites and living cultural landscapes; and involve civil society groups, experts and those with particular connections to aspects of heritage. Heritage helps us benefit from lessons learned in the past about coping with environmental changes and about the integration of nature and culture; enables us to focus on multigenerational timescales; and promotes an ethic of stewardship and reuse, as well as modes of non-material well-being. It can also be used to inspire climate action.

73. Arts and culture are also critical fields for the mobilization of climate action, as well as for information-sharing and awareness-raising about climate change. They offer far-reaching educational tools, including through popular theatre, muralism and music. “There is a gap between empirical knowledge that science gathers and the policy and personal action that is demanded in terms of a response. What the arts can do is create the empathy to bridge that gap, create the personal response ...”<sup>126</sup> Artistic and cultural forms “provide space for collective, improvisational and reflexive modes of acting on and thinking about uncertain futures.”<sup>127</sup>

74. The Special Rapporteur was pleased to note the convening of the UNESCO reflection group on culture and climate change in February 2020, bringing together experts from across the globe to discuss the role of culture in climate change mitigation and adaptation. The Climate Heritage Network, a global coalition, seeks to mobilize culture and heritage actors around climate change and bridge the gap between climate action and cultural initiative.<sup>128</sup> Such global efforts offer hope, but need support and resources to continue and multiply. Such initiatives are especially laudable for bringing together local voices and international coordination. All international efforts should involve consultation with and the participation of local constituencies and indigenous peoples, including experts, civil society, cultural rights defenders and the diverse populations affected, who, for such efforts to succeed, must be equal partners.

75. Women are change agents for combating the climate crisis. They have smaller carbon footprints than men owing to consumption patterns and lifestyle choices.<sup>129</sup> Women “hold critical local knowledge that can enhance climate adaptations and assist the development of new technologies to address climate variability in areas related to energy, water, food security, agriculture and fisheries, biodiversity services, health and disaster risk management.”<sup>130</sup> However, the ability of women to contribute to climate change mitigation and adaptation is too often hindered by gender inequality and gendered power dynamics.<sup>131</sup>

76. Culture and cultural rights have inherent value for human beings and for their enjoyment of many other human rights. However, we must now also recognize their

<sup>124</sup> UNESCO World Heritage Centre, *The Impacts of Climate Change on World Heritage Properties* (WHC-06/30.COM/7.1), annex 4, Predicting and managing the effects of climate change on world heritage (Vilnius, 2006), p. 47, para. 101.

<sup>125</sup> See contributions by Greece and WetFutures Ireland.

<sup>126</sup> Guy Abrahams, quoted in Claire Wilson, *Can artists make a difference in the climate change debate?*. (Asia-Europe Foundation and Culture 360, 2015); and “Culture 21 – Culture, climate change and sustainable development: briefing”, p. 4.

<sup>127</sup> Tyszcuk, “Culture and climate change scenarios” (see footnote 109), p. 56.

<sup>128</sup> <http://climateheritage.org/>.

<sup>129</sup> International Labour Organization, “Green jobs: improving the climate for gender equality too!”, p. 5 (January 2009).

<sup>130</sup> Margaret Alston, “Gender mainstreaming and climate change”, *Women’s Studies International Forum*, vol. 47, Part B (2014), p. 289.

<sup>131</sup> See contribution by International Action Network for Gender Equity and Law.

tremendous utility in our existential fight against catastrophic climate change. This means that all environmental standards and policies should take the cultural dimension into consideration, and that we have yet one more reason to take cultures seriously, to protect cultural heritage and ensure cultural rights. Without them, we are at even greater risk in our warming world.

## V. Conclusions and recommendations

### A. Conclusion

77. As we emerge from the pandemic, it would be a tragic mistake for the international community and States to prioritize economic growth, without concern for its environmental impact, to the detriment of human rights and desperately needed climate action. This will only lead us straight into another catastrophe. Instead, we can choose holistic, human rights-based strategies that allow us to build back better and enhance climate action.<sup>132</sup> Culture and cultural rights must be core components of such a strategy. Culture and cultural rights are prime casualties in the climate emergency, but also useful tools in our struggle to respond to it. They enable better policy choices and outcomes.

78. We must take a holistic approach to culture, cultural rights and climate change, an approach encompassing all regions, proactively including young people and older persons, thoughtfully bringing together natural, tangible and intangible cultural heritage, which are interlinked, and all forms of cultural expression, emphasizing both education and accountability, and considering the impact of actions by both State and non-State actors. We will not make much progress until there is more accountability. We cannot be selective or be galvanized only by threats to culture and heritage with which we feel a personal connection, but must take a universal approach to protecting the cultures, heritage and cultural rights of all.

79. The current pandemic has shown that waiting to respond to risk until the risk has materialized fully is a deadly and catastrophic strategy which magnifies unbearable losses. Given the scale of the climate emergency, our cultures must urgently shift to embrace precaution, prevention and evidence-based planning. “A fundamental way to reduce the threats posed by climate change to culture and the exercise of cultural rights is by decreasing global warming.”<sup>133</sup> The threat to humanity and its cultures is much greater for 2°C of global warming than for 1.5°C.<sup>134</sup> We must now make the choices and changes needed to achieve the 1.5°C target, and fully embrace the value of our own human and cultural survival, above profits and short-term convenience. Aspirational resolutions are insufficient. Rapid, effective action is essential.

80. The Special Rapporteur is not sure what she can say that others have not already said to convince the international community to take action while action is still possible to save ourselves and our cultures. Perhaps there is only one word to add, borrowing from children’s author Dr. Seuss. This is the word Seuss’s mythical creature, the Lorax, left for a child along with the last remaining seed for a disappearing tree in his environmentally degraded world: unless.

<sup>132</sup> See Secretary-General, COVID-19 and human rights – we are all in this together (April 2020). Available at [www.un.org/sites/un2.un.org/files/un\\_policy\\_brief\\_on\\_human\\_rights\\_and\\_covid\\_23\\_april\\_2020.pdf](http://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf).

<sup>133</sup> See contribution by International Council on Monuments and Sites.

<sup>134</sup> Ibid.

## **B. Recommendations**

81. **To implement cultural rights and safeguard culture and cultural heritage in the face of the climate emergency, States and other relevant actors, including international organizations, environmental bodies, businesses and experts should urgently:**

(a) **Adopt a human rights-based global action plan to save the cultures of humanity and protect cultural rights from the climate emergency, a plan that is globally coordinated and resourced, but driven by local priorities and concerns, with adequate funding, monitoring and follow-up;**

(b) **Prioritize the need for an especially urgent, effective and concerted global effort to prevent the cultural extinction of populations facing particular threats from the climate emergency, such as those in polar and coastal regions, including indigenous peoples and those living in small island States;**

(c) **Take cultural rights and cultural impacts into consideration in responding to all aspects of climate change and in climate action;**

(d) **Include harm to culture, cultural heritage and cultural rights in any inventory of harms resulting from or likely to result from climate change, or from mitigation and adaptation actions, as well as in all environmental impact and climate vulnerability assessments and in policy responses at all levels;**

(e) **Conduct more analysis and documentation of past, ongoing and expected damage to cultures, cultural heritage and cultural rights from climate change, including about underexplored topics such as intangible heritage;**

(f) **Embrace and leverage the role of data in measuring climate change-induced destruction of all forms of culture and cultural heritage, and in protecting and restoring culture and cultural heritage following such damage;**

(g) **Design appropriate measures for monitoring the impacts of climate change on cultural heritage and adapting to the adverse consequences thereof; and consider adaptations such as comprehensively recording and digitizing culture and cultural heritage and providing adequate funding and technical cooperation;**

(h) **Develop effective strategies for communicating to the public about climate-related threats to culture, cultural heritage and cultural rights and their importance in effective climate action;**

(i) **Fully explore the potential of culture and cultural heritage and traditional, indigenous and local knowledge to enhance mitigation and adaptation efforts; and promote awareness of and respect for rights-respecting traditional knowledge, including its importance in responding to the climate emergency;**

(j) **Ensure that scientific knowledge about climate change, including its impacts on culture, is made accessible, including in local and indigenous languages and non-verbal modes of communication, and widely available;**

(k) **Promote and support cultural expressions around climate change and its effects;**

(l) **Respect and ensure the rights of cultural rights defenders, indigenous human rights defenders and environmental human rights defenders working on issues related to climate change; and support and promote their work;**

- (m) **Ensure an integrated approach to climate change, culture and cultural rights by:**
- (i) **Involving cultural institutions, their staffs and directors, and cultural rights defenders and experts in discussions of climate policy; and likewise ensuring that environmental experts are engaged in the development of cultural policy;**
  - (ii) **Building bridges and institutionalizing networks between cultural and environmental officials, bodies and experts;**
  - (iii) **Ensuring that cultural and environmental policies and laws embody a human rights approach; and that cultural policies incorporate climate change and environmental concerns, while environmental and climate change-related policies address related cultural dimensions;**
  - (n) **Promote information-sharing among all relevant stakeholders across the fields of environmental protection, culture and human rights;**
  - (o) **Ensure adequate funding for all programmes and policies at the intersection of climate, culture and human rights;**
  - (p) **Integrate the arts, artists, culture and cultural rights defenders into climate efforts through sustainable funding and recognition;**
  - (q) **Develop remedies, compensation and mechanisms for accountability for climate-related damage to culture, cultural rights and cultural heritage, and for abuses against cultural rights defenders working on these issues;**
  - (r) **Guarantee that cultural rights defenders and experts, cultural heritage defenders and experts, and cultural practitioners, including representatives of indigenous peoples, women, persons with disabilities, youth and those from zones which are most affected by climate change, are involved in all climate-related policy processes at all levels; and ensure the accessibility of the meeting venues of the United Nations Framework Convention on Climate Change and related negotiations;<sup>135</sup>**
  - (s) **Assure gender mainstreaming throughout all climate targets and climate actions, prioritizing the education of women and girls, improving gender disaggregated data (including with regard to culture-related climate impacts), and equalizing care burdens<sup>136</sup> and recognizing gender differences in adaptation needs, opportunities and capacities in the cultural area;**
  - (t) **Advocate for strong property rights for women and indigenous peoples in line with relevant international standards;**
  - (u) **Provide funding and capacity-building to enhance the ability of indigenous people to employ their traditional knowledge to mitigate and adapt to climate change, and to develop inventories of such knowledge where they are unavailable; and ensure that traditional knowledge is used with the free, prior and informed consent of indigenous peoples and in ways that respect their internationally guaranteed rights;**
  - (v) **Guarantee that all climate action and initiatives are taken in coordination with, and with the participation of, indigenous peoples and directly affected local groups; and that the free, prior and informed consent of indigenous peoples is required before implementation;**

<sup>135</sup> See [A/HRC/44/30](#).

<sup>136</sup> UNDP, *Ensuring Gender Equity in Climate Change Financing* (New York, 2011), pp. 4–6.

(w) Advocate for conservation and prevention that enables humanity to reimagine the culture of our relationship with nature, inspired by holistic approaches in diverse cultures;

(x) Strengthen links between science and policy and rebuild cultural commitments to evidence-based and scientific decision-making and planning; and promote independent science;

(y) Ensure science-based climate-change education, incorporating a cultural rights perspective, for all.

**82. States should:**

(a) Fully implement their obligations under the Paris Agreement, and remain or become parties to that agreement; and fully implement the relevant recommendations of the Special Rapporteur on human rights and the environment;

(b) Ensure disability-inclusive, rights-based mitigation and adaptation;<sup>137</sup>

(c) Respect, ensure, fulfil and protect cultural rights for all without discrimination in accordance with international standards;

(d) Incorporate cultural rights, culture and cultural heritage into United Nations Framework Convention on Climate Change national adaptation plans;<sup>138</sup>

(e) Support the creation of a proposed new mandate on human rights and climate change.

**83. The United Nations human rights system should consider:**

(a) Systematically and urgently addressing climate change and its impacts on culture and cultural rights;

(b) Ensuring that its own practice is climate-friendly, and explore ways to decrease its carbon footprint;

(c) All human rights treaty bodies should consider a joint general comment on the climate emergency and human rights to draw attention to the exceptional nature of the threat that these pose to all rights, including cultural rights.

**84. Civil society and cultural rights defenders should:**

Engage in capacity-building on environmental issues for cultural rights defenders and on cultural rights issues for environmental human rights defenders and others; and consider further joint initiatives and advocacy campaigns bringing these sectors together.

<sup>137</sup> See [A/HRC/44/30](#).

<sup>138</sup> See contributions by Italy and Greece.



# General Assembly

Distr.: General  
6 August 2009

Original: English

---

## Sixty-fourth session

Item 71 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **The right to adequate housing**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report submitted by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, submitted pursuant to Human Rights Council resolution 6/27.

---

\* A/64/150.



## **Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context**

### *Summary*

The present report, submitted in accordance with Human Rights Council resolution 6/27, constitutes the second report to the General Assembly of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

The report discusses how the impacts of climate change have consequences for the fulfilment of the right to adequate housing. The report provides an overview of the scope and severity of climate change, its implications for extreme weather events and its impact on urban and rural areas, including unplanned and unserved settlements, on human mobility and on small islands and low-lying coastal zones. It also outlines the relevant international human rights frameworks and obligations in connection to the right to housing and discusses the essential role of international cooperation to address the inevitable impacts of climate change. It considers policies on mitigation and adaptation from a human rights perspective to the right to adequate housing. Finally, the Special Rapporteur draws preliminary conclusions on the relationship between climate change and the right to adequate housing and urges States to take a number of measures, including upholding their human rights obligations when mitigating climate change and adapting to its inevitable impacts.

### Contents

	<i>Page</i>
I. Introduction .....	3
II. Overview .....	3
III. Climate change and the right to adequate housing .....	6
A. Effects of climate change on housing in urban settlements.....	6
B. Climate change and human mobility .....	8
C. Impact of sea-level rise on housing in small islands and low-lying coastal areas .....	10
IV. Human rights/adequate housing approach to climate change .....	11
A. International human rights obligations in the right-to-adequate housing debate .....	11
B. International cooperation .....	12
C. Mitigation and climate change: strategies and effects on housing .....	13
D. Adapting to climate change: effects on housing .....	15
V. Conclusions and recommendations .....	19

## I. Introduction

1. In December 2007, by its resolution 6/27, the Human Rights Council reviewed and renewed the mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

2. During the presentation of her previous report to the General Assembly (A/63/275), the Special Rapporteur provided her views on the mandate and a programme of work. She expressed her interest in expanding the work of the mandate on a number of issues, including the relation between climate change and the right to adequate housing.

3. The present report is the result of thematic research undertaken, of information collected during a country visit of the Special Rapporteur to Maldives in February 2009 and of knowledge-sharing through participation at conferences and seminars on the topic of climate change and its potential impact on the realization and enjoyment of the right to the highest attainable standard of living, particularly, adequate housing.

4. The aim of the report is not to look at the causes that have produced climate change but at the impact of climate change on the fulfilment of the right to adequate housing, especially in respect of how climate change exacerbates existing vulnerabilities. The report provides an overview of the scope and severity of climate change, its implications for extreme weather events and its possible impact on urban and rural areas, including unplanned and unserviced settlements, on human mobility and on small islands and low-lying coastal zones. The report analyses the relevant international human rights frameworks and obligations in connection with the right to adequate housing. It also explores policies on mitigation and adaptation from a human rights perspective to the right to adequate housing. It concludes with recommendations, in particular for mitigation and adaptation strategies that are being designed and negotiated at local, national and international levels.

## II. Overview

5. The Intergovernmental Panel on Climate Change<sup>1</sup> indicated in 2007 that the Earth was warming faster than at any other time in recorded human history. In its fourth assessment report, the Panel affirmed the scientific consensus that global warming was clearly under way, indicating a high likelihood that the rate of warming was greater than at any time over the past 10,000 years.

6. The Panel also concluded that global warming was most likely due to the effects of human activity, primarily fossil fuel use and land use changes that had taken place in particular after the industrial revolution. The concentrations of carbon dioxide in the Earth's atmosphere far exceeded pre-industrial levels as recorded in

---

<sup>1</sup> The Intergovernmental Panel on Climate Change was established in 1988 by the World Meteorological Organization and the United Nations Environment Programme to assess the information relevant to the scientific basis of the risk of human-induced climate change, its potential impacts and possible response strategies.

polar ice cores dating back 650,000 years.<sup>2</sup> This is already causing a linear warming trend that is twice that of the past 100 years. The 11 years between 1995 and 2006 have been among the 12 warmest years in recorded history, a trend that is causing deep oceans to warm, glaciers to melt and sea levels to rise. If current warming trends are sustained, the Panel estimates that sea levels will rise an additional 0.23 to 0.47 metres, and average temperatures could rise by 6°C before the end of the century.<sup>3</sup>

7. In efforts to meet the challenges posed by a rapidly warming planet, negotiations are currently under way for a new agreement to replace the Kyoto Protocol<sup>4</sup> of the United Nations Framework Convention on Climate Change.<sup>5</sup> This new treaty, to be agreed at the upcoming Conference of the Parties in Copenhagen in December 2009, will seek to effectively mitigate the warming trends while preparing to adapt to the inevitable consequences of climate change.

8. Global warming is prompting longer-lasting droughts and threatening to turn entire regions of the world into deserts. The warming of the Earth's climate is also changing the amount, intensity and frequency of precipitation. This implies more intense and longer-lasting storms and other extreme weather events, as well as a higher risk of flooding and storm damage. While it is impossible to link any specific extreme weather event to changes in the Earth's climate, it has been established that global warming is increasing the severity of storms that often result in disasters.<sup>6</sup> The Panel also found evidence indicating that intense tropical cyclone activity in the North Atlantic had increased since about 1970. The Panel further stated: "it is likely that future tropical cyclones (typhoons and hurricanes) will become more intense, with larger peak and wind speeds and more heavy precipitation associated with ongoing increases of tropical sea surface temperatures".<sup>7</sup>

9. Between 2000 and 2004, a yearly average of 326 climate-related disasters was reported, and some 262 million people were affected, more than double the level in the first half of the 1980s.<sup>8</sup> By means of illustration: the 2005 hurricane season in the Atlantic was the most active on record, producing 27 named storms and killing over 1,600 people. In 2004, a first-ever hurricane battered the southern coast of Brazil.<sup>9</sup> That same year droughts swept across the Horn of Africa and Southern

<sup>2</sup> Intergovernmental Panel on Climate Change, "Summary for policymakers", a report of Working Group I of the Intergovernmental Panel on Climate Change, 2007.

<sup>3</sup> Intergovernmental Panel on Climate Change, *Climate Change 2007: Impacts, Adaptation and Vulnerability*, contribution of Working Group II to the fourth assessment report of the Panel. Cambridge, United Kingdom, Cambridge University Press, 2007.

<sup>4</sup> FCCC/CP/1997/7/Add.1, decision 1/CP.3, annex.

<sup>5</sup> United Nations, *Treaty Series*, vol. 1771, No. 30822.

<sup>6</sup> National Office of Oceanic and Atmospheric Research, "Global warming and hurricanes", available from [http://www.oar.noaa.gov/spotlite/archive/spot\\_gfdl.html](http://www.oar.noaa.gov/spotlite/archive/spot_gfdl.html). Last accessed 29 June 2009.

<sup>7</sup> Intergovernmental Panel on Climate Change, Working Group I report, "Summary for policymakers", in *Climate Change 2007: the Physical Science Basis* (Cambridge, United Kingdom, Cambridge University Press), p. 9.

<sup>8</sup> United Nations Development Programme, *Human Development Report 2007/2008. Fighting Climate Change: Human Solidarity in a Divided World* (United Nations Development Programme, 2007).

<sup>9</sup> *Up in smoke? Latin America and the Caribbean: The Threat from Climate Change to the Environment and Human Development*, third report of the Working Group on Climate Change and Development, August 2006.

Africa. In the following year, many countries in those areas experienced extensive flooding. The 2007 monsoon season in South Asia caused intense floods and storms that killed more than 1,000 people in Bangladesh, India, Southern Nepal and Pakistan and displaced more than 14 million people in India and 7 million in Bangladesh. According to the World Food Programme, 57 countries, including 29 in Africa, 19 in Asia and 9 in Latin America were hit with catastrophic floods, droughts and heatwaves.<sup>10</sup>

10. The impacts of extreme weather events will be felt disproportionately in the developing world. Between 1990 and 1998, 94 per cent of the world's 568 major natural disasters, and more than 97 per cent of all natural disaster-related deaths, were in developing countries.<sup>11</sup> Beyond the exposure of many developing countries to weather extremes due to their geographical location, poor countries lack the resources, infrastructure and insurance systems necessary to protect their populations against the effects of those disasters.<sup>8</sup> Between 2000 and 2004, for example, an average of 1 in 19 people living in the developing world was affected by a climate disaster per year, while 1 in 1,500 was affected within member countries of the Organization for Economic Cooperation and Development.<sup>12</sup> Japan is more highly exposed to the risks associated with storms, cyclones and flooding than the Philippines; yet between 2000 and 2004, average disaster-related fatalities amounted to 711 in the Philippines and 66 in Japan.<sup>8</sup>

11. The stakes are high, particularly for the world's poorest people. Extreme weather events and natural disasters threaten a series of essential human rights, particularly for the poorest and most vulnerable populations. They exacerbate disaster risks, both by intensifying climatic and extreme weather hazards as well as by decreasing the ability of people to withstand the impacts and recover from damages.<sup>13</sup>

12. The heaviest impacts affect people who have contributed least to the problem and lack the resilience necessary to survive these changes without major harm. According to a recent report of the United Nations International Strategy for Disaster Reduction secretariat: "Climate change is perhaps the greatest global outcome of environmental inequity since it is driven by the emissions that have brought benefits to affluent individuals and societies[,] yet most of the burdens fall on poorer individuals and societies, with developing countries and their poorest citizens being the most vulnerable".<sup>14</sup> This issue is a fundamental point of focus for the negotiations leading up to the Conference of the Parties in Copenhagen, and must be considered if the full challenges posed by climate change are to be effectively addressed.

<sup>10</sup> "Global food crisis looms as climate change and fuel shortages bite", 3 November 2007, *The Guardian*, United Kingdom.

<sup>11</sup> John Vidal, "Climate change will overload humanitarian system, warns Oxfam", *The Guardian*, United Kingdom.

<sup>12</sup> Oxfam International, "Climate wrongs and human rights: putting people at the heart of climate change policy", September 2008.

<sup>13</sup> United Nations International Strategy for Disaster Reduction Secretariat, *2009 Global Assessment Report on Disaster Risk Reduction: Risk and Poverty in a Changing Climate: Invest Today for a Safer Tomorrow*, p. 11.

<sup>14</sup> *Ibid.*, p. 10.

### III. Climate change and the right to adequate housing

#### A. Effects of climate change on housing in urban settlements

13. In its third assessment report, the Panel stated that climate change would increase the magnitude and frequency of weather extremes, such as heavy rainstorms, cyclones or hurricanes. These events pose specific risks to cities and smaller settlements.

14. The most direct risks are connected to flooding and landslides, caused by increases in rainfall intensity, sea-level rise and storm surges in coastal areas.<sup>15</sup> This precipitation can overwhelm urban drainage systems and result in floods. Inadequate drainage exacerbates the effects of heavy rainfall, leading to localized flooding and further weakening the already degraded infrastructure. Heavy rainfalls can also overburden sanitation systems and cause contamination of drinking water. When shelters are built in areas susceptible to hazards, such as in floodplains on the banks of rivers or on slopes that pose the risk of erosion and mudslides during heavy rains, the consequences can be devastating.

15. As rainfalls become more irregular or scant, drought is predicted to become more frequent and severe. This phenomenon has an impact on urban systems of water supply. The melting of glaciers is also affecting water storage and resulting in a scarcity of the water supply. This is the case in La Paz, where a water shortage is expected by 2025 and has the potential to affect 2 million people.<sup>16</sup> Increased water stress results in decreased access to water and sanitation and as water sources dry out, people are forced to move further in search of water for drinking, cooking and hygiene. This has a particular impact on women and girls, who are usually responsible for fetching water, with their health and access to education often suffering as a result.

16. The extent to which extreme weather events affect urban settlements is not only related to their locations but also to the quality and level of infrastructure and service provision: “For any city, the scale of the risk from these extreme weather events is also much influenced by the quality of housing and infrastructure in that city and the level of preparedness among the city’s population and key emergency services”.<sup>17</sup> Poor communities can be especially vulnerable, in particular those concentrated in unplanned and unserviced settlements within urban areas, which tend to be built on hazardous sites and to be susceptible to a number of climate change-related disasters. Living in a situation of poverty and exclusion, they lack adequate resources to protect themselves. Climate change-related effects aggravate existing risks and vulnerabilities.

17. The majority of the urban population is concentrated — and will be even more so in the coming decades — in low- and middle-income countries, which have most of their urban populations living at greater risk in unplanned and unserviced

---

<sup>15</sup> Intergovernmental Panel on Climate Change, “Industry, settlement and society”, in *Climate Change 2007: Impacts, Adaptation and Vulnerability*, p. 361.

<sup>16</sup> Questionnaire sent by Habitat International Coalition on climate change and the right to adequate housing, available from [www.hic-al.org](http://www.hic-al.org). Information provided by Red Habitat Bolivia.

<sup>17</sup> David Satterthwaite et al., Human Settlements Discussion Paper Series, Theme: Climate Change and Cities 1, *Adapting to Climate Change in Urban Areas: The Possibilities and Constraints in Low- and Middle-Income Nations* (International Institute for Environment and Development).

settlements. According to the United Nations Human Settlements Programme (UN-Habitat), there are about 1 billion slum-dwellers in the world today. The majority of these, more than 930 million, live in developing countries, where they constitute 42 per cent of the urban population. The proportion of slum-dwellers is particularly high in sub-Saharan Africa (72 per cent of the urban population) and in Southern Asia (59 per cent).<sup>18</sup> Disasters caused by extreme-weather are not simply a result of natural events but also reflect a failure of development policies.

18. These informal settlements are usually located in the most hazardous sites within cities, at risk from flooding or landslides. For instance, large concentrations of illegal settlements can be seen on hills prone to landslides (La Paz; Caracas; and Bamenda, Cameroon), in deep ravines (Guatemala City) or on land prone to flooding (Guayaquil, Ecuador; Recife, Brazil; Monrovia; Lagos, Nigeria; Port Harcourt, Nigeria; Port Moresby; New Delhi; Bangkok; Jakarta; Buenos Aires; Resistencia, Argentina; Bogota; Mumbai, India; Accra; Kumasi, Ghana; and Mombasa, Kenya).<sup>19</sup>

19. The areas exposed to and constantly affected by flooding, landslides and earthquakes still attract poor groups because of cheaper land and housing costs. They are also the only places where they can find accommodation close to their income-earning areas and livelihood opportunities within cities. Low-income groups will face serious constraints in being able to move to less dangerous sites, because of a lack of resources to enable them to move and due to a lack of alternative safer sites that are at the same time affordable and close to their income-earning and human development opportunities.

20. The lack of protective infrastructure and services aggravates human vulnerability to extreme weather-related phenomena: “For instance, it is generally cities with the largest inadequacies in protective infrastructure that have experienced the highest number of flood-related deaths and injuries over the last 25 years”.<sup>19</sup> One of the examples is the impact of the lack of waste collection on urban settlements. In research undertaken, the presence of uncollected waste is seen to frequently block streams and drainage channels leading to, or exacerbating, flooding.<sup>20</sup> UN-Habitat reported that a total of 98 per cent of the 211 million people affected by natural disasters during the period from 1991 to 2000 were in developing countries.<sup>21</sup> Consequently, “much of the human cost of extreme weather events in urban centres in low- and middle-income nations comes not from the ‘hazard’ or the ‘disaster event’, but from the inadequate provision of protection for urban population (or particular sections of the population) from these”.<sup>22</sup>

<sup>18</sup> UN-Habitat, “Key findings and messages”, in *Global report on human settlements 2007: Enhancing Urban Safety and Security*.

<sup>19</sup> Caroline Moser and David Satterthwaite, Human Settlement Discussion Paper Series, Theme: Climate Change and Cities — 3, *Pro-poor climate change adaptation in the urban centres of low- and middle-income countries* (International Institute for Environment and Development, October 2008), p. 9.

<sup>20</sup> UN-Habitat, *Global report on human settlements 2011: cities and climate change*, chapter 6, case study: Dar es Salaam (forthcoming).

<sup>21</sup> UN-Habitat, *Global report on human settlements 2007*.

<sup>22</sup> David Satterthwaite et al., “Adapting to climate change in urban areas: the possibilities and constraints in low- and middle-income nations” in *Adapting Cities to Climate Change*, Jane Bicknell, David Dodman and David Satterthwaite (eds) (Earthscan, London, 2009), p. 19.

21. When discussing the vulnerability of poor urban populations to climate change impacts, consideration must be given to the most vulnerable groups, such as children. Children may be removed from school in order to work and help to increase the income of their families and the supply of food and water. Schools are also often used as emergency lodging after natural disasters. This is a reality for Saint Louis, Senegal, where after recurrent flooding, the affected population has been moved to schools, thereby reducing the school year and affecting student attendance.<sup>23</sup> Climate change-related effects might also exacerbate the exposure of children to undernutrition and increase their vulnerability to a number of diseases and illnesses, such as malaria.<sup>24</sup> Thus, the common constraints many children already suffer from as a result of poverty are intensified by the related effects and pressures of climate change-induced disasters. Gender inequalities that existed prior to a disaster may also increase.

## B. Climate change and human mobility<sup>25</sup>

22. The linkages between climate change and human mobility are complex and not entirely predictable. The Intergovernmental Panel on Climate Change noted in 1990 that the greatest impact of climate change might be on human mobility. While there are no reliable estimates of the numbers of population flows related to climate change, it is clear that climate change-related impacts are already resulting in substantial human mobility. According to the Panel:

“Estimates of the number of people who may become environmental migrants are, at best, guesswork since (a) migration in areas impacted by climate change are not one-way and permanent, but multi-directional and often temporary or episodic; (b) the reasons for migration are often multiple and complex, and do not relate straightforwardly to climate variability and change; (c) in many cases migration is a longstanding response to seasonal variability in environmental conditions, it also represents a strategy to accumulate wealth or to seek a route out of poverty, a strategy with benefits for both the receiving and original country or region; (d) there are few reliable censuses or surveys in many key parts of the world on which to base such estimates”.<sup>26</sup>

<sup>23</sup> Questionnaire sent by Habitat International Coalition on climate change and the right to an adequate housing, available from [www.hic-al.org](http://www.hic-al.org). Information provided by Environmental Development Action in the Third World.

<sup>24</sup> UNICEF, *Climate Change and Children: A Human Security Challenge* (November 2008), pp. 9-13.

<sup>25</sup> Climate change raises critical questions concerning the legal status of those forced to move within their countries. That issue is not examined in the present report, as it is being considered by the Representative of the Secretary-General on the human rights of internally displaced persons. See, for example, the background paper entitled “Displacement caused by the effects of climate change: who will be affected and what are the gaps in the normative frameworks for their protection?”, which was submitted by the Representative of the Secretary-General to the Inter-Agency Standing Committee Working Group at its 71st meeting, held from 18 to 20 June 2008, and has been developed further by the Representative of the Secretary-General in the context of subsequent meetings of the Inter-Agency Standing Committee informal sub-working group on displacement/migration and climate change.

<sup>26</sup> Intergovernmental Panel on Climate Change, “Industry, settlement and society”, in *Climate Change 2007: Impacts, Adaptation and Vulnerability*, p. 365.

23. People might move voluntarily, in search of a better life in areas not affected by these phenomena, or forcibly, when threats to life, health, property and livelihoods exist. Some affected people might be evacuated before and during disasters and some of them would be relocated because returning to the original place of residence is not possible or too dangerous. International human rights standards and the right to adequate housing must be respected during any relocation process.

24. In the context of urban and rural areas, climate change will affect such areas with increasingly frequent and hazardous events. The erosion of livelihoods, due partly to environmental degradation, intense storms, floods, droughts, water stress and food scarcity, is already accelerating the rural-urban drift,<sup>27</sup> as farmers migrate due to failing crops and insecure livelihood perspectives.

25. In the Arctic circle and surrounding areas, warmer temperatures are causing the seas to freeze later in the autumn months and the permafrost to thaw. This is affecting the water storage capacity of the glaciers, which used to store water during winter months and feed rivers during summer months. Rapid glacier melt also affects the water supply and increases flooding risks in other parts of the world. This has a great impact on rural agriculture located in river deltas, resulting in the movement of many people.

26. Drought is also a factor that is affecting mobility in rural areas. Studies have demonstrated that desertification is influencing migration in Mexico.<sup>28</sup> Inhabitants of Tlaxcala, an area dependent on rain-fed agriculture, complained of shifting rainfall periods, which generated uncertainty and a decline in crop yields and incomes: "Return migration, and seasonal migration as a livelihood diversification strategy have been documented in this area ... The opportunity for some people to migrate seasonally, send remittances, and return home is an example of migration as an adaptation strategy to deteriorating environmental conditions".<sup>28</sup> Climate change has also had related impacts in West Africa, such as rainfall decreases, land degradation, and violence in the arid and semi-arid areas of Senegal, Mali, Burkina Faso and the Niger. This has "resulted in a rapid intra-country migration southward and a swelling of big cities like Dakar, Bamako, Ouagadougou, Niamey and Kano, [Nigeria]. Estimates for Burkina Faso suggest that close to half of the adult population born there has moved for at least part of the year to coastal states like [Côte d'Ivoire] and Ghana".<sup>29</sup>

27. Disturbances in marine ecosystems and fisheries as well as the deterioration of farmlands due to salt water flooding will jeopardize the access of population to food and to safe drinking water. This phenomenon also generates the movement of people to other areas in search of a better livelihood.

28. Migration can also aggravate economic problems in receiving areas. Many of the people who move to cities will do so as a result of increasingly inadequate

---

<sup>27</sup> Annual report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights (A/HRC/10/61).

<sup>28</sup> See "In search of shelter: mapping the effects of climate change on human migration and displacement", CARE International; Center for International Earth Science Information Network, Columbia University; United Nations High Commissioner for Refugees, United Nations University Institute for Environment and Human Security; and Social Dimensions of Climate Change, World Bank (May 2009), p. 7.

<sup>29</sup> *Ibid.*, p. 9.

access to sustainable livelihoods and will therefore lack the resources to gain access to adequate housing when moving. These movements will affect urban development in a number of ways, including increasing pressure on urban infrastructure and services. Rapid and unplanned urbanization has serious implications for urban welfare and urban service provision.

29. Many migrants will move to urban slums and informal settlements, living in precarious conditions in hazardous areas. UN-Habitat estimates that in the rapidly expanding slum settlements of Africa, about one third of slum-dwellers have migrated to the cities after being driven off their land by advancing desert frontiers and failing pastoral farming systems.<sup>30</sup>

### C. Impact of sea-level rise on housing in small islands and low-lying coastal areas

30. The vulnerability of human settlements to the impacts of climate change can be aggravated by the location of settlements in low-lying coastal areas. “Assets and population in both developed and developing countries are increasingly located in coastal areas, slopes, ravines and other risk-prone regions.”<sup>31</sup> More precisely: “Low elevation coastal zones contain 2 per cent of the world’s land and 10 per cent of its population, based on estimates for 2000. Of the somewhat more than 600 million people living in the zone, 360 million are urban. This implies an urbanization level of 60 per cent compared to a world urbanization level of slightly less than 50 per cent.”<sup>32</sup>

31. In particular, urban centres located in coastal areas will face serious risks as sea-level rise increases exposure to coastal flooding, erosion, rising water tables undermining building foundations and saltwater contamination of ground water. According to the report of the Intergovernmental Panel on Climate Change, many more millions of people are projected to be flooded every year due to sea-level rise by the 2080s. Densely populated and low-lying areas, where adaptive capacity is relatively low and which already face other challenges such as tropical storms or local coastal subsidence, are especially at risk. The numbers affected will be largest in the mega-deltas of Asia and Africa, with small islands being especially vulnerable.<sup>33</sup>

32. Small islands, where almost half a million people live,<sup>12</sup> are particularly vulnerable to rising seas, which threaten to erode coastal dwellings, destroy fisheries and exacerbate inundation and erosion. “Moreover, protection costs for settlement, critical infrastructure, and economic activities that are at risk from sea-

<sup>30</sup> See statement by the Executive Director of UN-Habitat to the High-level segment of the United Nations Climate Change Conference, United Nations Framework Convention on Climate Change, available from <http://www.unhabitat.org/content.asp?cid=5502&catid=550&typeid=8&subMenuId=0>.

<sup>31</sup> Intergovernmental Panel on Climate Change, “Industry, settlement and society”, in *Climate Change 2007: Impacts, Adaptation and Vulnerability*, p. 372.

<sup>32</sup> Gordon McGranahan, Deborah Balk and Bridget Anderson, “The rising tide: assessing the risks of climate change and human settlements in low-elevation coastal zones”, in *Adapting Cities to Climate Change*, Jane Bicknell, David Dodman and David Satterthwaite (eds) (Earthscan, London, 2009), p. 58.

<sup>33</sup> Intergovernmental Panel on Climate Change, “Summary for policymakers”, in *Climate Change 2007: Impacts, Adaptation and Vulnerability*, p. 12.

level rise will be burdensome for many small island States. Similarly, tourism — the leading revenue earner in many States — is projected to suffer severe disruption as a consequence of adverse impacts expected to accompany sea-level rise”.<sup>34</sup> The process threatens the vital infrastructure and facilities that support the livelihood of island communities.

33. The small islands of Tuvalu, Kiribati and Maldives are particularly vulnerable to rising sea levels. In the case of the island State of Tuvalu in the Western Pacific: “Frequent saltwater flooding, accelerated coastal erosion and increasing difficulty growing vegetables and plants are day-to-day challenges. The people of Tuvalu have reluctantly accepted the idea of relocation and have started moving to New Zealand, under the terms of a negotiated migration scheme”.<sup>35</sup>

34. In the case of Maldives, geographic and natural characteristics make it particularly fragile to climate change and related problems. A chain of 1,200 islands and coral atolls located in the Indian Ocean, its highest point is only 1.8 metres above sea level. As a low-lying, small island State, Maldives is very vulnerable to the impacts of climate change and associated sea-level rise. The Special Rapporteur emphasized in her preliminary note on her mission to Maldives in February 2009 (A/HRC/10/7/Add.4) that the impact of climate change on the acceleration of coastal erosion, frequency of storms and flooding and the rise of the sea level would clearly have a dramatic impact on the housing and livelihood of many Maldivians. Climate change had aggravated and would further amplify some of the problems linked with Maldives characteristics, including land scarcity and the vulnerability of the islands to natural phenomena. Such changes had an impact on the enjoyment of the right to adequate housing.<sup>36</sup>

## **IV. Human rights/adequate housing approach to climate change**

### **A. International human rights obligations in the right-to-adequate housing debate**

35. The obligation of States to take steps towards the realization of the right to adequate housing for all is laid down in a number of international legally binding human rights instruments. The instruments also form the basis of the mandate of the Special Rapporteur. They include the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights (article 11); the Convention on the Rights of the Child (article 27, para. 3); the non-discrimination provisions found in article 14, paragraph 2 (h), of the Convention on the Elimination of All Forms of Discrimination against Women; article 5 (e) of the International Convention on the Elimination of All Forms of Racial Discrimination; article 43.1 (d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and article 28 of the Convention on the

<sup>34</sup> Intergovernmental Panel on Climate Change, “Small island States”, in *Climate Change 2001: Impacts, Adaptation and Vulnerability*, contribution of Working Group II to the third assessment report (Cambridge, United Kingdom, Cambridge University Press, 2001).

<sup>35</sup> *Human Impact Report: Climate Change: The Anatomy of a Silent Crisis* (Global Humanitarian Forum, Geneva), p. 51.

<sup>36</sup> Further details will be provided in the report of the Special Rapporteur on her mission, to be submitted to the Human Rights Council at its thirteenth session, in March 2010.

Rights of Persons with Disabilities. The right to adequate housing has also been recognized at the regional level, such as in the European Social Charter (1961), the American Declaration of the Rights and Duties of Man (1948), the American Convention on Human Rights (1969), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”) and the African Charter on Human and Peoples’ Rights (1981).

36. States have clear obligations under international human rights law to respect, protect and fulfil the right to adequate housing and to pursue, through international cooperation, global solutions to the global problem of climate change and its impact on housing. It is therefore necessary to take into account international human rights standards to respond to the challenges posed by climate change.

## **B. International cooperation**

37. The most severe impacts of climate change particularly affect countries located in low-lying coastal areas, small island States and areas prone either to flooding or desertification. These areas and their populations already face a number of vulnerabilities to the impacts of global warming. For the regions that face extreme levels of vulnerability and are not in a condition to confront the impact of climate change within their existing base of resources, international support for their adaptation, in order to assist them in investing in increased resilience to climate change, is essential.

38. Industrialized countries have historically contributed most to man-made greenhouse gas emissions. At the same time, the world’s poorer regions and countries, which have generally contributed the least to human-induced climate change, are the ones disproportionately affected by warming-driven impacts. The unequal burden of the effects of climate change is recognized in the United Nations Framework Convention on Climate Change,<sup>5</sup> which calls upon States, in article 3, “to protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly the developed country Parties should take the lead in combating climate change and the adverse effects thereof”. In article 4, paragraphs 4 and 9, the Convention states that developed country Parties should also support developing countries with the costs of adaptation measures and should take into account their specific needs with regard to funding and transfer of technology. Moreover, the human rights framework complements the Convention “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”.<sup>27</sup>

39. Any effective response to the inevitable effects of climate change furthermore will require cooperation at the international level.<sup>37</sup> This is a necessary response to the disproportionate distribution of the causes and effects of climate change. It is

---

<sup>37</sup> As the United Nations Deputy High Commissioner for Human Rights stated: “The human rights perspective underlines the need for international cooperation to address the unequal burden falling on those who are least able to carry its weight”. Statement delivered at the Human Rights Council Panel Discussion on the relationship between climate change and human rights held on 15 June 2009.

also consistent with the long-standing obligations concerning international assistance and cooperation emphasized in the International Covenant on Economic, Social and Cultural Rights (article 2.1) and Articles 55 and 56 of the Charter of the United Nations. As stated by Kofi Annan in 2000 in his report entitled “We the peoples: the role of the United Nations in the twenty-first century”: “In addition to the separate responsibilities each state bears towards its own society, states are, collectively, the custodians of our common life on this planet — a life the citizens of all countries share”. Given the global nature of the threat of climate change, internationally coordinated action to assume collective stewardship of the global climate is particularly critical.

40. The World Bank has estimated that adaptation could cost between \$4 billion and \$37 billion annually. Yet, the resources allocated to the Global Environmental Fund as of September of 2008 totalled only \$3.3 billion.<sup>12</sup> In addition, many of the pledges for adaptation assistance have simply represented a portion of existing official development assistance budgets, rather than the allocation of new resources. Given that few countries have yet reached the international aid target of 0.7 per cent gross domestic product, the conflation of funding commitments for adaptation with pledges for regular development assistance programmes by donor countries is problematic.<sup>38</sup> In order for the international community to effectively respond to the urgent need to assist countries and groups of people who are particularly vulnerable to the effects of climate change to adapt in order to minimize harm, commitments towards adaptation assistance should reflect new resources, distinct from funds earmarked for regular development assistance.

41. Funding for adaptation is far from being the most complex challenge ahead. In addressing the development deficit in infrastructure provision, international cooperation projects need to confront technical and cultural challenges. Adaptation projects on climate change cannot simply replicate the hard engineering solutions that have been behind development projects for decades. For instance, to address flooding and erosion on low elevation coastal zones, the usual measures to protect settlements are to build breakwaters, seafront walls and beach defences. Although effective in alleviating the local problems caused by erosion, such protective systems usually transfer erosion further along the coast, causing flooding and losses elsewhere. International cooperation projects must be adapted to local needs and oriented to long-term development goals.

### **C. Mitigation and climate change: strategies and effects on housing**

42. The grave consequences of climate change require decisive action by the international community. “Mitigation”, in the context of climate change, refers to efforts aimed at actions and policies that seek to prevent global warming from causing dangerous interference with the climate. While there are several different arenas for possible mitigation action, the world’s leading climate scientists have converged towards a threshold for dangerous climate change of a maximum rise in the global average temperature of 2°C above the pre-industrial level. It will require global greenhouse gas emissions to peak before 2015 and to be reduced to

---

<sup>38</sup> International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide* (Geneva, 2008).

approximately 50 per cent of the current level by the year 2050.<sup>39</sup> Negotiations taking place under the United Nations Framework Convention are currently seeking to define the respective responsibilities of both developing and developed countries in the face of this major goal.

43. To date, the track record for countries complying with their commitment to reduce emissions has been poor. In 1992, the 23 wealthiest countries, home to 14 per cent of the global population and today responsible for 40 per cent of the emissions released into the atmosphere each year, committed to return their collective emissions to 1990 levels by the year 2000. Yet, by 2005, their collective emissions had increased more than 10 per cent above the target levels.<sup>12</sup> If States continue to settle for half-hearted attempts to comply with mitigation goals, the Earth's temperatures will continue to rise.

44. The level of emissions reductions must be sufficient to adequately stabilize the Earth's climate and avoid contributing to further challenges to the enjoyment of human rights, which will otherwise follow. As mentioned earlier in the present report, in order to avoid dangerous climate change, global temperature increases must be kept under 2°C (above pre-industrial levels). A rise in just under 2°C in global temperatures may well be tolerable for societies that enjoy a minimal degree of resilience, flexible infrastructure and adequate baseline conditions of health, housing and income levels. Many of the world's most resource-poor or otherwise vulnerable people face the very real threat of the loss of their homes and means of subsistence due to the increased frequency and intensity of storms, rising sea levels, desertification and drought. For such people, the threshold for an acceptable level of global warming might be arguably lower.<sup>38</sup> A human rights-centred focus on the world's most vulnerable populations would therefore argue for both emissions reductions targets that are sufficiently stringent to avert denial of human rights deriving from climate change and for stronger accountability mechanisms for complying with the targets once they are defined.

45. Human rights standards require all countries to seek to reduce their harmful emissions to the global atmosphere, with a view to reducing their negative effect on the enjoyment of human rights. This requires action at multiple levels. Industrialized countries, according to the United Nations Framework Convention on Climate Change "equity principle" must lead in reducing emissions levels and ensure that they comply with their commitments in this context. Developed countries must also contribute to efforts by developing countries to pursue low-carbon development paths, thereby avoiding new rounds of increases in emissions.

46. Developing countries also have obligations at a national level, in the context of the mitigation of climate change. National development plans must take into account the urgent need to refrain from contributing further to emissions that cause climate change, which requires the design of economic development strategies that avoid excessive reliance on fossil fuels to power their growth.

47. Both developing and developed countries are responsible for ensuring that the measures undertaken are consistent with their human rights obligations. For example, without adequate human rights safeguards, mitigation measures related to

---

<sup>39</sup> Intergovernmental Panel on Climate Change, *Climate Change 2007: Mitigation of Climate Change*, contribution of Working Group III to the fourth assessment report of the Panel (Cambridge, United Kingdom, Cambridge University Press, 2007), p. 173.

the development of alternative sources of energy, such as hydroelectric dams, may result in human rights violations. While such measures may aim to promote development and mitigate climate change, their impacts on the rights of people situated near project sites have in many cases been a subject of concern. Large dam projects around the world have resulted in the displacement of communities from their traditional lands.<sup>40</sup> Forced evictions and the displacement of communities within the context of efforts partly aimed at mitigating climate change have thus sometimes led to violations of the right to adequate housing.

48. Mitigation strategies in developed countries include the mobilization of renewable, decentralized energy devices and technologies. New building standards have been adopted to reduce the need for artificial cooling and heating and to promote the concept of energy-plus housing, which refers to houses that have the capacity not only to provide energy for their own consumption but also to generate a surplus that can be used for other purposes. Although such new technologies are paths to mitigate greenhouse emissions, a number of people living in developed countries and most urban dwellers in developing countries lack the resources to buy those technologies and to refurbish their houses to meet the new housing standards.<sup>41</sup>

49. International human rights mandates contain obligations for States to respect the rights of their populations and to provide protection against processes or practices that threaten those rights. Domestically, this requires States to pursue strategies aimed at mitigating climate change, while ensuring that they do not contribute to other rights violations.

50. Human rights mandates also require the participation of groups that stand to be affected in the design and implementation of mitigation measures. Informed and effective participation, in turn, requires that information about the mitigation targets and decisions related to those goals are managed transparently.<sup>42</sup> The principle of participation in the context of mitigation initiatives should be implemented to ensure that those who stand to be most directly affected have a say in its design and implementation, which could help anticipate, and thus avert, new rights violations that could result from the measure under discussion. Human rights standards would also require the existence of institutional forms of redress for grievances, compensation in response to inevitable damages and an evaluation of the distributional impacts of projects and effects.

## **D. Adapting to climate change: effects on housing**

### **1. Disaster prevention and risk-reduction actions**

51. A human rights approach has much to offer towards adaptation to climate change and reduction of the risks posed by natural disasters. While some natural disasters are unavoidable, much can be done to avoid their negative impacts on human lives and human rights. Of particular importance are measures to strengthen

<sup>40</sup> Presentation by the International Forum of Indigenous Peoples on Climate Change to the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol.

<sup>41</sup> See Heirinch Boll Stiftung, "Urban futures 2030", 2009.

<sup>42</sup> Submission by the Forest Peoples Programme, available from <http://unfccc.int/resource/docs/2009/smsn/ngo/104.pdf>.

the resilience and capacity to adapt to climate change of individuals and groups most vulnerable to the impacts of natural disasters. Examples of projects aimed at disaster risk reduction include conducting risk assessments in urban planning, rural development projects and the design of housing.

52. Adaptation measures to climate change need to include an assessment of the areas most at risk and the particularly vulnerable groups within the population. Normally, the most effective adaptation is to establish the necessary infrastructure that may prevent extreme weather events from becoming disasters. Most of the settlements at high risk of suffering the related consequences of extreme weather events can reduce the risk by improving building quality and providing infrastructure and services. It is clear that such measures may be constrained by a lack of funding and capacity.

53. Warning information must be communicated to all neighbourhoods at risk in order to allow dwellers to seek protection and to take risk reduction actions. Successful examples include efforts undertaken in Latin America, where Government provision of early warning and support for immediate pre-disaster action has contributed towards limiting damages. In Cuba, in 2004, hundreds of thousands of people were evacuated as Hurricane Charley approached, and international press reports suggested that although over \$1 billion worth of damage had been caused, including 70,000 houses damaged, only four or five people had died. Various measures had been taken in Central America, partly in response to the devastation caused by Hurricane Mitch in 1998, which had affected over 1.2 million people.<sup>43</sup> For instance, in Nicaragua, in 2000, the Government created the National System of Prevention, Mitigation and Attention to Disasters that integrates different Government levels, social actors and municipal and regional committees for risk prevention and mitigation, with a clear focus on risk management.

54. The human rights obligation to reduce disaster risks and vulnerabilities, for example, by setting up alarm and evacuation systems, has been addressed by the European Court of Human Rights. According to its decision in the case *Budayeva and Others v. Russia*,<sup>44</sup> if a disaster is foreseeable and the State is able to prevent ensuing threats to life and property, it has to take appropriate action in conformity with its human rights obligations under the right-to-life and/or the protection of privacy and property.<sup>45</sup>

## 2. Resettlement

55. People may be temporarily displaced for short periods of time due to climate change-related disasters, such as hurricanes, storms and floods, and be able to return to their original homes once the event ends. In such cases, temporary relocation must last only as long as absolutely necessary and all displaced persons should have the right to return to their homes without discrimination.

56. All options must be evaluated before proceeding with resettlement plans. States may designate a high-risk zone and prohibit the return to that area only “if the

---

<sup>43</sup> Caroline Moser and David Satterthwaite, Human Settlement Discussion Paper Series, Theme: Climate Change and Cities — 3, p. 22.

<sup>44</sup> *Budayeva and Others v. Russia*, European Court of Human Rights, No. 15339/02.

<sup>45</sup> The Court referred to obligations under the right to life and property, but clearly the same argument would apply to the right to adequate housing.

area of return is indeed an area with high and persistent risks for life or security, the remaining resources are inadequate for survival of returnees, the enjoyment of basic human rights cannot be guaranteed, all other available adaptation measures are exhausted, and the situation in the area of return can no longer be alleviated by protective measures".<sup>46</sup> Of particular concern are some Government policies, adopted in the context of post-disaster situations, which did not allow affected low-income persons to return to their original areas, which were then converted into areas for higher-income residential, commercial or industrial use. One example of this is the post-tsunami coastal buffer zone established in some countries, forcing the relocation of villages, disrupting livelihoods and generating social tensions, while tourist businesses expanded their operations into the "vacant" land areas. A comparably large coastal zone, wherein all rebuilding was to be banned, was also proposed for parts of other countries after the tsunami.<sup>17</sup>

57. The affected population should be consulted and fully involved during any process of relocation and resettlement. Permanent relocation should never result in homelessness. Alternative accommodation (or the necessary subsidy or cash payments) should be provided, as required by international human rights standards, to those who would not be otherwise able to access adequate housing. The criteria recognized for adequacy of housing also apply in those circumstances and include: legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility for disadvantaged groups, access to employment options, health-care services, schools, childcare centres and other social facilities, whether in rural or urban areas and culturally adequate housing.<sup>47</sup> Relocation areas must also be safe from natural disasters. Therefore an evaluation of the area should be undertaken in consultation with the affected population.

58. The alternative sites offered to the affected population must be adequate and not be too far from their income-earning opportunities. This will avoid dependence on the use of long-distance transport for work, which is essential to prevent adaptation measures resulting in an increase in greenhouse gas emissions and, thus, undermine mitigation.

59. In the context of resettlement, particular consideration should be given to the needs of women. Women generally assume the responsibility for child and domestic care, such as getting food, fuel and water, which can become more onerous in resettlements situations. They also encounter a number of problems related to lack of tenure and property rights and they are frequently ignored in the process of reconstruction and rebuilding of livelihoods.<sup>48</sup>

60. In the rebuilding process, poorer groups have more limited capacity to adapt. They normally lack insurance protection and receive less support from the State. They must be involved in all discussions concerning reconstruction processes and must be supported directly if conditions cannot be created to ensure that they can

---

<sup>46</sup> Office of the United Nations High Commissioner for Refugees, "Forced displacement in the context of climate change: challenges for States under international law", 2009.

<sup>47</sup> General Comment No. 4: The right to adequate housing (art. 11 (1)) of the Covenant, adopted by the Committee on Economic, Social and Cultural Rights in 1991.

<sup>48</sup> Caroline Moser and David Satterthwaite, Human Settlement Discussion Paper Series, Theme: Climate Change and Cities — 3, p. 12.

obtain, on their own, appropriate access to adequate housing and livelihood. Local skills should also be taken into consideration and enhanced.

61. The resettlement process should be seen as an opportunity to address short and longer term development issues, contributing to poverty reduction. The consequences of extreme weather disasters are also a failure of development, rather than simply natural events. Climate-change adaptation measures will also affect traditional urban infrastructure concerns such as housing. It also recognizes the social dimensions of the adaptation policies and the need to involve all actors, including individuals, households and communities, in defining and implementing the policies.

### **3. Participation and empowerment**

62. The people who are most vulnerable to the impacts of floods, droughts and storms are frequently the same people who already live in poverty and lack guarantees for the full realization of their rights. The measures undertaken by States to respond to climate change also, in some cases, present particular challenges for the full realization of their rights.

63. The informed participation of people in the development of national — and local-level responses aimed at adapting to the effects of climate change requires efforts to build the capacity of national populations to take part in such decisions through public awareness and mobilization. Once such capacity is in place, communities and civil society organizations will be more empowered to monitor and participate in the development of national and local adaptation strategies and ensure that they benefit those who most require the support. This approach will ensure that the people whose rights are most directly threatened by the impacts of climate change, as well as by the responses undertaken, become central authors in the implementation of urban planning initiatives and projects aimed at the development of new infrastructures. The participation of the beneficiaries of adaptation projects in the design and implementation of the projects, and the leading role of local governments in such projects, will therefore increase the likelihood of the governments being more responsive to human rights vulnerabilities and of being better positioned to effectively strengthen the resilience of communities, homes and infrastructure systems.

64. In the undertaking of adaptation projects, human rights standards and obligations would therefore call for the consultation and participation of concerned communities, gender-sensitive project designs, the recognition of local knowledge for special attention to be paid to marginalized groups and those who face discrimination and exclusion. These initiatives must, furthermore, be culturally adequate<sup>49</sup> and avoid contributing to the violation of other human rights. Care should also be taken in such measures to anticipate the potential for the projects to exacerbate the marginalization of different groups or coincide with potential conflict triggers. In that context, adaptation assistance should be made accessible to both rural and city dwellers, and across all similarly affected geographical regions of a

---

<sup>49</sup> An example is the case of Saint-Louis, Senegal, following recurrent inundations of the cemetery, the local government decided to construct protection walls instead of moving its location, due to cultural sensitivity. Questionnaire sent by Habitat International Coalition on climate change and the right to an adequate housing, available from [www.hic-al.org](http://www.hic-al.org). Information provided by Environmental Development Action in the Third World.

country. When possible, the projects should offer broad benefits across population groups. In other cases, adaptation assistance must be tailored to ensure that the benefits reach the people who are often most vulnerable to discrimination, including indigenous peoples and ethnic minorities, women and people with disabilities.<sup>50</sup>

## V. Conclusions and recommendations

65. **Climate change-related impacts have a range of implications for the effective implementation of the human right to adequate housing. The implications will be severe, particularly for low-income groups and those living in countries that lack the resources, infrastructure and capacity necessary to protect their populations.**

66. **The Special Rapporteur believes that urban areas are key players both in the generation of greenhouse gases and in strategies to reduce emissions, especially in decreasing dependence upon carbon-based fuels. Moreover, there is a need for urgent action to reduce the vulnerability of urban dwellers to the impact of climate change.**

67. **The most vulnerable to the impacts of intense storms, floods and droughts are frequently those who already live in poverty and whose human rights are less well protected. Hundreds of millions of urban dwellers live in slums, which are usually located in the most hazardous sites within cities, at risk from the direct and indirect impacts of climate change. Slums lack the basic infrastructure and services necessary to protect their dwellers from environmental disasters.**

68. **The effects of climate change are disproportionately distributed. The world's poorest people and nations, who have generally contributed the least to man-made greenhouse emissions, are those most affected by the impact of global warming.**

69. **The challenges posed by climate change — and the range of issues raised in the present report — will require further analysis and the Special Rapporteur will continue to monitor the situation. However, she would like to offer some preliminary recommendations for the consideration of the General Assembly.**

70. **States must comply with their commitments to the global atmosphere by reducing their harmful warming emissions. Industrialized countries must lead in reducing emissions levels and support developing countries in pursuing low-carbon development paths.**

71. **States have an obligation to employ measures to mitigate climate change and adapt to its inevitable impacts. At the same time, States must uphold their human rights obligations in all areas of action, including with regard to mitigation and adaptation projects and measures. They should also ensure that measures intended to protect people from the effects of climate change do not result in the unintended violation of other human rights.**

---

<sup>50</sup> German Watch, Brot für die Welt, and Diakonie, *Climate Change, Food Security and the Right to Adequate Food* (Stuttgart, October 2008).

72. An effective response to address the effects of climate change requires international cooperation. Some affected regions already face extreme levels of vulnerability and are not able to confront climate change impacts within their existing resources; so they therefore depend upon international support for adaptation.

73. When planning and implementing mitigation and adaptation projects, the consultation and participation of concerned communities in decision-making must be ensured; projects must be gender-sensitive, and local knowledge recognized. Adaptation projects should not rely on technologies not adapted to local environments.

74. Climate change adaptation efforts should give priority to the needs of the most vulnerable and start by identifying the measures to be introduced for their protection. This includes installing protective infrastructure, supporting buildings of better quality, through technical support and appropriate finance systems, and assisting those who live in the most dangerous sites to move to safer sites. In this context, access to affordable and well-located land for the urban poor is essential in order to avoid further unplanned settlement expansions or settling the poor far away from income-earning or human development opportunities.

75. The Special Rapporteur supports resettlement plans only as an alternative to be used in extreme circumstances where protection of residents cannot be guaranteed in areas proven to be unsafe. During all relocation stages, human rights standards concerning adequacy of housing must be respected and decision-making must involve all affected groups.

76. The human consequences of extreme-weather disasters reflect a failure of development policies and adaptation measures rather than only natural events. Therefore, reconstruction processes should be seen as an opportunity to address short- and longer-term development problems, contributing to poverty reduction and strengthening the effective enjoyment of human rights.

77. The Special Rapporteur considers that climate change represents an opportunity for reflection and debate on how to improve housing systems, policies and programmes so as to ensure adequate housing for all. She intends to continue exploring considerations on the right to adequate housing, which should be integrated in all efforts to deal with large-scale population resettlement and in prevention and reconstruction efforts in the context of natural disasters. She would welcome inputs and discussion concerning the future work of the mandate in those areas.

**Human Rights Council****Fifty-second session**

27 February–31 March 2023

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Towards a just transformation: climate crisis and the right to  
housing****Report of the Special Rapporteur on adequate housing as a component  
of the right to an adequate standard of living, and on the right to non-  
discrimination in this context, Balakrishnan Rajagopal***Summary*

The climate crisis is severely threatening the enjoyment of the right to adequate housing around the world. Climate mitigation and adaptation policies and misguided responses to climate events may sometimes undermine the right to adequate housing. Marginalized groups and their homes are at particular risk and exposed to the impact of climate change and therefore need to be involved in climate responses at all levels.

Housing itself makes a significant contribution to climate change, through housing construction, urban sprawl, soil sealing, energy consumption, water use, pollutants, deforestation, desertification and loss of biodiversity. A timely and well-devised intervention in the housing sector is therefore necessary. This includes stepping up efforts to improve energy efficiency, taking measures to electrify households, incorporating sustainability in building codes and standards, using low-carbon construction methods and materials, making more equitable use of the existing housing stock and integrating climate change and climate resilience into urban planning.

It is imperative to achieve a just transition towards rights-compliant, climate-resilient and carbon-neutral housing. International cooperation, financial support and significant investments are necessary to support this transition, including the creation of a fund to support climate mitigation and adaptation measures in the housing sector for those developing countries that are particularly vulnerable to the adverse effects of climate change. A just transition must also entail international remedies and compensation for climate-induced loss and damage in the area of housing.

The costs of the transition in the housing sector must be shared fairly among and within countries, and among public authorities, taxpayers, homeowners and renters or other affected groups, to ensure that nobody is left behind.



---

## Contents

	<i>Page</i>
I. Introduction .....	3
II. International law framework: the right to adequate housing in the context of climate change .....	3
A. Obligations in relation to the right to adequate housing .....	3
B. Obligations under international legal frameworks aimed at addressing the climate crisis .....	4
III. Impact of the climate crisis on the right to adequate housing .....	5
A. Extreme weather events .....	5
B. Slow-onset events .....	6
C. Adverse impacts of climate policies and responses on the right to housing .....	7
D. Marginalized groups and persons .....	9
IV. Housing as a contributor to the climate crisis .....	10
A. Energy consumption for cooking, heating, cooling and lighting .....	11
B. Construction and construction materials .....	11
C. Increase in average per capita living space .....	11
D. Emission of pollutants .....	12
E. Urban sprawl, deforestation and soil sealing .....	12
V. Towards just, human rights-based, climate-resilient and carbon-neutral housing for all .....	12
VI. Conclusions and recommendations .....	17

## I. Introduction

1. The climate crisis is also a housing crisis. Already, global warming of 1.1°C has resulted in increased frequency and severity of extreme weather events, as well as slow-onset processes, both severely threatening the realization of the right to housing around the world. These impacts are disproportionately affecting people in countries that are particularly vulnerable to the adverse effects of climate change and people in vulnerable situations, deepening existing inequalities and having a disproportionate impact on those who contribute least to climate change.

2. The rapid developments and improved knowledge in the area of climate impacts and causes prompted the Special Rapporteur to develop the present report, in which he builds upon the work of the previous Special Rapporteurs, in particular the previous report on climate change and the right to adequate housing.<sup>1</sup> Housing – through the construction sector and energy spending for buildings – makes a significant contribution to climate change, amounting in 2020 to 37 per cent of energy-related carbon dioxide emissions.<sup>2</sup> The Special Rapporteur makes the case for a timely and well-designed intervention in the housing sector and explains what would constitute a human rights-based approach to a just transition towards climate-resilient and carbon-neutral housing. Climate change requires unprecedented levels of investment in mitigation and adaptation, as well as in the reconstruction of housing following extreme events, if the universal standard of adequate housing is to be achieved and maintained.

3. To inform the report, the Special Rapporteur held a series of consultations with States, international organizations, national human rights institutions, civil society organizations, actors involved in the financing and building of housing, and academic experts. He also put out a call for input, and received approximately 70 responses and submissions to the questionnaire.<sup>3</sup>

## II. International law framework: the right to adequate housing in the context of climate change

### A. Obligations in relation to the right to adequate housing

4. The right to adequate housing, enshrined in article 25 of the Universal Declaration of Human Rights and article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, is well established under international law. What constitutes “adequate” housing is determined in part by social, economic, cultural, climatic, ecological and other factors. Regardless of any particular context, however, it includes the following minimum criteria: security of tenure, availability of services, affordability, habitability, accessibility, appropriate location and cultural adequacy.<sup>4</sup> These elements remain ever-so relevant in the light of the novel challenges that the climate crisis poses to achieving the right to housing, as well as the mitigation and adaptation efforts being undertaken in response to the crisis.

5. In the view of the Special Rapporteur, the climate crisis necessitates the recognition of an additional element of adequate housing: sustainability. Housing should not be realized endlessly, in a way that destroys the planet; the climate crisis is already undermining, for many persons, the right to live “somewhere in security, peace and dignity”.<sup>5</sup> States need to build resilience and foster climate mitigation of and adaptation to climate change<sup>6</sup> and reduce

<sup>1</sup> A/64/255.

<sup>2</sup> United Nations Environment Programme (UNEP), *2021 Global Status Report for Buildings and Construction: Towards a Zero-Emissions, Efficient and Resilient Buildings and Construction Sector* (Nairobi, 2021), p. 15.

<sup>3</sup> See <https://www.ohchr.org/en/calls-for-input/2022/call-input-right-adequate-housing-and-climate-change>.

<sup>4</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 8.

<sup>5</sup> *Ibid.*, para. 7.

<sup>6</sup> General Assembly resolution 71/256.

the carbon footprint of housing itself so that the right to adequate housing can be enjoyed by all, including by future generations. The right to adequate housing needs to be interpreted in consonance with the right to a clean, healthy and sustainable environment, recently recognized by the General Assembly, in its resolution 76/300. Adding “sustainability” as an element of what constitutes housing adequacy would underscore the interdependence of all human rights, given that housing is an enabling right crucial for the enjoyment of many other human rights in the context of climate change.

6. States have the obligation to take steps to the maximum of their available resources towards the progressive and full realization of the right to adequate housing for all, giving due priority to those groups living in unfavourable conditions.<sup>7</sup> The obligation encompasses taking measures to prevent foreseeable harm by climate change, and mobilizing the maximum available resources in an effort to do so. The full realization will almost invariably require the adoption of a national housing strategy, which should reflect extensive genuine consultation with, and participation by, all of those affected, including those living in situations of homelessness, those who are inadequately housed and their representatives.<sup>8</sup>

7. States have an obligation to provide an effective remedy in cases of violations of the right to adequate housing, including violations deriving from their failure to adopt adaptation measures and to avoid and reduce the effects of climate change. Effective remedies include making full reparations to those whose rights are violated and taking steps to prevent future violations.<sup>9</sup>

8. Under articles 2 and 11 (1) of the International Covenant on Economic, Social and Cultural Rights, States parties have an obligation to seek and provide international cooperation and assistance in order to ensure the realization of the right to adequate housing.<sup>10</sup> The Committee on Economic, Social and Cultural Rights has emphasized that States parties, both recipients and providers of assistance, should ensure that a substantial proportion of financing is devoted to creating conditions leading to a greater number of persons being adequately housed.<sup>11</sup> Five of the treaty bodies of the United Nations have jointly underscored that high-income States should support adaptation and mitigation efforts in developing countries, not only by financing initiatives, but also by facilitating the transfer of green technologies.<sup>12</sup> The Special Rapporteur would like to stress that States also have extraterritorial obligations to avoid conduct that would create a foreseeable risk of impairing the enjoyment of the right to adequate housing in other States.<sup>13</sup>

9. Finally, States should adopt legislation to prevent climate harms and violations of the right to housing by corporations or investors that are domiciled in their territory or jurisdiction, irrespective of whether the harm is caused within their jurisdiction or abroad. The Guiding Principles on Business and Human Rights provide that businesses have human rights due diligence obligations (principle 17) and that individuals and communities should have access to appropriate and effective remedies (principle 25).

## **B. Obligations under international legal frameworks aimed at addressing the climate crisis**

10. States have agreed under the United Nations Framework Convention on Climate Change to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system (art. 2). The Paris Agreement aims to limit warming to “well below” 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels. In the Paris Agreement, States parties acknowledge that, when taking action to address climate

<sup>7</sup> See International Covenant on Economic, Social and Cultural Rights, and Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 11.

<sup>8</sup> Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991), para. 12.

<sup>9</sup> See Human Rights Committee, *Billy et al. v. Australia* (CCPR/C/135/D/3624/2019).

<sup>10</sup> International Covenant on Economic, Social and Cultural Rights, arts. 2 and 11 (1).

<sup>11</sup> General comment No. 4 (1991), para. 19.

<sup>12</sup> HRI/2019/1, para. 17.

<sup>13</sup> A/HRC/43/43, para. 76.

change, they should respect, promote and consider their respective obligations on human rights. States parties are expected to prepare, communicate and maintain successive nationally determined contributions – domestic mitigation and adaptation measures – they intend to achieve. It is expected that the contributions will reflect the highest possible ambition of States parties and take into account their common but differentiated responsibilities. States parties are also expected to engage in adaptation planning and implementation, including by formulating and implementing national adaptation plans.<sup>14</sup>

### III. Impact of the climate crisis on the right to adequate housing

11. The climate crisis is already having a severe impact on all aspects of the enjoyment of the right to housing around the world. In addition to the damage and destruction caused by more frequent extreme-weather events, the right to adequate housing is undermined by slow-onset events, such as desertification and rising sea levels, which threaten the habitability of housing and human settlements. More and more, climate change is forcing people to migrate from rural areas due to loss of livelihoods and fresh water for agriculture and drinking. They move to cities, which are often overburdened and unable to ensure the provision of adequate housing for all. Many persons are thus forced to establish their homes in informal settlements, where many are living in inadequate or even inhumane conditions, often with a blatant lack of any security of tenure. Of the 40.4 million persons newly displaced in 2020, 30 million were displaced owing to weather-related events, ranging from droughts to cyclones – far more than the number of those displaced by conflict.<sup>15</sup> This figure is only predicted to increase.

#### A. Extreme weather events

12. Beyond the loss of human life, the destruction that climate-induced extreme weather events, including cyclones, typhoons, flooding and wildfires, wreak on housing has become painfully clear in recent years, as evidenced in many of the submissions received by the Special Rapporteur.

##### 1. Winds and floods

13. Climate-induced storms, changing monsoon patterns and other weather and weather-related events, including the increased rate of glacier melting, have caused damage to and destruction of housing at catastrophic levels. Weather events have become more frequent and intense in recent years, leaving no world region safe. Torrential monsoon rains in Pakistan triggered the most severe flooding in the country's recent history, leaving one third of the country under water, damaging at least 1.5 million houses in Sindh Province alone.<sup>16</sup> In New Zealand, severe floods were experienced in July 2021 and February 2022 on the west coast of South Island; the floods in July required the evacuation of 2,000 people and damaged 563 homes.<sup>17</sup> Brazil was hit several times by intense rains, landslides and storms in 2021 and 2022 that resulted in over 134,000 people being displaced.<sup>18</sup> In 2021, floods after heavy rainfalls caused serious damage in parts of Belgium, Germany and the Netherlands, causing estimated damages of €13 billion to residential properties in Germany<sup>19</sup> and €200 million in damages in the Netherlands.<sup>20</sup> During the 2020 rainy season, thousands of houses collapsed in the Sudan, leaving millions of people homeless.<sup>21</sup> Hurricane Harvey, which hit Houston and

<sup>14</sup> Paris Agreement, preamble and arts. 2 (1) (a), 4 (2) and (3), 7 (9) and 11.

<sup>15</sup> See <https://www.internal-displacement.org/global-report/grid2021/>.

<sup>16</sup> See <https://www.ohchr.org/en/press-releases/2022/09/pakistan-un-experts-call-more-international-solidarity-flood-victims>.

<sup>17</sup> New Zealand submission.

<sup>18</sup> Facts and Norms Institute submission.

<sup>19</sup> Witten Tenants Union submission.

<sup>20</sup> College voor de Rechten van de Mens (Netherlands Institute for Human Rights) submission.

<sup>21</sup> Adequate Housing Organization Sudan submission.

Harris County in Texas, United States of America, damaged more than 300,000 homes, including 25 per cent of the affordable housing stock in Houston.<sup>22</sup>

## 2. Extreme heat and cold

14. The increased frequency and severity of heatwaves<sup>23</sup> is a “silent killer” that leads to the death of thousands in their homes, when homes lack adequate insulation or cooling.<sup>24</sup> Extreme heat poses specific risks to older persons, persons with disabilities and children and worsens neonatal health outcomes.<sup>25</sup>

15. Heatwaves also produce conditions conducive to wildfires, which can cause serious and widescale damage to housing, especially in rural areas. In Australia, the 2019/20 “Black Summer” fires destroyed more than 3,000 homes.<sup>26</sup> In 2017, wildfires in Portugal destroyed almost 2,000 dwellings.<sup>27</sup>

16. While climate change will lower the risk of snow and ice, and overall need for heating in traditionally colder regions, it may actually increase the risk and intensity of sporadic extreme cold due to disruptions it causes to traditional weather patterns such as the polar vortex.<sup>28</sup> This was the case, for example, with the extreme cold that hit Texas in 2021. Extreme cold can be just as deadly as extreme heat, and also poses threats to infrastructure, including road, electrical and water systems. Low-income renters, older persons and persons with disabilities are the most vulnerable, and the most likely to be living in low-quality housing stock, with inadequate insulation or appliances. Combined with rising energy prices, extreme weather conditions have implications for the habitability and affordability of housing and further entrench the energy poverty many people face today.<sup>29</sup>

## B. Slow-onset events

17. Many of the known slow-onset events – sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity, and desertification<sup>30</sup> – have an impact on the enjoyment of adequate housing, particularly with regard to its habitability and location. Other biophysical changes, including to ground and soil, as well as to ecosystem functioning, have flow-on effects that have an impact on housing.

18. Perhaps most notably, rising sea levels will result in partial or total inundation of some coastal areas with the corresponding loss of property, damage to infrastructure and disruption of basic services.<sup>31</sup> Globally, it is projected that, in the midterm (2040–2060), 1 billion people will be at risk from coast-specific climate hazards in low-lying cities and settlements and on

<sup>22</sup> Earthjustice submission.

<sup>23</sup> Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis – Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2021).

<sup>24</sup> Office for the Coordination of Humanitarian Affairs, International Federation of Red Cross and Red Crescent Societies and the Red Cross Red Crescent Climate Centre, *Extreme Heat: Preparing for the Heatwaves of the Future* (2022).

<sup>25</sup> A/77/226, para. 48. See also <https://www.hrw.org/news/2022/08/12/europe-heatwaves-disastrous-older-people-people-disabilities>.

<sup>26</sup> Australia, Australian National Audit Office, *Administration of the National Bushfire Recovery Agency* (2021). Available at [https://www.anao.gov.au/sites/default/files/Auditor-General\\_Report\\_2020-21\\_46.pdf](https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2020-21_46.pdf).

<sup>27</sup> Portugal submission.

<sup>28</sup> Judah Cohen and others, “Linking Arctic variability change with extreme winter weather in the United States”, *Science*, vol. 373, No. 6559 (September 2021).

<sup>29</sup> Amulya K.N. Reddy, “Energy and social issues”, in United Nations Development Programme (UNDP), Department of Economic and Social Affairs and World Energy Council, *Energy and The Challenge of Sustainability* (UNDP, 2000).

<sup>30</sup> See [https://unfccc.int/files/adaptation/application/pdf/soe\\_synopsis.pdf](https://unfccc.int/files/adaptation/application/pdf/soe_synopsis.pdf).

<sup>31</sup> See generally Intergovernmental Panel on Climate Change, *Special Report on the Ocean and Cryosphere in a Changing Climate* (2019), chap. 4.

small islands.<sup>32</sup> Small island developing States are especially vulnerable: in Pacific island countries, 57 per cent of built infrastructure is located in risk-prone coastal areas.<sup>33</sup> In relation to Kiribati, the Human Rights Committee observed that “given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized”.<sup>34</sup> The Committee has noted that Indigenous Peoples in the Torres Strait region face the prospect of having to abandon their homes, due to erosion and flooding on the islands, and lack of adequate adaptation measures, constituting a violation of their right to private, family and home life and their cultural rights.<sup>35</sup>

19. Climate change will exacerbate several desertification processes, compounding other factors that are causing land degradation and desertification. Approximately 9 per cent of drylands, which cover about 46 per cent of the global land area and are home to 3 billion people, have been classified as desertification hotspots, affecting about 500 million people, particularly in South and East Asia, the Sahara region, including North Africa, and the Middle East. The combined pressures of desertification, climate variability and climate change are contributing to poverty, food insecurity and increased disease burden, rendering housing location inadequate and thereby forcing people to migrate.<sup>36</sup> Climate change is also expected to further exacerbate salinization, which is already one of the major global environmental and socioeconomic issues, with drylands in southern and western Australia, Mexico, South Africa, south-west United States and South America expected to be salinization hotspots,<sup>37</sup> which will further drive climate-induced migration.

### C. Adverse impacts of climate policies and responses on the right to housing

20. Victims of climate-induced disasters often experience considerable delays in the reconstruction of housing, and are thus forced to live in temporary shelters for extended periods of time. In some contexts, rehabilitation is becoming slower as climate-induced disasters become more frequent. In Fiji, some rural residents are still living in tents more than five years after a tropical cyclone.<sup>38</sup> Nearly 10 years post-Hurricane Sandy, New York City still has not finished fixing the \$3 billion in damage caused to public housing by the storm, and does not expect to until December 2023, due to delays in obtaining disaster relief funding.<sup>39</sup> There are vast inequalities between the funds countries can mobilize for reconstruction after extreme-weather events. Post-disaster government financial support, even in developed countries, is often inadequate and does not compensate all losses. In 2020, less than half of all disaster-related losses were insured. Insurance coverage is concentrated in developed countries, with coverage in most developing and emerging economies at well below 10 per cent.<sup>40</sup> Climate change is causing an insurability crisis, with insurers raising premiums or, in some cases, refusing to insure properties in high-risk areas.<sup>41</sup>

21. Contrary to the approach of building back better, too often post-disaster reconstruction can favour the interests of elites and promote privatization or land grabs. In the United States, following hurricanes, landlords have evicted tenants under the guise of remodelling and

<sup>32</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability – Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press), “Summary for policymakers”, para. B.4.5.

<sup>33</sup> Intergovernmental Panel on Climate Change, *Special Report on the Ocean and Cryosphere*, chap. 4.

<sup>34</sup> *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016), para. 9.11.

<sup>35</sup> *Billy et al. v. Australia*.

<sup>36</sup> Intergovernmental Panel on Climate Change, *Special Report on Climate Change and Land*, chap. 3.

<sup>37</sup> Amirhossein Hassini, Adisa Azapagic and Nima Shokri, “Global predictions of primary soil salinization under changing climate in the 21st century”, *Nature Communications*, vol. 12 (2021).

<sup>38</sup> Will Ventures submission.

<sup>39</sup> Earthjustice submission.

<sup>40</sup> United Nations Office for Disaster Risk Reduction, *Global Assessment Report on Disaster Risk Reduction 2022*, pp. 32–34.

<sup>41</sup> New Zealand and Federal Housing Advocate of Canada submissions.

rebuilding, and subsequently increased rents to attract wealthier tenants once the reconstruction work was over.<sup>42</sup> On the islands of Providencia and Santa Catalina, Colombia, the reconstruction efforts were delayed and ultimately culturally inadequate, since the aspirations and recommendations of the Raizal people were not taken into account and other interests and visions prevailed.<sup>43</sup>

22. The failure to take timely and adequate adaptation measures, as is often the case when the risks are faced by marginalized groups and communities, can constitute a violation of the right to housing. However, if such actions are not designed from a rights-compliant, holistic and long-term perspective, they can increase the risk of adverse climate-related impacts, lock in, increase or shift vulnerabilities, or entrench existing inequalities<sup>44</sup> – also referred to as maladaptation. There are concerns that the measures taken by several States have resulted in unnecessary displacement and forced evictions without proper consultation, participation or procedural fairness for those affected.<sup>45</sup> In 2021, close to 100,000 people who lived along two narrow water courses in Karachi, Pakistan faced forced evictions and demolition of their homes as part of a project to reduce climate-induced flood risks.<sup>46</sup>

23. The term “climate gentrification” refers to how factors such as geographical exposure, engineered resilience or even public investments in resilience or energy efficiency might affect the marketability and valuation of property, and therefore decrease housing affordability.<sup>47</sup> Due to its elevation, which provides relative protection from flooding and sea-level rise, Little Haiti, a neighbourhood of Miami that is home to approximately 30,000 residents, about 75 per cent of whom are Black or African American and 47 per cent of whom live in poverty, is one of the fastest gentrifying neighbourhoods in the south of Florida.<sup>48</sup>

24. There are ongoing policy debates about “managed retreat” – relocation or resettlement as a form of climate adaptation.<sup>49</sup> Several countries are already engaged in active relocation measures to assist those who are threatened by climate displacement. Resettlement and relocation should be mandated only when strictly necessitated by the unsustainability of maintaining human settlements in at-risk zones. Moreover, such drastic actions should be carefully planned, with full consultation with and participation of affected and receiving communities, to avoid negative impacts and resulting human rights violations.<sup>50</sup> However, where residents initiate such a move, States should support and enable those processes to ensure that the relocation promotes climate resilience and that the right to housing is protected throughout. After Hurricane Dorian hit the Bahamas in September 2019, the authorities bulldozed the remnants of informal settlements, arguing that they had been built on high-risk grounds. The residents, mainly persons belonging to the Haitian minority or migrants, did not even have the chance to save their belongings, and their efforts to rebuild have been threatened with further demolitions.<sup>51</sup>

25. Climate mitigation measures must not result in “green grabbing”, described as the appropriation of land stimulated by global policies of climate change mitigation.<sup>52</sup> Projects

<sup>42</sup> Earthjustice submission.

<sup>43</sup> Communication COL 11/2021, which will be available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>44</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, “Summary for policymakers”, para. C.4.

<sup>45</sup> International Alliance of Inhabitants submissions, containing recommendations emanating from the consideration by the International Tribunal on Evictions on evictions due to climate change in various States. See also [A/73/310/Rev.1](#), para. 97.

<sup>46</sup> Communication PAK 6/2021, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26501>.

<sup>47</sup> Jesse M. Keenan, Thomas Hill and Anurag Gumber, “Climate gentrification: from theory to empiricism in Miami-Dade County, Florida”, *Environmental Research Letters*, vol. 13 (2018).

<sup>48</sup> Earthjustice submission.

<sup>49</sup> [A/77/189](#).

<sup>50</sup> Commission on Human Rights of the Philippines submission. See also [A/HRC/43/43](#), para. 72, [A/64/255](#), para. 74 ff; and [A/73/310/Rev.1](#).

<sup>51</sup> See [BHS 2/2021](#). Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26398>.

<sup>52</sup> See <https://www.uni-bielefeld.de/einrichtungen/cias/publikationen/wiki/g/green-grabbing.xml>.

related to, for example, mega-dams, cultivation of biofuel feedstock, and lithium mining for electric batteries and solar panels have displaced local communities, leading to a loss of housing, too often without adequate prior consultation, remedies or compensation. The unsustainability of carbon removals and “offsets” as a climate mitigation approach is highlighted by the fact that the projected biological carbon removal pledges in nationally determined contributions would require almost 1.2 billion hectares of land, equivalent to current global cropland.<sup>53</sup> Those measures are no substitute for preventing emissions from fossil fuels and may even reinforce or perpetuate the marginalization of and inequities faced by ethnic minorities and Indigenous Peoples.<sup>54</sup> Projects implemented under climate mitigation programmes, such as Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+), have in many cases resulted in displacement of forest communities and severe restrictions on their livelihoods because of the lack of recognition of customary land tenure rights and the absence of communities’ participation in the design and implementation of such programmes.<sup>55</sup> In Thailand, forest communities have been criminalized as “destroyers of the forest” and forced eviction orders have been issued against them, without consultation and without provision of alternative land and housing, under forest conservation policies and legislation in the context of the Government’s climate change mitigation action.<sup>56</sup> In India, millions of people, mostly from forest-dwelling peoples, are at risk of forced evictions because of nature conservation claims in a context marked by the weak implementation of the Forest Rights Act.<sup>57</sup>

#### D. Marginalized groups and persons

26. People at risk of marginalization due to geography, poverty, age, gender, sex, disability, migration status, religion, race or cultural or ethnic background are most exposed to the impact of climate change on housing.<sup>58</sup> Persons experiencing homelessness often live in areas that are vulnerable to floods, hurricanes and cyclones, storm surges, mudslides, earthquakes and tsunamis,<sup>59</sup> and are the first to be affected if they cannot get to shelter. About 1 billion dwellers of informal settlements, including 350 million to 500 million children,<sup>60</sup> often living in conditions that constitute a pervasive violation of their right to adequate housing and other human rights,<sup>61</sup> are particularly vulnerable to climate impacts.<sup>62</sup>

27. Estimating that approximately 1 billion children – nearly half of the world’s children – live in countries that are at “extremely high risk” with regard to the impacts of climate change, the United Nations Children’s Fund (UNICEF) has documented that the climate crisis is also a combined housing and child’s rights crisis.<sup>63</sup> Being more likely to have insecure tenure and to be exposed to discrimination, and fearing harassment and violence in shelters, women and girls are also at particular risk during climate events. Similarly, lesbian, gay, bisexual, transgender, intersex and gender-diverse persons are disproportionately

<sup>53</sup> Kate Dooley and others, *The Land Gap Report 2022*.

<sup>54</sup> See [A/77/226](#).

<sup>55</sup> See [A/HRC/36/46](#), [E/C.19/2013/7](#) and Julia Dehm, *Reconsidering REDD+: Authority, Power and Law in the Green Economy* (Cambridge University Press, 2021).

<sup>56</sup> See THA 3/2022, which will be available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>57</sup> See IND 13/2019, available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24665>.

<sup>58</sup> See Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, “Summary for policymakers”; and Kimberley Thomas and others, “Explaining differentiated vulnerability to climate change: a social science review”, *WIREs Climate Change*, vol. 10, No. 2 (March 2019).

<sup>59</sup> A/HRC/43/43, para. 70.

<sup>60</sup> Habitat for Humanity, United Nations Human Settlements Programme (UN-Habitat), United Nations Children’s Fund (UNICEF). *Children, Cities and Housing: Rights and Priorities* (May 2022).

<sup>61</sup> See [A/73/310/Rev.1](#).

<sup>62</sup> UN-Habitat, *Pro-Poor Climate Action in Informal Settlements* (2018).

<sup>63</sup> UNICEF, *The Climate Crisis is a Child Rights Crisis: Introducing the Children’s Climate Risk Index* (2021).

exposed to inadequate housing and homelessness.<sup>64</sup> In the event of climate change-related emergencies and displacement they face more difficulties in reaching a safe environment and are thus at higher risk of gender-based violence and harassment.<sup>65</sup> Older persons and persons with disabilities have less capacity to move away from exposed areas and face additional barriers accessing shelter and safe spaces,<sup>66</sup> which can be compounded by ageism<sup>67</sup> and ableism. They are particularly vulnerable to extreme heat and cold, as are many persons with chronic diseases.

28. Racial and ethnic minorities,<sup>68</sup> migrants,<sup>69</sup> refugees and internally displaced persons<sup>70</sup> are more frequently segregated and confined to climate-vulnerable land and housing. In particular, undocumented migrants are at high risk of being denied access to emergency shelters, and are likely to avoid seeking access to safe spaces or emergency support due to fear of detention and deportation.

29. Persons in detention, including immigration detention, are extremely vulnerable to climate change and climate-related events. In one stark example, during an evacuation, persons in detention were left behind to fend for themselves, neck-deep in flood waters.<sup>71</sup> Indigenous Peoples<sup>72</sup> and peasants often live on lands and depend on ecosystems that are heavily exposed to climate impacts. They are also at greater risk of eviction and displacement owing to climate mitigation and environment conservation programmes, such as REDD+, hydroelectric or large wind-energy projects or biofuel plantations.<sup>73</sup>

30. Marginalized groups and persons are often left out of climate adaptation actions, more likely to be negatively affected by climate mitigation and (mal)adaptation, more vulnerable to climate events and less likely to benefit from relief and reconstruction. To minimize their exposure to risks, it is crucial that policies are tailored to their specific needs, that safeguards are operationalized, and that marginalized groups are consulted and can participate in decision-making, implementation, monitoring and evaluation at all levels of climate action.

31. The climate crisis has the potential to further entrench socio-spatial segregation, housing discrimination and housing exclusion if States fail to take targeted measures to prevent the climate crisis from spilling over into the housing crisis and vice versa. States need to tackle housing exclusion and discrimination to ensure that everyone can withstand the climate crisis and nobody is left behind. On the other hand, if the international community fails to address the climate crisis, that would trigger and entrench a housing and displacement crisis of global proportions that may potentially not be possible to control.

#### IV. Housing as a contributor to the climate crisis

32. All stages of housing construction, management and demolition have environmental impacts: these processes consume resources (land, water, energy and building materials) and produce greenhouse gas emissions. In 2020, the use and construction of buildings accounted for at least 37 per cent of energy-related carbon dioxide emissions.<sup>74</sup>

<sup>64</sup> International Lesbian, Gay, Bisexual, Trans, and Intersex Association of Asia (ILGA Asia) submission.

<sup>65</sup> See <https://www.ohchr.org/en/statements/2022/05/forcibly-displaced-lgbt-persons-face-major-challenges-search-safe-haven>.

<sup>66</sup> See [A/HRC/44/30](#). See also [A/72/128](#) paras. 30–32.

<sup>67</sup> See [A/HRC/47/46](#).

<sup>68</sup> Earthjustice, Habitat for Humanity International Nepal, and Women's Legal Centre (South Africa) submissions.

<sup>69</sup> [A/77/189](#), para. 34.

<sup>70</sup> See [A/75/207](#).

<sup>71</sup> See <https://www.aclu.org/other/prison-conditions-and-prisoner-abuse-after-katrina#:~:text=The%20prisoners%20spent%20days%20without,action%20lawsuit%20over%20prison%20conditions>.

<sup>72</sup> See [A/HRC/36/46](#).

<sup>73</sup> See [A/HRC/36/46](#) and [E/C.19/2013/7](#).

<sup>74</sup> UNEP, *2021 Global Status Report for Buildings and Construction*, p. 15.

## A. Energy consumption for cooking, heating, cooling and lighting

33. The housing sector is a key contributor to climate change primarily due to direct and indirect emissions related to heating, cooling and lighting and the running of appliances. In 2019, the carbon dioxide emissions from the operation of buildings increased to 10 gigatons of carbon dioxide, representing approximately 28 per cent of global energy-related carbon dioxide emissions. In developed countries, buildings consume over 70 per cent of electrical power generated and 40 per cent of primary energy, and are responsible for 40 per cent of carbon dioxide emissions from combustion.<sup>75</sup>

34. Energy-efficient homes are those that use less energy for heating and cooling and for running appliances. At present, approximately 75 per cent of the building stock in the European Union is energy inefficient according to current building standards.<sup>76</sup> There is growing global demand for appliances: the International Energy Agency expects that 650 million air conditioners will be added by 2030 and another 2 billion by 2050.<sup>77</sup> Heavy reliance on fossil fuel sources for energy needs, including for cooking, heating, cooling, lighting, water heating and the running of appliances, increases emissions, while also causing dangerous air pollution. In the United States, the majority of buildings rely on fossil fuels to power heating appliances such as water heaters and furnaces, with over two thirds of greenhouse gas emissions from residential and commercial sectors in the United States resulting from fossil fuel combustion.<sup>78</sup>

## B. Construction and construction materials

35. Every phase of the life cycle of construction materials – extraction or harvesting, manufacture, transport, construction and demolition – relies on energy and produces greenhouse gas emissions. In 2020, construction emissions were responsible for 10 per cent of total global energy-related carbon dioxide emissions.<sup>79</sup> Materials such as steel, cement bricks and non-certified wood have a large carbon footprint. Cement production is responsible for approximately 7 per cent of global greenhouse gas emissions and steel is responsible for approximately 7 to 9 per cent of such emissions. Reaching net-zero embodied carbon in buildings requires lowering the demand for materials, switching to low-carbon materials, maximizing energy efficiency in manufacturing, enabling the reuse and recycling of construction materials, and reevaluating traditional techniques and materials.<sup>80</sup>

## C. Increase in average per capita living space

36. The increase in average per capita living space is contributing to greenhouse gas emissions due to the additional land and materials needed for construction of housing, as well as additional energy needed for heating and cooling. Between 2015 and 2020, gross floor area of buildings increased almost 10 per cent, from 224 billion square metres to 246 billion square metres. The floor area of the global buildings sector is projected to double by 2060 (an increase of 230 billion square metres) with much of the increase expected to occur in Asia and Africa.<sup>81</sup> However, there are vast differences in average home sizes in different countries.

<sup>75</sup> Economic Commission for Europe (ECE), *#Housing2030: Effective Policies for Affordable Housing in the UNECE Region* (Geneva, 2021), p. 133.

<sup>76</sup> Faidra Filippidou and Juan Pablo Jiménez Navarro, *Achieving the Cost-Effective Energy Transformation of Europe's Buildings* (Publications Office of the European Union, Luxembourg, 2019).

<sup>77</sup> International Energy Agency, *Net Zero by 2050: A Roadmap for the Global Energy Sector* (2021), p. 141.

<sup>78</sup> Earthjustice submission.

<sup>79</sup> UNEP, *2021 Global Status Report for Buildings and Construction*, p. 41.

<sup>80</sup> Global Alliance for Buildings and Construction, UNEP and International Energy Agency, *GlobalABC Roadmap for Buildings and Construction 2020–2050* (Paris, 2020), p. 68.

<sup>81</sup> UNEP, *2021 Global Status Report for Buildings and Construction*, pp. 13 and 29.

37. The increase in floor area per capita is driven by the increase of the size of dwellings and a decrease in the size of households, especially in developed countries. In general, larger households tend to have lower per capita greenhouse gas emissions, due to the sharing of living space and resources. It is predicted that the average global household size will fall from 4.0 persons (1990) to 2.5–3.0 in 2030 and to 2.0–2.8 in 2050, with single-person households expected to become the most prevalent by 2030.<sup>82</sup> Studies have shown that changes in household size between 1995 and 2015 have caused approximately 11.3 gigatons of additional carbon dioxide equivalent.<sup>83</sup> The globalization and imposition of a western model of housing has been detrimental to the development of more localized housing solutions that are culturally and place appropriate.

#### **D. Emission of pollutants**

38. The waste produced by households is responsible for 5 per cent of global greenhouse gas emissions (methane, carbon dioxide and nitrous oxide). Currently, more than 50 per cent of collected waste is not properly managed, and openly burned or dumped at landfills in most developing countries.<sup>84</sup> Improvements in waste management services thus also hold a mitigation potential.

#### **E. Urban sprawl, deforestation and soil sealing**

39. Infrastructure development and urbanization are drivers of deforestation, conversion of ecosystems and land degradation. Since 1975, urban centres and surrounding suburbs have expanded by a factor of 2.5, with large regional variations. Urban expansion is causing landscape fragmentation and having an impact on forest resources and land use, while coastal development is leading to significant loss of mangrove forests.<sup>85</sup> The resulting soil sealing and lack of vegetation and the replacement of green areas with asphalt and concrete contributes to the urban heat island effect, which causes overall urban temperatures to rise.

40. Further, the growth of urban populations and urban sprawl has increased urban transportation demands, and the associated growth in motor vehicles has increased energy consumption and escalated emissions. Fragmented, isolated and low-density living environments are generally far more energy-intensive and promote a heavier reliance on fossil-fuelled transport, which can be reduced by planning more compact communities, where housing is in close proximity to education, employment and services.<sup>86</sup> Transport is a substantial and growing cause of global greenhouse gas emissions, accounting for 23 per cent of global energy-related carbon dioxide emissions in 2019. The majority of transport emissions are caused by road vehicles (70 per cent), followed by aviation (12 per cent), shipping (11 per cent) and rail (1 per cent).<sup>87</sup>

### **V. Towards just, human rights-based, climate-resilient and carbon-neutral housing for all**

41. Meeting the climate and human rights obligations discussed above requires, among others, immediate and substantial reductions in emissions from the global building and

<sup>82</sup> Diana Ivanova and Milena Büchs, “Implications of shrinking household sizes for meeting the 1.5°C climate targets”, *Ecological Economics*, vol. 202 (2022).

<sup>83</sup> Ibid.

<sup>84</sup> Meenu Gautam and Madhoolika Agrawal, “Greenhouse gas emissions from municipal solid waste management: a review of global scenario”, in *Carbon Footprint Case Studies: Municipal Solid Waste Management, Sustainable Road Transport and Carbon Sequestration*, Subramanian Senthilkannan Muthu ed. (Singapore, Springer, 2021).

<sup>85</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change*, chap. 7.

<sup>86</sup> ECE, *#Housing2030*, p. 139.

<sup>87</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change*, chap. 10.

construction sectors. It is possible to reach net-zero operational and embodied carbon emissions in buildings, with clear and ambitious policies to promote passive building design, material efficiency, low-carbon materials, efficient building envelope measures, highly efficient lighting and appliances and better waste management.<sup>88</sup> Concurrently, a dramatic increase in the global housing stock is needed in order to ensure adequate housing for all. In the present report, the Special Rapporteur identifies several pathways to achieving just, human rights-based, climate-resilient and carbon-neutral housing for all.

42. Realizing the right to housing in the context of climate change requires States to step up efforts to improve the energy efficiency of households. To reach net zero emissions by 2050, retrofit rates would need to increase to 2.5 per cent in developed countries (10 million dwellings) and 2 per cent in developing countries (20 million dwellings) annually.<sup>89</sup> While there has been considerable investment in the energy efficiency of buildings, most of the growth in this investment comes from a small number of European countries.<sup>90</sup> At present, energy inefficiency, combined with rising energy prices and demands, are creating financial stress for low-income households and contributing to energy poverty. Similarly, energy efficiency standards and retrofits can also negatively affect housing affordability, especially of rentals.<sup>91</sup> These risks need to be explicitly acknowledged, and programmes must be designed to include protections for renters and not undermine affordability and security of occupancy, and to proactively address energy poverty.<sup>92</sup> Rent control is essential to combat green gentrification. Higher costs resulting from building retrofits or green building requirements can also be prevented through tenant protection regulations, requiring the construction of affordable housing in mixed-use developments and by tying retrofit loans to future energy savings.<sup>93</sup> States should take care to prevent greenwashing in the real estate sector in the form of deceptive marketing targeting the growing demand for more “green” or sustainable homes.<sup>94</sup>

43. Measures to electrify households to transition away from fossil fuels or wood for cooking, heating water and temperature controls could significantly reduce the greenhouse gas emissions from the housing sector, alongside policies to promote the use of highly efficient and low-emissions lighting, appliances and equipment systems. In its net zero scenario, the International Energy Agency envisions almost eliminating gas, coal and oil heating, and high efficiency electric heat pumps becoming the primary technology for space heating, with bioenergy boilers, solar thermal systems, and district heating, low-carbon gas and hydrogen fuel cells all playing a role.<sup>95</sup> Given that 750 million people (1 in 10) still lack access to electricity, mostly in sub-Saharan Africa,<sup>96</sup> the electrification of households needs to be accompanied by investment in green energy, especially for Africa.

44. Two thirds of States have no mandatory building codes or standards for minimum energy performance or requirements for new buildings. Locally appropriate strategies for whole-life cycle assessment and the decarbonization of buildings and construction, which engage both the formal and informal sector, are needed, as is effective education about, and implementation and enforcement of, such strategies or codes. These could include optimization of the building envelope (the building’s outer elements, foundation, walls, roof,

<sup>88</sup> Global Alliance for Buildings and Construction, UNEP and International Energy Agency, *GlobalABC Roadmap*.

<sup>89</sup> International Energy Agency, *Net Zero by 2050*, p. 143.

<sup>90</sup> UNEP, *2021 Global Status Report for Buildings and Construction*, p. 12.

<sup>91</sup> European Federation of National Organisations Working with the Homeless, *Renovation: Staying on Top of the Wave – Avoiding Social Risks and Ensuring the Benefits* (2020); and Witten Tenants Union submission.

<sup>92</sup> ECE, *#Housing2030*, p. 139; and European Federation of National Organisations Working with the Homeless, *Renovation: Staying on Top of the Wave*.

<sup>93</sup> Institute for Human Rights and Business, *Better Building(s): Financing Human Rights-Based Decarbonisation in Europe’s Built Environment* (2021), p. 25.

<sup>94</sup> Farzana Quoquab, Rames Sivadasan and Jihad Mohammad, “Do they mean what they say? Measuring greenwash in the sustainable property development sector”, *Asia Pacific Journal of Marketing and Logistics*, vol. 34, No. 4 (2022).

<sup>95</sup> International Energy Agency, *Net Zero by 2050*, p. 145.

<sup>96</sup> [A/77/284](#), para. 15.

windows, doors and floors), passive design, external shading, reflective surfaces, insulation, thermal and solar windows, daylighting and other design tools.<sup>97</sup>

45. In developing countries, the majority of mitigation potential is in new buildings, while in developed countries the majority of mitigation potential is in retrofitting existing buildings.<sup>98</sup> Developed countries in particular need to eliminate building new as an absolute ideal and take a bird's-eye view of existing housing stock, to allow for: disused buildings to be safely restored and used as living spaces; dated buildings to be renovated and retrofitted; vacation homes to be used as main places of residence; and brand-new empty housing, only serving the purpose of “storing” the finance of private investors and financial institutions, to become actual homes.

46. While there are substantial policy challenges in reaching net-zero embodied carbon for major building components such as cement and steel,<sup>99</sup> there is a growing interest in sustainable materials such as hempcrete, wood, clay and straw or recycled materials, as well as in the reduction of energy use in the construction process (e.g. through prefabrication) and the use of smart technologies and traditional low-carbon technologies.<sup>100</sup> Traditional designs and structures of the housing of Indigenous Peoples, and the use of more sustainable materials, can guide the development of more climate-resilient and carbon-neutral housing.<sup>101</sup>

47. Finally, increased investment in new carbon-neutral, climate-resilient social housing is needed, in addition to the retrofitting of existing social housing. In the United States, scholars and housing activists are calling for 12 million new carbon-neutral public homes to be built in 10 years.<sup>102</sup> In Europe, it is estimated that renovating the social housing sector alone would require an additional €13 billion per year until 2050.<sup>103</sup>

48. There is a need for systemic and integrated urban and rural planning at the national and local levels that fully integrates climate change, disaster risk reduction, location of services and infrastructure, planning for transit, green space, vegetation, the mitigation of heat islands, water and waste management, net-zero building codes and resilience, especially in relation to the informal city. Contrary to planning decisions being driven by the financial interests of developers, as is frequently the case, a rights-based approach to planning ensures community participation, especially of marginalized communities, and the collective agency of residents to shape the future of their city. Urban planning needs to incorporate risk assessment, mapping and resilience planning, to ensure buildings can withstand changing weather conditions and to minimize the need for rebuilding and repair in the aftermath of climate-induced extreme weather events.<sup>104</sup> Increased security of tenure, both in urban informal settlements and in rural communities, including with regard to customary land tenure rights, better equips societies to withstand the impact of climate-induced events. Action needs to be taken immediately, since the way human settlements are designed and constructed will lock in patterns of energy use and greenhouse gas emissions for decades.<sup>105</sup>

49. More compact land use and the provision of less car-dependent transport infrastructure could reduce transport-related emissions by 25 per cent.<sup>106</sup> Numerous cities around the world have goals to become “10-, 15- or 20-minute cities/neighbourhoods” to

<sup>97</sup> Global Alliance for Buildings and Construction, UNEP and International Energy Agency, *GlobalABC Roadmap*, pp. 31 and 36.

<sup>98</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change*.

<sup>99</sup> Global Alliance for Buildings and Construction, UNEP and International Energy Agency, *GlobalABC Roadmap*, p. 68.

<sup>100</sup> Witten Tenants Union submission.

<sup>101</sup> Habitat for Humanity Indonesia submission.

<sup>102</sup> Daniel Aldana Cohen, “A Green New Deal for Housing”, in *The Green New Deal and the Future of Work*, Craig Calhoun and Benjamin Y. Fong, eds. (Columbia University Press, 2022).

<sup>103</sup> European Federation of National Organisations Working with the Homeless, “Social ambition, the must for climate transition”, position paper, January 2022.

<sup>104</sup> Global Alliance for Buildings and Construction, UNEP and International Energy Agency, *GlobalABC Roadmap*, pp. 22 and 77.

<sup>105</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change*, chap. 8.

<sup>106</sup> *Ibid.*, chap. 10.

promote more active forms of transport and reduce emissions.<sup>107</sup> Paris is investing €250 million to make the city entirely bikeable, through its Plan Velo: Act 2 (2021–2026), which provides for the building of an additional 130 km of bike-safe pathways.<sup>108</sup> From June to August 2022, a German initiative that allowed travellers to use all buses, trams, subways and regional trains for just €9 per month (a reduction of up to 90 per cent in transport fares) reportedly saved 1.8 million tons of carbon dioxide emissions<sup>109</sup> and also helped reduce social isolation.

50. A rights-based transition would require transparency in decision-making; consultation with and participation of affected individuals and communities; non-discrimination; and accountability mechanisms.<sup>110</sup> Specific mechanisms need to be developed to ensure the participation of tenants, including collectively through tenant unions or other associations, in decisions over housing and to engage persons living in informal housing. Persons at risk of marginalization can play an important role in promoting climate justice, and their perspectives, knowledge and lived experience need to inform climate and housing policymaking.<sup>111</sup> Homelessness should be taken into consideration, and housing rights groups should be included, in the development of decarbonization strategies. Ensuring the respect of international labour standards and the rights of workers in the housing and construction sector needs to be an integral part of a transition to carbon-neutral, climate-resilient housing.<sup>112</sup> Despite the marginalization they experience, Indigenous Peoples have been at the forefront of struggles for climate justice, and Indigenous traditional knowledge systems are a crucial resource for climate mitigation and adaptation, including for developing more climate-resilient and carbon-neutral housing.

51. States need to ensure coordination and coherence among housing strategies, climate change-related plans and other relevant policies, including those concerning the green transition, poverty reduction, environment protection, sustainable development and clean energy. Legislation that specifically guarantees the right to housing without discrimination, and measures and duties relating to climate and sustainability, for example those in the Right to Housing Plan 2016–2025 of Barcelona,<sup>113</sup> can help ensure a just transition.

52. States need to step up safeguards and oversight to protect against greenwashing in the housing sector, where entities may misrepresent the energy efficiency of buildings or the levels of carbon emissions during construction.

53. A 2019 analysis showed that 113 out of 164 nationally determined contributions submitted included, either directly or indirectly, urban considerations.<sup>114</sup> In 2020, 136 countries mentioned building emission reductions in their nationally determined contribution.<sup>115</sup>

54. Given the vulnerability of people to climate-related impacts in both urban and rural areas, it is critical to support countries to effectively address human settlement issues in the formulation and implementation of national adaptation plans.<sup>116</sup> However, of the 39 countries that have submitted such plans, only 15 set out more detailed measures in the field of housing.

<sup>107</sup> T.M Logan and others, “The x-minute city: measuring the 10, 15, 20-minute city and an evaluation of its use for sustainable urban design”, *Cities*, vol. 131 (2022); and C40 Mayors’ Agenda for a Green and Just Recovery.

<sup>108</sup> See <https://www.weforum.org/agenda/2021/10/paris-plans-completely-cyclable-by-2026/>.

<sup>109</sup> “Germany’s cheap summer train fares prevented 1.8 million tons of carbon pollution”, *Yale Environment 360*, 31 August 2022.

<sup>110</sup> Institute for Human Rights and Business, *Dignity by Design: Human Rights and the Built Environment Lifecycle* (2019).

<sup>111</sup> [A/HRC/50/57](#), para. 32.

<sup>112</sup> See International Labour Organization, *Guidelines for a just transition towards environmentally sustainable economies and societies for all* (2015); and Institute for Human Rights and Business, *Dignity by Design*.

<sup>113</sup> See <https://www.habitatge.barcelona/en/strategy/right-to-housing-plan>.

<sup>114</sup> UN-Habitat, *Sustainable Urbanization in the Paris Agreement* (Nairobi, 2017), p. IX.

<sup>115</sup> UNEP, *2021 Global Status Report for Buildings and Construction*, pp. 12–13.

<sup>116</sup> See UN-Habitat, *Addressing Urban and Human Settlement Issues in National Adaptation Plans: A Supplement to the UNFCCC Technical Guidelines on the National Adaptation Plan Process* (2018).

55. Climate plans, particularly at the national level, have limited cross-references to housing implications and opportunities, and rarely incorporate a human rights lens.<sup>117</sup> The climate action plans produced by some member cities of the C40 network can serve as examples of how the housing dimension can be specifically incorporated in mitigation and adaptation strategies.<sup>118</sup>

56. Holistic policies are needed to ensure that decarbonization does not exacerbate housing unaffordability and homelessness, and that the benefits of the transition are shared by all. The costs of the green transition in the housing sector must be shared fairly between public authorities, taxpayers, homeowners and tenants or other affected interest groups.<sup>119</sup> Examples of measures include the following: in the European Union, a social climate fund has been proposed to address social impacts that may arise from the “Fit for 55” decarbonization package;<sup>120</sup> in the United States, the Justice40 whole-of-government project aims to ensure that at least 40 per cent of the overall benefits from federal investments in climate and clean energy go to disadvantaged communities;<sup>121</sup> in the Colombian road map to net-zero carbon buildings, the first priority is placed on vulnerable communities in urban and rural areas experiencing energy poverty;<sup>122</sup> and the India Cooling Action Plan, aimed at reducing cooling demand, has specific provisions for low-income group housing.<sup>123</sup> In the Netherlands, the Energisprong programme funds investments in retrofitting social housing through bill savings, ensuring no net additional cost to tenants.<sup>124</sup> The development of inclusive and redistributive models, such as housing communities or cooperatives, can enable sustainable, affordable, inclusive housing for marginalized groups.

57. In 2010, States established the Green Climate Fund under the United Nations Framework Convention on Climate Change as an operating entity of the financial mechanism to assist developing countries in adaptation and mitigation practices to counter climate change. The commitment made in 2010 to mobilize \$100 billion per year by 2020 to address the needs of developing countries<sup>125</sup> has not been realized. In existing mechanisms, there are considerable delays in and barriers to delivering finance at the local level. There is a need for simplified, efficient mechanisms for the provision of international finance for mitigation and adaptation interventions in the housing sector that can be accessed by local actors, including cities, subnational governments, housing providers, housing cooperatives and residents’ associations. In addition, the creation of a global fund for social protection – as suggested by the International Labour Organization and the Special Rapporteur on human rights and extreme poverty – could, among other things, maintain social protection floors for climate-impacted people.<sup>126</sup>

58. It is possible to finance a just transition to rights-compliant, climate-resilient and carbon-neutral housing for all; what is lacking is political will. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment demonstrated that \$7 trillion could be raised annually for realizing the Sustainable Development Goals, through measures including a global wealth tax; redirection of environmentally damaging subsidies; a global carbon tax; reduction of tax evasion and avoidance; special drawing rights for climate action; debt relief; and fulfilment of official development assistance commitments.<sup>127</sup>

<sup>117</sup> Institute for Human Rights and Business submission.

<sup>118</sup> See [https://www.c40knowledgehub.org/s/article/Mapped-Cities-with-a-climate-action-plan?language=en\\_US](https://www.c40knowledgehub.org/s/article/Mapped-Cities-with-a-climate-action-plan?language=en_US).

<sup>119</sup> Institute for Human Rights and Business, *Better Building(s)*.

<sup>120</sup> See <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/>.

<sup>121</sup> See <https://www.thejustice40.com/>.

<sup>122</sup> See [https://drive.google.com/file/d/1m\\_IXAjLhtGxdh0k-YAMNCpI29vMc0kk4/view](https://drive.google.com/file/d/1m_IXAjLhtGxdh0k-YAMNCpI29vMc0kk4/view).

<sup>123</sup> National Human Rights Commission, India submission.

<sup>124</sup> European Federation of National Organisations Working with the Homeless submission.

<sup>125</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change, decision 2/CP.15, para. 8. See also <https://unfccc.int/topics/climate-finance/workstreams/needs-report>.

<sup>126</sup> See [A/HRC/47/36](#).

<sup>127</sup> See [A/77/284](#).

59. A human rights-based transition to climate-resilient and carbon-neutral housing for all requires remedies and compensation for climate-induced impacts on housing from those most responsible for causing the climate crisis. Countries in the global North have disproportionately contributed to cumulative greenhouse gas emissions, with some analyses showing they are responsible for up to 92 per cent of excess historical emissions.<sup>128</sup> There is “extreme carbon inequality”, with the richest 1 per cent of people globally responsible for twice as many emissions between 1990 and 2015 as the poorest half of humanity.<sup>129</sup> About 63 per cent of global greenhouse gas emissions since the Industrial Revolution can be traced to 90 carbon majors.<sup>130</sup> Further research is needed to document the responsibility of private equity and real estate finance in contributing to the climate crisis through overbuilding, as the basis for accountability mechanisms.

60. It is estimated that developing countries will face between \$290 billion and \$580 billion in economic losses from climate change in 2030, in addition to non-economic losses, with some predictions suggesting such losses could reach \$1.7 trillion by 2050.<sup>131</sup> The super-profits made by the fossil fuel industry between 2000 and 2019 could cover the costs of climate-induced economic losses in 55 of the most climate-vulnerable countries nearly 60 times over.<sup>132</sup> Therefore, “equitable, flexible and accountable mechanisms to address climate change-related loss and damage, now and in the future, are a climate justice imperative”.<sup>133</sup>

61. The Special Rapporteur welcomes in principle the decision taken at the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change to establish a fund to respond to loss and damage<sup>134</sup> as an important step from the perspective of the right to adequate housing. However, it remains to be worked out how to ensure that assistance provided through the fund actually reaches the people and communities who have been affected, in particular those whose homes have been damaged or destroyed due to climate-related impacts. In the view of the Special Rapporteur, this will require mechanisms of public control and strong civil society participation in the implementation, management and oversight of the fund.

62. Currently, the overwhelming majority of climate finance is not offered as grants, but rather as loans or non-grant instruments.<sup>135</sup> In addition, extreme weather events are forcing already heavily indebted countries deeper into debt. The suspension or cancellation of debt payments, especially in the aftermath of extreme climate events, is needed to ensure countries have the necessary resources for emergency response and reconstruction.<sup>136</sup>

## VI. Conclusions and recommendations

63. **Under the framework of the right to adequate housing, States have an obligation to use the maximum of their available resources to address the impacts of climate change on housing, to mitigate it and avoid foreseeable harm. In the light of the climate crisis, the core elements of the right – security of tenure, availability of services,**

<sup>128</sup> Jason Hickel, “Quantifying national responsibility for climate breakdown: an equality-based attribution approach for carbon dioxide emissions in excess of the planetary boundary”, *The Lancet Planetary Health*, vol. 4 (September 2020).

<sup>129</sup> Tim Gore, “Confronting carbon inequality: putting climate justice at the heart of the COVID-19 recovery” (Oxfam International, 2020).

<sup>130</sup> Richard Heede, “Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers: 1854–2010”, *Climatic Change*, vol. 122 (2014).

<sup>131</sup> Anil Markandya and Mikel González-Eguino, “Integrated assessment for identifying climate finance needs for loss and damage: a critical review”, in *Loss and Damage from Climate Change: Concepts, Methods and Policy Options*, Reinhard Mechler and others, eds. (Springer, 2018).

<sup>132</sup> Loss and Damage Collaboration, “The cost of delay: why finance to address loss and damage must be agreed at COP27” (October 2022).

<sup>133</sup> See <https://www.ohchr.org/sites/default/files/2022-11/2022-11-02-HC-Open-Letter-to-UNFCCC-COP27.pdf>.

<sup>134</sup> See <https://unfccc.int/documents/624440>.

<sup>135</sup> Oxfam International, “Climate finance shadow report 2020”.

<sup>136</sup> Tess Woolfenden and Sindra Sharma Khushal, “The debt and climate crises: why climate justice must include debt justice” (October 2022).

affordability, habitability, accessibility, appropriate location and cultural adequacy – acquire a new meaning. The Special Rapporteur believes that it is time to recognize that sustainability of housing should become an additional core element of the right to adequate housing, in order to ensure that the right to adequate housing is interpreted in full consonance with the right to a clean, healthy and sustainable environment. Sustainability implies that States should not realize the right to adequate housing in an endless manner that would undermine collective survival and with it the right to housing as such. Instead, it requires reducing housing’s own carbon footprint, and ensuring housing’s resilience against climate events.

64. Extreme weather events and slow-onset events have significant and lasting impacts on the enjoyment of the right to housing. The frequency and risk of extreme weather events, as well as the long-term impact of slow-onset events, are already evident. Such events damage and destroy housing and make existing housing inadequate due to changing conditions, drive climate migration and may in some instances require even the permanent relocation of communities. Reconstruction may present an opportunity to redress inequalities and achieve security of tenure, housing resilience and carbon-neutrality. Reconstruction efforts should not have a detrimental impact on the right to housing of climate disaster victims. States have an obligation:

(a) To continuously work, in consultation with and with the participation of affected people, to improve the climate resilience of housing and climate-disaster preparedness. This entails regional or local strategies to map, identify, prepare for and mitigate climate risks and to engage in participatory neighbourhood planning exercises, with representation from vulnerable groups;

(b) To include informal settlements and their residents in any climate adaptation planning;

(c) To provide safe and adequate shelter and reconstruction assistance after climate events, including through the provision of funds, materials, facilities and infrastructure. In this context the Special Rapporteur wishes to reiterate the recommendations contained in the reports on post-conflict and post-disaster reconstruction<sup>137</sup> and disaster relief efforts<sup>138</sup> submitted by a previous mandate holder;

(d) To work, in the case of climate-induced migration, with interest groups to ensure rights-compliant, resilient and durable housing solutions, including security of tenure, in places of destination;

(e) To ensure that resettlement and relocation are pursued only when they cannot be avoided and are strictly necessitated by the unsustainability of maintaining human settlements in at-risk zones. Any resettlement and relocation should be planned and implemented with the full consultation and participation of affected and receiving communities and comply with the basic principles and guidelines on development-based evictions and displacement<sup>139</sup> and other applicable human rights norms, for example the United Nations Declaration on the Rights of Indigenous Peoples.

65. The above actions should be conducted in a manner that reinforces the right to adequate housing. As the right to adequate housing is closely interlinked with the right to participation, States have the obligation to ensure access to information and the participation of all affected persons, including marginalized groups, in the development, implementation, monitoring and evaluation of any climate-related actions and policies. This would include persons living in informal settlements, persons in situations of homelessness, persons with disabilities, older persons, women, children, lesbian, gay, bisexual, transgender, intersex and gender diverse persons, racial and ethnic minorities, Indigenous Peoples, peasants, fisherfolk, migrants, refugees and internally displaced persons. States must also recognize the valuable role of climate and housing rights defenders and ensure their protection in accordance with the Declaration

<sup>137</sup> A/HRC/16/42.

<sup>138</sup> A/66/270.

<sup>139</sup> A/HRC/4/18, annex I.

on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders).

66. States must ensure that all climate mitigation and adaptation projects comply with the right to adequate housing and do not produce more inequality or result in climate gentrification, “green grabbing”, forced evictions and arbitrary displacement of communities. International agencies and mechanisms, donor States and businesses all have due diligence obligations and should put in place safeguards and grievance mechanisms to ensure that the mitigation and adaptation projects they fund do not violate the right to adequate housing or any other human rights norms.

67. States should adopt legislation to protect, respect and fulfil the right to adequate housing without discrimination. They should, in addition:

(a) Incorporate the right to adequate housing in national climate action plans, national determined contributions and national adaptations plans;

(b) Ensure that national housing strategies take climate risks into account and are coordinated with climate policies.

68. The housing sector is a significant contributor to climate change, accounting for 37 per cent of global energy-related carbon dioxide emissions through energy consumption and construction alone. Increases in per capita living space, the emission of pollutants, deforestation, desertification, loss of biodiversity and urban sprawl all contribute further emissions that negatively affect the climate. In the light of a growing world population ever in demand of housing, there is a need to ensure housing sustainability.

69. The realization of the right to adequate housing, especially if continued in the way it has been realized in many highly developed countries, has a strong climate impact in comparison to the realization of some other rights (e.g. the right to education or the right to equality before the law). The Special Rapporteur is of the view that defining adequate housing should not only entail considering minimum floor sizes per person, but also maximum floor sizes. The further improvement of housing conditions for some should not undermine the right to adequate housing for others and for future generations.

70. Human rights obligations and obligations under international climate agreements require States to achieve as quickly as possible a just transition towards rights-compliant, climate-resilient and carbon-neutral housing for all, including by:

(a) Stepping up efforts to improve the energy efficiency of households, such as the adoption of energy efficiency standards; the encouragement of retrofitting; the use of highly efficient and low-emissions lighting, appliances and equipment systems; and expansion of access to electricity produced in an environmentally friendly manner and other green sources of energy where households still depend on fossil forms of energy for heating, cooking and other needs;

(b) Encouraging greater housing-need satisfaction from the existing housing stock to allow for: disused buildings to be safely restored and used as living spaces; dated buildings to be renovated and retrofitted; and vacant and secondary homes to be used as main places of residence, for example through appropriate taxation policies. In the latter context, States should implement recommendations to address the financialization of housing<sup>140</sup> to ensure climate mitigation in the housing sector;

(c) In housing construction, promoting the use of affordable and accessible net-zero embodied carbon for major building components, as well as renewable materials such as wood, clay and straw, or recycled materials;

(d) Investing in the development of new carbon-neutral, climate-resilient social housing that is affordable for all;

<sup>140</sup> See A/HRC/34/51.

(e) Ensuring that urban planning policies integrate climate change, disaster risk reduction, energy response, land use, transport, location of services and infrastructure equity, and also including in those efforts any informal settlements and their residents.

71. Given that in many countries the primary responsibility for housing is vested with local and regional governments, in order to make the shift towards rights-compliant, climate-resilient and carbon-neutral housing for all, States must ensure that local and regional governments:

(a) Are equipped with adequate authority and human and financial resources, including by building technical expertise in the areas of human rights, housing and climate change at the local level;

(b) Proactively conduct participatory land use planning and urban planning to avoid entrenching existing inequalities or creating long-term climate risks;

(c) Are provided with sufficient leadership, coordination and oversight by State-level entities for the implementation of climate mitigation and adaptation policies.

72. Business and non-State actors should conduct human rights due diligence and remedy human rights violations for which they are responsible. Specifically, this requires:

(a) Businesses to incorporate the right to adequate housing in corporate, social and governance policies;

(b) Architecture and design firms to design with the objective of transitioning to climate-resilient and carbon-neutral housing in mind and to innovate in sustainable materials and processes, paying specific attention to the needs of marginalized groups;

(c) Construction and engineering companies to consider climate impacts when sourcing materials and consider utilizing low-carbon construction processes and methods;

(d) Investors and developers to shift investment away from short-term profit-maximization that promotes overbuilding and to proactively support climate-resilient, carbon-neutral housing;

(e) Owners and managers of buildings to seek to reduce the operational carbon emissions from buildings.

73. A rights-based approach entails adopting a holistic and long-term view, adopting safeguards to prevent harm, putting in place accountability mechanisms, providing information about decision-making processes, ensuring the participation and inclusion of affected persons and groups, ensuring non-discrimination, and prioritizing the needs of those who are most vulnerable, while promoting co-benefits.<sup>141</sup>

74. It is crucial to ensure that efforts to curb carbon emissions in the built environment and the housing sector do not drive up housing and energy costs for households, further expand the global deficit of adequate and affordable housing or increase existing vulnerabilities and marginalization. Measures to ensure the affordability of housing in the just transition may include:

(a) Providing targeted financial support, including to low-income households and those living in informal housing;

(b) Splitting the costs of the green transition in the housing sector fairly between public authorities, taxpayers, homeowners and tenants or other affected interest groups;

(c) Preventing building retrofits or green building requirements from increasing housing costs, through rent caps, tenant protections, requirements for a

<sup>141</sup> Institute for Human Rights and Business, *Dignity by Design*, p. 22.

---

proportion of genuinely affordable housing in mixed-use developments, and the tying of retrofit loans to future energy savings;

- (d) Investing in affordable public or social housing.

75. The Special Rapporteur calls on the international community:

(a) To create simplified, efficient mechanisms for the provision of international financial assistance for mitigation and adaptation interventions in the housing sector for developing countries that are particularly vulnerable to the adverse effects of climate change;

(b) To ensure that the recently established loss and damage fund becomes resourced and operational as quickly as possible, is disbursed efficiently, includes mechanisms of public control and for participation of civil society actors, and ensures that support actually goes to those whose homes have been damaged or have become inhabitable due to climate-related impacts;

(c) To create an international mechanism for obtaining redress and compensation for climate-induced impacts on housing from those most responsible for causing the climate crisis;

(d) To establish the historic responsibilities of States and private equity and real estate finance entities stemming from encouraging overbuilding, and ensure they participate in any redress and compensation mechanism proportionally, according to their level of contribution to the climate crisis;

(e) To allow for the suspension or cancellation of debt payments in the aftermath of extreme climate events so that governments can ensure climate-efficient and resilient reconstruction for those whose homes have been damaged or destroyed.

---



# General Assembly

Distr.: General  
25 October 2022

Original: English

---

## Seventy-seventh session

Agenda item 66 (a)

### Elimination of racism, racial discrimination, xenophobia and related intolerance

## Contemporary forms of racism, racial discrimination, xenophobia and related intolerance

### Note by the Secretary-General\*

The Secretariat has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, in accordance with Human Rights Council resolution [43/36](#).

---

\* The present report was submitted after the deadline in order to reflect recent developments.



**Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume**

**Ecological crisis, climate justice and racial justice**

*Summary*

In the present report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, highlights the racially discriminatory and unjust roots and consequences of environmental degradation, including climate change. In the report, she explains why there can be no meaningful mitigation or resolution of the global ecological crisis without specific action to address systemic racism, in particular the historic and contemporary racial legacies of colonialism and slavery.

## I. Introduction

1. The global ecological crisis is simultaneously a racial justice crisis. As countless studies and submissions received show, the devastating effects of ecological crisis are disproportionately borne by racially, ethnically and nationally marginalized groups – those who face discrimination, exclusion and conditions of systemic inequality because of their race, ethnicity or national origin. Across nations, these groups overwhelmingly comprise the residents of the areas hardest hit by pollution, biodiversity loss and climate change.<sup>1</sup> These groups are disproportionately concentrated in global “sacrifice zones” – regions rendered dangerous and even uninhabitable owing to environmental degradation. Whereas sacrifice zones are concentrated in the formerly colonized territories of the global South, the global North is largely to blame for these conditions. As noted by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: “high-income States continue to irresponsibly export hazardous materials ... along with the associated health and environmental risks, to low- and middle-income countries”.<sup>2</sup> Notably, the distinction between “high-income” and “low-income” countries is directly related to the racist economic extraction and exploitation that occurred during the colonial era, for which colonial powers have not been held accountable.<sup>3</sup>

2. “Sacrifice zones,” as illustrated in this report, are more accurately described as “racial sacrifice zones”. Racial sacrifice zones include the ancestral lands of Indigenous Peoples, territories of the small island developing States, racially segregated neighbourhoods in the global North and occupied territories facing drought and environmental devastation. The primary beneficiaries of these racial sacrifice zones are transnational corporations that funnel wealth towards the global North and privileged national and local elites globally.<sup>4</sup>

3. In addition to documenting racial sacrifice zones, the Special Rapporteur highlights coerced displacement and immobility in the context of ecological crisis and how racially, ethnically and nationally marginalized groups are disparately subjected to this coercion and immobility. Submissions received show how climate-induced migration cannot be divorced from the racially unjust hierarchies and regimes of colonial and imperial extraction and exploitation that have significantly determined who is forced to move and who has the privilege of keeping their homes and nations.

4. Within the broader movement for environmental justice, climate justice seeks historical accountability from those nations and entities responsible for climate change. Climate justice also seeks radical transformation of the contemporary systems that enable global ecological crisis and distribute the suffering associated with this crisis on a racially discriminatory basis. Because climate change today is driven by the accumulation of greenhouse gases in the atmosphere, historical emissions are an existential contemporary problem. From 1850 to 2002, industrialized countries produced three times the carbon dioxide produced by the entire global South.<sup>5</sup> However, it is the global South and colonially designated non-white regions of the world that are most affected and least able to mitigate and survive global ecological crisis, in significant part owing to the colonial processes that caused historical emissions in the first place.

<sup>1</sup> Owing to space constraints, this report is focused on environmental human rights harms related to extractivism and climate change. The Special Rapporteur highlights the urgency of a broader and more comprehensive analysis of the intersection of environmental and racial justice.

<sup>2</sup> See [A/HRC/49/53](#).

<sup>3</sup> See [A/HRC/50/60](#); and [A/HRC/41/54](#).

<sup>4</sup> See [A/HRC/50/60](#). See also, submission from the Centre for Economic and Social Rights.

<sup>5</sup> Sarah Mason-Case and Julia Dehm, “Redressing historical responsibility for the unjust precarities of climate change in the present”, in *Debating Climate Law*, Benoit Mayer and Alexander Zahar, eds. (New York, Cambridge University Press, 2021).

5. The Secretary-General appropriately described the recent flooding in Pakistan as “a level of climate carnage beyond imagination”, noting that Pakistan is responsible for less than 1 per cent of global greenhouse emissions. One country – the United States of America – is responsible for 20 per cent of total cumulative carbon dioxide emissions.<sup>6</sup> The European Union is responsible for 17 per cent, and 90 transnational corporations, predominantly headquartered in the global North, are responsible for 63 per cent of cumulative industrial emissions from 1751 to 2010.<sup>7</sup>

6. As experts note, global North historical emissions did not benefit all equally. Instead, their production relied upon and enabled racist colonial subordination in the global South, and in the settler colonies of the global North. Inequity persists in the present. According to one submission, the average person’s carbon dioxide emissions in the United Kingdom of Great Britain and Northern Ireland over a two-week period is more than a resident of Burkina Faso, Ethiopia, Guinea, Madagascar, Malawi or Uganda will emit in a year. Africa’s energy-related emissions account for about 2 per cent of global emissions, but it is likely to shoulder almost 50 per cent of the estimated global climate change adaptation costs. As noted by the President of the African Development Bank, Africa should not have to beg for help to address climate change – polluting global powers should have to pay.<sup>8</sup> The same is true for other parts of the global South.

7. Both within and outside the United Nations, Member States are championing initiatives to develop responses to the global ecological crisis. In this context, a racial justice approach to this crisis is both urgent and necessary, and yet within the global framework it remains thoroughly marginalized. Notwithstanding the important efforts of environmental justice advocates globally, the Special Rapporteur finds that those with authority, control, influence and decision-making power within the global climate governance regimes have largely neglected racial equality and non-discrimination norms that are foundational to international human rights and the international order more broadly. To put it bluntly, the interests and concerns of non-white peoples in particular have been successfully sidelined within United Nations frameworks for coordinating the global response to ecological crisis. The predominant global responses to environmental crises are characterized by the same forms of systemic racism that are driving these crises in the first place. Environmental, climate and racial injustice are the institutionalized status quo.

8. “Techno-chauvinism”, the conviction that technology can solve all societal problems, and overreliance on market-based solutions in responses to climate change are reinforcing racial injustice. The reasons for this relate in part to how technocratic and technological fields and the global capitalist economy remain characterized by forms of systemic racism that are then reproduced even in well-intentioned “green” initiatives.<sup>9</sup> Owing to space constraints, the Special Rapporteur refers readers to her prior analyses of systemic racism, technology and global political economy.<sup>10</sup> Technology has a critical role to play in addressing the ecological crisis, but technological solutions should neither be implemented at the expense of the racially and ethnically marginalized groups that are already disproportionately impacted by ecological crisis, nor advanced in pursuit of “false solutions”.<sup>11</sup>

9. The Special Rapporteur acknowledges references to vulnerability or “vulnerable groups” generally in environmental human rights analysis. She stresses the normative

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Cara Anna, “Africa shouldn’t need to beg for climate aid, says bank president”, PBS News Hour, 11 February 2020.

<sup>9</sup> Submissions from Dehm, Sealey-Huggings and Gonzalez.

<sup>10</sup> See [A/HRC/44/57](#); [A/HRC/50/60](#); and [A/HRC/41/54](#).

<sup>11</sup> Submissions from Desmond D’sa (South Durban Community Environmental Alliance) and Patrick Bond (University of Johannesburg).

and pragmatic urgency of engaging racism, racial discrimination and racial injustice explicitly and directly. The Special Rapporteur has warned of the dominance of “colour-blind” approaches to global governance and political economy, including human rights analyses and responses. A colour-blind analysis of legal, social, economic and political conditions professes a commitment to an even-handedness that entails avoiding explicit racial analysis in favour of treating all individuals and groups the same, even if these individuals and groups are differently situated, including because of historical projects of racial subordination.<sup>12</sup> Even when colour-blind approaches are well-intentioned, their ultimate effect is failure to challenge and dismantle persisting structures of entrenched racial discrimination. The Special Rapporteur emphasizes that, in order to address the racially and ethnically disparate impacts of ecological crises, United Nations Member States, officials and other stakeholders must explicitly account for these impacts.

10. The General Assembly and Human Rights Council have recognized the human right to a clean, healthy and sustainable environment,<sup>13</sup> and the Council has noted the human rights impacts of climate change in a number of resolutions. The Office of the United Nations High Commissioner for Human Rights (OHCHR) and various special procedures of the Council have produced vital human rights knowledge, upon which this report builds.<sup>14</sup> They have highlighted equality and non-discrimination concerns, especially in relation to gender,<sup>15</sup> age,<sup>16</sup> disability,<sup>17</sup> sexual orientation and gender identity,<sup>18</sup> Indigenous people<sup>19</sup> and people of African descent.<sup>20</sup>

11. The Special Rapporteur benefited from valuable input from expert group meetings and additional submissions from targeted calls, interviews with representatives of United Nations agencies and submissions from a range of stakeholders in response to a public call. She thanks all stakeholders for their submissions. Non-confidential submissions will be available on the website of the Special Rapporteur. The Special Rapporteur emphasizes that the expertise of directly affected communities was invaluable in the preparation of her report.

## **II. Why ongoing climate and environmental crises require racial equality and justice lenses**

### **A. Racist colonial foundations of ecological crisis**

12. Systemic racism served as a foundational organizing principle for the global systems and processes at the heart of the climate and environmental crises. Understanding and addressing contemporary climate and environmental injustice alongside the racially discriminatory landscape requires a historicized approach to how “race” and racism have shaped the political economy of climate and

<sup>12</sup> [A/HRC/41/54](#), para. 14.

<sup>13</sup> See General Assembly resolution [76/300](#); and Human Rights Council resolution [48/13](#).

<sup>14</sup> See [www.ohchr.org/en/climate-change/reports-human-rights-and-climate-change](http://www.ohchr.org/en/climate-change/reports-human-rights-and-climate-change). See also [A/74/161](#); [A/HRC/31/52](#); [A/HRC/49/53](#); [A/HRC/41/39](#); [A/71/281](#); [A/66/285](#); [A/75/207](#); [A/67/299](#); [A/HRC/44/44](#); [A/76/222](#); [A/HRC/48/56](#); [A/HRC/40/53](#); [A/74/164](#); [A/70/287](#); and [A/HRC/47/43](#).

<sup>15</sup> See [A/77/136](#).

<sup>16</sup> See [A/HRC/37/58](#); and [A/HRC/42/43](#).

<sup>17</sup> See [A/71/314](#).

<sup>18</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), special procedures, “Forcibly displaced LGBT persons face major challenges in search of safe haven”, joint statement by human rights experts on the International Day against Homophobia, Transphobia and Biphobia, May 2022.

<sup>19</sup> See [A/77/238](#).

<sup>20</sup> See [A/HRC/48/78](#).

environmental realities, as well as the governing legal frameworks and worldviews that these frameworks represent. At the centre of the climate crisis are levels of greenhouse emissions that are the product of centuries of natural resource extraction, industrialization and industrial processes and consumption of the outputs of these processes.<sup>21</sup> In their submissions, a number of experts summarized an extensive body of research that charts the racist colonial regimes that underpinned the extraction of coal, gas and oil, forged a global capitalist system dependent on the maintenance of racial hierarchies, and are thus at the heart of the global ecological crisis.<sup>22</sup> In her 2019 report on global extractivism and racial equality, the Special Rapporteur also outlined the racist colonial foundations of the extractivist and industrialization processes that have caused the global ecological crisis.<sup>23</sup>

## **B. Contemporary manifestations of transnational environmental racism and climate injustice**

13. The formal international repudiation of colonialism has by no means eradicated colonial domination and its racist legacies, including as they relate to the contemporary global ecological crisis. The Special Rapporteur on human rights and the environment has highlighted that, although all humans are exposed to ecological crisis, the burden of this crisis falls disproportionately on systemically marginalized groups, and that many environmental injustices are rooted in “racism, discrimination, colonialism, patriarchy, impunity and political systems that systematically ignore human rights”.<sup>24</sup>

14. Peoples in formerly colonized territories who were racially designated as non-white bear the disproportionate environmental burdens of extraction, processing and combustion of fossil fuels.<sup>25</sup> In her 2019 report on global extractivism and racial equality, the Special Rapporteur explained how the contemporary global extractivism economy remains racially stratified because of its colonial origins and the ongoing failure of Member States – especially those who benefited the most from colonial domination – to decolonize the international system and provide reparations for racial discrimination rooted in slavery and colonialism.<sup>26</sup>

15. The territories subject to the most rapacious forms of extraction are those belonging to groups and nations that were colonially designated as racially inferior. The nations least capable of mitigating and responding to ecological crisis have been rendered so both by histories of colonial domination, and in the postcolonial era by externally neoliberal and other economic policies.<sup>27</sup> In the global North, racially and ethnically marginalized groups are similarly on the front lines.

16. The Working Group of Experts on People of African Descent has detailed how environmental racism and the climate crisis have disproportionately affected people of African descent, owing in part to racialized histories of colonial domination, the trade in enslaved Africans and systematic discrimination against and segregation of people of African descent.<sup>28</sup> The Special Rapporteur on the rights of Indigenous Peoples has shed a similar light on environmental racism and climate injustice as they

<sup>21</sup> Submission from Gonzalez.

<sup>22</sup> E.g., submissions from Dehm, Gonzalez and Sealey Huggins, including Greenpeace, *Confronting Injustice: Racism and the Environmental Emergency* (2022).

<sup>23</sup> See [A/HRC/41/54](#).

<sup>24</sup> See [A/HRC/49/53](#).

<sup>25</sup> Submission from Gonzalez.

<sup>26</sup> See [A/HRC/41/54](#); and [A/74/321](#).

<sup>27</sup> See [A/HRC/50/60](#).

<sup>28</sup> See [A/HRC/48/78](#).

affect the lives and very existence of Indigenous Peoples.<sup>29</sup> A number of submissions highlight the ongoing racially disparate effects of the ecological crisis and its drivers, some of them highlighting colonial legacies.<sup>30</sup>

17. Highlighting the salience of colonial legacies should not eclipse the role played by powerful countries in the global South in producing contemporary greenhouse emissions and fuelling environmental degradation. Brazil, China and India are among the top global carbon dioxide emitters. Transnational and cross-border activities within the global South bring their own set of geopolitical and environmental challenges. For example, the Belt and Road Initiative of China in Africa entails industrial megaprojects linked both to African debt entrapment and environmental degradation,<sup>31</sup> and in some places irreparable ecological damage.<sup>32</sup>

*Race, ethnicity, national origin and “sacrifice zones”*

18. The term “sacrifice zones” is derived from a designation used during the cold war to describe areas irradiated due to production of nuclear weapons.<sup>33</sup> Racially marginalized and formerly colonized peoples were among those whose communities were disproportionately “sacrificed” to the demands of nuclear proliferation, as prominently illustrated by the impacts of nuclear testing on the people of the Marshall Islands, as well as Indigenous Peoples and ethnic minorities living in territories controlled by military superpowers.<sup>34</sup>

19. According to the Special Rapporteur on human rights and the environment, “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”.<sup>35</sup> Climate change is driving the proliferation of sacrifice zones,<sup>36</sup> which in many places are, in effect, racial sacrifice zones.

20. In the Amazon and elsewhere in South America, Indigenous environmental human rights defenders are frequently targeted for persecution for protesting industrial projects that destroy their homelands. In several cases, environmental protectors have been threatened or murdered for their advocacy.<sup>37</sup> At the same time, according to one submission, environmental disruption caused by development mega-projects in Brazil, for example, threaten long-time quilombola and Indigenous communities.<sup>38</sup>

<sup>29</sup> See [A/HRC/36/46](#); and [A/HRC/4/32](#).

<sup>30</sup> Submissions from Maat for Peace, Development and Human Rights; Heinrich Böll Foundation; European Network Against Racism; Black Coalition for Rights; Global Justice Clinic; Sabantho Aderi (Lokono-Arawak); and Gonzalez.

<sup>31</sup> OHCHR, *Baseline Study on the Human Rights Impacts and Implications of Mega-Infrastructure Investment* (2017).

<sup>32</sup> Gong Sen, Melissa Leach and Jing Gu, “The Belt and Road Initiative and the SDGs: towards equitable, sustainable development”, *IDS Bulletin*, vol. 50, No. 4 (December 2019).

<sup>33</sup> Steve Lerner, *Sacrifice Zones: The Front Lines of Toxic Chemical Exposure in the United States* (Cambridge, Massachusetts, MIT Press, 2010), p. 2.

<sup>34</sup> Jessica Barkas Threet, “Testing the bomb: disparate impacts on Indigenous Peoples in the American West, the Marshall Islands, and in Kazakhstan”, *University of Baltimore Journal of Environmental Law*, vol. 13, No. 1 (2005).

<sup>35</sup> See [A/HRC/49/53](#).

<sup>36</sup> *Ibid.*

<sup>37</sup> OHCHR, “Colombia: extreme risks for rights defenders who challenge corporate activity”, 4 August 2022; [A/HRC/46/35](#); and Inter-American Commission on Human Rights, “IACHR and UN human rights condemn murders of environmental activists and Quilombolas in Brazil”, 24 January 2022.

<sup>38</sup> Submission from the Brazilian Black Coalition for Rights.

21. In South Asia, Indigenous peoples and those subject to caste-based discrimination face environmental devastation from development projects over which they have limited free, prior and informed consent. In Indonesia, the legacy of colonial-era racist urban planning, combined with excessive ground water extraction and pro-capital adaptive responses, subjects low-income residents of *Kampungs* in Jakarta to flooding and to the threat of forced displacement.<sup>39</sup> Throughout South-East Asia, rampant industrial activity has transferred the harms of environmental degradation and toxic waste from industrial hotspots in the global North to non-white communities in the global South.<sup>40</sup>

22. A number of submissions highlighted the prevalence of racial sacrifice zones in the United States.<sup>41</sup> For example, “Cancer Alley” is a petrochemical corridor along the Mississippi River, where 150 petrochemical facilities operate. With a predominantly African American population, it is a region with the highest rates of multiple forms of cancers in the United States. Racist legacies loom large over Cancer Alley. It was originally called Plantation Country, a place where enslaved Africans were forced to labour. New facilities like the “Sunshine Project” stretch over at least four ancestral burial grounds and are concentrated in the Fifth District, whose residents are 86.3 per cent African American. The land use plan for the District has been changed from “residential” to “residential/future industrial” without notice, allowing for one of the largest plastics facilities to be approved. By contrast, chemical companies are barred from constructing new facilities in the Third District, whose residents are 78.4 per cent white.<sup>42</sup>

23. A 1987 study revealed a nationwide pattern, with racially marginalized communities in the United States five times more likely than white communities to live near toxic waste.<sup>43</sup> As noted in a submission, these disparities cannot be explained solely on the basis of income inequality: an in-depth study in 2008 found that Black people in the United States with an annual household income of \$50,000 to \$60,000 live in neighbourhoods subject to greater pollution than the average white people with household incomes under 10,000 dollars.<sup>44</sup>

24. In one submission it was reported that, in Canada, the Aamjiwnaang First Nation is surrounded by Sarnia, Ontario’s so-called “Chemical Valley”. Residents experience low air quality and high rates of negative health outcomes, such as miscarriages, childhood asthma and cancer.<sup>45</sup>

25. Throughout Europe, Roma communities are forced to live near hazardous waste sites or in areas that are prone to climate change-related disasters, often to make way for industrial development or tourism. At the same time, Irish Travellers often lack access to culturally specific accommodation and are denied reliable access to water,

<sup>39</sup> Michelle Kooy and Karen Bakker, “Splintered networks: the colonial and contemporary waters of Jakarta”, *Geoforum*, vol. 39, No. 6 (November 2008); Jeroen Frank Warner and Hanne Wiegel, “Displacement induced by climate change adaptation: the case of ‘climate buffer’ infrastructure”, *Sustainability*, vol. 13, No. 16 (August 2021); and Kian Goh, “Urban waterscapes: the hydro-politics of flooding in a sinking city”, *International Journal of Urban and Regional Research*, vol. 43, No. 2 (March 2019).

<sup>40</sup> Benedetta Cotta, “What goes around, comes around? Access and allocation problems in Global North-South waste trade”, *International Environmental Agreements: Politics, Law and Economics*, vol. 20 (2020).

<sup>41</sup> Submissions from Ms. Shirley and Heinrich Böll Foundation.

<sup>42</sup> See submission from Human Rights Advocacy Project; and communication No. JAL USA 33/2020.

<sup>43</sup> United Church of Christ, “Toxic wastes and race in the United States: a national report on the racial and socio-economic characteristics of communities with hazardous waste sites”, 1987.

<sup>44</sup> Liam Downey and Brian Hawkins, “Race, income, and environmental inequality in the United States”, *Sociological Perspectives*, vol. 51, No. 4 (December 2008).

<sup>45</sup> See submission from Maat for Peace, Development and Human Rights; and [A/HRC/49/53](#).

affordable heating and electricity.<sup>46</sup> In the Arctic, Indigenous peoples such as the Inuit and Sami are faced with rising sea levels and the total destruction of their livelihoods owing to changing climate patterns.<sup>47</sup>

26. In one submission<sup>48</sup> it was noted that European research on environmental justice is focused almost exclusively on the issue of income inequality. Race and ethnicity are largely absent, and data disaggregated on these bases is not collected. The submission provided examples of such omissions in Germany, notwithstanding the persisting evidence of environmental racism against Rom\*nja and Sinti\*zza. In the submission it is also noted that a number of German studies reveal that polluting industries are more frequently located in cities and neighbourhoods with higher proportions of migrants. These national and European studies show that the correlation between a migration background or non-German citizenship and environmental pollution is more significant than the correlation between socioeconomic status or income and environmental pollution.

27. In one submission it was reported that, in the United Kingdom, racially and ethnically marginalized groups are disproportionately subjected to higher levels of air pollution than white British people, and more susceptible to pollution health impacts. Furthermore, the placement of waste incinerators disproportionately affects racially and ethnically marginalized groups.<sup>49</sup>

28. In one submission<sup>50</sup> it was reported how the military occupation by Israel of the Occupied Palestinian Territories contributed to the ecological devastation and transformation of the Palestinian territories, and continues to deny Palestinians their fundamental right to self-determination, including regarding indigenous Palestinian approaches to mitigating climate impacts. Israeli settler expansion into Palestinian territories has led to the destruction of hundreds of Palestinian villages.<sup>51</sup> In addition to the devastation caused by this destruction, native trees have been eliminated in favour of European pine trees. In the submission tax incentives were reported that encourage high-polluting industry to relocate to the Occupied Palestinian Territories, with immense, documented genotoxic effects for Palestinian residents. Furthermore, the submission reported the pretextual use of environmental considerations to justify further Israeli settlement of the Occupied Palestinian Territories.

29. Extensive pollution of the air and water has also caused the higher incidence of serious diseases among Palestinians. Environmental protection policies have allegedly been used to justify the use of land by occupation authorities. It is reported in the submission that Israel has been using the claim of protecting nature reserves to confiscate more land for the purpose of building additional settlements, via a practice which has been described as “greenwashing”. It is also reported in the submission that 91 per cent of the total water of the West Bank is being expropriated solely for Israeli settler use, while Palestinians face serious water insecurity.<sup>52</sup> OHCHR has reported that: “Israeli authorities treat the nearly 450,000 Israeli settlers and 2.7 million Palestinians residing in the West Bank (excluding East Jerusalem) under two distinct bodies of law, resulting in unequal treatment on a range of issues including access to water”.<sup>53</sup> Indeed, Israeli practices and policies in the Occupied

<sup>46</sup> Submission from European Network against Racism.

<sup>47</sup> Ibid.

<sup>48</sup> Submission from the Heinrich Böll Foundation.

<sup>49</sup> Submission from Sealey Huggins (Greenpeace, *Confronting Injustice: Racism and the Environmental Emergency*).

<sup>50</sup> Submission from Al-Haq.

<sup>51</sup> Communication No. JAL ISR 2/2022.

<sup>52</sup> Submission from Al-Haq.

<sup>53</sup> See [A/HRC/48/43](#).

Palestinian Territories amount to apartheid,<sup>54</sup> with extreme environmental and human rights consequences for Palestinians.

30. In one submission it was noted that the historical legacy of militarized occupation and neocolonial extraction also plays a key role in the climate vulnerability of States in Central America and the Caribbean. A deadly history of intervention, neoliberal coercion and unequal relationships between Latin America and military superpowers, in particular the United States, has rendered this region particularly vulnerable to climate change slow-onset disasters.<sup>55</sup> In the Caribbean, farmers and peasants are confronted with catastrophic changes in the weather that make agricultural labour increasingly difficult and that predominately affect poor farmers and rural women.<sup>56</sup> In Central America, climatic changes have led to violence and climate migration, often through dangerous climate pathways, defined by racialized exclusion, in North America.<sup>57</sup>

31. In the Middle East, colonial and neocolonial invasions and military interventions have been motivated in large part by the extensive reserves of fossil fuels in that region. States and transnational corporations of the global North have collaborated with authoritarian elites to extract and exploit the region's fossil fuels – contributing to climate change and perpetuating human rights violations against local communities and racially marginalized migrant labourers.<sup>58</sup>

32. Across the African continent, extractive projects and toxic waste dumping have wreaked havoc on natural environments,<sup>59</sup> as African States, with arid ecosystems, struggle to maintain local livelihoods in the midst of climate change.<sup>60</sup> In a submission it was reported that the prevalence of sacrifice zones in Africa, including the example of Kabwe in Zambia, which is among the most polluted places in the world owing in part to abandoned mining residue. According to estimates, more than 95 per cent of children living there have elevated levels of lead in their blood.<sup>61</sup> In another submission highlighted communities' decades-long battles against transnational corporations for pollution from offshore oil and gas drilling, and ever-leaking petrol pipelines in Durban, South Africa.<sup>62</sup>

33. Small island developing States face extreme risks, as rising sea levels, intensifying natural disasters and the destruction of natural ecologies threaten lives and livelihoods.<sup>63</sup> The multidimensional vulnerability index, a newly developed metric measuring the economic, geographic, financial and environmental vulnerabilities of small island developing States, put the average score of small island developing States 50 to 60 per cent higher than the global average, indicating a starker vulnerability than would be implied by income levels.<sup>64</sup> For small island developing States, the

<sup>54</sup> See A/HRC/49/87.

<sup>55</sup> Submission from Gonzalez.

<sup>56</sup> Submissions from the Haitian Civil Society Consultation; and Sealey-Huggins.

<sup>57</sup> Submissions from Sabantho Aderi (Lokono-Arawak); and the Global Justice Clinic.

<sup>58</sup> Submission from Gonzalez.

<sup>59</sup> Amnesty International, "Trafigura: a toxic journey", 2016.

<sup>60</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2022).

<sup>61</sup> Submission from Maat for Peace, Development and Human Rights.

<sup>62</sup> Submissions from D'sa and Bond.

<sup>63</sup> Michelle Mycoo and others, "Small islands", in *Climate Change 2022* (Cambridge, United Kingdom, Cambridge University Press, 2022).

<sup>64</sup> UNDP, "Towards a multidimensional vulnerability index", discussion paper, February 2021.

global ecological crisis is predicted to wipe out some of their territories before the end of the twenty-first century.<sup>65</sup>

*Race, ethnicity, national origin and climate-induced displacement*

34. As the Special Rapporteur has detailed in prior reports, racial and xenophobic discrimination are root causes of forced displacement, but they also significantly determine who can move within and across borders, and who is immobilized against their will.<sup>66</sup> This is true in the context of environmental and climate induced displacement.<sup>67</sup> Manifestations of environmental racism and climate injustice include forced displacement, as well as the inability of racially marginalized peoples to flee contamination hotspots or areas of escalated natural disaster risk.

35. According to the Office of the United Nations High Commissioner for Refugees (UNHCR), 90 per cent of refugees and most internally displaced persons come from highly climate vulnerable countries.<sup>68</sup> At the same time, highly climate vulnerable countries host over 40 per cent of refugees, while internally displaced persons in conflict-affected and climate vulnerable countries are often displaced to areas where they are exposed and vulnerable to climate-related hazards.<sup>69</sup> The risk for refugees and internally displaced persons is two-fold: on the one hand, settlements are disproportionately concentrated in regions that are exposed to higher-than-average warming levels and specific climate hazards, including temperature extremes and drought; on the other hand, these populations frequently inhabit settlements and legal circumstances that are intended to be temporary but are protracted across generations, all the while facing legal and economic barriers in their ability to migrate away from climate impacts. Large concentrations of these settlements are in the Sahel,<sup>70</sup> the Near East and Central Asia,<sup>71</sup> where temperatures will rise higher than the global average, and extreme temperatures will exceed thresholds for safe habitation. Many refugees are racially and ethnically marginalized people. Systemic racism in international border regimes constrains the movement of racially marginalized peoples, while allowing citizens of the global North unprecedented autonomy to travel, migrate<sup>72</sup> and avoid environmentally unsafe areas. With climate change being framed as a security issue, security corporations and other actors are contributing to border militarization that further prevents many displaced by climate conditions from finding safety.<sup>73</sup> Within countries, spatial segregation and discrimination in housing or economic opportunities traps racially marginalized communities in specific locations within the country.<sup>74</sup>

36. A number of submissions highlighted forced displacement from racial sacrifice zones, as well as the racist and xenophobic treatment of migrants and refugees who

<sup>65</sup> Ibid.

<sup>66</sup> See A/HRC/38/52; A/HRC/48/76; A/75/590; A/HRC/44/57; and A/HRC/35/41.

<sup>67</sup> Carmen Gonzalez, "Climate change, race, and migration", *Journal of Law and Political Economy*, vol. 109 (2020).

<sup>68</sup> UN News, "Climate change link to displacement of most vulnerable is clear: UNHCR", 22 April 2021.

<sup>69</sup> Based on analysis of available data from Internal Displacement Monitoring Centre, Global Internal Displacement database, available at [www.internal-displacement.org/database/displacement-data](http://www.internal-displacement.org/database/displacement-data); and the Notre Dame Global Adaptation Initiative, Country Index database, available at <https://gain.nd.edu/our-work/country-index/>.

<sup>70</sup> Office of the United Nations High Commissioner for Refugees (UNHCR), "Decade of Sahel conflict leaves 2.5 million people displaced", 14 January 2022.

<sup>71</sup> UNHCR, "Displaced on the frontlines of the climate emergency", 2021.

<sup>72</sup> E. Tendayi Achiume, "Racial borders", *The Georgetown Law Journal*, vol. 110, No. 3 (2022).

<sup>73</sup> Submission from Francis.

<sup>74</sup> See A/HRC/49/48.

are able and choose to leave. According to one submission,<sup>75</sup> climate change is increasing displacement and migration to urban areas and out of Haiti, owing to negative economic impact on the livelihoods of farmers. Racism limits Haitians' freedom of movement, limiting their ability to escape climate harms through dignified migration. In the United States, Haitians are targeted for deportation under Title 42 of the United States Code, which has been used to detain and exclude Haitian migrants at the border.<sup>76</sup>

37. According to one submission,<sup>77</sup> in Mozambique, the expansion of large international mining projects has intensified, and they have been a main source of socioenvironmental conflicts causing internal displacement. A total of 1,365 families from the communities of Mithethe, Chipanga, Bagamoyo and Malabue were displaced by a coal exploration project operated by the Brazilian multinational Vale in Moatize, Tete province. The treatment of displaced populations by multinational companies in the region mimic violent colonial practices. The decision to implement the project was imposed upon the affected communities, who were excluded from decision-making, and subject to police intimidation. Most of the population harmed by transnational corporations are peasants, low-income, Indigenous Peoples and racially marginalized groups. Locals live in constant fear of reprisals for speaking against the company.

38. Another submission<sup>78</sup> highlighted the long history of racism in the agricultural sector in the United States, which includes the forceful removal of Native Americans from their homelands, enslaving Africans and their descendants and exploiting Latinx farmworkers under inhumane conditions. Federal and state policy has historically favoured white men, with some states blocking reparations or ownership of land by non-white individuals. White individuals own 98 per cent of farmland, while 80 per cent of the labour force is Latinx. Homestead acts have disproportionately given subsidized farms to white individuals and corporations while the federal Government has discriminated in lending to non-white farmers. The Southern landowners' efforts to exclude Black sharecroppers from the New Deal legislation during the Great Depression began an enduring phenomenon known as "agricultural exceptionalism", a systematic exclusion of farmworkers from federal labour protections, such as the National Labor Relations Act and Fair Labor Standards Act. According to the submission, climate change is forcing more people to migrate and increasing the number of individuals seeking work in the United States. However, over half of farmworkers lack immigration status, and those who enter the country legally are vulnerable to abuse. Workers are commonly subjected to poor wages and unsafe working conditions.

39. In one submission<sup>79</sup> it was reported that, in Central America and Mexico, Indigenous and Black communities have been involuntarily displaced by their disparate exposure to the impacts of extractivism and their general socioeconomic marginalization. According to the International Organization for Migration (IOM), Central America is at great risk of hydro-meteorological events related to climate change. The level of risk of humanitarian crises and disasters in six out of the seven countries in the region, namely, Cuba, El Salvador, Haiti, Honduras, Mexico and Nicaragua are at medium and high levels.<sup>80</sup> There are no effective policies in place to

<sup>75</sup> Submission from the Global Justice Clinic.

<sup>76</sup> Communication No. JAL USA 27/2021.

<sup>77</sup> Submission from Eusébio.

<sup>78</sup> Submissions from the Florida State University; University of Bologna; and the Bread for the World USA.

<sup>79</sup> Submission from the Observatorio de Racismo en México y Centroamérica.

<sup>80</sup> Lilian Yamamoto and others, *La Movilidad Humana Derivada de Desastres y el Cambio Climático en Centroamérica* (Geneva, International Organization for Migration, 2021).

protect displaced people, and their human rights are further jeopardized by racial and ethnic criminalization when they attempt to migrate. Indigenous, non-Spanish-speaking and Black migrants face barriers in accessing jobs, education, health and housing services owing to institutionalized discrimination.

40. In many submissions to the Special Rapporteur it was noted that Indigenous peoples faced the prospect of being forced out of their ancestral and traditional homelands owing to rising sea levels and natural disasters. In one submission it was reported that, in India, Indigenous Peoples account for 40 per cent to 50 per cent of those displaced despite making up just 8 per cent of the total population.<sup>81</sup> The disruptive impacts of industrial projects in their territories are a main cause. Entire Indigenous territories, in particular those in the small island developing States, are at risk, and even the full-scale relocation of entire State populations will not rectify the fallout from the destruction of their islands.<sup>82</sup> The permanent loss of Indigenous homelands is and will remain a massive global failure and a deep racial injustice in the absence of urgent rectificatory action.

### III. Racially discriminatory environmental human rights violations

#### A. Applicable legal frameworks

41. Non-discrimination and the prohibition on racial discrimination are peremptory norms of public international law.<sup>83</sup> Non-discrimination and equality obligations are also broadly enshrined in international human rights treaties including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.<sup>84</sup>

42. The most comprehensive prohibition of racial discrimination can be found in the International Convention on the Elimination of All Forms of Racial Discrimination. In article 1 (1), racial discrimination is defined as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin that has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. In its general recommendation, the Committee on the Elimination of Racial Discrimination has clarified that the prohibition of racial discrimination cannot be interpreted restrictively.<sup>85</sup> The Committee has also stated that the Convention applies

<sup>81</sup> Submission from Gupta.

<sup>82</sup> Submission from Vano.

<sup>83</sup> See [A/77/10](#); and [A/CN.4/727](#). See also, *Barcelona Traction, Light and Power Company, Limited, Judgment*, *I.C.J. Reports 1970*, p. 3; and *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *Advisory Opinion*, *I.C.J. Reports 1971*, p. 16. Regional human rights mechanisms have reiterated the status of non-discrimination and equality principles and obligations as foundational to enjoyment of human rights. See e.g., African Commission on Human and People’s Rights, communication No. 245/2002, para. 169; and Inter-American Court on Human Rights, *Advisory Opinion OC-18/03 of September 2003*, para. 101.

<sup>84</sup> See International Covenant on Civil and Political Rights, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2; Convention on the Rights of the Child, art. 2; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1; Convention on the Elimination of All Forms of Discrimination against Women, art. 1; Convention on the Rights of Persons with Disabilities, art. 2; and International Labour Organization, *Convention No. 111 (1958) concerning discrimination in respect of employment and occupation*, para. 1(a).

<sup>85</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009).

to purposive or intentional discrimination, as well as discrimination in effect and structural discrimination. This substantive, non-formalistic approach to equality is especially important in the context of environmental degradation and climate change, where discriminatory intent is difficult to prove but disparate impacts of environmental harm are clearly apparent.

43. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination requires States parties to eliminate racial discrimination in the enjoyment of economic, social, cultural, civil and political rights. Article 2 requires States parties, inter alia, to “take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists” and to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization”.

44. Under international human rights law, States are in breach of their obligations if they fail to adopt or enforce anti-discrimination legislation regulating the conduct of both public and private actors; fail to amend, rescind or nullify any laws and regulations that have the effect of creating or perpetuating discrimination;<sup>86</sup> or fail to adopt all appropriate immediate and effective measures to prevent, diminish and eliminate the conditions, attitudes and prejudices which cause or perpetuate discrimination in all its forms, or, where necessary, fail to implement concrete special measures aimed at realizing de facto, substantive equality.<sup>87</sup> Special measures or “affirmative action” – specific steps taken by a State aimed at achieving equality in effect, correcting inequality and discrimination, and/or securing advancement of disadvantaged groups or individuals<sup>88</sup> – are a protected human rights remedy<sup>89</sup> that States are required to implement where necessary.<sup>90</sup>

45. The term “environmental racism” describes institutionalized discrimination involving “environmental policies, practices or directives that differentially affect or disadvantage (whether intentionally or unintentionally) individuals, groups or communities based on race or colour”.<sup>91</sup> Environmental racism occurs within nations and across borders, as noted by the Working Group of Experts on People of African

<sup>86</sup> Committee on Economic, Social and Cultural Rights, general comments No. 20 (2009), paras. 11, 37, and 39–40; and Human Rights Committee general comments No. 31 (2004), para. 8.

<sup>87</sup> CCPR/C/21/Rev.1/Add.1, para. 10; Committee on Economic, Social and Cultural Rights, general comments No. 16 (2005), para. 15; Committee on Economic, Social and Cultural Rights, general comments No. 20 (2009), paras. 8(b), 9 and 39; Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004). See also International Convention on the Elimination of All Forms of Racial Discrimination, art. 7; Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009); and CRPD/C/DOM/CO/1, para. 50.

<sup>88</sup> Convention on the Elimination of All Forms of Discrimination against Women, art. 4(1); Convention on the Rights of Persons with Disabilities, art. 5(4); International Convention on the Elimination of All Forms of Racial Discrimination, art. 2(2); Committee on the Rights of Persons with Disabilities, general comments No. 6 (2018), para. 29; and Human Rights Committee general comment No. 18 (1989), para. 10.

<sup>89</sup> See the compilation of general comments and general recommendations adopted by the Human Rights Treaty bodies in [HRI/GEN/1/Rev.9 \(Vol. I\)](#), in particular Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005), paras. 9 and 39; and Committee on the Rights of the Child, general comment No. 4 (2003), paras. 1 and 12.

<sup>90</sup> International Convention on the Elimination of All Forms of Racial Discrimination, art. 2(2); Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 30; Committee on Economic, Social and Cultural Rights, general comments No. 20 (2009), paras. 8(b) and 9; and Human Rights Committee general comment No. 28 (2000), para. 3.

<sup>91</sup> Robert D. Bullard, “Confronting environmental racism in the twenty-first century”, *Global Dialogue*, vol. 4, No. 1 (Winter 2002), p. 35.

Descent.<sup>92</sup> People of African and Asian descent, Indigenous peoples, Roma, refugees, migrants, stateless persons and other racially and ethnically marginalized groups are all affected by environmental racism, which must be addressed to the fullest extent possible under international human rights law.

46. The Durban Declaration and Programme of Action, which remains the international community's most comprehensive plan to eliminate racism and racial discrimination, offers recommendations on tackling environmental racism. For example, it calls for increased support for people of African descent to invest in "environmental control measures" and offers several recommendations for "non-discriminatory measures to provide a safe and healthy environment for individuals and groups of individuals victims of or subject to racism, racial discrimination, xenophobia and related intolerance".<sup>93</sup>

47. Environmental racism and climate injustice interact with other forms of social exclusion, such as discrimination on the grounds of gender, age and disability. It should be recognized in intersectional analyses of environmental and climate-related human rights violations that women, older persons, persons with disabilities and gender and sexually diverse persons who are members of racially marginalized peoples face distinct human rights violations. In several submissions this point is made explicitly. Women in particular play important roles in rural and agricultural life, and they are typically on the front line of environmental and climate-related human rights violations. Indeed, the Special Rapporteur on violence against women and girls, its causes and consequences has reported that climate change-induced violence against women is a distinct phenomenon caused by the feminization of intersecting vulnerabilities.<sup>94</sup> Elderly persons and children are also vulnerable to climate harms, in particular when they live in economically marginalized communities or States with limited economic resources to support their specific needs. Persons with disabilities similarly require resources to adapt and mitigate harms caused by climate change, and these resources are typically denied to certain States and racially marginalized communities owing to systemic discrimination.

48. Environmental justice and climate justice are often linked to the right to development on sustainable terms. The right to development is intended to guarantee both a right to social and economic progress and the realization of all other human rights through self-determination and equal sovereignty. In the Declaration on the Right to Development, the General Assembly states that the right of peoples to self-determination includes the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. The right to development "implies the full realization of the right of peoples to self-determination", which includes the right freely to determine their political status and to pursue their economic, social and cultural development.<sup>95</sup>

49. In the United Nations Declaration on the Rights of Indigenous Peoples,<sup>96</sup> the General Assembly explicitly recognizes the importance of environmental protection in preventing discrimination against Indigenous Peoples. In article 29 it affirms that "Indigenous Peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for Indigenous Peoples for such conservation and protection, without discrimination." In article 29 it also applies the "free, prior and informed consent" principle to the storage or disposal of hazardous materials in the lands or territories of Indigenous Peoples. In article 32 it

---

<sup>92</sup> See [A/HRC/48/78](#).

<sup>93</sup> Durban Programme of Action, paras. 5, 8(c) and 111.

<sup>94</sup> See [A/77/136](#).

<sup>95</sup> General Assembly resolution [41/128](#), art. 1(2).

<sup>96</sup> General Assembly resolution [61/295](#).

calls on States “to provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact”.

## **B. Racially discriminatory denial of economic and social rights, the right to self-determination and principles related to the right to development**

50. In many national contexts, environmental injustice is often analysed in terms of socioeconomic inequities with limited attention to racial and ethnic inequities, and there is widespread resistance to collection of data disaggregated on racial and ethnic bases.<sup>97</sup> Without discounting the importance of poverty, gender, age and other social characteristics in exposing communities to environmental and climate change harms, discrimination on the grounds of race, colour, descent and national and ethnic origin remains a critical determinant of climate and environmental harms experienced by individuals and communities. Systemic racial discrimination results in economic marginalization, and in many places racially, ethnically and nationally marginalized groups are trapped in low-income brackets. The economic marginalization of racially marginalized peoples plays a major role in constraining their control over the development of their communities and their exposure to toxic waste and climate disasters. Relatedly, racially marginalized peoples frequently lack true self-determination over economic development that occurs on or near their communities, making them frequent victims of racial sacrifice zones created by national authorities or transnational corporations.

51. In a submission from a coalition of civil society organizations in Haiti, it was explained that those most harmed by climate change and environmental degradation are frequently *peyizan* (peasant farmers), rural women and residents of poor urban communities.<sup>98</sup> Haiti is considered one of the five countries most affected by the climate crisis globally, yet it has contributed only approximately 0.003 per cent to global greenhouse gas emissions. Furthermore, the history of racialized economic and political domination of Haiti by imperial powers is well known and has contributed immensely to its contemporary economic conditions.<sup>99</sup> According to predictions, the effects of climate change will eventually double the length of the dry season in Haiti, while floods and hurricanes are likely to increase. Haitians face the prospect of declining agricultural livelihoods, malnutrition and severe mental and physical health impacts.

52. In submissions from the United States it was noted how Black, Latinx and Indigenous communities are disproportionately more likely to live in communities near contamination hotspots, owing to the legacy of economic marginalization, segregation, slavery and colonialism. They are more likely to face the effects of pesticide poisoning owing to economic marginalization that concentrates poor, racially marginalized peoples in dangerous agricultural labour. While transnational corporations continue their industrial activities, residents are often unable to achieve accountability using local or state government forums. In other parts of the country, companies continue plans to extract and transport fossil fuels over Indigenous territories and sacred lands, fully supported by international financial actors eager to derive profits from fossil fuels.<sup>100</sup> In these scenarios, marginalization along economic and political lines has prevented Black, Latino and Indigenous Peoples from exercising their right to development and asserting their right to self-determination. As a result,

<sup>97</sup> Submission from European Network against Racism.

<sup>98</sup> Submission from the Global Justice Clinic.

<sup>99</sup> See [A/74/321](#).

<sup>100</sup> Submission from Saldamando.

they are unable to protect their territories from economic development that will largely benefit transnational corporations and elites outside their communities.<sup>101</sup>

53. In one submission it was noted how impoverished Afro-descendants in Brazil are disproportionately exposed to floods and landslides because of their economic marginalization and segregation into dangerous areas. Afro-Brazilians are the disproportionate victims of such disasters because of a sociopolitical structure in Brazil that places racialized peoples in living conditions of enhanced vulnerability, while public policymakers fail to address precarious living conditions.<sup>102</sup>

### C. Racially discriminatory civil and political persecution

54. Environmental racism results in routinized persecution of human rights defenders and environmental protectors who work to protect their communities from environmental harm. Around the world, these defenders frequently come from Indigenous communities or other racially marginalized groups. As discussed previously, racial marginalization entails economic and political marginalization, and when marginalized groups make efforts to assert their rights in the face of exploitative Governments and transnational corporations, these groups are heavily persecuted. Often, there is limited accountability for human rights defenders from racially and ethnically marginalized groups. In documenting deaths and violence against environmental human rights defenders, the former Special Rapporteur on human rights defenders explained that “one of the systemic causes of conflicts around environmental rights is the imbalance of power between States, companies and environmental human rights defenders”.<sup>103</sup> A structural underpinning of this imbalance in power is systemic racism, which excludes racially marginalized peoples from full political decision-making and exposes activists and leaders to racialized violence.

55. According to one submission, in Brazil, Indigenous and Afro-Brazilian leaders have been targeted by both public and private actors for their advocacy against industrial projects near their lands.<sup>104</sup> Global Witness reports that Brazil has the fourth highest number of murdered environmentalists in the world. Traditional peoples, quilombola, riverine and Indigenous communities suffer constant pressure from various economic activities in their territories and have been threatened or cruelly assassinated.<sup>105</sup> In Pará, a region with heightened environmental conflicts, several cases of commissioned murders of environmental activists have been reported. In these incidents, all the victims were Black women who fought for a balanced way of life with forest conservation. Reported in another submission was the assassination of a South African environmental activist, also a Black woman, fighting against coal mining expansion.<sup>106</sup> Yet another submission highlighted murder, rape and torture of Ogoni community activists in Nigeria, where Shell has destroyed the lives and livelihoods of Indigenous Peoples.<sup>107</sup>

56. In another submission, it is reported that, in India, Indigenous and Dalit leaders have also faced detention and criminalization owing to their advocacy against local environmental policies which impinge upon their cultural autonomy.<sup>108</sup>

<sup>101</sup> Submission from the Indigenous Environmental Network.

<sup>102</sup> Submission from the Coalition of Black Brazilians for Rights.

<sup>103</sup> See [A/71/281](#).

<sup>104</sup> Submission from the Coalition of Black Brazilians for Rights.

<sup>105</sup> Monica Nunes, “Família de ambientalistas é assassinada no Pará: pai, mãe e filha tinham projeto de soltura de quelônios no Rio Xingu”, 11 January 2022.

<sup>106</sup> Submissions from D’sa and Bond.

<sup>107</sup> Submission from the Centre for Economic and Social Rights.

<sup>108</sup> Submission from Gupta.

## D. Dispossession of Indigenous and Afro-descendant peoples

57. As noted in the Special Rapporteur's report on global extractivism, Indigenous and Afro-descendant peoples are frequently on the front lines of extractive projects, and thus bear an outsized risk of harm from environmental degradation. At the same time, climate change threatens indigenous peoples in the Pacific, the Americas, the Caribbean, Asia and Africa with the loss of their homelands. The profusion of extractive projects and the subsequent emission of greenhouse gases can be attributed to the systematic dispossession of Indigenous and Afro-descendant peoples and the denial of their lands and right to self-determination.

58. According to one submission,<sup>109</sup> in Brazil, Sapê do Norte, certified as protected "quilombos" territory, has been the home of quilombo communities since 1960. Inhabitants of this region have been experiencing a drastic reduction in biodiversity, large-scale deforestation, drying up of streams and filling of springs, death of animals and high dumping of pesticides in the water and soil, owing to highway construction, agribusiness attacks, installation of a gas pipeline by Petrobras, and the rupture of the Fundão dam, operated by Samarco. The construction of the Alcântara Launch Center over the largest quilombola territory in Brazil resulted in the mandatory removal of 312 quilombola families, and more continue to be displaced across the country.

59. In another submission, grave human rights violations against the Chepang Indigenous community in Nepal were reported, including construction and development in their territories without free, prior informed consent, destruction of their homes and livelihood and brutal violence against community members.<sup>110</sup> Notwithstanding the promulgation of laws intended to protect Indigenous peoples in Nepal, one submission highlights the absence of dedicated resources to give effect to these laws. It reported the case of the Sonaha and Haliya communities, who remain outside of the government framework intended to protect Indigenous communities.<sup>111</sup>

## E. Eco-fascism

60. An ideological strand of racism known as "eco-fascism" has been observed in far-right and neo-Nazi circles around the world.<sup>112</sup> The eco-fascist movement targets racially marginalized groups and ethnic and national minorities and excluded groups as scapegoats for environmental problems. They also utilize environmental concerns to support generalized xenophobia. Eco-fascist rhetoric has been associated with white supremacist terrorism, in particular in settler-colonial nations. The Christchurch, El Paso and Buffalo shootings in New Zealand and the United States, which were explicitly targeted at racially marginalized peoples, were linked to eco-fascist rhetoric.<sup>113</sup>

<sup>109</sup> Submission from the Coalition of Black Brazilians for Rights.

<sup>110</sup> Submission from FIAN.

<sup>111</sup> Submission from FIAN Nepal (Dalits).

<sup>112</sup> Submission from European Network against Racism.

<sup>113</sup> Kate Aronoff, "The Buffalo shooter and the rise of ecofascist extremists", *The New Republic*, 2022.

## IV. Towards environmental justice, climate justice and racial justice

### A. Concerns with the dominant approaches

61. The responses and momentum of the global system remains woefully ill-equipped to halt racially discriminatory and unjust features and consequences of ecological crisis. The Special Rapporteur is concerned that dominant international approaches to governing environmental and climate issues amount to a doubling down on racial inequality and injustice.

#### *Racially discriminatory mitigation and overreliance on market-based solutions*

62. In several submissions it was noted that some “green” solutions to climate change challenges actually reinforce or perpetuate racial marginalization and inequities. The transition to alternatives to fossil fuels in some contexts is resulting in “green sacrifice zones”<sup>114</sup> meaning that racially and ethnically marginalized groups are disproportionately exposed to human rights violations associated with the extraction or processing of these alternatives.<sup>115</sup> Critiques of “green capitalism” or “green growth” point out that these approaches promote energy transitions that “tend to presuppose the perpetuation of colonial arrangements”.<sup>116</sup> They seek to maintain unsustainable levels of consumption in the global North through transitions that require tremendous destructive extraction from the global South. As “green new deals” proliferate in the global North, their efficacy is contingent on their capacity to address the root causes of ecological crisis and undo the systemic racism embedded in fossil fuel economies.<sup>117</sup> Even development initiatives and seemingly “green” private ventures in global South countries can mask their profit-seeking arc, resulting in worsened environmental conditions and conflicts.<sup>118</sup>

63. Consultation participants reported that, in large part, because many climate-related initiatives are designed without the input, consideration or leadership of racially marginalized peoples, they can reinforce patterns of racial discrimination already present in national and international economies. Overreliance on technocratic knowledge and the exclusion of local communities from climate change leadership have worked to distract from the systemic changes demanded by front-line communities and required to truly solve the ongoing crisis.<sup>119</sup>

64. For example, carbon capture and storage technologies are increasingly promoted as processes that can collect carbon dioxide generated by industrial activities before they reach the atmosphere, and transport captured emissions to sites where they can be used or stored. However, in one submission it was reported that carbon capture is neither necessary to avoid catastrophic levels of warming nor feasible at scale.<sup>120</sup> In fact, it warns that carbon capture distracts from the reforms needed to ensure a fossil fuel-free future, an outcome which is essential to the health and rights of the marginalized communities on the front lines of the climate and environmental crisis.

<sup>114</sup> Christos Zografos and Paul Robbins, “Green sacrifice zones, or why a green new deal cannot ignore the cost shifts of just transitions”, *One Earth*, vol. 3, No. 5 (November 2020).

<sup>115</sup> Claire Burgess, “Australia’s lithium extractivism is costing the Earth”, Medium, 10 June 2022.

<sup>116</sup> Jason Hickel, “The anti-colonial politics of degrowth”, *Political Geography*, vol. 88, supplement C (June 2021).

<sup>117</sup> Submission from Sealey Huggins.

<sup>118</sup> Guiseppina Siciliano and others, “Environmental justice and Chinese dam-building in the global south”, *Current Opinion in Environmental Sustainability*, vol. 37 (April 2019); and Shun Deng Fam, “China came, China built, China left? The Sarawakian experience with Chinese dam building”, *Journal of Current Chinese Affairs*, vol. 46, No. 3 (December 2017).

<sup>119</sup> Submission from Gonzalez.

<sup>120</sup> Submission from the Center for International Environmental Law.

Carbon capture can lock current pollution in place, rather than facilitating energy transition. It is reported in the submission that many carbon capture programmes are launched in places already overburdened by the heavy concentration of toxic industrial pollution. These places overlap with the “racial sacrifice zones” described above. This trend is especially concerning because carbon capture can increase the emission of harmful air pollutants at the site of capture because of the increased energy required to power the capture equipment and the chemicals used in the process.

65. Other experimental or speculative technologies proposed in response to climate change potentially pose significant risks to human rights. For example, experts believe that some “geoengineering” projects meant to adapt to climate change may have significant adverse impacts, including termination shock, rainfall disruption, water depletion and the erosion of human and ecological resilience. The Intergovernmental Panel on Climate Change (IPCC) has warned against overreliance on unproven technologies that could disrupt natural systems and disproportionately harm global South communities.<sup>121</sup>

66. Other programmes and policies could similarly have negative impacts on Indigenous Peoples and racially marginalized peoples in the global South. For example, some experts have extensively criticized the REDD+ programme for its use of over-optimistic projections but also its use of Indigenous territories and denial of certain communities’ rights of self-determination.<sup>122</sup> In one submission the role of REDD+ is reported in providing cover for land grabs against Indigenous Peoples.<sup>123</sup>

67. In one submission it was noted that access to available climate financing, especially at the local level, remains a critical challenge. It was also reported in the submission that experts have described the operation of international climate institutions as a form of indirect colonization. Projects are often envisioned and directed by international institutions that tend to privilege global North perspectives over global South contributions.<sup>124</sup>

*Climate and racial injustice rooted in existing international frameworks*

68. A complex framework on international environmental law exists, and with the creation of the United Nations Environmental Programme (UNEP) and the adoption of the Stockholm Declaration and Action Plan for the Human Environment at the United Nations Conference on the Human Environment, held in Stockholm in 1972, United Nations Member States initiated a regime for global environmental coordination. Multiple treaties address pollution and biodiversity, although this section is focused on climate change governance, including through the United Nations Framework Convention on Climate Change, the Kyoto Protocol thereto and the Paris Agreement. In the Framework Convention three pillars in the fight against climate change are advanced: adaptation, mitigation and “loss and damage”.

69. In United Nations environmental and climate negotiations, global South States have consistently advocated for an international environmental framework in which structural disparities in the global economic and political system are recognized. In her address at the Stockholm Conference, whose outcomes were greatly influenced by global North economists,<sup>125</sup> the Prime Minister of India, Indira Gandhi, called for

<sup>121</sup> Ibid.

<sup>122</sup> Submission from Dehm.

<sup>123</sup> Submission from the Indigenous Environmental Network.

<sup>124</sup> Submission from the Centre for Economic and Social Rights.

<sup>125</sup> See Karin Mickelson, “The Stockholm Conference and the creation of the North-South divide in international environmental law and policy”, in *International Environmental Law and the Global South*, Shawkat Alam and others, eds. (New York, Cambridge University Press, 2015); and Philip McMichael, “Contemporary contradictions of the global development project: geopolitics, global ecology and the ‘development climate’”, *Third World Quarterly*, vol. 30, No. 1 (2009).

a collective approach to address environmental issues while emphasizing the need for appreciating power inequities and historical domination.<sup>126</sup> At the Stockholm Conference, global South States raised concerns about environmental degradation and human rights impacts caused by industrial activities of global North transnational corporations. Some negotiators consistently argued that environmental issues must be considered in light of historical and geopolitical structures,<sup>127</sup> and even at the United Nations Conference on Environment and Development (Earth Summit), held in Rio de Janeiro, Brazil, in 1992, the Prime Minister of Malaysia highlighted the emergence of climate colonialism perpetuated by States in the global North.<sup>128</sup> However, the global climate framework offers no real path forward for climate justice, which entails racial justice.

70. At the Rio Summit, the Conference secretariat estimated that developing countries required \$100 billion per year in external assistance to meet the Summit action plan, Agenda 21.<sup>129</sup> Notwithstanding their role in creating the climate crisis, some powerful States in the global North refused to contribute the requisite aid to global South States.<sup>130</sup> At the United Nations Conference on Sustainable Development (Rio+20), held in 2012, the twentieth anniversary of the Rio Summit, global North States refused requests from the Group of 77 and China to increase financial assistance to meet their environmental commitments.<sup>131</sup>

71. The framing of climate change within international forums frequently elides the historical responsibility borne by some States and transnational corporations. Although the common but differentiated responsibility principle has been enshrined in the Rio Declaration and carried through the United Nations Framework Convention on Climate Change, the Kyoto Protocol and the Paris Agreement, global North States have accepted the language on the basis of differential or superior capacity, rather than as an indication of State responsibility for historical harm.<sup>132</sup>

72. Questions of reparation and remediation for loss and damage caused by climate change and environmental degradation have purposefully been excluded from relevant frameworks by the powerful countries most responsible for the harm.<sup>133</sup> The eventual inclusion of loss and damage within the Paris Agreement was due to a compromise that shields wealthy countries from accountability.<sup>134</sup> The trajectory of the loss and damage framework after the Paris Agreement has thus continued its transition away from confronting historical responsibility and reparation.<sup>135</sup>

<sup>126</sup> Malavika Rao, “A TWAIL perspective on loss and damage from climate change: reflections from Indira Gandhi’s speech at Stockholm”, *Asian Journal of International Law*, vol 12, No. 1 (January 2022).

<sup>127</sup> Ibid.

<sup>128</sup> McMichael, “Contemporary contradictions”.

<sup>129</sup> Martin Khor, “An assessment of the Rio Summit on sustainable development”, *Economic and Political Weekly*, vol. 47, No. 28 (July 2012).

<sup>130</sup> John Vogler and Hannes R. Stephan, “The European Union in global environmental governance: leadership in the making?”, *International Environmental Agreements: Politics, Law and Economics*, vol. 7, No. 4 (December 2007).

<sup>131</sup> Khor, “An assessment of the Rio Summit”. See also, submission from the Centre for Economic and Social Rights.

<sup>132</sup> Sumudu Atapattu and Carmen G. Gonzalez, “The North–South divide in international environmental law: framing the issues”, in *International Environmental Law and the Global South*, Alam and others, eds.

<sup>133</sup> Submission from Dehm.

<sup>134</sup> Maxine Burkett, “Reading between the red lines: loss and damage and the Paris outcome”, *Climate Law*, vol. 6, Nos. 1–2 (May 2016), p. 124.

<sup>135</sup> Julia Dehm, “Climate change, ‘slow violence’ and the indefinite deferral of responsibility for ‘loss and damage’”, *Griffith Law Review*, vol. 29, No. 2 (2020).

73. The massive power and resource imbalances among States participating in climate change negotiations have led to compromises that benefit politically powerful States – including former colonial powers – at the expense of global South States, especially small island developing States. One submission highlighted how existing climate mitigation interventions, which are delivered only in English and remain highly technical, widen the gap between traditional and scientific approaches to climate response.<sup>136</sup> Although States in the global North are typically capable of fielding large negotiating teams and relying upon well-resourced national bureaucracies operating in English, other States are limited to smaller negotiating teams with limited support from their capitals.<sup>137</sup> This imbalance is magnified by the outsized economic capacity of global North States, which was built in significant part through racist domination of the global South, and allows the North to exert greater leverage on the global South. At the same time, global South States have no effective, reliable means of holding global North States accountable for failing to meet their climate obligations or to provide reparations for historical and ongoing climate injustice.

74. There are vital debates about the need for greater compliance with existing international standards in the face of ecological crisis but, as highlighted by submissions received, a central problem is the existing international legal frameworks. For example, in addition to the above, international law fails to provide robust provisions for holding transnational corporations accountable for human rights violations that disproportionately affect peoples and territories colonially designated as non-white. International investment law presently serves as a deterrent to environmentally responsible extractivism regulation because of the costly arbitral proceedings that can result from national environmental and other regulations that diminish the value of foreign investment. An additional concern is that the applicable legal and policy frameworks have operated as “hyper-technocratic silo[s]”<sup>138</sup> that are disconnected both from the bodies of law that are major contributors to the problem, and from the economic, social and political fields that shape and are impacted from ecological crisis. Even the way nature and the environment are conceptualized in international environmental discussions is limited to the commercial, human-centric understandings of nature that can be traced to early European scholars, and that remain the dominant frames in international law.<sup>139</sup> The worldviews that have precipitated ecological disaster and that are determining the global response remain anchored in Eurocentrism and continue to exclude the worldviews of other peoples. This epistemic imperialism is itself a racial justice issue.

## B. Recommendations

**75. The present report conveys the grim picture on the ground, but there are racially and ethnically marginalized groups that challenge environmental racism and climate injustice on a daily basis, and that are charting paths toward climate justice and environmental justice more broadly. From consultations, the Global Tapestry of Alternatives<sup>140</sup> offers one example. It is a “network of networks”, that is a non-hierarchical, horizontal initiative focused on solidarity, strategic alliances and systemic solutions at the local, regional and global levels. Other examples include Oil Change International and the Indigenous Environmental**

<sup>136</sup> Submission from Vano.

<sup>137</sup> Danielle Falzon, “The ideal delegation: how institutional privilege silences ‘developing’ nations in the UN climate negotiations”, *Social Problems*, spab040 (2021).

<sup>138</sup> Submissions from Gonzalez and the Centre for Economic and Social Rights.

<sup>139</sup> Ushu Natarajan and Kishan Khoday, “Locating nature: making and unmaking international law”, *Leiden Journal of International Law*, vol. 27, No. 3 (2014).

<sup>140</sup> See <https://kalpavriksh.org/our-work/alternatives/global-tapestry-of-alternatives/>.

Network,<sup>141</sup> Native Conservancy, GenderCC Women for Climate Justice Southern Africa, the Global Alliance of Territorial Communities and Mouvman Peyizan Papay, which are but a few examples of grass-roots environmental and climate-justice initiatives that are also forging transnational alliances and centring racially and ethnically marginalized groups in environmental and climate-related knowledge production. Localism alone cannot be a solution to global ecological crisis, but global approaches to adaptation, mitigation and loss and damage must be shaped by and responsive to grass-roots organizations and networks of racially, ethnically and nationally marginalized groups which are on the front lines of the global ecological crisis.

76. The Special Rapporteur additionally recommends the following to Member States, and stakeholders within the United Nations environmental and climate governance regimes:

77. Adopt a global approach that effectively responds to the fact that climate justice requires racial justice, and that racial justice requires climate justice. The racially disparate impacts of environmental degradation and climate injustice require fundamental reorientation of political institutions, economic systems and legal principles to include racial justice and equality priorities. “Green transitions” must also be racially just transitions. Transitions to cleaner forms of energy, climate adaptations and other programmes must take steps, including special measures, to ensure that climate change responses do not continue patterns of racial marginalization and discrimination. True racial justice entails an end to environmental racism, and also entails adaptation, mitigation and loss and damage frameworks that uproot the systemic racism built into the global economy, political hierarchies and legal frameworks. This includes wholesale decolonization of legal and economic systems to ensure that racially marginalized peoples, including Indigenous Peoples, possess true self-determination, including sovereignty over their territories. As noted in one submission, racial justice and climate justice require fiscal justice.<sup>142</sup>

78. Prioritize reparations for historical environmental and climate harms and for contemporary harms rooted in historic injustice. The Special Rapporteur urges Member States and stakeholders to consult her 2019 report on reparations for racial discrimination rooted in slavery and colonialism, which also applies to the context of climate and environmental justice. Reparations require addressing historic climate injustice, as well as eradicating contemporary systemic racism that is a legacy of historic injustice in the context of the global ecological crisis. To the extent that contemporary international legal principles present barriers to historical responsibility for climate change, United Nations Member States must decolonize or transform this law in a manner that makes it capable of guaranteeing genuine equality and self-determination for all peoples. Reparations, which entail equitable international economic, political and legal frameworks, are a precondition for reorienting the global order away from ecological crisis. Proposals for pathways to reparations are growing, and progress requires global, national and local collaboration and partnership with racially, ethnically and nationally marginalized groups.

79. The Special Rapporteur emphasizes that the right to self-determination includes Indigenous Peoples’ right to development on their own terms and timelines and in accordance with their ideologies. Indigenous Peoples are diverse, with varied needs, priorities and governance structures. Indigenous

<sup>141</sup> Indigenous Environmental Network and Oil Change International, “Indigenous resistance against carbon”, August 2021. See also, submission from Kaswan.

<sup>142</sup> Submission from the Centre for Economic and Social Rights.

Peoples should not be forced into categorical or stereotypical roles as “full-time stewards of the natural environment”, nor should they be trapped into paternalistic development arrangements driven by State Governments.

80. Stop racially discriminatory human rights violations relating to climate and the environment and provide effective remedies to the individuals and groups affected. The Special Rapporteur urges States to implement the recommendations of the many special procedures mandates that have offered technical and other recommendations that can assist in this regard. Climate migrants and refugees should be provided with the requisite legal and substantive protections, especially in countries with historic responsibility for climate injustice. Racial equality and non-discrimination require that all necessary measures be taken to preserve Indigenous homelands and mitigate the effects of climate change on small island developing States. States and other stakeholders must also ensure human rights-complaint data collection on environmental and climate impacts, disaggregated on the basis of race, ethnicity and national origin.

81. Systematically hold transnational corporations accountable for environmental racism and climate injustice.

82. Institutionalize meaningful participation and decision-making of racially, ethnically and nationally marginalized persons and peoples in global and national climate governance, including women, gender-diverse persons, persons with disabilities, refugees, migrants and stateless persons.

---



# General Assembly

Distr.: General  
9 August 2011

Original: English

---

## Sixty-sixth session

Item 69 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedom**

## **Protection of and assistance to internally displaced persons**

### **Note by Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, in accordance with General Assembly resolution 64/142 and Human Rights Council resolution 14/6.

---

\* A/66/150.

*Summary*

The report outlines the major activities undertaken by the mandate holder during the period of August 2010 to July 2011. In addition, it provides a thematic review of the issue of climate change and internal displacement.

**Contents**

	<i>Page</i>
I. Introduction .....	3
II. Mandate and activities of the Special Rapporteur .....	3
A. The mandate of the Special Rapporteur .....	3
B. Country engagement .....	3
C. Cooperation with regional and international organizations .....	4
D. Mainstreaming the human rights of internally displaced persons in the United Nations system .....	5
III. Thematic section: climate change and internal displacement .....	6
A. Introduction .....	6
B. Some basic concepts and terminology .....	7
C. The larger picture .....	8
D. Potential consequences of climate change for displacement patterns .....	9
E. The need for a rights-based approach .....	10
F. The relevance of the human rights framework for internally displaced persons .....	11
G. Addressing internal displacement in the context of climate change .....	13
H. Participation and procedural rights of affected persons .....	21
I. International cooperation frameworks .....	21
IV. Recommendations .....	22

## **I. Introduction**

1. The present report provides an overview of the main activities undertaken by the mandate holder during the period from August 2010 to July 2011. It covers the activities of the Special Rapporteur on the human rights of internally displaced persons, who assumed his functions in November 2010, and the activities of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, whose mandate ended in October 2010.

2. The report also contains a thematic section on climate change and internal displacement. It is presented in accordance with General Assembly resolution 62/153 and Human Rights Council resolution 14/6.

## **II. Mandate and activities of the Special Rapporteur**

### **A. The mandate of the Special Rapporteur**

3. By its resolution 14/6, the Human Rights Council mandated the Special Rapporteur to address the complex problem of internal displacement, in particular by mainstreaming the human rights of internally displaced persons into all relevant parts of the United Nations system; and to work towards strengthening the international response through coordinated international advocacy and action for improving protection and respect of the human rights of the internally displaced.

4. In accordance with his mandate, the Special Rapporteur has endeavoured to promote a rights-based approach to internal displacement through dialogue with Governments and mainstreaming and advocacy activities within the United Nations and regional organizations. He would like to express his appreciation to the Governments that have issued invitations or otherwise engaged with the mandate.

### **B. Country engagement**

5. The Special Rapporteur carried out a mission to Maldives from 16 to 22 July 2011 to assess the current situation of persons displaced by the 2004 tsunami, as well as issues relating to potential internal displacement owing to natural disasters and climate change. The Special Rapporteur found that the effects of climate change, such as coastal erosion, salination, rising sea levels and more frequent storms and flooding, were being felt in many islands and affecting human rights such as the right to housing, safe water and livelihoods.

6. The Special Rapporteur stressed the need to put in place preparedness measures for potential climate change-induced displacement, founded on a human rights-based approach. While commending the efforts of the Maldives authorities for having recently endorsed the strategic national action plan for disaster risk reduction and climate change adaptation, he noted that it was now essential to put in place a law on disaster risk reduction and properly resourced institutional support structures which would ensure implementation of the strategy and address internal displacement.

7. With regard to the situation of the 2004 tsunami victims, the Special Rapporteur found that while much had been achieved in addressing their situation,

1,600 people were still living in difficult conditions in temporary shelters on several islands and required urgent attention. The report on his visit will be presented to the Human Rights Council in March 2012, and will serve to complement the thematic section of the present report, on internal displacement and climate change, by highlighting the particular situation of low-lying island States.

8. During the reporting period, the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, visited the following countries: Georgia (13-16 September 2010; see A/HRC/16/43/Add.3); Armenia (17 and 18 September 2010); Iraq (26 September-3 October 2010; see A/HRC/16/43/Add.1); and Haiti (11-16 October 2010).

9. Since assuming his mandate, the Special Rapporteur has made visit requests to the following countries: Côte d'Ivoire, Colombia, Pakistan, Papua New Guinea, the Philippines, Kenya and the Sudan. He has received positive replies from the Sudan and Kenya, and is planning to visit Kenya in September 2011.

### **C. Cooperation with regional and international organizations**

10. The Special Rapporteur has actively engaged with key regional and international organizations during the reporting period. Among others, he has continued constructive engagement with the World Bank, and more particularly its conflict, crime and violence unit, and the International Committee of the Red Cross, with whom he discussed operational approaches to the protection of internally displaced persons, future areas of cooperation and the continuation of the annual open dialogue session on issues of mutual concern.

11. The Special Rapporteur has engaged closely with regional organizations in Africa for the promotion, ratification and implementation at the national level of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention), the first legally binding regional instrument specifically on the protection of and assistance to internally displaced persons. In that context, he participated in, inter alia, the first ministerial conference of the Economic Community of West African States on humanitarian assistance and internal displacement in West Africa, held in Abuja on 6 and 7 July 2011; a workshop on the Kampala Convention for Members of the Kenyan Parliament Select Committee on Internally Displaced Persons on 23 May 2011, in Mombasa, Kenya; the regional consultative meeting on the plan of action for the Kampala Convention for the Eastern and Central Africa region, held in Kinshasa on 20 and 21 May 2011; and the regional consultative meeting on the plan of action for the Kampala Convention for the Southern African Development Community (SADC), held in Lilongwe on 17 and March 2011.

12. The Special Rapporteur has maintained ongoing contacts with civil society organizations in Geneva and New York and in the field. In particular, he wishes to express his appreciation for the support provided to his mandate through the Brookings-London School of Economics Project on Internal Displacement. He is also appreciative of the strong cooperation with the Internal Displacement Monitoring Centre on various issues of mutual interest, including training and advocacy activities relating to the Kampala Convention.

13. The Special Rapporteur, the Brookings-London School of Economics Project on Internal Displacement, the International Institute of Humanitarian Law, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) co-organized the seventh annual course on the law of internal displacement in San Remo, Italy, from 7 to 12 June 2011. The course provides training to high-level Government officials working on internal displacement from different parts of the world. In 2011, it welcomed 21 participants from 14 displacement-affected countries.

14. The Special Rapporteur also participated in the regional workshop on protecting and promoting rights in natural disasters in the Great Lakes region and East Africa and the forum on the Kampala Convention organized by the Brookings-London School of Economics Project on Internal Displacement and the Office for the Coordination of Humanitarian Affairs of the Secretariat and held in Kampala from 15 to 17 June 2011.

15. In addition, the Special Rapporteur participated in various other international forums and events, including, in the context of this thematic report, the Expert Roundtable on Climate Change and Displacement held in Bellagio, Italy from 22 to 25 February 2011,, and the Nansen Conference on Climate Change and Displacement in the 21st Century, held in Oslo on 6 and 7 June 2011.

#### **D. Mainstreaming the human rights of internally displaced persons in the United Nations system**

16. During the reporting period, the Special Rapporteur participated in the Inter-Agency Standing Committee, the key platform for the Special Rapporteur to mainstream the human rights of internally displaced persons within the United Nations system and the wider humanitarian community.

17. The Special Rapporteur has maintained close cooperation with key United Nations entities, including OHCHR, UNHCR and the Office for the Coordination of Humanitarian. He engaged with these entities through briefings and meetings in New York and Geneva to discuss specific issues relating to the protection of internally displaced persons, and areas of cooperation. The Special Rapporteur also participated in a number of key events and activities organized by these entities, such as training sessions, events related to the promotion of the Kampala Convention, an expert round table on climate change and displacement and various human rights events organized by OHCHR. In addition to providing overall substantive and logistical support to the activities of the Special Rapporteur, OHCHR facilitates coordination with the United Nations system. The Special Rapporteur wishes to express his special appreciation for the support these entities have continued to provide to him in fulfilling his mandate.

### III. Thematic section: climate change and internal displacement

#### A. Introduction

18. According to United Nations estimates, up to 50 million people are internally displaced because of natural disasters each year.<sup>1</sup> In 2010 alone, at least 42.3 million people were newly displaced by sudden-onset natural disasters, 90 per cent of which were due to climate-related.<sup>2</sup>

19. The importance of displacement, and in particular internal displacement, within the climate change debate is well established and now calls for specific strategies and measures to address it. Already in 1990, the Intergovernmental Panel on Climate Change reported that the greatest single impact of climate change might be on human migration.<sup>3</sup> The Panel estimated that by 2050, 150 million people could be displaced by climate change-related phenomena, such as desertification, increasing water scarcity, floods and storms. Since then, while estimates have varied, it has generally been accepted that the effects of climate change will indeed result in large-scale movements of people, mostly within the boundaries of affected States, and that developing States in the southern hemisphere are likely to be the worst affected.

20. The socio-economic impact of climate change is expected to have significant consequences for the enjoyment of human rights, for the implementation of the Millennium Development Goals and for human security (A/HRC/10/61) In this context, internal displacement represents a further challenge of adaptation to the effects of climate change. In its resolution 64/162 of 18 December 2009, the General Assembly recognized natural disasters as a cause of internal displacement and voiced concern about factors, such as climate change, that were expected to exacerbate the impact of natural hazards, and climate-related slow-onset events.

21. The importance of addressing displacement caused by climate change was more recently recognized by the Conference of the Parties to the United Nations Framework Convention on Climate Change. At its sixteenth session, held in Cancun, Mexico from 29 November to 10 December 2010, the Conference of the Parties adopted the “Cancun Adaptation Framework”,<sup>4</sup> which expressly acknowledges climate-induced displacement.

22. The Conference of the Parties invited all parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities and respective capabilities, and specific national and regional development priorities, objectives and circumstances, by undertaking, inter alia, measures to enhance understanding, coordination and cooperation with regard to climate change-induced displacement, migration and

---

<sup>1</sup> See [www.unocha.org/what-we-do/advocacy/thematic-campaigns/internal-displacement/overview](http://www.unocha.org/what-we-do/advocacy/thematic-campaigns/internal-displacement/overview).

<sup>2</sup> Internal Displacement Monitoring Centre, “Displacement due to natural hazard-induced disasters: global estimates for 2009 and 2010”, June 2011, p. 11.

<sup>3</sup> First Assessment report, available from [www.ipcc.ch](http://www.ipcc.ch).

<sup>4</sup> FCCC/CP/2010/7/Add.1, decision 1/CP.16.

planned relocation, where appropriate, at national, regional and international levels.<sup>5</sup>

23. The present report aims to explore the linkages between climate change and internal displacement from a human rights perspective. It draws on the 1998 Guiding Principles on Internal Displacement,<sup>6</sup> the core international human rights instruments and the principal climate change frameworks proposed to date. While not exhaustive, it highlights some key principles and concepts necessary to inform the discussion, sheds light on the complexities surrounding the issue and makes a number of recommendations which could serve to orient future work in this area.

24. The scope of the report is limited to internal displacement, in keeping with the parameters of the Special Rapporteur's mandate. Moreover, owing to the close linkages between climate change and the increased frequency and severity of natural disasters, combined with the inherent difficulty of distinguishing between natural disasters provoked by climate change and those unrelated to this phenomenon, the report takes an inclusive approach to the issue. Owing to space limitations, the specific situation of low-lying island States is not addressed, but will be the focus of attention in the Special Rapporteur's report to the Human Rights Council in March 2012 on his visit to Maldives in July 2011.

## **B. Some basic concepts and terminology**

25. The present section provides definitions of key concepts and terminology used in the climate change debate. The Intergovernmental Panel on Climate Change defines climate change as “any change in the climate over time, whether due to natural variability or [...] human activity”.<sup>7</sup> The United Nations Framework Convention on Climate Change, however, specifically focuses on changes in the climate which are “attributed directly or indirectly to human activity” and are “in addition to natural climate variability”.<sup>8</sup>

26. Two principal strategies to respond to the threats posed by climate change are mitigation and adaptation. Mitigation, in the context of climate change policy, refers to measures which aim to minimize the extent of global warming by reducing emission levels and stabilizing greenhouse gas concentrations in the atmosphere.<sup>9</sup> Climate change adaptation measures are adjustments in natural or human systems in response to actual or expected climatic stimuli or their effects, which moderate harm or exploit beneficial opportunities.<sup>10</sup> Alternatively stated, they are measures that reduce harm and strengthen the capacity of societies and ecosystems to cope with and adapt to climate change risks and impacts. This report explores, in particular, possible adaptation measures specific to climate change-induced displacement.

27. References to resilience in this context relate to “the ability of a system, community or society exposed to hazards to resist, absorb, accommodate and

<sup>5</sup> Ibid., para. 14.

<sup>6</sup> E/CN.4/1998/53/Add.2, annex. Available at [www2.ohchr.org/english/issues/idp/standards.htm](http://www2.ohchr.org/english/issues/idp/standards.htm).

<sup>7</sup> *Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Summary for Policymakers, p. 21. Available from [www.ipcc.ch](http://www.ipcc.ch).

<sup>8</sup> United Nations, *Treaty Series*, vol. 1771, No. 30822, art. 1, para. 2.

<sup>9</sup> Adapted from United Nations Framework Convention on Climate Change, Glossary of climate change acronyms ([http://unfccc.int/essential\\_background/glossary/items/3666.php](http://unfccc.int/essential_background/glossary/items/3666.php)).

<sup>10</sup> Ibid.

recover from the effects of a hazard in a timely and efficient manner”.<sup>11</sup> Definitions of other terms are provided in subsequent sections of the report.

### C. The larger picture

28. While the effects of climate change are themselves expected to result in displacement, this factor should not be considered in isolation from broader global, regional and national dynamics. As highlighted at an expert workshop organized by UNHCR in 2011, the impact of climate change will interact with a number of global mega-trends such as population growth, rapid urbanization, increased human mobility and food, water and energy insecurity,<sup>12</sup> as well as local and regional factors (pre-existing socio-economic and governance situations), which will potentially affect the magnitude and patterns of displacement as well as possible solutions.

29. Climate change is arguably already acting as “an impact multiplier and accelerator”.<sup>13</sup> In addition to its negative impact on social and economic rights, which will itself provoke some displacement, climate change, interacting with other pressures or social and political factors, will exacerbate the risk of conflicts, which could then act as a driver of further displacement. Climate-related displacement is therefore likely to be characterized by multiple causalities, such as conflicts due to competition over resources or the loss of livelihoods. This was more recently highlighted during the Security Council debate of 20 July 2011 on the possible security implications of climate change, in which it was noted that climate change could aggravate or amplify existing security concerns and give rise to new ones, particularly in already fragile and vulnerable nations. It could also sharply intensify human displacement, bringing communities into increasing competition for finite natural resources with global repercussions for global economic stability.<sup>14</sup>

30. A distinction should be drawn between sudden-onset and slow-onset events since they affect human mobility in different ways. Slow-onset disasters tend to prompt movements of people to other locations in search of livelihoods, food security and safety — a trend already being manifested in different parts of the world. In this context, regional particularities around displacement patterns and their various causes will be important to monitor and understand. This is particularly the case in Africa and Asia, as climate change is expected to have especially dire effects on developing countries, and the most vulnerable populations within them. At the time of writing of this report, an estimated 12 million people in the Horn of Africa required immediate humanitarian assistance owing to drought and food insecurity affecting, inter alia, Somalia, Kenya, Ethiopia, Uganda and Djibouti.<sup>15</sup> In Somalia, successive drought-induced crop failures, spiralling food prices and lack of food

<sup>11</sup> UNISDR (Secretariat of the International Strategy for Disaster Reduction), *Terminology on Disaster Risk Reduction*, Geneva, 2009, p. 10.

<sup>12</sup> UNHCR, Summary of deliberations on climate change and displacement, resulting from the expert round table on climate change and displacement held in Bellagio, Italy, from 22 to 25 February 2011, p. 2.

<sup>13</sup> Ibid.

<sup>14</sup> Press release SC/10332 ([www.un.org/News/Press/docs//2011/sc10332.doc.htm](http://www.un.org/News/Press/docs//2011/sc10332.doc.htm)). See also the related Security Council debate on 17 April 2007 (SC/9000); and A/HCR/10/61, paras. 61-63.

<sup>15</sup> Food and Agriculture Organization of the United Nations (FAO), media report of 20 July 2011 ([www.fao.org/news/story/en/item/82387/icode/](http://www.fao.org/news/story/en/item/82387/icode/)).

assistance, combined with conflict, insecurity and limited access by humanitarian organizations, have resulted in one of the worst famines in decades, placing 3.7 million people in need of urgent assistance and causing large-scale displacements.<sup>16</sup>

31. In order to address these intersecting challenges and develop adaptation strategies to deal with complex climate change-related displacement, a broader and more holistic understanding is required which goes beyond the direct line of causality usually applied in situations of sudden-onset natural disasters.

#### **D. Potential consequences of climate change for displacement patterns**

32. Population displacements are likely to result from or be exacerbated by a number of different changes in our physical climate and environment, including:

(a) Increased droughts, environmental degradation and slow-onset disasters such as desertification which undermine agricultural livelihoods and reduce food security;

(b) Higher temperatures in water and air, and increasing acidity of seas;

(c) Contraction of snow-covered areas and melting of sea ice, leading among other things, to rising sea levels affecting the habitability of coastal areas and low-lying island States;

(d) Increased frequency and intensity of weather-related natural hazards such as tropical cyclones, hurricanes, mudslides and flooding, which will threaten the physical safety of affected populations;

(e) Conflict and social upheaval, directly or indirectly attributable to climate change-related factors, such as competition for scarcer natural resources, changing livelihood patterns, increased social tensions and possible concentration of vulnerable populations, including in poor urban areas.

33. The above changes in our environment and climate are predicted to increase displacement and to alter its patterns, as people move to locations, predominantly within their own countries, which offer them greater human security and livelihoods. In some instances, for example when planned relocation is unsuccessful or when the spontaneously displaced congregate in urban centres already under pressure, secondary displacements may ensue. Indeed, secondary or cyclical displacements may become a by-product of ineffective adaptation strategies to address original displacement situations, as well as a consequence of the failure to sufficiently plan ahead in areas such as food security, urban planning or resource management — all of which may be put under additional pressure by the effects of climate change.

<sup>16</sup> Office for the Coordination of Humanitarian Affairs, *Famine and drought situation report No. 6*, 3 August 2011, p. 2, at <http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Somalia%20Situation%20Report%20No.%206%2003%20August%202011.pdf>.

## E. The need for a rights-based approach

34. In the last several years, the climate change debate, traditionally centred on scientific and economic factors, has gradually begun to encompass the social and human rights dimensions. This has led to a growing body of studies and reports exploring the multidisciplinary and human rights facets of the challenges posed by the effects of climate change.<sup>17</sup>

35. In 2008, the Human Rights Council, in its resolution 7/23, requested OHCHR to undertake a study, in consultation with States and other key stakeholders, on the relationship between climate change and human rights. The study (A/HRC/10/61) provides an overview of the effects of climate change for human rights, including its impact on specific rights, vulnerable groups of persons, forced displacement and conflict, and examines the human rights implications of response measures to climate change. Importantly, it outlines relevant national and international obligations under international human rights law, including those relating to the progressive realization of economic, social and cultural rights and access to information and participation in decision-making. The study concludes that measures to address climate change should be informed and strengthened by international human rights standards and principles.

36. Other actors have also enriched the discussion by focusing on specific rights or the impact of climate change on particular groups.<sup>18</sup> In addition to posing a direct threat to the right to life, the effects of climate change are expected to have negative implications for basic rights relating to food (A/HRC/7/5), housing (A/64/255), water and health, and affect the overall right to an adequate standard of living (A/HRC/10/61, paras. 21-38). Some of these analyses have highlighted the link between the lack of access to these rights and displacement.<sup>19</sup> In the context of climate change, internally displaced persons are also a growing category of persons considered to be especially at risk, given the adverse material, social and psychological consequences commonly associated with displacement. These risks are heightened by the fact that the most serious effects of climate change, including displacement, are predicted to disproportionately affect poor regions and countries and populations already in a vulnerable situation owing to poverty and other factors.<sup>20</sup>

37. Measures to address these vulnerabilities and meet the challenges related to climate change-induced displacement should be informed and supported by a human rights-based approach which is applied at all phases of displacement and disaster response. The Nansen principles, developed at the Nansen Conference on Climate Change and Displacement (see para. 15 above), underscored the need for such an approach. Principle I states that “responses to climate and environmentally-related displacement need to be informed by adequate knowledge and guided by the

<sup>17</sup> See, for example, International Council on Human Rights Policy, *Climate Change and Human Rights: A Rough Guide*, 2008; and The World Bank, *Human Rights and Climate Change: A Review of the International Legal Dimensions*, Washington, D.C., 2011.

<sup>18</sup> See A/HRC/SF/2010/2, paras. 11, 14 and 18-20, and A/HRC/10/61, paras. 42-60, which analyse the impact of the effects of climate change on women, children, indigenous peoples and internally displaced persons.

<sup>19</sup> For example, A/HRC/7/5, A/64/255, A/HRC/10/61 and A/HRC/13/21, paras. 43 and 44.

<sup>20</sup> See A/HRC/10/61, paras. 42-54; A/HRC/16/62, para. 48; and UNFCCC/CP/2010/7/Add.1, preamble.

fundamental principles of humanity, human dignity, human rights and international cooperation”.<sup>21</sup>

## **F. The relevance of the human rights framework for internally displaced persons**

### **A global framework**

38. A broad human rights protection framework for internally displaced persons has been developed in the last two decades, which applies explicitly to situations of natural disasters, and extends to persons displaced by the effects of climate change (see A/HRC/13/21, paras. 2 and 41-44).

39. Holding a central place in this framework are the Guiding Principles on Internal Displacement (see note 6 above), which are based on standards in international human rights and humanitarian law and, by analogy, international refugee law. While not legally binding as such, the Guiding Principles restate relevant hard law and have been affirmed by the international community as “an important international framework for the protection of internally displaced persons”.<sup>22</sup> They have served as an important normative standard for the protection of persons displaced in a variety of contexts including conflict, serious human rights violations, natural disasters, and development projects.

40. The Guiding Principles define internally displaced person as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border”.

41. The Guiding Principles have also served as a basis for developing further operational guidance, such as the revised Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (A/HRC/16/43/Add.5) and the Framework on Durable Solutions for Internally Displaced Persons (A/HRC/13/21/Add.4), both adopted by the Inter-Agency Standing Committee. The former, in particular, represent progress in the application of a human rights-based approach to situations of natural disasters — situations closely related to climate change given the increased frequency of climate-related disasters.<sup>23</sup> In addition to applying in different contexts, the Guiding Principles provide specific standards of assistance and protection at all stages of displacement, including in the prevention of displacement, during the displacement phase itself and in the search for durable solutions.

<sup>21</sup> For information on the Nansen Conference and the principles, see [http://www.regjeringen.no/en/dep/ud/Whats-new/news/transcript-of-the-prime-ministers-speech/nansen\\_principles.html?id=651568](http://www.regjeringen.no/en/dep/ud/Whats-new/news/transcript-of-the-prime-ministers-speech/nansen_principles.html?id=651568).

<sup>22</sup> The 2005 World Summit Outcome (see General Assembly resolution 60/1), para. 132. See also resolution 64/162, preamble and para. 10.

<sup>23</sup> By 2008 it was noted that the number of disasters had doubled in the preceding 20 years, while in 2010 it was estimated that 90 per cent of disasters were climate-related. See United Nations News Centre, “Time to prepare for disasters is now says UN”, at [www.un.org/apps/news/story.asp?NewsID=29154&Cr=Disaster&Cr1=Climate#](http://www.un.org/apps/news/story.asp?NewsID=29154&Cr=Disaster&Cr1=Climate#), and Internal Displacement Monitoring Centre, note 2 above.

**Regional frameworks**

42. The Guiding Principles have further paved the way for a new regional treaty, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). Adopted in 2009, the Convention is the first legally binding instrument specifically on the protection of internally displaced persons.<sup>24</sup> Article 5(4) specifically requires that measures be taken to protect and assist people who have been internally displaced by natural or human-made disasters, including those triggered by climate change. Moreover, as stated in article 2 (a), it is a particular objective of the Convention to prevent, mitigate, prohibit and eliminate the root causes of internal displacement. This requirement of prevention and mitigation is further detailed in article 4(2), which obligates parties to develop an early warning system in areas of potential displacement, disaster risk reduction strategies and emergency management measures, in addition to providing protection and assistance if necessary.

43. Other regional instruments, such as the Protocol on Protection and Assistance to Internally Displaced Persons,<sup>25</sup> which implements the Guiding Principles, and the 2005 Agreement on Disaster Management and Emergency Response of the Association of South East Asian Nations, provide further legal and policy frameworks to address displacement, including climate change-induced displacement, at the regional level. They could also potentially provide the basis for regional operational mechanisms for the coordination of humanitarian assistance, displacement-related adaptation schemes and the channelling of climate change adaptation funding.<sup>26</sup>

**National frameworks**

44. At the national level, the Guiding Principles are being increasingly used by many countries to develop their domestic laws and policies (see A/HRC/13/21, para. 15, and General Assembly resolution 64/162, paras. 10 and 13). The Nansen Principles (see para. 37 above) recognize the importance of the Guiding Principles in addressing climate change-induced internal displacement at the national level. Principle VIII states: “The Guiding Principles on Internal Displacement provide a sound legal framework to address protection concerns arising from climate and other environmentally-related internal displacement. States are encouraged to ensure the adequate implementation and operationalization of these principles through national legislation, policies and institutions.”

45. In the context of climate change-induced internal displacement and the increased frequency of related natural disasters, it is now more important than ever that national legislation fully include provisions for these situations, and not just for situations of conflict-related displacement. In this regard, the Cancun Adaptation Framework specifically urges all parties to the United Nations Framework Convention on Climate Change to “strengthen and, where necessary, establish and/or designate national-level institutional arrangements, with a view to enhancing work on the full range of adaptation actions [including displacement-related

---

<sup>24</sup> The Kampala Convention will become binding upon ratification by 15 signatory States. As of 2 August 2011, a total of 12 countries had ratified the Convention.

<sup>25</sup> Article 12 of the Pact on Security, Stability and Development in the Great Lakes Region.

<sup>26</sup> UNHCR, note 12 above, p. 6.

adaptation measures], from planning to implementation” (FCCC/CP/2010/7/Add.1, decision 1/CP.16, para. 32).

## **G. Addressing internal displacement in the context of climate change**

46. The present section focuses on adaptation strategies which relate to disaster management, prevention and durable solutions, rather than humanitarian assistance during the displacement phase itself. Effective responses to the human rights challenges related to climate change-induced internal displacement will require the international community to move beyond the traditional humanitarian assistance and reactive governance models. As suggested by principles IV and V of the Nansen principles, addressing internal displacement in the context of climate change is likely to demand greater focus on foresight, reliable data and monitoring systems, as well as the positive obligations of prevention, resilience building and durable solutions.

### **Disaster risk reduction and disaster preparedness**

47. Disaster risk reduction is defined as “the conceptual framework of elements considered with the possibility to minimize vulnerabilities and disaster risks throughout society, to avoid (prevention) or to limit (mitigation and preparedness) the adverse impacts of hazards, within the broad context of sustainable development”.<sup>27</sup> Stated differently, disaster risk reduction seeks to address the underlying risk factors in order to reduce avoidable loss of life, as well as loss of property and livelihoods — many of which affect internally displaced persons directly. With this aim in mind, the World Conference on Disaster Reduction, held in Hyogo, Japan from 18 to 22 January 2005, adopted a 10-year plan<sup>28</sup> which was signed by 168 States Members of the United Nations.

48. In the face of the increased frequency and intensity of natural hazards, governments have a responsibility to take reasonable preventive action to reduce exposure, minimize vulnerabilities and avoid or limit the adverse impact of hazards<sup>29</sup>. As highlighted by the General Assembly in its resolution 64/142, the consequences of hazards can be prevented or substantially mitigated by disaster risk reduction strategies, which, it suggested, should be integrated into national development policies and programmes. Strategies may include physical infrastructures, but also measures to build national and local humanitarian response and disaster management systems, establish participation mechanisms and strengthen the resilience of affected persons and early recovery capacities.

49. Early warning mechanisms can be instrumental in minimizing damage and loss of life, as well as displacement. However, preliminary analysis of the famine and resulting displacements in Somalia in July and August 2011 shows that while a

<sup>27</sup> UNISDR, “Living with risk: a global review of disaster reduction initiatives”, 2004, p. 17.

<sup>28</sup> Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters (A/CONF.206/6 and Corr.1, chap. I, resolution 2).

<sup>29</sup> A/HRC/10/61, paras. 72-74; General Assembly resolution 64/162, preamble; see also discussion of obligations of States to reduce vulnerabilities and disaster risks, including interpretations by the European Court of Human Rights, in “Conceptualising climate-induced displacement”, by Walter Kälin, in J. McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives*, Oxford, 2010, pp. 82 and 83.

disaster was forecast as early as November 2010 by the Famine Early Warning Systems Network, the famine was not declared until July 2011, and response by donors to funding appeals by the United Nations was insufficient.<sup>30</sup> While insecurity and lack of humanitarian access exacerbate the difficulties in the case of Somalia, this most recent situation, as well as the drought affecting neighbouring countries, have revealed systemic difficulties on the part of both States and the international community in responding proactively to early warnings in order to prevent disasters or limit the adverse impacts on populations, even in the case of slow-onset disasters such as famine. This indicates that technical mechanisms such as early warning systems need to be combined with political will and responsive governance systems that implement preparedness, disaster risk reduction and other adaptation measures in a timely.

50. In addition to early warning systems, legal preparedness measures, such as national legislation and policies, and other measures to protect the human rights of internally displaced persons can be put in place before disaster strikes in order to limit the negative impact of potential displacement. They can include measures to preserve and restore family unity (e.g. during evacuations), which is a key factor contributing to protection, and to ensure the replacement of personal documentation through rapid and simplified procedures. They can also include measures to protect housing, land and property rights through the registration and safekeeping of land titles; mechanisms to resolve property disputes following a disaster; and precautions to ensure that disaster relief interventions are conducted in such a way as to avoid discrimination (for example on the basis of gender, age or ethnicity).<sup>31</sup>

### **Preventing and minimizing internal displacement, and its adverse effects**

51. According to the Guiding Principles, displacement must remain an option of last resort. It must only be exercised when there are no other alternatives, and be undertaken for legitimate purposes with sufficient legal and procedural guarantees.<sup>32</sup>

52. Guiding Principle 7(1) provides that “prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether” and that “where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects”. Adaptation strategies related to potential displacement should, therefore, also include investments and measures to avoid and minimize such displacements, where that is feasible.

<sup>30</sup> *The Economist*, 30 July-5 August 2011, p. 32; Office for the Coordination of Humanitarian Affairs, Famine and drought situation report No. 6, 3 August 2011, p. 4.

<sup>31</sup> Walter Kälin, “A human rights-based approach to resilience building”, presented at Nansen Conference on Climate Change and Displacement, in the 21st Century, Oslo, 5-7 June, 2011, p. 2. Available at [www.brookings.edu/papers/2011/0606\\_disasters\\_human\\_rights\\_kaelin](http://www.brookings.edu/papers/2011/0606_disasters_human_rights_kaelin).

<sup>32</sup> Guiding Principles 6 and 7. Also see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, revised edition, pp. 27 and 30; and American Society of International Law, *Studies in Transnational Legal Policy*, No. 38 (2008). Note that the term protection against displacement refers to protection against arbitrary displacement (i.e., an order or forced displacement by authorities) and that prevention of displacement refers to measures which seek to alleviate the need for populations to move — and never to prevent the act of fleeing or moving by those displaced.

53. Much of the attention to date in the area of protection from displacement has focused on protecting individuals or communities from "arbitrary" displacement (Guiding Principle 6), resulting from active violations of human rights by the State or other actors, such as when displacement is used as a form of collective punishment or to effect policies of ethnic cleansing, or when large-scale development projects fail to meet set requirements.

54. Some climate change-induced displacement however, such as movements triggered by slow-onset disasters, may require more emphasis on the positive obligations of States, with the support of regional bodies and the international community, to anticipate, plan ahead and take measures to prevent or mitigate conditions likely to bring about displacement and threaten human rights. This precautionary role to ensure conditions conducive to human rights, including rights related to an adequate standard of living which allow one to avoid displacement, is a standard of governmental, international governance and human rights protection which is based on positive obligations and actions, rather than the negative obligation of non-interference in human rights.

55. To discharge its obligations, responsible governance will need to develop capacities to detect potential disaster and displacement situations early on, accountability mechanisms to ensure that follow-up prevention and protection measures are taken, and more effective systems of local and regional consultation which engage affected populations in decisions about their future. In particular, addressing potential displacement in cases of slow-onset disasters may demand that, in addition to environmental adaptation measures to minimize degradation (e.g. soil erosion), measures be taken to address a wide range of social issues at the local level. These can include pre-emptive measures such as economic diversification, the development of alternative forms of livelihoods, addressing issues related to the management of natural resources and putting in place appropriate social safety nets for the most vulnerable sectors of the population.

56. The Special Rapporteur on the right to food for example, has analysed the adverse impact of extreme climate changes on livelihoods and food security.<sup>33</sup> The impact of climate change on agricultural production in developing countries in particular, which has been well documented, will result in volatile markets and threaten the right to food for millions of people. It may be necessary to address and re-evaluate methods of agricultural production,<sup>34</sup> in addition to addressing humanitarian assistance needs. Research and decisions made with regard to agricultural approaches and other measures to ensure food security and resource management will profoundly affect displacement patterns.

57. When preventive measures have not been taken or are not feasible, displacement and pre-emptive movements by populations, which are rational adaptation responses,<sup>35</sup> are likely to take place. Anticipating these movements, and

---

<sup>33</sup> See A/HRC/7/5, para. 51, and A/HRC/7/5/Add.2, paras. 11 and 15. See also Committee on Economic, Social and Cultural Rights general comment No. 12 (1999) on the right to adequate food (art. 11), para. 28; and A/HRC/10/61, paras. 25-27.

<sup>34</sup> News release, "Cancun climate Summit: UN food expert calls for a 'Green Marshall Plan for Agriculture'", 29 November 2010.

<sup>35</sup> See International Organization for Migration, *Policy Brief on Migration, Climate Change and Environment* (2009), available at [www.iom.int/envig](http://www.iom.int/envig).

ensuring data collection and monitoring in such situations are important<sup>36</sup> in order to be able to plan for and minimize the negative consequences, including loss of life or property, and the risk of provoking instability in host areas.

58. In the case of internal displacement caused by sudden-onset disasters, disaster risk reduction and measures to build resilience are key elements to preventing displacement or limiting its consequences. It is also important to ensure that early recovery and reconstruction are undertaken at the earliest possible opportunity so that displacement does not last longer than required. However, this has represented a key and systemic challenge to date, which humanitarian and development actors, as well as States, must address in their displacement-related adaptation strategies.

59. The Cancun Adaptation Framework recognizes the need to strengthen international cooperation and national capacities and expertise, with a view to developing approaches which can reduce loss and damage associated with the effects of climate change, in cases of both sudden disasters and slow-onset events.<sup>37</sup>

60. Importantly, the Framework specifically mentions activities related to risk reduction, resilience building, micro-insurance, risk sharing and economic diversification, as well as the need to address rehabilitation measures associated with slow-onset events.<sup>38</sup>

### **Relocations**

61. It may at times be necessary to relocate people from high-risk or disaster-prone areas or in response to a slow-onset disaster which has made life unsustainable in a particular area.<sup>39</sup> Where displacement takes place outside of an emergency situation, such as in the case of pre-emptive relocations by the Government, safeguards are necessary to ensure that individual rights are respected.

62. Guiding Principle 7(3) provides for a number of such procedural guarantees, in addition to the requirements in Guiding Principle 7(1) mentioned in paragraph 52 above. A specific decision by an appropriate State authority is required; full information must be provided to internally displaced persons on the reasons and procedures for the displacement, the place of relocation and compensation; and their free and informed consent must be sought. Moreover, authorities must endeavour to involve affected persons, including women, in the management and planning of the relocation and ensure that the right to an effective remedy, including the review of decisions, is respected.

63. Plans to relocate individuals or communities need to ensure effective participation by the affected population in all decisions, including with regard to the new relocation site and the timing and modalities of the relocation. Key and often difficult issues in relocations frequently include access to land, livelihood opportunities and compensation for the displaced. Relocation plans need to be sensitive to other factors as well, such as issues of community, ethnic and cultural identity and possible (often pre-existing) incompatibilities or tensions with the receiving community. Measures which are sensitive to the needs and concerns of the

---

<sup>36</sup> UNHCR, note 12 above, para. 39.

<sup>37</sup> FCCC/CP/2010/7/Add.1, decision 1/CP.16, paras. 25 and 26.

<sup>38</sup> *Ibid.*, paras. 28 (b) and (c).

<sup>39</sup> Planned relocations are distinguishable from evacuations or spontaneous displacements, which occur in an emergency context.

receiving community, including with regard to absorption capacity (additional pressures placed on natural and other resources, community services, etc.), and which promote integration, and mediation where necessary, will often be necessary. These require working with all parties in order to foster trust and provide the necessary support for the relocation to both the displaced and the receiving communities.

64. While sometimes necessary, the relocation of communities should always remain a measure of last resort. Relocation plans and sites often present a number of problems which tend to make them unsuccessful. Concerns relating to compensation and the loss of housing and livelihoods, for example, may result in resistance by communities to relocation plans until a tragedy or disaster strikes. In other situations, the problem is the distance between the original and the new site. Not recognising the importance of location can sometimes result in displaced persons returning to the original high-risk area.<sup>40</sup> This is often the experience with informal settlements in urban settings for example. People frequently return to such settlements because of the high value they place on being close to the city centre, to their source of livelihood and to the community and social networks they have established, which are a critical source of support, especially for vulnerable groups.<sup>41</sup>

65. In low-lying island States, long-standing inhabitants of particular islands also often manifest the wish to move as a group and to stay close to their original location, even if they must move to a different island.<sup>42</sup> Principles applicable to relocations in other contexts, such as development-linked evictions, can provide valuable guidance for the formulation of standards and procedures for relocations necessitated by the effects of climate change (see A/HRC/4/18).

### **The urban migration dimension**

66. The erosion of livelihoods, in part provoked by climate change, is considered a key push factor for the increase in rural-to-urban migration, most of which will be to urban slums and informal settlements offering precarious living conditions (A/HRC/10/61, para. 37). More than 50 per cent of the world's population currently live in urban areas, most of which are situated in low- and middle-income nations. One third of this urban population (1 billion people) live in precarious informal settlements and slums, which exacerbates their vulnerability to humanitarian crisis.<sup>43</sup> By 2030, it is estimated that urban populations will surpass 5 billion and that 80 per cent of urban populations will live in towns and cities in the developing world.<sup>44</sup> In Asia and Africa, experts note that "urban growth is accentuated by the increasing number of refugees and internally displaced persons who tend to migrate to cities".<sup>45</sup>

67. The urban dimensions of climate change-induced displacement should therefore factor as a key consideration in national medium- and long-term national

<sup>40</sup> Report of the Wilton Park conference on "Urban risks: moving from humanitarian responses to disaster prevention", 22-25 November 2010.

<sup>41</sup> Ibid.

<sup>42</sup> This was observed during the visit of the Special Rapporteur to Maldives in July 2011.

<sup>43</sup> Report of the Wilton Park conference, note 40 above, p. 1.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

development strategies, as well as adaptation measures to address potential displacement. Cities may need to become “expandable” to absorb potential influxes of people. At the same time, in order to decrease unplanned urban migratory flows, potential displacement situations need to be better managed.

68. Unplanned influxes to urban settings present a number of potential risks. Because internally displaced persons are more likely to be “untitled”, “unregistered”, “unlisted” and “undocumented”, inequalities which existed prior to a disaster may be reinforced after the disaster.<sup>46</sup> As newcomers, internally displaced persons are likely to have less access to resources and livelihoods, to live in slum areas, and to be the potential targets of urban violence in these sites. Like other impoverished slum-dwellers they may be forced to live in hazard-prone locations such as low-lying areas and landfill sites,<sup>47</sup> exposing them to risks to their physical safety and the risk of loss of housing and further displacement.

69. According to experts, the very “concentration of resources, assets and services in cities can lead to more debilitating impacts of disasters, conflict and violence”.<sup>48</sup> This has drawn the attention of the humanitarian community and urban specialists to the particular impact on urban settings of climate change, with a focus on the increasing urban vulnerability gap, housing challenges and the need to move away from only focusing on humanitarian response and develop disaster prevention strategies specific to urban settings.<sup>49</sup>

#### **Reducing the displacement effect of climate change mitigation measures**

70. Measures to mitigate climate change, such as investments in clean technologies (e.g. hydropower, wind power), agro-fuel production, forest conservation projects or the restoration of marshlands, are also predicted to cause significant levels of internal displacement.

71. The international community has acknowledged that measures responding to the effects of climate change are likely to have adverse economic and social consequences for some, and that support, including financing, technology and capacity-building, will be necessary in order to minimize these impacts and “build up the resilience of societies and economies negatively affected by response measures”.<sup>50</sup> However, safeguards to prevent or minimize displacement resulting from measures which aim to mitigate climate change — and which in many cases affect indigenous and minority groups — continue to be weak.

72. Agro-fuel production and programmes to preserve forest cover, which have at times been found to impinge on the rights of indigenous peoples in relation to their traditional lands and culture, are examples of how some climate change mitigation

<sup>46</sup> Ibid., p. 8.

<sup>47</sup> Ibid., p. 3.

<sup>48</sup> Ibid., p. 2.

<sup>49</sup> Ibid. The need to strengthen humanitarian responses to emergencies in urban centres has also been recognized by the Inter-Agency Standing Committee, which addresses this issue through its reference group on meeting humanitarian challenges in urban areas. See *IASC Strategy: Meeting Humanitarian Challenges in Urban Areas*, 2010.

<sup>50</sup> See FCCC/CP/2010/7/Add.1, decision 1/CP.16, para. 89; see also Kyoto Protocol, arts. 2, para. 3 and 3, para. 14.

measures can have adverse consequences and lead to forced displacement.<sup>51</sup> Guidelines developed to date by development actors in the context of large-scale development projects, including some which promote clean energy such as hydroelectric dams, have been criticized as well for failing to minimize displacement and sufficiently apply human rights standards.<sup>52</sup>

73. Guiding Principles 6(c) and 7(1)(3) provide for specific standards and criteria that must be met when displacement is envisaged in a non-emergency context, such as with regard to the mitigation measures mentioned above and large-scale development projects. In the context of mitigation measures to address climate change, it will be important to assess the potential displacement likely to result from such measures and to strengthen guidelines, applying the standards in the Guiding Principles and a human rights-based approach.

### **Durable solutions to displacement in the context of climate change**

74. Given the predicted extent of displacement provoked by the effects of climate change, adaptation strategies will require measures not only to alleviate the immediate humanitarian consequences and suffering, but also to end situations of displacement through durable solutions. While moving or fleeing to a safer location may provide temporary relief, it is well established that prolonged displacement situations exacerbate existing vulnerabilities, create dependency, lead to social tensions, and generally lead to a number of serious protection, humanitarian and human rights challenges.

75. In many instances, internally displaced persons may live in compact settlements or camps, which present a number of further concerns, including concerns for personal safety, and in particular sexual and gender-based violence; the pull factor related to the provision of assistance in the camps; and the fact that camps may sustain a humanitarian assistance situation for too long at the expense of early recovery and durable solutions. As levels of displacement rise in the context of climate change, the urgency of finding long-lasting solutions for affected populations and avoiding the precariousness, marginalization and instability associated with situations of protracted displacement, will become a national, and potentially regional, security imperative.

76. In order to be successful, adaptation measures addressing internal displacement must provide durable solutions strategies in the form of return, local integration or resettlement in another part of the country. However, in the context of climate change, durable solutions are likely to be more complex and less static or one-dimensional. They may combine a number of solutions, including movements which are seasonal or temporary, or solutions which include continuity with the place of origin as well as integration in a different part of the country (for example, part of the family returns to the place of origin permanently or on a seasonal basis, while the breadwinner works in another location). Strategies addressing internal displacement should therefore be sufficiently flexible to include and support various scenarios of human adaptation, and ensure that durable solutions are based on free and informed consent.

<sup>51</sup> A/HRC/10/61, paras. 66-68; E/C.19/2008/13, para. 45. Programmes to preserve forest cover have also at times prevented displacement by involving local communities closely in the project and by shielding them from agro-industrial projects.

<sup>52</sup> See A/64/255, para. 47 with regard to large dam projects.

77. Standards and guidelines related to durable solutions are provided in the Guiding Principles 28 to 30 and the Framework for Durable Solutions. The latter provides that durable solutions can be considered to have been achieved “when internally displaced persons no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement (A/HRC/13/21/Add.4, para. 8)”.

78. A number of factors are conducive to durable solutions. One such factor is ensuring a transition early on from the humanitarian assistance phase to early recovery and reconstruction, thus allowing internally displaced persons to return to their places of origin and rebuild their lives as early as possible after a disaster. The importance of ensuring that humanitarian assistance and development are mutually reinforcing from the beginning of an emergency is recognized in the guiding principles on humanitarian assistance annexed to General Assembly resolution 46/182. Yet, aligning humanitarian assistance and the longer-term objectives of recovery and development has been difficult in practice, as the various actors apply different criteria and considerations to their areas of activity. The difficulties are compounded in situations where national Governments do not have a clear long-term strategy. Predicted increases in the frequency and intensity of sudden-onset disasters, however, make it imperative to improve the capacity of local, national and international actors to bridge the gap between objectives linked to the humanitarian and the recovery and reconstruction phases.

79. Other factors conducive to durable solutions include re-establishing local economies and livelihoods, encouraging self-reliance in affected communities and promoting their participation in all activities, from humanitarian assistance delivery to engagement with development actors. In the case of resettlement or relocation, strategies related to land, housing and livelihoods are essential, as is a community-based approach which takes account of the needs of receiving communities. Increased internal displacement will also require mechanisms to address possible integration challenges and tensions with receiving communities.

80. Durable solutions for displaced populations should be part of national adaptation plans,<sup>53</sup> and local and national capacity-building programmes, and be supported by funds made available for adaptation measures. They should also be part of national development plans. Some effects of climate change, however, may affect the types of durable solutions accessible to affected populations. In the case of certain types of slow-onset disasters, for example, return may not be a viable alternative for the foreseeable future. This highlights the need to explore various possible options early on and integrate them within national development and adaptation plans, in order to minimize the social and humanitarian consequences of spontaneous and large-scale internal displacement. In extreme situations, such as the case of some low-lying island States, where conditions are no longer fit for human habitation, durable solutions may also have to be explored through regional and international cooperative efforts, which may pave the way for new standards and options, including cross-border displacements.

---

<sup>53</sup> See references to modalities and support with regard to development of national adaptation plans in FCCC/CP/2010/7/Add.1, decision 1/CP.16, paras. 14 (a), 15 and 16.

## H. Participation and procedural rights of affected persons

81. Procedural rights of affected persons have a critical place in the context of climate change-induced displacement. They help ensure respect for human rights and a more effective response to specific vulnerabilities, and promote the empowerment of affected persons as well as the full use of their capacities. Indeed, individual and community resilience will largely depend on the extent to which internally displaced persons are empowered to adapt to change and included in decisions affecting their lives. Procedural rights include, *inter alia*, access to information; consultation and effective participation in decision-making processes; and access to effective remedies.

82. It is important to ensure that procedural and accountability mechanisms are in place to guarantee participation of affected populations at all stages of displacement.<sup>54</sup> Guiding Principles 7, 28 and 30 provide for specific procedural rights of internally displaced persons in relation to prevention of displacement as well as guarantees of their participation in relocation and durable solution processes. Host and receiving communities should also feature in many of these participatory and consultation processes.<sup>55</sup>

83. The Cancun Adaptation Framework recognizes the need to support adaptation measures which are “country driven, gender sensitive, participatory and fully transparent [...] taking into consideration vulnerable groups [and] communities” (FCCC/CP/2010/7/Add.1, decision 1/CP.16, para. 12). It further recognizes the need for measures to enhance understanding and cooperation with regard to climate change-induced displacement and planned relocation and the need to undertake impact vulnerability and adaptation assessments, including on the social and economic consequences of climate change adaptation options and response measures (paras. 14 (b) and (f) and preamble to section III.E). While complementary, the Guiding Principles and the Framework for Durable Solutions provide more specific and detailed guidance on standards related to participatory and procedural rights of internally displaced persons.

## I. International cooperation frameworks

84. The State has the primary responsibility to protect and assist persons displaced within its borders. At the same time, in the context of climate change-induced displacement and the disproportionate burden imposed on poor regions and countries, shared international responsibility has also been acknowledged. Where State capacities and resources are insufficient, international cooperation and partnerships should help support the cost of adaptation measures. This is consistent with human rights standards and principles (A/HRC/10/61, para. 87) and recognized in the Cancun Adaptation Framework, which invites Parties to enhance action on adaptation, taking into account their common but differentiated responsibilities and

<sup>54</sup> See General Assembly resolution 64/162, para. 7; A/HRC/16/43/Add.5, pp. 11, 14-15, 26 and 33.

<sup>55</sup> Host communities refer to communities to which internally displaced persons have been spontaneously fled, whereas receiving communities refer to communities in which the displaced have, in an intentional or planned fashion, resettled or been relocated.

capacities as well as their priorities and circumstances (FCCC/CP/2010/7/Add.1, decision 1/CP.16, para. 14).

85. More specifically, the Cancun Adaptation Framework recognizes, in paragraph 14 (f), the need for national, regional and international cooperation with regard to adaptation strategies to address displacement issues, migration and relocation — cooperation which can present opportunities for agreements and new standards to facilitate and support the movement of peoples, including outside their national borders when that is necessary.

86. Climate change has served to crystallize the impact of actions by individual States which go beyond the State to affect the rights of people and communities around the globe. Climate change knows no State or generational boundaries. Effective systems of international cooperation and responsible domestic governance are thus required to address it in line with human rights obligations and to support adaptation strategies to deal with the various human rights challenges, such as displacement, that it presents to the international community as a whole.

## **IV. Recommendations**

### **A human rights-based approach**

87. **A human rights-based approach should be used to inform and strengthen all actions, at the local, regional, national and international levels, to address climate change-related internal displacement. The Guiding Principles on Internal Displacement, which are based on standards in international human rights law, humanitarian law and, by analogy, refugee law, provide a sound legal framework which States should implement at the national level through legislation, policies and institutions.**

### **Adaptation and mitigation measures**

88. **Adaptation measures to address climate change-induced displacement should be comprehensive in nature, so as to encompass disaster risk reduction and management; proactive strategies to prevent or minimize displacement; planned relocations, when appropriate; pre-emptive internal migration when this is based on sound national policies and used as a coping mechanism in the case of slow-onset disasters; and durable solutions. Such measures must be in line with international human rights obligations, and include the provision of humanitarian assistance and protection to affected persons during the displacement phase.**

89. **The various climate change adaptation funds should incorporate support for adaptation measures related to climate change-induced internal displacement. They should support the efforts of national Governments in this regard as well as community engagement. Financing mechanisms should adopt a comprehensive approach to displacement-related adaptation measures, running the gamut from prevention to durable solutions as detailed above, and uphold safeguards with regard to forced displacements and planned relocations. Such mechanisms should keep abreast of relevant research and be consistent with normative developments in this field.**

90. Disaster risk reduction and disaster preparedness measures should be enhanced in order to prevent or minimize the displacement of persons. This is particularly necessary in light of the more frequent and severe sudden-onset disasters, as well as the dire humanitarian consequences of slow-onset disasters such as droughts, both of which are due to the negative effects of climate change. National disaster management systems, laws and policies should incorporate a human rights-based approach, stress local or community capacity-building and participation and refer to applicable standards on internal displacement in the event displacement cannot be avoided. Disaster management measures should be included in national development plans and climate change adaptation strategies.

91. Mechanisms to promote the engagement and participation and to strengthen the capacities of local governments, communities, civil society and the private sector should be enhanced and supported. Their role is instrumental to effectively address the challenges related to climate change. Community participation should involve those who are most vulnerable.

92. The Special Rapporteur welcomes the climate change mitigation targets set by the United Nations Framework Convention on Climate Change process and encourages additional efforts in this regard, as mitigation of the effects of climate change will also reduce the numbers of people internally displaced as a result of climate change.

#### **Knowledge, guidance and information**

93. Measures to enhance knowledge in the area of climate change-related displacement are necessary and should be taken as soon as possible, in accordance with the recommendation of the Cancun Adaptation Framework (FCCC/CP/2010/7/Add.1, decision 1/CP.16). This should include research on the scope and scale of such displacement, which should be based on consultations with affected communities and inter-agency and interdisciplinary efforts.

94. Particular efforts are required to understand and respond better to situations of slow-onset disaster related to climate change, so as to avoid or minimize related human suffering and displacement.

95. Research is encouraged on the potential displacement of persons through climate change mitigation and adaptation projects, such as those promoting clean energy. Such research should explore the scope and nature of such displacements, as well as further actions which may be necessary to ensure the human rights of those displaced by such projects, in line with the Guiding Principles on Internal Displacement and other applicable human rights standards and guidelines.

96. Further guidance should be developed with regard to situations where relocation of populations is deemed necessary owing to the effects of climate change. Such guidance should be based on lessons learned and ensure that the rights of persons who must be relocated are guaranteed. In particular, issues of compensation, property rights, procedural rights, community and cultural identity, livelihoods and support to receiving communities should be addressed.

97. Global monitoring mechanisms for internal displacement should be strengthened with a view to encompassing both sudden- and slow-onset

disasters related to climate change, and help determine the overall scope of displacement that is connected to the phenomenon of climate change.

98. The urban dimension of climate change-related displacement should be further researched and operational responses enhanced, so as to address the distinctive nature of urban vulnerabilities and capacities and the potential increase and impact of unplanned urban migration resulting from increased slow- and sudden-onset disasters.

99. Specific guidance should be developed for Member States on how to ensure that displacement is taken into account in the climate change debate, on the normative standards and guidance documents available and on the human rights implications and broader dynamics of climate change-induced displacement, such as its impact on security and urban migration.

#### **Cooperation and assistance**

100. Increased international support is needed to strengthen local and national capacities and legal frameworks and policies to address displacement resulting from the effects of climate change. This cooperation and assistance, and the full implementation of paragraph 14 (f) of the Cancun Adaptation Framework, will be essential to support States in taking all necessary steps to respect, protect and fulfil the rights of affected persons in accordance with their international human rights obligations.

101. In order to achieve concrete results and establish stronger operational and accountability structures, greater focus must now be placed on policy and programme implementation at the regional, national and subnational levels. This requires enhancing actions and advocacy in regional and national level forums on specific adaptations measures to address climate change-related displacement, both internal and regional.

102. The role of the Inter-agency Standing Committee in addressing and advocating on general humanitarian concerns as well as displacement-specific issues related to climate change is key and should be strengthened, including through the work of its task force on climate change, its participation in key global policy forums such as the United Nations Framework Convention on Climate Change, and technical inputs at the regional, national and subnational levels to build resilience and scale up practical climate change activities and adaptation measures.



# General Assembly

Distr.: General  
21 July 2020

Original: English

---

## Seventy-fifth session

Item 72 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Human rights of internally displaced persons**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, in accordance with Assembly resolution [74/160](#) and Human Rights Council resolution [41/15](#).

---

\* [A/75/150](#).



## **Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary**

### *Summary*

In the present thematic report, the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, examines internal displacement in the context of the slow-onset adverse effects of climate change. She analyses the impacts of this type of displacement on the enjoyment of human rights by internally displaced persons, including specific groups. She looks at the human rights obligations, responsibilities and roles of States, the international community, businesses and national human rights institutions in addressing internal displacement in the context of the slow-onset adverse effects of climate change and makes recommendations to these actors.

## Contents

	<i>Page</i>
I. Introduction .....	4
II. Applicable legal and policy frameworks .....	5
III. Understanding internal displacement in the context of the slow-onset adverse effects of climate change .....	7
A. Movement patterns .....	7
B. Interrelation between the slow-onset adverse effects of climate change and armed conflict .....	9
C. Data and evidence .....	10
D. Impacts on the enjoyment of human rights by internally displaced persons, including specific groups .....	11
E. Direct and indirect impacts of the COVID-19 pandemic .....	14
IV. Addressing internal displacement in the context of the slow-onset adverse effects of climate change .....	15
A. Human rights obligations of States .....	15
B. Role of the international community .....	19
C. Responsibility of businesses .....	20
D. Role of national human rights institutions .....	22
V. Conclusions and recommendations .....	22

## I. Introduction

1. Internal displacement linked to the adverse effects of climate change is expected to increase significantly over the coming years and decades. Projections indicate that, without concrete climate and development action, over 143 million people in sub-Saharan Africa, South Asia and Latin America alone could be forced to move within their own countries by 2050 owing to the slow-onset impacts of climate change.<sup>1</sup> While this figure covers different types of human mobility, it gives an indication of the expected scale of movement in these three regions, which suggests that the global scale will be even higher. Climate change will affect every region, although some countries and communities are more vulnerable, including small island developing States and the least developed countries. Most population movements relating to the slow-onset adverse effects of climate change are expected to remain within national borders.

2. In the present report, the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, draws attention to the particular challenges posed by internal displacement in the context of the slow-onset adverse effects of climate change, and its impacts on the enjoyment of the human rights of those affected, with the aim of advancing a human rights-based approach to prevention, response and solutions. The adverse effects of climate change<sup>2</sup> can involve slow and sudden-onset events. Slow-onset events are defined as “events that evolve gradually from incremental changes occurring over many years or from an increased frequency or intensity of recurring events” (FCCC/TP/2012/7, para. 20). Slow-onset events include sea level rise, increasing temperatures, ocean acidification, glacial retreat and related impacts, salinization, land and forest degradation, loss of biodiversity and desertification (FCCC/CP/2010/7/Add.1, decision 1/CP.16, footnote 3). Slow-onset and sudden-onset events, such as floods or storms, can also be intertwined, requiring holistic approaches that take their interrelations into account.

3. The Special Rapporteur notes that disaster displacement is included in the Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People for the period 2018–2020, which she spearheaded, jointly with the Office of the United Nations High Commissioner for Refugees and the Office for the Coordination of Humanitarian Affairs, in 2017. She welcomes that the High-level Panel on Internal Displacement, established by the Secretary-General in October 2019, will also look at internal displacement in the context of disasters and the adverse effects of climate change, and hopes that the present report can inform its work.

4. The Special Rapporteur expresses her gratitude for the valuable information received from a wide range of stakeholders, including all those who responded to her call for inputs.<sup>3</sup> In the present report, she builds on the reports of her predecessors (see, for example, A/66/285 and A/64/214), and in its preparation she benefited from enriching consultations with many States and partners, including the Office of the United Nations High Commissioner for Human Rights, the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees, the Platform on Disaster Displacement, the Intergovernmental Authority on Development, the Norwegian Refugee Council and the Raoul Wallenberg Institute of Human Rights

<sup>1</sup> World Bank, *Groundswell: Preparing for Internal Climate Migration* (Washington, D.C., 2018).

<sup>2</sup> The adverse effects of climate change are defined in article 1 (1) of the United Nations Framework Convention on Climate Change as “changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socioeconomic systems or on human health and welfare”.

<sup>3</sup> The submissions to the Special Rapporteur will be made available at [www.ohchr.org/EN/Issues/IDPersons/Pages/CallforInputs\\_IDPs\\_climate\\_change.aspx](http://www.ohchr.org/EN/Issues/IDPersons/Pages/CallforInputs_IDPs_climate_change.aspx).

and Humanitarian Law, as well as from virtual consultations convened by the Global Protection Cluster with the Asia-Pacific Disaster Displacement Working Group and protection clusters across the globe.

## II. Applicable legal and policy frameworks

5. The issue of internal displacement in the context of the slow-onset adverse effects of climate change lies at the intersection of various legal and policy fields, including international human rights law, international environmental law, international disaster relief law, disaster risk reduction and sustainable development, and requires concerted action.

6. There is extensive evidence of the widespread impacts of climate change on the enjoyment of human rights, such as the rights to life, health, housing, food, water and education, cultural rights and collective rights, such as the rights of indigenous peoples and the right to self-determination.<sup>4</sup> At least 155 States have now recognized in law the human right to a safe, clean, healthy and sustainable environment (A/74/161, para. 43). Those impacts contribute to displacement, and displacement further impacts the enjoyment of human rights. Under the 1998 Guiding Principles on Internal Displacement, which reflect international human rights law and international humanitarian law, arbitrary displacement is prohibited, including in cases of disasters, unless the safety and health of those affected requires their evacuation (Principle 6).

7. Under international environmental law, States have made commitments on climate change mitigation and adaptation, which are essential for preventing and addressing displacement. Key instruments include the 1992 United Nations Framework Convention on Climate Change and subsequent agreements negotiated under its umbrella. In the 2010 Cancun Adaptation Framework, the Conference of the Parties recognized the need for measures regarding climate change-induced displacement, migration and planned relocation as part of action on adaptation, and called upon States to enhance climate change-related disaster risk reduction strategies (FCCC/CP/2010/7/Add.1, decision 1/CP.16, para. 14 (e) and (f)). The 2015 Paris Agreement under the United Nations Framework Convention on Climate Change contains explicit references to human rights. The Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts was mandated to establish a task force on displacement related to the adverse impacts of climate change.<sup>5</sup> On the basis of its work, the Conference of the Parties welcomed a series of recommendations, including regarding the formulation of laws, policies and strategies that reflect integrated approaches to climate change-related displacement in the broader context of human mobility, taking into consideration human rights obligations and other relevant international standards (FCCC/CP/2018/10/Add.1, decision 10/CP.24, annex, para. 1 (g) (i)). In the 1994 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, the

<sup>4</sup> See, for example, A/HRC/10/61; A/HRC/32/23; A/HRC/35/13; A/HRC/36/46; *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016); Office of the United Nations High Commissioner for Human Rights (OHCHR) and Platform on Disaster Displacement, “The slow onset effects of climate change and human rights protection for cross-border migrants”, 2018; list of reports of special procedure mandate holders relevant to climate change available at [www.ohchr.org/Documents/HRBodies/SP/List\\_SP\\_Reports\\_Climate\\_Change.pdf](http://www.ohchr.org/Documents/HRBodies/SP/List_SP_Reports_Climate_Change.pdf); and John H. Knox, “Human rights principles and climate change”, in *The Oxford Handbook of International Climate Change Law*, Cinnamon P. Carlarne, Kevin R. Gray, and Richard Tarasofsky, eds. (Oxford University Press, 2015).

<sup>5</sup> FCCC/CP/2015/10/Add.1, decision 1/CP.21, para. 49; FCCC/SB/2019/5/Add.1; and “Terms of reference: Task Force on Displacement”, available at [https://unfccc.int/sites/default/files/resource/TFD\\_ToR.pdf](https://unfccc.int/sites/default/files/resource/TFD_ToR.pdf).

relationship between desertification and climate change is recognized and references are made to displacement (preamble, arts. 8 (1) and 10 (3) (a) and annex II, art. 2 (d)).

8. It is recognized in the 2030 Agenda for Sustainable Development that climate change undermines sustainable development, and Goal 13 is dedicated specifically to climate action. The importance of disaster risk reduction is also acknowledged in the 2030 Agenda, and a number of relevant targets are set under this and other Goals (for example, targets 1.5, 11.b, 13.1 and 13.2). The Agenda is grounded in international human rights law and provides that no one should be left behind, including internally displaced persons. The New Urban Agenda includes commitments relating to climate action, disaster risk reduction and the prevention of forced evictions and arbitrary displacement.

9. The Sendai Framework for Disaster Risk Reduction 2015–2030 is aimed at substantially reducing disaster risk and losses, and several references are made therein to displacement caused by disasters. The importance of addressing climate change as one of the drivers of disaster risk is recognized, as is the fact that disaster risk reduction is essential to protecting human rights and achieving sustainable development. In the 2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, the participants in the Nansen Initiative acknowledge the link between internal and cross-border displacement, and identify among the priority areas for action strengthening the management of disaster displacement and risk in the countries of origin. Disaster, climate change and environmental degradation are also addressed in the Global Compact for Safe, Orderly and Regular Migration, which includes a number of actions relating to the prevention of displacement.

10. At the regional level, under the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, States parties are explicitly obliged to take measures to protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change (art. 5 (4)). The 2006 Protocol on the Protection of and Assistance to Internally Displaced Persons, adopted at the International Conference on the Great Lakes Region, also covers displacement as a result of disasters. Human mobility, including displacement, in the context of the adverse effects of climate change is addressed, to different extents, in a number of regional and subregional policies and strategies relating to disaster risk reduction and management, migration and climate change. Examples include the Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management (2017–2030), the Central American Policy on Comprehensive Disaster Risk Management and the Regional Migration Policy Framework of the Intergovernmental Authority on Development.

11. A myriad of national laws and policies are also relevant, particularly those on migration, displacement and relocations, disaster risk reduction, climate change mitigation and adaptation, and those protecting human rights, although many do not explicitly address the slow-onset adverse effects of climate change. Many national laws and policies relating to human mobility include references to climate change, disaster and environmental degradation as drivers of mobility, or displacement specifically, and the need for disaster risk reduction and durable solutions.<sup>6</sup> Some national laws and policies on climate action, such as national adaptation plans, contain references to population movements or to the needs of displaced persons specifically; and in several nationally determined contributions under the United Nations Framework Convention on Climate Change States have emphasized specific

---

<sup>6</sup> See, for example, the National Policy on Climate Change and Disaster-Induced Displacement adopted by Vanuatu in 2018; the National Strategy on the Management of Disaster and Climate Induced Internal Displacement adopted by Bangladesh in 2015; and the Protection and Assistance to Internally Displaced Persons Act, 2019, of South Sudan.

actions that they will take to address climate-related displacement. Less than half of the States that adopted the Sendai Framework had adopted national disaster risk reduction strategies as at 2018, but where they had, such strategies often covered both sudden and slow-onset disasters and included references to human mobility issues, although to different extents.<sup>7</sup> Evacuations and planned relocations are also provided for in many national laws and policies.<sup>8</sup> A range of other national laws and policies are relevant to the topic at hand, such as environmental and development policies and regulations regarding rural areas, forestry and fisheries, urban planning, employment, housing, education and health.<sup>9</sup>

### III. Understanding internal displacement in the context of the slow-onset adverse effects of climate change

#### A. Movement patterns

12. Human mobility in the context of the slow-onset adverse effects of climate change can take many forms, including displacement, migration and planned relocation.<sup>10</sup> In most cases, movement is not entirely voluntary or forced, but rather falls somewhere on a continuum between the two, with different degrees of voluntariness and constraint. In line with the definition of the Guiding Principles on Internal Displacement, internal displacement is considered to take place when people are evacuated or flee their homes or places of habitual residence, whether to avoid the anticipated effects of a disaster, or in the aftermath of a disaster, and remain within the country's borders.

13. Disasters result from the interaction of hazards with conditions of exposure, vulnerability and capacity, leading to adverse losses and impacts.<sup>11</sup> The Task Force on Displacement under the United Nations Framework Convention on Climate Change has identified four key ways in which the slow-onset adverse effects of climate change can turn into a disaster and increase displacement risks.<sup>12</sup> First, slow-onset events can

<sup>7</sup> Platform on Disaster Displacement, "Mapping the baseline: to what extent are displacement and other forms of human mobility integrated in national and regional disaster risk reduction strategies?", 2018.

<sup>8</sup> See, for example, Fiji, Ministry of Economy, "Planned relocation guidelines: a framework to undertake climate change related relocation", 2018.

<sup>9</sup> Submissions to the Special Rapporteur contained a wealth of information on national and regional frameworks. See also Platform on Disaster Displacement, "Mapping the baseline"; and Raoul Wallenberg Institute of Human Rights and Humanitarian Law, "Asia-Pacific research on displacement in the context of disasters and climate change", available at <https://rwi.lu.se/disaster-displacement/>.

<sup>10</sup> See OHCHR and Platform on Disaster Displacement, "The slow onset effects of climate change and human rights protection for cross-border migrants", 2018; Internal Displacement Monitoring Centre, "Synthesizing the state of knowledge to better understand displacement related to slow onset events: Task Force on Displacement – activity I.2", 2018; United Kingdom of Great Britain and Northern Ireland, Government Office for Science, "Migration and global environmental change: future challenges and opportunities – final project report", 2011; Koko Warner and others, *Where the Rain Falls: Climate Change, Food and Livelihood Security, and Migration* (Bonn, Care France and United Nations University Institute for Environment and Human Security, 2012); Jane McAdam and others, *International Law and Sea-Level Rise: Forced Migration and Human Rights*, FNI Report 1/2016 and University of New South Wales Faculty of Law Research Series (Lysaker, Norway, Fridtjof Nansen Institute; Sydney, University of New South Wales, 2016); Alexandra Bilak, "From island to slum: Bangladesh's quiet displacement crisis", Internal Displacement Monitoring Centre, March 2019; and submissions to the Special Rapporteur, including from the International Organization for Migration (IOM) and the Internal Displacement Monitoring Centre.

<sup>11</sup> See the definition used by the United Nations Office for Disaster Risk Reduction available at [www.undrr.org/terminology/disaster](http://www.undrr.org/terminology/disaster).

<sup>12</sup> See advance report of the Task Force on Displacement, 17 September 2018. Available at [https://unfccc.int/sites/default/files/resource/2018\\_TFD\\_report\\_17\\_Sep.pdf](https://unfccc.int/sites/default/files/resource/2018_TFD_report_17_Sep.pdf).

decrease the availability of vital resources, such as water, food, shelter and energy production. For instance, increasing temperatures can lead to drier soils and affect the timing of fertilization and blooming, and sea level rise can lead to the salinization of soils and reduced crop yields in cultivated areas, affecting agriculture and the availability of pasture for livestock, while rising sea temperatures can affect marine ecosystems and fisheries, all of which contribute to food insecurity. Second, slow-onset events can turn into a disaster prompted by a sudden-onset event, for example, when sea level rise turns into flooding, desertification into wild fires, or temperature increase into heatwaves. Third, slow-onset events can erode the capacity of communities to withstand further hazards, increasing their vulnerability to the next hazard. Lastly, slow-onset events are a hidden aggravating factor that acts as a threat multiplier for economic, social, cultural and political factors of crisis. The adverse effects of climate change may also affect the frequency and intensity of natural hazards.<sup>13</sup>

14. As climate change affects different areas in varied ways, human mobility patterns, including displacement, are context specific. The way in which different parts of the world are affected by natural hazards varies depending on many factors relating to their geography and climate. Communities are also affected differently depending not only on environmental factors but also on their interaction with social, economic and cultural factors, and the resilience and ability of communities to adapt. People are displaced when they can no longer adapt to the changing climate and have no option other than to leave, for example, because an area has become uninhabitable or too dangerous for human habitation. In these circumstances, people are forced to move away, and those who have already left the area to some extent voluntarily are forced to stay away.<sup>14</sup>

15. The level of vulnerability of individuals and households therefore plays an important role in their mobility. Those who are less vulnerable may be able to adapt to slow-onset processes and mitigate their impacts, thus being able to remain in their homes, or they might move elsewhere before the situation evolves into a disaster leading to displacement. In this case, movement can be an effective adaptation strategy to prevent displacement and might include seasonal and temporary migration. At earlier stages of a crisis, movement might be shorter, temporary, involve only some members of a household, and involve a higher degree of choice. Most vulnerable populations might not have the resources necessary to adapt this way and might stay in the area until they have no choice other than to leave and become displaced. Other communities might not move because they have a particular attachment to their lands and culture, such as indigenous peoples. It is usually the poorest and most vulnerable people who stay in situ as a slow-onset process gets worse without being able to adapt. They usually move as a measure of last resort to ensure their survival and have limited options on where to go. Displacement in the context of the slow-onset adverse effects of climate change is expected to be mostly long-term and internal, notwithstanding the possibility that some people might eventually cross borders.

16. The type of movement might also evolve over time. Temporary moves that took place at the beginning of a crisis can turn into displacement when people are unable to return home as the crisis becomes a disaster. Internal migrants can also become internally displaced because of other events that affect them during movement or in their new place of residence. People evacuated from an at-risk area can face secondary displacement if forced to move to a new location or protracted displacement if they are unable to return to their homes after the evacuation.

17. Urban areas are expected to continue to be an important destination for population movements in the context of the slow-onset adverse effects of climate

---

<sup>13</sup> See Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C* (2018).

<sup>14</sup> Concrete experiences of displacement in different contexts involving slow-onset events are analysed in a number of publications. See, for example, the Internal Displacement Monitoring Centre thematic series on “Displacement in a changing climate”.

change.<sup>15</sup> At the same time, cities will increasingly become areas of risk, and coastal cities in particular will be increasingly exposed to hazards associated with sea level rise. When the poorest households move to urban areas, they often reside in peripheral areas and informal settlements, which are also exposed to hazards such as flooding and landslides that are expected to increase in frequency and severity because of climate change. For example, already densely populated South Asian cities located in low-lying coastal zones have been steadily growing, and slums in those cities have been expanding owing to rural-urban population movements, while rising temperatures and flooding are likely to increase displacement and the incidence of disease in slums. On the other hand, some people, especially the poorest, might move to rural areas, where they might have to face other environmental hazards or risks.

18. People displaced in the context of slow-onset processes may return when conditions improve, but they may continue to be exposed to hazards and at high risk of further displacement unless they strengthen their resilience to future shocks. In many cases, however, internally displaced persons may not be able to return because, in the context of slow-onset processes, conditions leading to displacement often do not improve quickly. In some cases, the impacts of slow-onset events might become irreversible and render the area uninhabitable and return impossible, such as in the case of land submerged because of sea level rise or complete desertification.

19. The interaction of other factors with the slow-onset adverse effects of climate change also has a significant bearing on the impact of these hazards on communities and related human mobility. Human activity can also exacerbate and accelerate slow-onset processes through the continued emission of greenhouse gases and other environmental impacts that compound the adverse effects of climate change, contributing to human mobility. In the context of the adverse effects of climate change, human mobility in general, and displacement in particular, is usually multi-causal and depends on various factors contributing to peoples' levels of vulnerability or resilience to natural hazards. The slow-onset adverse effects of climate change interrelate with factors such as population growth, poverty and level of development, weak governance, violence and conflict, and multiple and intersecting forms of discrimination, resulting in different impacts in different places for different people. It is often the combination of and interplay between factors that increase the risk of displacement.

## **B. Interrelation between the slow-onset adverse effects of climate change and armed conflict**

20. Slow-onset processes can compound other displacement drivers, such as intercommunal tensions, violence and armed conflict.<sup>16</sup> The intersecting risks of climate change and armed conflict heighten the vulnerability of people and communities and undermine their adaptive capacity, increasing their risk of displacement.

21. The interactions between the effects of climate change and armed conflict are complex and context-specific and can take many forms. Slow-onset events, such as

<sup>15</sup> See International Committee of the Red Cross (ICRC), "Displaced in cities: experiencing and responding to urban internal displacement outside camps", 2018; Internal Displacement Monitoring Centre, "UnSettlement: urban displacement in the 21st century", 2018; and World Bank, *Groundswell: Preparing for Internal Climate Migration*.

<sup>16</sup> See ICRC, "When rain turns to dust: understanding and responding to the combined impact of armed conflicts and the climate and environment crisis on people's lives", 2020; United Nations Environment Programme (UNEP), *Livelihood Security: Climate Change, Migration and Conflict in the Sahel* (Geneva, 2011); and OHCHR and Platform on Disaster Displacement, "The slow onset effects of climate change and human rights protection for cross-border migrants"; advance report of the Task Force on Displacement, 17 September 2018; Lukas Rüttinger and others, "A new climate for peace: taking action on climate and fragility risks", report commissioned by the

sea level rise or desertification, might hit a community that is already struggling to cope with the effects of armed conflict and is therefore more vulnerable to disasters. Armed conflicts often take a toll on the civilian population. Warfare can also result in environmental damage, thereby compounding slow-onset processes. In a context of poverty, violence, crisis and insecurity, societies might focus on immediate survival and deprioritize preventive and planning actions and sustainable governance of the environment and natural resources, which further undermines their resilience. When a slow-onset event hits such communities, households might lack the means to cope and have no choice other than to leave. Slow-onset events may also affect persons who have already been displaced in the context of armed conflict, triggering multiple displacements, or such events might constitute barriers to return or local integration, prolonging their displacement.

22. Slow-onset events might also act as a threat multiplier or risk amplifier for other factors and a hidden aggravating factor, for example, contributing to resource scarcity and exacerbating existing intercommunal and intracommunal tensions and disputes over resources. While climate change is not believed to constitute a direct cause of armed conflict, it can exacerbate factors that, in combination, fuel tensions and increase the risk of conflict. This is understood to be the case, for example, in the Lake Chad basin, where climate change has impacted water availability, putting additional pressure on existing intercommunal tensions and disputes over resources.<sup>17</sup> The ability of societies to resolve disputes and manage resources is essential to prevent tensions from escalating into conflict.

23. The combined and cumulative impacts of conflict and the slow-onset adverse effects of climate change can trigger displacement, and displacement can further fuel existing tensions. Armed conflict also weakens government institutions and governance, affecting their capacity to respond to displacement, to address climate change and environmental degradation and to take preventive measures to protect their population from disasters and displacement. Environmental degradation linked to armed conflict and the financing of armed conflict through the exploitation of natural resources can also compound the adverse effects of climate change. Insecurity also tends to pose challenges for humanitarian actors who are trying to gain access to internally displaced persons in need of assistance and protection.

### C. Data and evidence

24. Reliable data and evidence on internal displacement are essential to inform operational and policy responses, as well as early warning, disaster risk management and preparedness, to understand protection needs and support durable solutions. For example, understanding the coping strategies of people in particular situations can inform prevention and preparedness strategies, and unusual or intensified movement patterns observed in a particular area can highlight the need for interventions. There

---

Group of Seven members, 2015; Robert Malley, President and Chief Executive Officer of Crisis Group, “Climate change is shaping the future of conflict”, statement made at a virtual Arria formula meeting of the Security Council, 22 April 2020; Michelle Bachelet, United Nations High Commissioner for Human Rights, “Global update at the 42nd session of the Human Rights Council”, opening statement at the forty-second session of the Human Rights Council, 9 September 2019; and Florian Krampe, “Climate change, peacebuilding and sustaining peace”, Stockholm International Peace Research Institute (SIPRI) Policy Brief, June 2019. In addition, the impacts of climate change and environmental degradation on peace and stability are highlighted in a number of resolutions of the Security Council and United Nations Environment Assembly.

<sup>17</sup> Janani Vivekananda and others, “Shoring up stability: addressing climate and fragility risks in the Lake Chad region”, paper prepared by adelphi, Berlin, 15 May 2019; Amali Tower, “Shrinking options: the nexus between climate change, displacement and security in the Lake Chad basin”, Climate Refugees, 18 September 2017.

are, however, significant gaps in the data available on displacement in the context of the slow-onset adverse effects of climate change, although some fragmented data collection efforts are being made at the national and local levels.<sup>18</sup>

25. The complexities around environmental processes and related population movements pose challenges for identifying those displaced and delimiting the affected areas, which has an impact on data collection and analysis. Moreover, slow-onset processes and related forms of human mobility take place over an extended period of time and can affect a large area, requiring extensive data collection exercises if these are to give a complete picture. Different metrics and definitions might be used for different data sets, making comparison difficult. Lack of sufficient data disaggregation is also problematic for the design of responses.

26. Academic research also provides valuable information to inform effective laws and policies on internal displacement. In the context of the slow-onset adverse effects of climate change, further research on such topics as land-use planning to reduce displacement risk, displacement in urban contexts or the impact of adaptive migration on the mobility of those who stay behind could be of great use to the design of effective prevention and response strategies.

#### **D. Impacts on the enjoyment of human rights by internally displaced persons, including specific groups**

27. The impacts of displacement on the enjoyment of human rights are extensive, starting with the right to freedom of movement and choice of place of residence. When people are displaced, they lose their homes and livelihoods and might be deprived of their rights to housing, food, water and sanitation, health care, education and property. Uprooted and disconnected from their lands and communities, they might also be unable to practise their cultural traditions and religion, or speak their language, affecting their cultural and religious rights. They might have lost their documents during displacement or face difficulties in obtaining or renewing civil documentation, which might create barriers to essential services, social benefits, employment and housing, land and property rights, political participation and access to justice. The properties that they left behind might be destroyed, damaged, occupied or stolen.

28. While climate change is global, its adverse effects and related mobility affect people differently. Communities living in certain areas, such as low-lying coastal areas, small island States and Arctic ecosystems, are more exposed to slow-onset events and therefore at higher risk of disaster displacement. People depending on local natural resources for their livelihoods are affected more directly and at higher risk of displacement. Slow-onset processes and related displacement also intersect with gender, age, ethnicity, socioeconomic status, cultural background and disability, resulting in differentiated impacts on different groups and exacerbating pre-existing inequalities and vulnerabilities.

##### **Specific groups**

29. Indigenous peoples and other persons whose livelihoods depend heavily on ecosystems are among those who have contributed the least to climate change while suffering some of its worst impacts.<sup>19</sup> Indigenous peoples are highly dependent on their

<sup>18</sup> See Internal Displacement Monitoring Centre, “Disaster displacement: a global review, 2008–2018”, May 2019; and submissions to the Special Rapporteur, including from IOM and the Internal Displacement Monitoring Centre.

<sup>19</sup> See [A/HRC/36/46](#); Norwegian Refugee Council and Alaska Institute for Justice, “Climate change, displacement and community relocation: lessons from Alaska”, 2017; and submissions to the Special Rapporteur.

lands, territories and natural resources for their livelihoods and cultural practices and are particularly vulnerable to climate change-related displacement. The adverse effects of climate change threaten their ancestral lands, livelihoods, culture, customs, religious practices, identity and language. In different parts of the world, indigenous ancestral lands and sacred sites are already being submerged and disappearing as a result of sea level rise, thawing permafrost and land erosion. The impacts of slow-onset processes on arable lands, marine ecosystems and wildlife affect indigenous peoples' subsistence livelihoods. If development projects for climate change adaptation and mitigation are designed and implemented without the participation and free, prior and informed consent of indigenous peoples, such projects not only deny them of their right to participate in decisions affecting them, but can further undermine their livelihoods and traditions and increase their risk of displacement.

30. Other persons whose livelihoods are directly dependent on natural resources, such as farmers, herders, pastoralists and fisherfolk, are directly impacted by the slow-onset adverse effects of climate change, which might affect agriculture, fish stocks and pasture lands, destroying livelihoods and cultural practices. For example, pastoral production is recognized as part of cultural heritage in Africa, where 66 per cent of land is dedicated to this practice. Pastoralists travel across vast terrains with their livestock in search of water and grazing grounds. Environmental changes such as desertification and droughts reduce grazing lands and kill livestock, forcing them to change their traditional routes and eventually leave their communities, traditional ways of life and cultural practices behind.<sup>20</sup>

31. Children and young persons<sup>21</sup> will suffer the most severe impacts of climate change resulting from the historic greenhouse gas emissions of previous generations. Given their young age and limited resources, their ability to adapt to the changing climate is limited. This is particularly worrying given that the countries most exposed to the adverse effects of climate change have predominantly young populations. At the early stages of slow-onset processes, men and boys of working age might migrate in search of better life opportunities, which exposes them to a number of risks. They are likely to have unsafe and poorly remunerated jobs and to live in inadequate housing in unsafe areas. While they might have had a degree of choice in their initial movement, they might be unable to return to their area of origin when slow-onset processes reach the threshold of a disaster, and thus become forcibly displaced. Children who remain in the affected area are exposed to the evolving environmental effects and are at risk of disasters, a situation that is likely to lead to their gradual impoverishment and eventual displacement. Conversely, some families might decide to send women and girls to a camp where they can receive assistance, while men and boys stay behind to look after their house, livestock or fields. The risks are different for those who move and those who stay, but exist in both cases. In either case, family separation makes children more likely to drop out of school and to work to support themselves or their families, increasing their vulnerability to child and forced labour,

<sup>20</sup> Internal Displacement Monitoring Centre, "They call it exodus: breaking the cycle of distress migration in Niger", September 2019; and Norwegian Refugee Council, Internal Displacement Monitoring Centre and Nansen Initiative, "On the margin: Kenya's pastoralists", March 2014.

<sup>21</sup> See [A/74/261](#); [A/HRC/37/58](#); Committee on the Rights of the Child, general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health ([CRC/C/GC/15](#)); Human Rights Council resolution [32/33](#); submissions to the Special Rapporteur, including from the United Nations Educational, Scientific and Cultural Organization and the United Nations Children's Fund; Michelle Bachelet, United Nations High Commissioner for Human Rights, "25th Conference of the Parties high level event 'We Dare': Children and Youth vs Climate Change", statement delivered at the event, Madrid, 9 December 2019; and António Guterres, Secretary-General, "The highest aspiration: a call to action for human rights", remarks to the Human Rights Council, Geneva, 24 February 2020.

exploitation and abuse, including sexual exploitation and, in some contexts, child recruitment and use in armed conflict.

32. Furthermore, owing to gender roles and the unequal distribution of resources, women and girls<sup>22</sup> are particularly vulnerable to the adverse effects of climate change and at higher risk of violence during displacement. In some communities, they might be involved in gathering or producing food and collecting water, activities that are more directly affected by slow-onset processes. Women might have limited access to land, property ownership and livelihoods, which increases their dependence on other family members, exacerbate their vulnerability to slow-onset events and constitute barriers to their achieving durable solutions. When men and boys migrate at the early stages of a crisis, women and girls often stay behind, living in an increasingly hazardous context. As in other situations of internal displacement, when women and girls are displaced, they often have more limited livelihood opportunities and access to health care, and are exposed to a higher risk of sexual and gender-based violence, forced labour, exploitation, abuse and trafficking in persons. In some societies, women and girls unaccompanied by a male family member might face discrimination and barriers to accessing basic services and obtaining civil documentation. In situations of crisis, women and girls are more likely to take on house chores and caring duties. Girls might drop out of school and women and girls might be subjected to child or forced marriage.

33. Other groups are also disproportionately affected in displacement contexts. For example, older persons (see [A/HRC/42/43](#)) are often less mobile and can end up trapped in zones affected by slow-onset processes. When families flee a disaster zone, older persons might be unable to accompany them and stay behind, exposed to the dangers. Those who are displaced might take on additional caregiving roles, including responsibility for children and dependent family members, as other adults separate from the family. They might also lose access to natural resources that they used to control, affecting their livelihoods and their status within their households and communities. During displacement, they face a number of challenges, including in relation to access to health care and other essential services, and protection risks. Persons with disabilities (see [A/HRC/44/41](#) and [A/HRC/44/30](#)) might also be less mobile and face challenges when trying to flee a zone of danger, which could result in their being left behind and exposed to natural hazards. When persons with disabilities are displaced, they have specific protection needs, for example, in relation to access to health care, and often face multiple forms of discrimination and barriers to accessing basic services and essential information and to participating in decision-making. They often face neglect and are at heightened risk of violence, exploitation and abuse. In many contexts, environmental human rights defenders are targeted and at risk of displacement.<sup>23</sup>

### **Vulnerable groups as agents of positive change**

34. Even though specific groups are particularly vulnerable to the slow-onset adverse effects of climate change and related displacement, they also have great agency. In many contexts they display remarkable strength, resourcefulness and resilience in the face of disasters and displacement, despite the challenges, barriers and discrimination that they face. They also have traditional knowledge and valuable perspectives that can contribute to the design of programmatic responses, disaster risk reduction strategies and durable solutions.

35. Indigenous peoples have traditional knowledge of the environment and the effects of climate change at the local level. They have developed coping strategies

<sup>22</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change ([CEDAW/C/GC/37](#)); and submissions to the Special Rapporteur, including from Plan International.

<sup>23</sup> Human Rights Council resolution [40/11](#).

that can inform approaches to climate change adaptation and disaster risk reduction and play a central role in environmental protection and climate action (see [A/HRC/36/46](#)). Indeed, in the Paris Agreement, the importance of indigenous peoples' knowledge systems to guide adaptation action is acknowledged (art. 7). The Intergovernmental Panel on Climate Change, the international body responsible for assessing the science related to climate change, has also recognized that "indigenous, local, and traditional knowledge systems and practices, including indigenous peoples' holistic view of community and environment, are a major resource for adapting to climate change".<sup>24</sup> Indigenous peoples also actively claim their rights and seek to hold Governments and companies accountable for climate change.<sup>25</sup>

36. Children and young persons have raised their voices against climate change and acted collectively to protect the earth's future, which will affect them more than anyone else. Their leadership, mobilization capacity and appeals for climate action have crossed borders, moved masses and sparked protests. Children and young persons are determined to defend their rights and demand climate action, and they must be heard.<sup>26</sup> Climate action is not only a matter of intergenerational solidarity, but is also a human rights duty and a matter of intergenerational justice.

37. Other groups have also played a crucial role in climate action. For example, in many instances women have contributed their unique local knowledge about agriculture, conservation and the management of natural resources; and in positions of political authority, women have often championed more environmentally responsible policies ([A/HRC/41/26](#), paras. 26–30).

## E. Direct and indirect impacts of the COVID-19 pandemic

38. The coronavirus disease (COVID-19) pandemic, as well the measures taken by States in response to it and the associated socioeconomic crisis, have also had an impact on displacement patterns and the enjoyment of human rights by internally displaced persons. While difficult to measure, movement restrictions imposed by Governments to contain the spread of the virus are expected to have hampered human mobility in the context of the slow-onset adverse effects of climate change, including adaptive movement that would have had the potential to minimize the risk of a disaster occurring, and displacement of communities where slow-onset effects have reached the threshold of a disaster, trapping people in dangerous zones. Others might have been displaced despite the pandemic and movement restrictions, exposing them to the risk of contracting the disease during movement and facing heightened discrimination.

39. The effects of the COVID-19 pandemic have hit the most vulnerable people the hardest and have exacerbated existing inequalities and vulnerabilities, including the vulnerability of communities to disasters in hazard-prone zones and their risk of displacement. Internally displaced persons, regardless of the cause of their displacement, are at heightened risk of exposure to COVID-19 owing to limited access to health care, water, sanitation, food and adequate housing, and they often

<sup>24</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (New York, Cambridge University Press, 2014), p. 26.

<sup>25</sup> See, for example, Business and Human Rights Resource Centre, "Kivalina lawsuit (re global warming)"; and Sabin Center for Climate Change Law, "Petition to the Inter-American Commission on Human Rights seeking relief from violations of the rights of Arctic Athabaskan peoples resulting from rapid Arctic warming and melting caused by emissions of black carbon by Canada", 2013.

<sup>26</sup> See, for example, Voices of Youth, "COP25: join the Declaration on Children, Youth and Climate Action".

face discrimination.<sup>27</sup> Many internally displaced persons have lost their livelihoods owing to the ongoing crisis, and are sliding into poverty, unable to afford essential goods and housing, and are at risk of eviction. The COVID-19 crisis has increased the vulnerability of communities to natural hazards, while climate change increases the frequency and intensity of natural hazards, together resulting in a higher risk of disaster and displacement. Slow-onset processes and environmental degradation might also increase the risk of future pandemics.<sup>28</sup>

40. In the recovery from the COVID-19 pandemic and its impacts, it is essential that efforts, including economic stimulus packages, focus on sustainability and building back better, in accordance with Governments' commitments on climate change mitigation, sustainable development, disaster risk reduction, human rights and the prevention of conditions leading to displacement.<sup>29</sup>

## IV. Addressing internal displacement in the context of the slow-onset adverse effects of climate change

### A. Human rights obligations of States

41. Under international human rights law, States must not violate human rights through their own actions, they must protect individuals and communities under their jurisdiction from human rights violations by third parties or harm caused by foreseeable threats such as disasters, and they must implement and enforce laws and policies to fulfil human rights. In the context of climate change and disaster displacement, States must take positive action to protect people from direct threats to life and other human rights impacts of foreseeable natural hazards and related displacement by taking both preventive and remedial action.<sup>30</sup> The adoption of suitable laws and policies on disaster risk reduction, human mobility, environmental protection and sustainable development, including on urban planning, housing, land and property, must constitute an integral part of such efforts. The duties and responsibilities of States to prevent and avoid the conditions leading to displacement, including disaster displacement, to provide humanitarian assistance and protection to internally displaced persons and to support durable solutions are set out in the Guiding Principles on Internal Displacement.

<sup>27</sup> OHCHR, "COVID-19: do not forget internally displaced persons, UN expert urges Governments worldwide", 1 April 2020.

<sup>28</sup> Office of the United Nations High Commissioner for Refugees and Potsdam Institute for Climate Impact Research, "COVID-19, displacement and climate change", fact sheet, June 2020; Internal Displacement Monitoring Centre, "Coronavirus crisis: internal displacement"; Cristina O'Callaghan "Planetary health and COVID-19: environmental degradation as the origin of the current pandemic", Barcelona Institute for Global Health, 6 April 2020; and submissions to the Special Rapporteur.

<sup>29</sup> See United Nations, "Secretary-General says COVID-19 'wake-up call' demands recovery built on green economy, marking Earth Day 2020", press release, 20 April 2020; and United Nations, Department of Global Communications, "Climate change and COVID-19: UN urges nations to 'recover better'", 22 April 2020.

<sup>30</sup> See [A/74/161](#); Bruce Burson and others, "The duty to move people out of harm's way in the context of climate change and disasters", *Refugee Survey Quarterly*, vol. 37, issue 4 (December 2018); Daniel Farber, "Climate change and disaster law", in *The Oxford Handbook of International Climate Change Law*; Human Rights Committee, general comment No. 36 (2018) on the right to life ([CCPR/C/GC/36](#)); European Court of Human Rights, *Budayeva and Others v. Russia* (applications Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), judgment of 20 March 2008; and submissions to the Special Rapporteur, including from the Asia Pacific Academic Network on Disaster Displacement.

## Prevention and preparedness

42. Disaster displacement associated with the slow-onset adverse effects of climate change is already occurring in many parts of the world and is expected to increase significantly as temperatures continue to rise.<sup>31</sup> Prevention is therefore essential. States must take measures for climate change mitigation, adaptation and disaster risk reduction as means to prevent and mitigate the impacts of climate change on the enjoyment of human rights and to prevent the conditions leading to disaster displacement. States must also protect groups in particularly vulnerable situations from the adverse effects of climate change, disasters and related displacement.<sup>32</sup> The responsibility of States to engage in disaster risk reduction has been recognized also in the Sendai Framework and in the draft articles on the protection of persons in the event of disasters of the International Law Commission.<sup>33</sup>

43. The risk of displacement in the context of the slow-onset adverse effects of climate change can be reduced in a number of ways, for example, by mitigating the effects of climate change, reducing the vulnerability of households to climate-related hazards and reducing the number of people exposed to hazards.

44. Climate change mitigation measures reduce greenhouse gas emissions and enhance carbon sinks, thus limiting global warming. Under the United Nations Framework Convention on Climate Change and subsequent agreements, States have committed to reducing emissions and have adopted such measures as setting emission limits, creating markets in greenhouse gas emissions, promoting energy efficiency and conservation and developing the renewable energy sector.

45. Disaster risk reduction<sup>34</sup> and climate change adaptation can reduce the vulnerability of communities and build resilience, enabling people to adjust to the changing climate and stay in their homes when exposed to natural hazards. Examples include adaptation strategies that increase livelihood diversification and reduce people's direct dependence on at-risk natural resources, or infrastructure improvements such as the construction of sea barriers to protect against coastal erosion, flooding and saltwater intrusion. Examples of measures that can enhance people's resilience include development initiatives on housing, food security, access to basic services, such as health care and education, and sustainable ecosystem management, including through urban planning and land reform. The State's duty to respect and protect also entails ensuring that climate change mitigation and adaptation measures and development projects respect human rights and do not themselves trigger displacement. Good practices include tailoring disaster risk management and resilience-building programmes to the interplay of the adverse effects of climate change, violence and conflict as relevant to a particular context. For example, the Building Resilient Communities in Somalia programme, which brings together several humanitarian organizations, is aimed at helping communities to withstand and absorb the impacts of disasters, such as drought and localized outbreaks of conflict.<sup>35</sup>

46. States can also reduce the number of people exposed to hazards through better land-use planning and regulations. Movement as an adaptation strategy can also be supported, for example, through migration management. As a last resort,

<sup>31</sup> Intergovernmental Panel on Climate Change, Fifth Assessment Report, 2014.

<sup>32</sup> For example, Convention on the Rights of Persons with Disabilities, art. 11; and Guiding Principles on Internal Displacement, Principle 9. See also Human Rights Council resolution 41/21.

<sup>33</sup> See also International Law Association, Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise, 2018.

<sup>34</sup> See also United Nations Office for Disaster Risk Reduction, "Words into action: disaster displacement – how to reduce risks, address impacts and strengthen resilience", 2019.

<sup>35</sup> See submission to the Special Rapporteur from the Norwegian Refugee Council; and Norwegian Refugee Council "Building Resilient Communities in Somalia", leaflet, available at [www.nrc.no/globalassets/images/thematic/brcis/brics-leaflet.pdf](http://www.nrc.no/globalassets/images/thematic/brcis/brics-leaflet.pdf).

Governments may have to facilitate moving people out of high-risk zones through planned relocations. However, planned relocations might have severe negative impacts on their intended beneficiaries, for example, affecting their livelihoods and cultural practices, and can constitute forced eviction in violation of international human rights law if the required conditions are not met. Planned relocations should be carried out only in exceptional circumstances, when certain areas of land have become too dangerous for human habitation and as a measure of last resort, with full respect for human rights, cultural practices and traditions and with the participation of affected communities, and should involve a full resettlement process to ensure access to adequate housing, livelihoods and basic services and to preserve communities and cultural practices.<sup>36</sup>

47. It is also vital to prepare for unavoidable displacement, for example, in contexts in which slow-onset and sudden-onset events are intertwined, to minimize the impact of displacement on the enjoyment of human rights by the affected populations. This includes putting in place early warning and early action systems and contingency and preparedness plans. For instance, suitable land and living space can be identified and set aside in the event that an evacuation or planned relocation is needed. Effective preparedness also requires a community-based approach that supports and disseminates existing successful coping strategies. Good practices include the use of national trust funds and forecast-based financing mechanisms, which release humanitarian funding for pre-agreed early actions, to better anticipate displacement needs in advance of a crisis on the basis of scientific forecasts and risk data.<sup>37</sup>

48. Preparedness can also include evacuation drills. Under certain circumstances, States must carry out an evacuation and prevent those who have already left from returning to the area for as long as the danger lasts. Those evacuated or unable to return will be internally displaced persons until they reach durable solutions. An evacuation should be ordered only if strictly necessary to protect their health and safety, if all possible alternatives have been explored and if certain conditions are met. It must be provided for by law, consistent with human rights and as short as possible.<sup>38</sup>

### **Protection and assistance**

49. A common misconception is that protection needs in relation to disaster displacement, especially slow-onset hazards, are less relevant than in displacement triggered by armed conflict. In reality, persons who are internally displaced owing to disasters face significant protection risks given the extensive impacts of displacement on the enjoyment of human rights. Their needs, however, might be overlooked in laws

<sup>36</sup> See Brookings Institution and University of Bern, “IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters”, January 2011, available at [https://www.ohchr.org/Documents/Issues/IDPersons/OperationalGuidelines\\_IDP.pdf](https://www.ohchr.org/Documents/Issues/IDPersons/OperationalGuidelines_IDP.pdf); Brookings Institution, Georgetown University and Office of the United Nations High Commissioner for Refugees, “Guidance on protecting people from disasters and environmental change through planned relocation”, 7 October 2015; Alaska Institute for Justice and Alaska Native Science Commission, “Rights, resilience and community-led relocation: perspectives from fifteen Alaska Native coastal communities”, 2017; and submissions to the Special Rapporteur, including from the Alaska Institute for Justice.

<sup>37</sup> Submission to the Special Rapporteur from the International Federation of Red Cross and Red Crescent Societies; and International Federation of Red Cross and Red Crescent Societies, “Vulnerability and Capacity Assessment (VCA)”, available at [www.ifrc.org/vca](http://www.ifrc.org/vca).

<sup>38</sup> See Guiding Principles on Internal Displacement, Principle 6 (2) (d); African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, art. 4 (4) (f); International Covenant on Civil and Political Rights, art. 12 (3); Human Rights Committee, general comment No. 27 (1999) on freedom of movement (HRI/GEN/1/Rev.9 (Vol. I)), paras. 15 and 16; and Brookings Institution and University of Bern, “IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters”.

and policies on internal displacement, or in policies on disaster risk reduction, which might not address the specific needs of internally displaced persons among disaster-affected persons or have a limited scope. Moreover, it might be challenging to identify persons displaced in the context of the slow-onset adverse effects of climate change because of the complexity of population movements in these contexts, particularly in urban areas. As a result, responses often focus on camps and rural settings, leaving a protection gap in urban settings.

50. Disaster risk reduction, preparedness and contingency plans that include the specific protection challenges and assistance needs of disaster displacement can also ensure a more effective provision of humanitarian assistance and protection. Responses should also address the needs of host communities, so as to prevent or avoid inflaming tensions with displaced communities to the detriment of both. The situation of those who have stayed behind in areas affected by slow-onset processes should also be addressed. They remain exposed to hazards and are at risk of displacement, among other vulnerabilities, which might be exacerbated by the departure of a significant number of people from their community.

### **Durable solutions**

51. Internal displacement associated with slow-onset processes poses particular challenges for the achievement of durable solutions. The slow-onset adverse effects of climate change tend to be long-term and, in some instances, irreversible, making return unlikely or impossible in many contexts. Local integration or settlement elsewhere can also pose challenges, for example because of a decrease in available habitable lands owing to the adverse effects of climate change, or because of cultural barriers, discrimination and tensions with host communities, which might be exacerbated by resource scarcity driven by slow-onset processes. Housing, land and property rights can be a key barrier to durable solutions in these contexts, as lack of ownership might contribute to unsustainable relocations, evictions and multiple displacements. Achieving durable solutions can also be particularly challenging for groups such as indigenous peoples, which have a special relationship with their territories and lands. The risk of protracted displacement is therefore particularly high in the context of the slow-onset adverse effects of climate change.

52. Disaster risk reduction, preparedness and climate change adaptation undertaken with respect for human rights are essential to support durable solutions in these contexts. Measures to support climate change adaptation and build the resilience of displaced persons and host communities can reduce the vulnerability of households, strengthen the capacity of host communities to receive displaced persons and facilitate local integration. Good practices to support durable solutions in countries affected by drought and desertification have been reported, for example, providing livestock to support pastoralists in re-establishing their livelihoods, establishing communal farms to plant cash crops and providing training and grants to help to diversify livelihoods.<sup>39</sup> Planned relocations that integrate a full resettlement plan in accordance with human rights can also support disaster displaced persons in rebuilding their lives, especially when their areas of origin have become uninhabitable.

### **Other obligations**

53. States must ensure the participation of affected persons in decision-making, obtain their free, prior and informed consent and ensure transparency and access to information, equality and non-discrimination, accountability and access to effective

---

<sup>39</sup> Submission from the Internal Displacement Monitoring Centre.

remedies. States should integrate these principles into relevant legal and policy frameworks and take active steps to implement them in practice.

54. Internally displaced persons, communities at risk of displacement and host communities must be involved in decision-making processes relating to the planning and implementation of prevention and response strategies as well as durable solutions, at all stages of development, implementation and monitoring of laws, policies, programmes and strategies. The participation of specific groups, including women, children, older persons, persons with disabilities and indigenous peoples, must also be ensured. The participation of affected persons and communities constitutes a great asset to the development of laws, policies and programmes as diverse groups can share their enriching knowledge, perspectives and experiences (see [A/72/202](#) and [A/HRC/36/46](#)). To be able to enjoy meaningful participation in decision-making, people must have access to relevant information, in a language and format that they can understand and that is adapted to their needs relating, for instance, to literacy, disability or their location. This includes information on the conditions in the place of origin, local integration or settlement elsewhere. Even before a disaster takes place, they must be informed and prepared about the possible dangers and risks, and warned of imminent threats. Moreover, the free, prior and informed consent of populations must be obtained before any measures that affect them are taken to address disaster displacement, for example in the case of planned relocations. Similarly, the free, prior and informed consent of indigenous peoples must be obtained before the adoption and implementation of legislative or administrative measures or the approval of projects that might affect them,<sup>40</sup> including climate change mitigation and adaptation projects in their territories.

55. All laws, policies, strategies and programmes must ensure equality of treatment and non-discrimination on grounds such as age, gender, ethnicity and minority status, disability or socioeconomic status, and ensure the inclusion of the most marginalized. Under international human rights law, States are also required to ensure accountability and access to effective remedies for human rights harms, including harm resulting from the adverse effects of climate change.<sup>41</sup> Remedies such as restitution of lands or compensation for loss and damage can go a long way towards helping internally displaced persons to rebuild their lives and achieve durable solutions.

## **B. Role of the international community**

56. While States bear the primary responsibility for addressing internal displacement within their borders, the engagement of the international community is essential to prevent and address the impacts of climate change, which is a global issue.

57. States must cooperate among themselves and with international organizations and agencies to assist affected States in preventing, avoiding and responding to the risks associated with climate change, including the risk of disaster displacement, for example, through development cooperation, financial and technical support, including technology transfer and capacity-building, and by strengthening and coordinating measures on disaster risk reduction, climate change mitigation and adaptation, humanitarian assistance, protection and support for durable solutions for internally displaced

---

<sup>40</sup> See Declaration on the Rights of Indigenous People, arts. 19 and 32; and OHCHR, “Free, prior and informed consent of indigenous peoples”, available at [www.ohchr.org/Documents/Issues/ipeoples/freepriorandinformedconsent.pdf](http://www.ohchr.org/Documents/Issues/ipeoples/freepriorandinformedconsent.pdf).

<sup>41</sup> See OHCHR, “Bachelet welcomes top court’s landmark decision to protect human rights from climate change”, 20 December 2019; OHCHR, “Key messages on human rights and climate change”, available at [www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages\\_on\\_HR\\_CC.pdf](http://www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf); UNEP, “Climate change and human rights”, December 2015; [A/HRC/10/61](#); [A/HRC/31/52](#); and [A/HRC/36/46](#).

persons.<sup>42</sup> In this regard, numerous initiatives, activities and programmes are currently being carried out, including by international and regional organizations. The Platform on Disaster Displacement, “a group of States leading and working together towards better protection for people displaced across borders in the context of disasters and climate change”,<sup>43</sup> plays a fundamental role in advancing knowledge, action and policy on disaster displacement, including in the context of slow-onset events. The international community can also provide important support to research and data initiatives to advance knowledge on climate change-related displacement.<sup>44</sup>

58. Under international environmental law, States have common but differentiated responsibilities for addressing climate change, and developed States parties have committed to taking the lead in climate action and supporting developing countries, given that their historical greenhouse gas emissions far surpass those of developing countries and they have a greater capacity to respond to climate change.<sup>45</sup> The support of the international community is of the utmost importance given the expected drastic increase in internal displacement in the context of the slow-onset adverse effects of climate change if global temperatures continue to rise, and the severe impact on the least developed countries, developing countries and middle-income countries, which might have insufficient resources to respond, and the potentially protracted nature of displacement where lands have become uninhabitable. Humanitarian, development, environment and peace actors must also work closely together to ensure cohesive and integrated measures. Regional cooperation and coordination are also particularly important given that regions might experience similar environmental degradation processes.<sup>46</sup>

### C. Responsibility of businesses

59. Businesses are often responsible for the effects of climate change and its human rights impacts, including those impacts relating to internal displacement, given the emission of greenhouse gases through their own activities and those of their business relationships. They might also be responsible for displacement triggered by development projects for climate change adaptation and mitigation. Companies have the responsibility to identify, prevent, mitigate and account for how they address these adverse human rights impacts as part of their ongoing human rights due diligence processes, in line with the Guiding Principles on Business and Human Rights.<sup>47</sup> Due diligence processes should include an assessment of actual and potential human rights impacts, including the risk of disaster displacement. As noted in Guiding Principle 18 (b), human rights due diligence processes should involve meaningful consultation with potentially affected groups and other relevant stakeholders. Businesses should

<sup>42</sup> The duty to cooperate is included in the Charter of the United Nations as one of the objectives of the Organization and is mentioned in a number of environmental law agreements and human rights instruments. See, for example, the International Law Commission draft articles on the protection of persons in the event of disasters, arts. 7 and 8; the International Law Association Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise, Principle 4; and [A/HRC/10/61](#), para. 99.

<sup>43</sup> See <https://disasterdisplacement.org/>.

<sup>44</sup> For example, in its submission, the European Union indicates its engagement in undertaking and supporting research relating to human mobility and climate change through the Joint Research Centre of the European Commission and the Habitable project under the Horizon 2020 research programme.

<sup>45</sup> Mentioned in several environmental law agreements, including: United Nations Framework Convention on Climate Change, arts. 3.1 and 4; Cancun Adaptation Framework, art. 14 (f); and Paris Agreement, art. 11 (3).

<sup>46</sup> See, for example, the submission from the Intergovernmental Authority on Development on its governance architecture at the regional and national level.

<sup>47</sup> [A/HRC/17/31](#), annex; and OHCHR, “The corporate responsibility to respect human rights: an interpretive guide”, 2012.

therefore involve communities at risk of, or affected by, climate change-related displacement in decisions that might affect them.

60. In accordance with Guiding Principle 19, companies should take appropriate action in response to adverse human rights impacts with which they are involved, which means that companies should cease or prevent impacts that they cause or contribute to and use their leverage to mitigate any remaining impacts. In the context of climate change and related displacement, businesses should take measures to reduce greenhouse gas emissions and be active agents in supporting climate change mitigation and adaptation and disaster risk reduction.<sup>48</sup> Moreover, the business sector has important strengths that can contribute significantly to these efforts, through its expertise and capacity to innovate, develop new technology, and support technology transfer and knowledge sharing for the benefit of climate change mitigation, adaptation and disaster risk reduction. Companies can, for example, invest in technology to adapt agricultural practices and crops to new soil conditions and share knowledge to help communities to adapt to the changing climate.

61. Where businesses have identified that they have caused or contributed to displacement, they should provide for or cooperate in its remediation (Principle 22). This entails engaging with those who have been affected to determine an appropriate remedy, which may include support for protection and assistance efforts and durable solutions, for instance, through funding or by supporting housing solutions for internally displaced persons, food production, and the provision of health care and education.<sup>49</sup> Although there are challenges in determining the share of a company's contribution to climate change,<sup>50</sup> in principle, all companies contributing to human rights harms associated with climate change should provide for remediation appropriate to their share in the responsibility for the harms.<sup>51</sup> The exact allocation of the share of each company in the harm will depend entirely on the specific situation and should be determined in each instance through a remediation process, which should involve a legitimate grievance mechanism.<sup>52</sup> Of note, there is a growing body of climate change litigation cases brought by both individuals and governmental bodies seeking to hold companies accountable for climate change and its adverse effects.<sup>53</sup>

62. Many companies have engaged in climate action through initiatives such as the Adaptation Private Sector Initiative under the United Nations Framework Convention on Climate Change, the Caring for Climate Initiative under the Global Compact and the World Business Council for Sustainable Development. The Special Rapporteur calls upon more businesses to come forward, take their share of responsibility and join climate action to prevent and address the human rights impacts of climate change and climate change-related displacement.

<sup>48</sup> See also A/74/161, paras. 71 and 72; and Sendai Framework for Disaster Risk Reduction 2015–2030, para. 36 (c).

<sup>49</sup> Submission to the Special Rapporteur from the Norwegian Refugee Council.

<sup>50</sup> See study that has been referred in climate change litigation: Richard Heede, "Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers, 1854–2010" *Climatic Change*, vol. 122, 2014. Available at <https://link.springer.com/article/10.1007/s10584-013-0986-y>.

<sup>51</sup> OHCHR, "OHCHR response to request from BankTrack for advice regarding the application of the UN Guiding Principles on Business and Human Rights in the context of the banking sector", pp. 11 and 12. Available at [www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf](http://www.ohchr.org/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf).

<sup>52</sup> See A/HRC/44/32 and A/HRC/44/32/Add.1 on non-State-based grievance mechanisms.

<sup>53</sup> Business and Human Rights Resource Centre, "Climate change litigation". Available at [www.business-humanrights.org/en/corporate-legal-accountability/special-issues/climate-change-litigation](http://www.business-humanrights.org/en/corporate-legal-accountability/special-issues/climate-change-litigation).

## D. Role of national human rights institutions

63. National human rights institutions have a crucial role to play in addressing internal displacement in the context of the slow-onset adverse effects of climate change, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).<sup>54</sup> National human rights institutions can focus on monitoring and reporting on climate change-related displacement, including the gathering of disaggregated data. The monitoring by such institutions can also serve to provide an early warning for slow-onset disasters. They can handle complaints and promote the accountability of Governments and businesses in relation to their duties and responsibilities in the prevention of and response to climate change impacts, including internal displacement. For example, in a landmark case, the Commission on Human Rights of the Philippines addressed a petition requesting it to investigate and determine the impact of climate change on the human rights of the Filipino people and the role in climate change of the world's top fossil fuel producers. The Commission found that some companies played a clear role in climate change and could be held legally liable for its human rights impacts.<sup>55</sup>

64. National human rights institutions can also support States in preventing the conditions that might lead to displacement and responding to displacement in line with their human rights obligations. For example, they can advocate incorporating provisions on climate change-related internal displacement and the human rights of internally displaced persons into relevant national laws and policies, and can propose to parliaments the harmonization of national laws with international standards. National human rights institutions can also promote a human rights-based approach to sustainable development and the importance of the Sustainable Development Goals, including Goal 13, for climate change mitigation and adaptation measures that have the potential to minimize the risk of disaster displacement.

65. In the context of the COVID-19 pandemic, national human rights institutions can assess the impacts of the health and associated socioeconomic crisis and the measures taken by Governments in response to the pandemic, including declarations of states of emergency, on displacement patterns and the enjoyment of human rights by internally displaced persons and promote the need to build back better in the recovery from the COVID-19 crisis.

## V. Conclusions and recommendations

**66. Addressing internal displacement in the context of the slow-onset adverse effects of climate change, whether or not such displacement is linked to sudden-onset effects, requires a holistic approach to the complexities and multi-causality of human mobility in such contexts. It requires joint action by affected States and the international community, and a multi-stakeholder coordinated approach to climate action, disaster risk reduction, development and human rights protection, as well as the involvement of peace actors in settings in which the adverse effects of climate change interact with armed conflict.**

---

<sup>54</sup> See also [A/HRC/41/40](#) and submissions to the Special Rapporteur, including for activities currently being carried out by national human rights institutions.

<sup>55</sup> Submission to the Special Rapporteur from the Commission on Human Rights of the Philippines; and Amnesty International "Philippines: landmark decision by Human Rights Commission paves way for climate litigation", 9 December 2019.

67. The Special Rapporteur therefore makes the following recommendations to relevant stakeholders and hopes that they are also taken into consideration by the High-level Panel on Internal Displacement in its work.

68. The Special Rapporteur calls upon the stakeholders indicated below to:

*States*

(a) Enhance climate change mitigation efforts and honour and increase commitments to reduce greenhouse gas emissions, to prevent human rights harms and the conditions leading to displacement associated with the adverse effects of climate change;

(b) Integrate climate change-related displacement into laws, policies and programmes on human mobility, and human mobility including disaster displacement into laws, policies and programmes on disaster risk reduction and climate change adaptation, adopting a human rights-based approach that ensures the meaningful and effective participation of affected communities and groups in decision-making, transparency and access to information, free, prior and informed consent, equality and non-discrimination, accountability and access to effective remedies, and addresses the disproportionate impacts on vulnerable groups and supports their agency;

(c) Adopt and allocate resources to comprehensive climate change mitigation, adaptation and risk reduction strategies implemented with respect for human rights, including policies on urban planning, rural development, land use, sustainable livelihoods and the provision of basic services, to reduce exposure and vulnerability to slow-onset events, ensuring a whole-of-government approach, and enhance the capacity of local authorities and communities in this connection;

(d) Ensure the collection of comprehensive data, including disaggregated data, and analysis on human mobility, including internal displacement in the context of the adverse effects of climate change, to inform prevention, preparedness, response, protection and solutions to disaster displacement, and development planning;

(e) Strengthen national and local capacity for data collection and analysis and risk modelling; adopt standardized methodology and indicators in line with the international recommendations on statistics relating to internally displaced persons, including the work of the Expert Group on Refugee and Internally Displaced Persons Statistics, and promote practices that aim for data to be interoperable, standardized, open and publicly available;

(f) Account for displacement and integrate durable solutions from the early stages of prevention, preparedness and response, as well as in disaster recovery, rehabilitation and reconstruction plans;

*International community and donors*

(g) Support efforts on climate change mitigation and adaptation, disaster risk reduction and sustainable development undertaken with respect for human rights, and programmes on protection, assistance and durable solutions for internally displaced persons, in countries and communities that are vulnerable to slow-onset processes, through financial, technical and development cooperation, including through funding, knowledge-sharing, technology transfer and capacity-building;

(h) Ensure that human rights-based climate action, environmental sustainability and resilience-building are mainstreamed in all efforts and programmes relating to internal displacement, and that funding and programmes are appropriate to long-term scenarios linked to slow-onset processes and integrate durable solutions from the outset;

(i) Engage in cooperation efforts at the global and regional levels, and the adoption and implementation of regional strategies and platforms addressing regional implications of the adverse effects of climate change and related displacement;

*Business enterprises*

(j) Incorporate human rights risks associated with climate change and disaster displacement in policy commitments and human rights due diligence processes and actively engage in the remediation of harm that the company has caused or to which it has contributed;

(k) Support rights-based efforts on climate change mitigation and adaptation, disaster risk reduction and sustainable development, and programmes for protection, assistance and durable solutions for persons internally displaced in the context of the adverse effects of climate change, through funding, development and sharing of new technology, and other means;

*National human rights institutions*

(l) Incorporate climate change-related internal displacement in human rights monitoring, including data collection and early warning systems, and complaint handling, and support States in the implementation of their human rights obligations in relation to climate change and associated internal displacement;

*Academia*

(m) With the support of research foundations, donors, the private sector and other funding bodies, conduct interdisciplinary research on the phenomenon of displacement in the context of the slow-onset adverse effects of climate change, the legal and policy responses at the national and subnational levels and how these are implemented in practice, taking into account the experiences of different groups, the distinctive features of displacement in different environments and the roles of various actors.



# General Assembly

Distr.: General  
27 July 2023

Original: English

---

## Seventy-eighth session

Item 73 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Human rights of internally displaced persons

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of internally displaced persons, Paula Gaviria Betancur, in accordance with General Assembly resolution [76/167](#) and Human Rights Council resolution [50/6](#).

---

\* [A/78/150](#).



## **Report of the Special Rapporteur on the human rights of internally displaced persons, Paula Gaviria Betancur**

### *Summary*

In the present report, the Special Rapporteur on the human rights of internally displaced persons, Paula Gaviria Betancur, provides an update on the activities that she has undertaken since her first report to the Human Rights Council in July 2023. She further outlines the thematic priorities that she intends to focus on during her mandate, namely, internal displacement resulting from generalized violence; mediation and peace processes, peace agreements, peacebuilding and internal displacement; internal displacement and climate change; and the reintegration and integration of internally displaced persons. For each of these themes, she elaborates upon the current state of play and provides an overview of the particular issues she intends to examine during her mandate.

active and fruitful participation in mediation and peace processes, and, ultimately, peacebuilding, by facilitating their access to training in order to close knowledge gaps and to develop tools and skills to advance their needs and initiatives.

### Climate change and internal displacement

41. The adverse impact of climate change on the global crisis of internal displacement, once a distant future hypothetical, is now a lived reality for millions worldwide: for the livestock herder driven from home by conflict with his neighbours over dwindling water and pasture sources; for the mother in an informal urban settlement whose children can no longer go to school or drink clean water following flash flooding; and for entire communities of Indigenous Peoples in places such as the Arctic Circle or the Pacific Islands, whose traditional homelands are literally disappearing from beneath their feet. The Special Rapporteur considers it an urgent priority for her mandate and for the international community to find ways to address this twofold crisis and provide tangible protection, assistance and solutions to those affected.

42. Under the United Nations Framework Convention on Climate Change, the Cancun Adaptation Framework highlights measures to enhance understanding, coordination and cooperation around displacement, migration and planned relocation in the context of climate change, while a dedicated Task Force on Displacement has been established under the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (see [A/75/207](#), para. 7). The Sendai Framework for Disaster Risk Reduction 2015–2030 recognizes the role of climate change in exacerbating disaster risks and the need to mitigate these risks, including the risk of displacement. The Global Compact for Safe, Orderly and Regular Migration calls for disaster preparedness and resilience policies that integrate displacement considerations in the context of sudden-onset and slow-onset disasters exacerbated by the adverse effects of climate change.<sup>60</sup> Several regional and national instruments also aim to address internal displacement in the context of climate change, including through integrated frameworks that address climate, disaster and conflict-related drivers of displacement.<sup>61</sup>

43. The relationship between the adverse effects of climate change and internal displacement is complex, as it involves the interplay of various triggers and drivers of displacement rather than a direct causal pathway.<sup>62</sup> Climate change increases the risk of disasters and conflict, which are more proximate drivers of internal displacement. Climate change can increase the frequency and intensity of seasonal hazards, such as floods or cyclones, which turn into disasters – situations in which hazards interact with pre-existing conditions of exposure, vulnerability and capacity, to disrupt the functioning of a community or society<sup>63</sup> – when they overwhelm affected communities’ capacity to cope, leading to losses and other adverse impacts, including displacement. Climate change can also fuel conflict, for instance, in contexts where slow-onset processes such as drought and desertification intensify competition over resources, eventually leading to conflict-induced displacement.<sup>64</sup>

<sup>60</sup> General Assembly resolution [73/195](#), objective 2 (h)–(l).

<sup>61</sup> UNHCR and IOM, *Bridging the Divide in Approaches to Conflict and Disaster Displacement: Norms, Institutions and Coordination in Afghanistan, Colombia, the Niger, the Philippines and Somalia* (2021).

<sup>62</sup> See submission of the Kaldor Centre for International Refugee Law.

<sup>63</sup> See [www.undrr.org/terminology/disaster](http://www.undrr.org/terminology/disaster).

<sup>64</sup> “Human rights, climate change and migration in the Sahel” (United Nations publication, 2021), pp. 5–6.

Climate change can also erode the ability of communities to cope with hazards and conflict, for example, by disrupting traditional livelihoods, leaving communities with fewer resources for adaptation following a crisis event.

44. Not all migration in response to the adverse effects of climate change is necessarily displacement. Human mobility in the context of the adverse effects of climate change may amount to displacement if it meets the threshold stipulated by the Guiding Principles on Internal Displacement, which defines internally displaced persons as those who have been evacuated or who have fled their homes or places of habitual residence as a result of, or in order to, avoid the anticipated effects of a disaster, and who have not crossed an international border.<sup>65</sup> However, other persons impacted by climate change may choose to migrate voluntarily as an adaptation strategy before the situation in their area of origin reaches the threshold of a disaster, in particular those with the means to do so. A third alternative is planned relocation, whereby persons or groups of persons move or are assisted to move from their homes to protect them from risks and impacts related to disasters and environmental change, including the effects of climate change, are settled in a new location and are provided with the means to rebuild their lives, under the authority of the State.<sup>66</sup>

45. Former mandate-holders have extensively explored internal displacement in the context of climate change, considering both sudden-onset and slow-onset climatic phenomena and the impact thereof on the human rights of internally displaced persons.<sup>67</sup> The Special Rapporteur will aim to build on these findings and focus on specific mitigation, adaptation and loss and damage measures to address the adverse effects of climate change, advocating for sustained attention to displacement in the context of the adverse effects of climate change in the decision-making bodies of all relevant conventions and treaties. She will consider how such measures can be formulated with a view to protecting, assisting and providing solutions and remedy to internally displaced persons and preventing further displacement. She will also examine how climate mitigation, adaptation and loss and damage measures address the needs and leverage the capacities of specific populations among the displaced, as well as the interplay between climate change and her other thematic priorities.

46. States have an obligation to prevent arbitrary displacement in the context of climate change, which threatens the effective enjoyment of a broad array of rights, by implementing mitigation and adaptation measures that reduce the risk of displacement by disasters. Mitigation measures in particular are an obligation for the majority of States under the Paris Agreement.<sup>68</sup> Given that disasters involve the interaction of hazards with pre-existing factors of exposure, vulnerability and capacity to cope, mitigation measures aim to reduce the frequency of hazards by curbing emissions and other factors that drive climate change, while adaptation measures aim to reduce the exposure and vulnerability of communities and build their capacity to cope with hazards. Adaptation measures include early warning systems and other mechanisms to provide information to affected communities; infrastructure to offset the effects of hazards; sustainable land-use planning; and development initiatives that improve access to basic services and an adequate standard of living, expanding communities' ability to cope.<sup>69</sup> Several stakeholders identified the need to support diversification of

---

<sup>65</sup> A/75/207, para. 12.

<sup>66</sup> Brookings Institution, Georgetown University and UNHCR, "Guidance on protecting people from disasters and environmental change through planned relocation", 7 October 2015, p. 5.

<sup>67</sup> A/64/214, A/66/285, A/75/2017 and A/HRC/10/13/Add.1.

<sup>68</sup> OHCHR, "Key messages on human rights, climate change and migration". Available at [www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Key\\_Messages\\_HR\\_CC\\_Migration.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Key_Messages_HR_CC_Migration.pdf).

<sup>69</sup> A/75/207, paras. 45–46.

livelihoods and expand social safety nets as the adverse effects of climate change render certain land- and resource-dependent livelihoods unviable.<sup>70</sup>

47. The Special Rapporteur will advocate for the full and meaningful participation of communities that have been displaced in the context of the adverse effects of climate change and those at risk of such displacement, which is indispensable to the success of climate mitigation and adaptation efforts in terms of their ability to prevent disaster displacement. Such participation should reflect the intersectionality of these communities in order to ensure a diversity of perspectives. These efforts are especially critical in instances of climate change adaptation projects that in and of themselves displace communities. The costs and benefits of such projects must be carefully assessed, with the full participation of affected communities, before they can be implemented. Given the variation in local impacts of climate change and the particular role of cities in hosting those displaced in the context of the adverse effects of climate change, the Special Rapporteur will also promote the leadership of local authorities, including municipalities, in the design and implementation of these projects.

48. Planned relocations in the context of climate change are generally considered a measure of last resort after other mitigation and adaptation options have been reasonably exhausted.<sup>71</sup> Such caution is reasonable, given the immense financial and logistical challenges associated with the relocation of entire communities, as well as the myriad potential adverse impacts on the human rights of those relocated in instances where the process is not properly managed or where affected communities are not meaningfully engaged, which may more closely resemble development-based evictions or involuntary resettlement.<sup>72</sup> Furthermore, planned relocation implies shifting the focus away from mitigation measures to curb the climatological drivers of displacement,<sup>73</sup> although such measures are not always within the power of the States that are the most affected, which have often contributed the least to climate change,<sup>74</sup> to enact. Planned relocations also represent a devastating loss of culture and identity for those with a special dependency on and attachment to their lands, including Indigenous Peoples, minorities and those with land-based livelihoods. Nevertheless, the increasing severity of the adverse effects of climate change implies that even under the best-case mitigation scenarios, some communities will have no other recourse than this last resort and indeed, many States have already begun implementing such policies for affected citizens.<sup>75</sup>

49. Given this reality, the Special Rapporteur will examine how planned relocations in the context of climate change can be conceptualized and carried out in a manner that protects and expands the human rights of those affected and ensures their full, informed and meaningful participation throughout the process. She will identify lessons from planned relocation efforts that negatively impacted the human rights of those displaced, as well as examples of successful efforts, in particular those that were initiated at the request of climate-change affected communities,<sup>76</sup> and provide

<sup>70</sup> See submissions of Nigeria; Kenya; Overseas Development Institute Humanitarian Policy Group; Maat for Peace Development and Human Rights Association; and CARAM Asia.

<sup>71</sup> Brookings, Georgetown and UNHCR, “Guidance on protecting people from disasters”, p. 11.

<sup>72</sup> For an assessment of the human rights impacts of development-induced displacement, see [A/77/182](#).

<sup>73</sup> See submission of Elizabeth Ferris.

<sup>74</sup> Core Writing Team, Hoesung Lee and José Romero, eds., “Summary for policymakers” in *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Intergovernmental Panel on Climate Change (Geneva, 2023), para. A.2.

<sup>75</sup> See submission of the Internal Displacement Monitoring Centre.

<sup>76</sup> See submission of the Kaldor Centre for International Refugee Law.

concrete recommendations on conflict-sensitive, human rights-based approaches to planned relocations, in line with the Guiding Principles on Internal Displacement<sup>77</sup> and the guidelines developed by the Brookings Institution, Georgetown University and UNHCR.<sup>78</sup> As the design, implementation, and success of such efforts will depend significantly on the local circumstances of the areas and communities from which and to which people will be relocated, she will advocate for local authorities, including municipalities, to lead these efforts.

50. The Special Rapporteur will give particular attention to how specific groups are impacted by planned relocation and how they participate in the planning and execution of this process. She will also give particular attention to innovative approaches to relocation that accommodate continued mobility, such as seasonal return or pendular migration to the area of origin to continue traditional livelihoods. She will further investigate how such efforts may be executed with a view to preserving the culture and identity of those with a special dependency on and attachment to their lands, and what additional measures are needed to ensure the integration of these communities.

51. Access to justice and remedy are essential rights of internally displaced persons in contexts of arbitrary displacement;<sup>79</sup> however, these rights are difficult to realize in the context of climate change. Those displaced in the context of climate change, in particular slow-onset events, often struggle for recognition as internally displaced persons, which limits their ability to claim reparative measures.<sup>80</sup> Establishing liability for climate change-related rights violations poses significant challenges, including the difficulty of attributing disasters and conflicts that cause displacement definitively to climate change, the difficulty of attributing responsibility for specific climate change-driven events to specific actors and the question of which States or entities should be held responsible for the effects of climate change.<sup>81</sup> A further complication is whether the States and businesses that have contributed the most to climate change will have the political will to acknowledge and remedy the harms caused by their emissions.

52. Nevertheless, displacement in the context of climate change is not natural or inevitable, but rather the result of deliberate actions and policies that benefit some to the detriment of others. There are clear disparities among States as to which have contributed the most to global emissions and which are the most impacted by the adverse effects of climate change, which, the Intergovernmental Panel on Climate Change has concluded, are linked to historical and ongoing patterns of inequity such as colonialism.<sup>82</sup> Significant inequities are also evident within States. For example, the Intergovernmental Panel found that, in urban contexts, the adverse effects of climate change are concentrated among economically and socially marginalized urban residents.<sup>83</sup> Climate change amplifies existing structural inequalities among and within States, and those that already have fewer resources to cope with increasingly frequent and severe hazards are consequently the most affected by disasters.<sup>84</sup>

<sup>77</sup> See, in particular, principle 7, which concerns planned displacements.

<sup>78</sup> Brookings, Georgetown and UNHCR, “Guidance on protecting people from disasters”.

<sup>79</sup> OHCHR, “Key messages on human rights and climate change” (available at [www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/KeyMessages\\_on\\_HR\\_CC.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf)), para. 3, and “Key messages on human rights, climate change and migration”, para. 9.

<sup>80</sup> See submissions of Climate Refugees and the Kaldor Centre for International Refugee Law.

<sup>81</sup> See submission of Elizabeth Ferris.

<sup>82</sup> Intergovernmental Panel on Climate Change, “Headline statements from the summary for policymakers”, Sixth Assessment Report of Working Group II, 28 February 2022.

<sup>83</sup> Core Writing Team and others, eds., “Summary for policymakers”, para. A.2.7.

<sup>84</sup> [A/75/207](#), paras. 27–33, and [A/HRC/52/28](#).

53. Internally displaced persons in the context of climate change thus require access to justice and remedy for multiple harms: for the climate change-fuelled disaster that was the proximate cause of their displacement and for the pre-existing structural violence that deprived them of the resources and capacity to cope with hazards prior to their displacement. Groups with a special dependence on and attachment to their lands also face the devastating losses of their culture and identity in situations where they are displaced from their traditional lands and/or forced to give up their traditional livelihoods. Finding ways to remedy these intangible yet consequential losses is also critical.

54. Consequently, the Special Rapporteur believes that more attention should be paid to the question of justice for internally displaced persons in the context of climate change. The international community has made incremental progress towards recognizing the need to address the unequal harms associated with climate change, under the umbrella of “loss and damage”, the term generally used to denote the adverse effects of climate change that occur despite mitigation and adaptation measures or in their absence.<sup>85</sup> The Conference of the Parties to the United Nations Framework Convention on Climate Change established the Warsaw International Mechanism to address loss and damage in developing countries that are particularly vulnerable to the adverse effects of climate change in 2013; included loss and damage as a core element of the Paris Agreement (article 8) in 2015; and established a fund to respond to loss and damage in 2022. Displacement is recognized as one form of loss and damage, as evinced by the Mechanism’s establishment of the Task Force on Displacement.

55. Nevertheless, these efforts must go further towards reparative justice for those displaced in the context of climate change. By definition, “loss and damage” explicitly excludes the possibility of liability or compensation for climate change-related harms.<sup>86</sup> To date, most of the above mechanisms have focused largely on research and knowledge-sharing around the adverse impacts of climate change, and it remains to be seen how the recently established loss and damage fund will function in practice. The Special Rapporteur will aim to examine how loss and damage mechanisms and other channels may be leveraged to provide meaningful access to remedy and justice that give due consideration to the concepts of liability and compensation for the rights violations suffered by internally displaced persons in the context of climate change. She will advocate for the full and meaningful participation of internally displaced persons, including the specific groups that are disproportionately impacted by the adverse effects of climate change, in the design and implementation of loss and damage policies and programmes and in eventual efforts towards broader climate justice.

56. In contexts where the adverse effects of climate change and conflict intersect, the Special Rapporteur will promote due consideration of climatological factors that contribute to conflict in mediation and peace processes, peace agreements and peacebuilding, including by ensuring that post-conflict reconstruction supports climate mitigation and adaptation in order to prevent further displacement in the future.

---

<sup>85</sup> See interview with Adelle Thomas, “Loss and damage: A moral imperative to act”, available at [www.un.org/en/climatechange/adelle-thomas-loss-and-damage](http://www.un.org/en/climatechange/adelle-thomas-loss-and-damage).

<sup>86</sup> Article 8 of the Paris Agreement and Adoption of the Paris Agreement – Proposal by the President – Draft decision -CP.21 (FCCC/CP/2015/L.9/Rev.1), paras. 48–52.

### The integration and reintegration of internally displaced persons

57. The Framework on Durable Solutions for Internally Displaced Persons describes the path towards the sustainable integration and reintegration of internally displaced persons as a gradual, long-term process of reducing displacement-specific needs and ensuring the enjoyment of human rights without discrimination. It enumerates eight human rights-based criteria for determining when durable solutions have been achieved, namely, long-term safety and security, adequate standard of living, access to livelihoods and employment, access to remedies and justice, family reunification, accessible mechanisms for restoration of housing, land and property and personal and other documentation and participation in public affairs.<sup>87</sup> Although indicators have been developed to measure the progress made with respect to these criteria, the availability of data to inform these criteria remains extremely limited.<sup>88</sup>

58. It is crucial to move beyond treating internal displacement as solely a humanitarian problem and work towards nationally and locally owned solutions to ensure that the rights, including the right to a voluntary, safe and dignified solution, and agency of internally displaced persons of all ages, genders and diversities are protected by the State, and that internally displaced persons, along with other members of the local community, are empowered as rights-holding residents of their countries. Integration and reintegration are contextual and multidimensional, and “subjective factors play a major role in determining at what point IDPs [internally displaced persons] no longer see themselves as IDPs or if they are still perceived as such by others.”<sup>89</sup>

59. According to UNHCR, in 2022, at least 5.7 million internally displaced persons were estimated to have returned to their place of origin, 8 per cent more than during the previous year.<sup>90</sup> This figure, however, does not address the fundamental aspects of identity, including cultural, religious and linguistic considerations, belonging and acceptance, social cohesion, spirituality and quality of social life, which are rarely documented or considered when formulating durable solutions.<sup>91</sup> Return and relocation movements are not a durable solution in and of themselves absent full and holistic integration and reintegration; however, the focus in many contexts continues to be primarily on physical return, with limited support for local integration or settlement elsewhere.<sup>92</sup>

60. The Special Rapporteur will further explore differentiated approaches to facilitating the integration and reintegration of internally displaced persons and will pay special attention to the conditions that contribute to the sustainability of durable solutions in their countries and their lived experiences and perceptions that impart a sense of belonging. She will analyse programmes and policies to address social cohesion, psychosocial well-being, subjective feelings about belonging, family and social networks and access to information to understand how they reduce discrimination and marginalization.

61. The Special Rapporteur will also consider the role of identity, including cultural, spiritual and religious practices, as well as the link between mental health and suffering, including transgenerational impacts resulting from displacement and the impacts of post-traumatic stress, loneliness and isolation, discrimination and

<sup>87</sup> See Durable Solutions, “Informing responses to support durable solutions for IDPs”, at <https://inform-durablesolutions-idp.org/>.

<sup>88</sup> See UNHCR, *Global Trends: Forced Displacement in 2022* (Copenhagen, June 2023).

<sup>89</sup> Kälin, *Internal Displacement and the Law*, p. 245.

<sup>90</sup> See UNHCR, *Global Trends*.

<sup>91</sup> See submission of the Internal Displacement Monitoring Centre.

<sup>92</sup> See submission of the Danish Refugee Council (Middle East).

prejudice and other mental health and psychosocial challenges with respect to integration and reintegration, as well as the participation of internally displaced persons in the development of solutions. The importance of psychosocial care, social support and community networks, protection from discrimination and access to information and mental health care will be examined in the context of life-changing events experienced by internally displaced persons, including how such support and targeted interventions affect their resilience, capacities and agency.

62. Key issues will be the importance of upholding fundamental rights, such as the rights to life, security, safety, protection, equality, non-discrimination and freedom from stigmatization and exclusion, and prioritizing the strengthening of resilience, self-reliance and protection capacities of internally displaced persons by eliminating barriers that hinder their ability to secure sustainable livelihoods, education, health care and adequate housing. Special attention should be given to groups in vulnerable situations, including unaccompanied minors, young people, women and girls, female heads of household, persons with disabilities, older persons, LGBTIQ+ persons, persons perceived as affiliated with parties to conflicts, minorities, Indigenous Peoples, rural workers and pastoralists. Addressing the challenges faced by internally displaced persons in vulnerable situations during integration and reintegration requires context-specific approaches that consider local dynamics, cultural sensitivities and the specific needs, capabilities and aspirations of the affected populations.

63. Full and equitable access to effective legal remedies to protect housing, land and property rights, including in areas where customary rights are managed without formal recognition, is vital for the successful integration and reintegration of internally displaced persons.<sup>93</sup> Ensuring access to justice is a significant challenge for internally displaced persons owing to displacement-related factors such as the lack of documentation, legal representation and familiarity with the legal system. Supporting and strengthening existing local and national protection systems and mechanisms, along with combating discrimination and stereotypes and raising awareness of the drivers of internal displacement, are equally crucial.<sup>94</sup>

64. The Special Rapporteur is grateful to her predecessor for highlighting the importance of reparations in achieving durable solutions, addressing material obstacles faced by internally displaced persons and restoring their dignity, including through housing, land and property restitution and livelihood support, which, together with truth-seeking, accountability and guarantees of non-recurrence, contribute to the recognition of wrongdoing.<sup>95</sup> She will continue advocating for the use of reparations, specifically collective reparations, as appropriate, to enable comprehensive reintegration.

65. Successful integration and reintegration of internally displaced persons require promoting social cohesion and reconciliation within displacement-affected communities, addressing tensions and grievances and fostering dialogue. The effective integration of internally displaced persons into host communities continues to present significant challenges, as the sheer magnitude of internally displaced persons' movements are perceived as overwhelming and straining limited services available in host communities, which can create tensions and conflicts. This may be exacerbated by parallel humanitarian and development responses when little effort is made to ensure inclusive economic development strategies that benefit both host communities and internally displaced persons.

---

<sup>93</sup> See submission of UN-Habitat.

<sup>94</sup> See submission of the Danish Refugee Council.

<sup>95</sup> [A/73/173](#), paras. 42 and 64.

66. The Special Rapporteur will also address the challenges to achieving integration and reintegration that some have raised regarding the lack of harmonized normative, institutional and monitoring and accountability frameworks that facilitate a comprehensive, coordinated and realistic response and reintegration policy with adequate allocation of resources to address challenges faced by internally displaced persons and empower them to participate in decision-making and national dialogue processes.<sup>96</sup>

67. The absence of documentation, and obstacles to obtaining it owing to transportation and administrative costs and bureaucratic policy barriers,<sup>97</sup> compounded by restrictions of freedom of movement, places internally displaced persons at increased risk for arrest or arbitrary detention, which hinders durable solutions and leaves internally displaced persons with unequal legal protection and access to social welfare schemes. Undocumented births expose children to the risk of statelessness, hinder their access to basic services and place them at risk of trafficking, recruitment and sexual exploitation. These are rights protected by the Guiding Principles on Internal Displacement, and the Special Rapporteur will advocate for the full enjoyment of these rights to enable integration and reintegration.

68. Another challenge the Special Rapporteur will address is the tendency to respond to compounding emergencies with crisis-driven investment rather than sustainable solutions that uplift individuals and communities and address underlying causes of displacement. The pressures generated by funding needs, unclear organizational incentives and limited space for innovative approaches make it difficult to focus on integration and reintegration and effect changes. Humanitarian action is often organized around major technical clusters, producing fragmented funding and programme implementation and prioritizing the interests of major aid agencies rather than the needs and priorities of affected populations, especially in countries experiencing ongoing violence, disasters and migratory flows that further exacerbate the fragility of infrastructure and marginalize crisis-affected populations. Targeted interventions and sustainable response and recovery approaches are needed to mitigate these effects. Furthermore, the short length of humanitarian funding cycles poses a challenge even when long-term issues are duly considered, as available resources do not provide the flexibility or certainty required for effective durable solutions programming.<sup>98</sup> States often focus on providing life-saving humanitarian assistance, which, while crucial, can also perpetuate dependency unless supported by development assistance and socioeconomic and political participation, which are necessary for durable solutions.<sup>99</sup>

69. The sustainability of integration and reintegration of internally displaced persons relies instead on the State's investment in creating livelihood and employment opportunities, the provision of support and services to host communities and continuous monitoring and reporting of displacement triggers.<sup>100</sup> The integration and reintegration of internally displaced persons can further be supported by fostering social cohesion, inclusion and trust; empowering identity and self-determination, including through cultural and spiritual expression; and providing mental-health and psychological support. This can be done by promoting inclusive policies and programmes to ensure equal rights, opportunities and access to services for both internally displaced persons and host communities; encouraging community-led initiatives and engagement; enabling inclusive and meaningful participation in

<sup>96</sup> See submissions of Mexico and the Consortium of Ethiopian Human Rights Organizations.

<sup>97</sup> See submission of the Danish Refugee Council (Middle East).

<sup>98</sup> See joint submission of the International Rescue Committee and Sesame Workshop.

<sup>99</sup> See submission of the Consortium of Ethiopian Human Rights Organizations.

<sup>100</sup> See submission of the Kenya National Commission on Human Rights.

decision-making processes; facilitating dialogue and collaboration between host communities and internally displaced persons; and establishing social and cultural incentives to address concerns and build trust, a sense of solidarity, empathy and shared responsibility.<sup>101</sup>

70. Programmes that promote social acceptance, invest in local actors and prioritize inclusion are crucial for promoting social cohesion and reconciliation and preventing future conflict.<sup>102</sup> Preserving and respecting the diverse identities, cultural heritage, languages, traditions and spiritual practices of internally displaced persons, providing mental health services and psychological support and creating an inclusive environment are important in fostering a sense of identity, belonging and resilience.

71. Many stakeholders stressed the need to prioritize the provision of adequate, accessible and quality mental health and psychological support services, including counselling, trauma support and psychosocial interventions, through fostering capacity within communities; and facilitating access to clinical services, in order to provide a sense of belonging, emotional support and opportunities for collective healing. Raising awareness about mental health issues and reducing the stigma can encourage internally displaced persons to access the necessary support and services. Donors should focus on strengthening the capacity of States to provide these services.<sup>103</sup>

72. In contexts where the State lacks the legitimacy, will or ability to implement measures to facilitate the sustainable integration and reintegration of internally displaced persons, community-based development planning processes play a vital role in addressing social cohesion and economic inclusion in tandem.<sup>104</sup> Civil society actors have an important role to play in mobilizing support and solidarity by bringing attention to and documenting challenges and protection needs and working to address and resolve them, as well as holding the State and other relevant authorities accountable for their obligations towards internally displaced persons.<sup>105</sup>

73. The sustainability of integration and reintegration of internally displaced persons is a complex and multifaceted process that requires a comprehensive approach. The unique needs, experiences and aspirations of internally displaced persons must be considered, and an inclusive and supportive environment within host communities must be fostered. The Special Rapporteur will continue to raise awareness about the rights and needs of internally displaced persons and to identify good practices with a view to developing policy recommendations for sustainable integration and reintegration. She will advocate for integration and reintegration initiatives to be rights-based and age- and gender-sensitive, with due consideration of effective accountability mechanisms for both humanitarian actors and duty bearers.<sup>106</sup>

## IV. Conclusions

**74. The adverse effects of climate change and situations of generalized violence create internal displacement that amplifies existing structural inequalities. Persons who, even prior to displacement, were marginalized by their identities or beliefs are disproportionately impacted by arbitrary displacement and the**

<sup>101</sup> See submission from the National Human Rights Commission of Nigeria.

<sup>102</sup> See submission of Mercy Corps.

<sup>103</sup> See UNHCR, “Strengthening mental health and psychosocial support in UNHCR: achievements in 2021 and priorities for 2022 and beyond” (Geneva, 2022).

<sup>104</sup> Consultation with UNDP.

<sup>105</sup> See submission of the Danish Refugee Council.

<sup>106</sup> See submissions of Save the Children and the Danish Refugee Council.

human rights violations this entails. The impact of both generalized violence and climate change is often highly context-specific, leaving local authorities, particularly in cities, on the front line of responses. The complexity of these phenomena make accountability for arbitrary displacement in these situations a challenge.

75. Mediation and peace processes, peace agreements and peacebuilding efforts provide a platform that can prevent future arbitrary displacement, including in contexts of climate change and generalized violence, as well as provide redress for those subjected to arbitrary displacement and associated human rights violations, including the disproportionate impact faced by those marginalized even prior to displacement. However, these conflict resolution efforts frequently fail to dedicate sufficient attention to addressing internal displacement or meaningfully engage internally displaced persons and displacement-affected communities from an intersectional perspective.

76. Remedying and preventing future rights violations suffered by internally displaced persons in contexts of climate change, generalized violence and post-conflict transitional processes is essential to the integration and reintegration of internally displaced persons. These measures must be complemented by context-specific and holistic efforts to facilitate the full integration and reintegration of internally displaced persons, which remains a multi-faceted, context-specific and subjective process.

77. Given the challenges of establishing accountability and meaningful remedy for rights violations after arbitrary displacement has already occurred, the Special Rapporteur will work with States and other responsible authorities to encourage them to implement meaningful measures and strategies to prevent arbitrary displacement driven by disasters, generalized violence and conflict, including mitigation and adaptation measures to address the adverse impacts of climate change. Where such displacement has already taken place and post-crisis recovery is underway, she will promote measures that provide justice, remedy and reparations to internally displaced persons for the human rights violations, losses and damages they have endured. She will advance these priorities by advocating for the consideration of prevention measures and remedy mechanisms for displacement in mediation and peace processes.

78. Lastly, the Special Rapporteur will consistently advocate for internally displaced persons and displacement-affected communities, including local and municipal authorities, to be meaningfully engaged in the design and implementation of prevention strategies and efforts, transitional justice and remedy mechanisms and mediation and peace processes. She will also promote approaches that centre their perspectives in determining the conditions under which full integration and reintegration, following the implementation of durable solutions, is achieved.



# General Assembly

Distr.: General  
13 August 2012

Original: English

---

## Sixty-seventh session

Item 70 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Human rights of migrants

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report prepared by the Special Rapporteur on the human rights of migrants, François Crépeau, in accordance with General Assembly resolution 66/172.

---

\* A/67/150.



## Report of the Special Rapporteur on the human rights of migrants

### *Summary*

The present report, submitted in accordance with General Assembly resolution 66/172, constitutes the first report to the Assembly of the Special Rapporteur on the human rights of migrants. The report first introduces the activities of the Special Rapporteur throughout the reporting period.

The thematic section of the report is dedicated to the impacts of climate change and some of its consequences for migration. The Special Rapporteur first analyses some of the technical aspects of climate-change-induced migration, including questions of definitions, identifying the places and persons most affected and considering where climate-change-induced migrants are moving towards. It then considers how international law approaches the matter of climate-induced migration, including some deficiencies in the currently existing categories.

Finally, the Special Rapporteur takes note of the political engagement that will be required on the issue by a range of actors, including from governments, the international community and civil society. He provides some conclusions and recommendations to help guide States in developing appropriate responses to this complex issue.

### Contents

	<i>Page</i>
I. Introduction .....	3
II. Activities .....	3
A. Engagement with the Human Rights Council .....	4
B. Regional thematic study: management of the external borders of the European Union and its impact on the human rights of migrants .....	4
III. Thematic section: climate change and migration .....	5
A. Introduction .....	5
B. United Nations system and international engagement on migration and climate change ..	6
C. Question of definition: what is climate-change-induced migration? .....	7
D. International law and climate-change-induced migration .....	13
E. Looking ahead: political engagement on the issue of climate-change-induced migration	17
F. Migration as a solution: recognizing the opportunities of migration as adaptation to global environmental change .....	21
IV. Conclusions and recommendations .....	22

## I. Introduction

1. The present report is the first submitted to the General Assembly by the current Special Rapporteur on the human rights of migrants. The Special Rapporteur was invited to present his report to the General Assembly at its sixty-seventh session in resolution 66/172.
2. The activities of the Special Rapporteur are carried out in accordance with Commission on Human Rights resolution 1999/44, by which the mandate was first established. Since then, the mandate of the Special Rapporteur has been extended by Commission on Human Rights resolutions 2002/62 and 2005/47 and Human Rights Council resolutions 8/10 and 17/12, each time for a period of three years. At its seventeenth session, the Human Rights Council appointed François Crépeau (Canada) as the new Special Rapporteur on the human rights of migrants, and he assumed his functions on 1 August 2011.

## II. Activities

3. During the period under review, the Special Rapporteur participated in a number of conferences and forums directly related to his mandate.
4. From 8 to 10 November 2011, in Djibouti, the Special Rapporteur participated in an Expert Meeting on Refugees and Asylum-Seekers in Distress at Sea, organized by the Office of the United Nations High Commissioner for Refugees (UNHCR).
5. From 29 November to 2 December 2011, he attended the Global Forum on Migration and Development Civil Society Days and relevant side events in Geneva. He also attended the Tenth Coordination Meeting on International Migration and Development in New York in February 2012.
6. On 22 and 23 March 2012, he participated in the Expert Consultation of Human Rights at International Borders, organized in Geneva by the Office of the United Nations High Commissioner for Human Rights (OHCHR).
7. The Special Rapporteur also participated in the twenty-first session of the United Nations Office on Drugs and Crime Commission on Crime Prevention and Criminal Justice in Vienna from 23 to 27 April 2012 during the thematic discussion on violence against migrants, migrant workers and their families.
8. The Special Rapporteur has also been collaborating with the United Nations Children's Fund (UNICEF) in the preparation of a joint document which will be presented at the Day of General Discussion of the Committee on the Rights of the Child on the rights of all children in the context of international migration, and he will participate in the Day of General Discussion on 28 September 2012.
9. The Special Rapporteur has also been following the preparations for the 2012 Global Forum on Migration and Development, which he will attend in Mauritius in November 2012. He also welcomes the next High-level Dialogue on International Migration and Development, which will be the second such dialogue to be convened by the General Assembly, in New York in September 2013. The Special Rapporteur provided input to the contribution of the United Nations system to the High-level Dialogue, stressing the importance of paying sufficient attention to the human rights

of migrants. The Special Rapporteur welcomes the fact that migration is being considered by those two high-level multilateral forums.

#### **A. Engagement with the Human Rights Council**

10. During the period under review, the Special Rapporteur undertook his first country mission to Albania, from 5 to 13 December 2011. The report was submitted to the Human Rights Council at its twentieth session in June 2012 (see A/HRC/20/24/Add.1, annex). The Special Rapporteur wishes to thank the Government of Albania for its positive response to his report.

11. The Special Rapporteur submitted his first thematic report to the Human Rights Council at the same session (A/HRC/20/24). The subject of the report, the detention of migrants in an irregular situation, was selected given the increasing tendency of States to engage in this practice, and in the light of the wide range of human rights impacts that detention has on detainees. The Special Rapporteur thanks all Member States who participated in the interactive dialogue and hopes that his recommendations will be taken up by States when considering their policies and programmes regarding the detention of migrants, in particular the principle that freedom should be the rule and detention the exception.

#### **B. Regional thematic study: management of the external borders of the European Union and its impact on the human rights of migrants**

12. During the period under review, the Special Rapporteur decided to dedicate the first year of his mandate to a regional thematic study on the management of the external borders of the European Union, focusing on the Mediterranean region. The Special Rapporteur is acutely aware of the increasing political attention on migration within Europe. In particular, he has observed the focus on border management by the European Union, in the context of the Schengen free-movement area, and the impact on the human rights of those migrants attempting to enter the European Union.

13. The study, developed in consultation with the European Union and relevant Member States, had the objective of assessing the progress made as well as the obstacles and challenges which remain in protecting and promoting the rights of migrants, paying particular attention to the human rights of migrants in an irregular situation. The Special Rapporteur will examine the European Union directives and national policies in place with respect to visa regimes and border control and will also analyse important bilateral mobility partnerships established between European Union and non-European Union countries as they affect border management, and the implications of such partnerships for the human rights of migrants. He will also investigate management policies and practices, interception practices, including on land and at sea, detention regimes and conditions, and returns and readmissions.

14. Thus, in April and May 2012, the Special Rapporteur visited Vienna and Brussels where he held consultations with the key European Union institutions responsible for protecting and promoting the rights of migrants, including, among others, the European Union Commissioner for Home Affairs, the Directorate-

General for Justice of the European Commission, the European Parliament, the secretariat of the European Council, the European External Action Service, the Fundamental Rights Agency and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

15. Within the above framework of analysis, the Special Rapporteur will focus his country visits in 2012 on examining the complex issues of control and management of European Union borders, using real case examples from his missions at the national level. In particular, the Special Rapporteur has chosen to visit both sides of the border of two of the main points of entry for migrants into the European Union: Turkey and Greece, and Tunisia and Italy. In June 2012, he visited Tunisia and Turkey. He will visit Italy from 1 to 8 October and Greece from 26 November to 3 December 2012.

16. The findings and recommendations emerging from those visits will be presented to the Human Rights Council at its twenty-third session in the form of one thematic global mission report, with country-specific attachments. The Special Rapporteur will highlight ongoing challenges in the development and implementation of policies and will also identify best practices. He will also provide a set of recommendations to assist member States of the European Union and States visited in overcoming such challenges individually, bilaterally and regionally.

### **III. Thematic section: climate change and migration**

#### **A. Introduction**

17. The world can expect to experience profound changes in the natural and human environments over the next 50 years or so. Given the significant impacts of those environmental transformations, the Special Rapporteur notes that the effects of climate change will likely play a significant and increasingly determinative role in international migration. In this context, the Special Rapporteur decided to dedicate the thematic section of his report to the General Assembly to the impacts of climate change on migration.

18. Hundreds of millions of people, especially in the global South, are highly vulnerable to global environmental change and will become more so in the future. In its assessment of the future of the planet, the leading intergovernmental body working on the issue, the Intergovernmental Panel on Climate Change, concluded in its Fourth Assessment Report (2007) that global warming was unequivocal and that human activity was the main driver, very likely causing most of the rise in temperatures since 1950.

19. Thus, global environmental variation as a result of climate change is now a certainty, and the impact of climate change on migration is becoming increasingly apparent. Walter Kälin, the former representative of the Secretary-General on the human rights of internally displaced persons, has identified five scenarios of climate-induced displacement, triggered respectively by (i) sudden-onset disasters; (ii) slow-onset environmental degradation; (iii) sinking small island States;

(iv) high-risk zones designated by Governments; and (v) unrest that seriously disturbs the public order, violence, or armed conflict.<sup>1</sup>

20. In particular, climate change is likely to exacerbate the frequency and intensity of extreme weather events (e.g., tropical storms, floods, heat waves) and the gradual processes of environmental degradation (e.g., desertification and soil and coastal erosion). Those effects of climate change and their adverse consequences for livelihoods, public health, food security and water availability will have a major impact on human mobility, as one natural response will be to migrate.

## **B. United Nations system and international engagement on migration and climate change**

21. While the question of the impact of climate change on migration patterns and the displacement of persons has long been neglected, it has started to receive much needed attention from the international community.

22. In the context of the work of Special Procedures, the former Special Rapporteur on the human rights of migrants, Jorge Bustamante, in his final report to the Human Rights Council in 2011, noted the increasing relevance of climate change and its impact on the movement of peoples and recommended that further study be made on the impacts of environmental and climate change on human mobility (see A/HRC/17/33, paras. 47-62).

23. Other mandate holders have also developed very timely reports dedicated to this issue in relation to their respective mandates, notably the Special Rapporteur on the human rights of internally displaced persons (A/66/285) and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (A/64/255).

24. In 2009, the Office of the United Nations High Commissioner for Human Rights (OHCHR) submitted a report to the Human Rights Council in response to its resolution 7/23 on the relationship between climate change and human rights. The report also contained a detailed section focused on the impact of climate change on migration (see A/HRC/10/61, paras. 55-60).

25. Each of those reports contains important definitions, including basic concepts and terminology, especially on mitigation and adaptation,<sup>2</sup> upon which the Special Rapporteur will rely in the present report. Furthermore, the Special Rapporteur will use the term “climate-change-induced migrant” to refer to persons who may migrate in connection with the environmental impacts of climate change.

26. Beyond the work of OHCHR, the United Nations system as a whole is also increasingly focusing on the intersection of climate change and environmental

<sup>1</sup> Walter Kälin, “Conceptualizing Climate-Induced Displacement”, in *Climate Change and Displacement: multidisciplinary perspectives*, pp. 81-103, Jane McAdam, ed. (Hart Publishing, Portland, Oregon, 2010).

<sup>2</sup> Report of the Special Rapporteur on the human rights of internally displaced persons on Climate Change and Internal Displacement (A/66/285, paras. 25-27); report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on Climate change and the right to adequate housing (A/64/255, paras. 51-64); and report of OHCHR on the relationship between climate change and human rights (A/HRC/10/61, paras. 12-15).

policy and migration. The Global Migration Group, a collective of 18 United Nations agencies, the World Bank and the International Organization for Migration (IOM), was created in 2006 in recognition that migration is a complex and multidimensional issue that requires a coherent and coordinated approach from the international community (see <http://www.globalmigrationgroup.org>). The United Nations Educational, Scientific and Cultural Organization (UNESCO) as the Chair of the Global Migration Group in the second half of 2011, focused its statement on the relationship between climate change and migration.

27. The Climate Change Environment and Migration Alliance (see <http://www.ccema-portal.org>), which includes the United Nations Environment Programme (UNEP), the Office for the Coordination of Humanitarian Affairs, IOM and other international non-governmental organizations specialized in environment, has also recently been established.

28. Individual United Nations agencies have also focused specifically on the link between migration and climate change. IOM has a thematic focus on this issue and has developed numerous publications on the topic.<sup>3</sup> Similarly, UNHCR has recognized the important impact that climate change will have on its work.<sup>4</sup> The World Bank also recently commissioned a study on human rights and climate change.<sup>5</sup>

29. The 2012 United Nations Conference on Sustainable Development (Rio+20), held in Brazil from 20 to 22 June 2012, also recognized the issue of migration as relevant in the context of environmental cooperation, and emphasis was put on the need for States to recognize the rights of migrants, in particular those in a vulnerable situation.<sup>6</sup>

30. Of course, the Special Rapporteur recognizes the contributions of numerous non-governmental organizations, as well as Governments themselves, to the development of this field. As more research continues to be carried out at both the scientific and policy levels, the understanding of the issues continues to evolve. Building on this, the Special Rapporteur will further explore the human rights aspects of migration relating to climate change.

### C. Question of definition: what is climate-change-induced migration?

31. Environmentally induced migration is commonly presented as a new, or emerging, issue. Yet, changes in environmental conditions have always influenced migration patterns. It is a core feature of our human condition: since mankind has existed, people have been moving in response to changes in their environment, often seasonally. In the context of climate change, however, the rate and scale of this migration could be multiplied. Precise numbers regarding environmental migrants vary considerably, with estimates of the number of people likely to be displaced by

<sup>3</sup> An overview of the work of IOM on migration and climate change is available from <http://www.iom.int/jahia/Jahia/pid/2068>.

<sup>4</sup> An overview of the work of UNHCR on Migration and Climate Change is available from <http://www.unhcr.org/pages/49e4a5096.html>.

<sup>5</sup> World Bank, *Human Rights and Climate Change: A Review of the International Legal Dimensions*, Washington, D.C., 2011.

<sup>6</sup> See outcome document of the United Nations Conference on Sustainable Development (Rio+20) (A/66/L.56, annex, paras. 144 and 157).

climate change ranging from 50 to 250 million by the year 2050.<sup>7</sup> The Special Rapporteur remains aware, however, that accurate data on this issue is not readily available. Furthermore, he recognizes that statistical exercises will be controversial, not only in view of the difficulty in predicting the rate of sea level rise and its impact on persons, but also with regard to a key conceptual hurdle: the difficulty of identifying those migrants who can be said to have moved solely for reasons related to climate change. For example, it is difficult to isolate the effects of climate change that may contribute to population movements from other environmental factors, such as land degradation, which may be linked to other stresses on the environment, including the impact of an increasing global population consuming ever more natural resources.

32. In this context, the Special Rapporteur understands that although environmental transformations experienced as a result of climate change may contribute to migratory movements, environmental migration, like every kind of migration, is essentially a complex, multicausal phenomenon which may be driven by a multiplicity of push-and-pull factors. Thus, the question of identifying those who have migrated as a result of climate change might be a challenging, if not impossible, task: the impacts of climate change often contribute to a cluster of causes that lead to migration.

33. Further difficulties in defining the climate-change-induced migrant are compounded by the fact that climate change may induce a range of migration patterns. Climate change may induce temporary, circular and permanent migration movements, which may be multidirectional, or episodic. Persons affected may move internally or internationally, spontaneously or in an organized and planned manner, and may range on a wide continuum between forced and voluntary migrations. Future predictions remain problematic: while research may suggest some ways in which climate change may affect migratory patterns, it is difficult to predict future movements accurately if only because of the decisive role of individual human agency, as migration is always also an individual trajectory and never simply a mass displacement. Moreover, the success, or lack thereof, of future mitigation and adaptation strategies, including the development of new technologies which may or may not ameliorate the situation of those most affected by the effects of climate change, are impossible to know. Furthermore, it is impossible to forecast the impact of future extreme environmental events, including their regularity or force.

34. Notwithstanding, or perhaps in the light of these conceptual difficulties, the Special Rapporteur recognizes the need for more rigorous scientific, empirical, sociological, legal and other research in this field. Only with precise knowledge of the scope and nature of environmental migration will States be able to develop and agree upon common policies in this regard.

#### **1. Identifying people vulnerable to climate-change-induced migration**

35. While climate change may be felt across the globe, it is likely that its impacts will affect some individuals and groups more than others. At a global level, the Intergovernmental Panel on Climate Change reflected “sharp differences across

---

<sup>7</sup> Nicholas Stern, *Stern Review on the Economics of Climate Change*, Cambridge, United Kingdom, Cambridge University Press, 2006, p. 77, describing 250 million as a “conservative” assumption of how climate-induced displacement is to be defined.

regions”.<sup>8</sup> Developing States facing multiple stresses are likely to be the most severely affected, in particular in Africa, Asia and Oceania: megadeltas, small island developing States, and low-lying coastal and arid areas are most exposed to environmental migration.

36. Within societies, specific groups may be more vulnerable to the effects of climate change than others.<sup>9</sup> Economically disadvantaged communities can be especially vulnerable, in particular those concentrated in high-risk areas, as those societies may be highly dependent on the environment for their livelihood.<sup>10</sup> Other determinants play a key role, including personal characteristics such as age, gender,<sup>11</sup> wealth or disability. Moreover, the Special Rapporteur recognizes that in general, people migrating through a lack of choice as a consequence of climate change are more likely to be moving in an irregular situation and are therefore more vulnerable to human rights violations through the course of their migration.

37. Other societal factors are also significant, including for groups that are marginalized or excluded or that experience discrimination, such as minority communities or indigenous peoples. Those communities often live in fragile environments which are more directly affected by climate change. Moreover, due to poverty, groups are often in a weaker position in terms of their ability to anticipate and respond to environmental change resulting in the paradox where the most vulnerable individuals and communities are often those least able to migrate. At the same time, owing to their often limited ability to participate in political life, those groups are often overlooked by the authorities when relief measures are being developed and delivered, or they face serious protection concerns when measures are developed and have a negative impact on them, thus compounding their vulnerability. Another concern is that of secondary impacts, where, as a result of climate change, affected persons are relocated to minority areas or indigenous lands, without adequate consultation or respect for their rights. The Special Rapporteur thus emphasizes the need to ensure that all groups are adequately considered in the context of responding to climate-change-induced migration, with particular attention paid to those who are most vulnerable, including ensuring their active political and technical participation in the development of responses.

38. The Special Rapporteur is also aware that vulnerability is not only determined by geographical, social or economic factors, but also may be the result of political circumstances. The commitment of States to developing appropriate policy responses, either in direct response to a natural disaster, or with regard to long-term

<sup>8</sup> See Intergovernmental Panel on Climate Change, R. K. Pachauri and A. Reisinger, eds., *Climate Change 2007: Synthesis Report*, Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Geneva, Intergovernmental Panel on Climate Change, 2007, p. 65.

<sup>9</sup> See A/64/255 and A/HRC/10/61, paras. 42-54.

<sup>10</sup> International Panel on Climate Change, R. K. Pachauri and A. Reisinger, eds., *Climate Change 2007, Synthesis Report*, Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Geneva, Intergovernmental Panel on Climate Change 2007, p. 48.

<sup>11</sup> See A/64/255 and A/HRC/10/61, paras. 45-47; see also Alice Edwards, “Displacement, Statelessness and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination against Women”, background paper prepared for a UNHCR and Committee on the Elimination of Discrimination against Women joint seminar (New York, 16-17 July 2009).

planning to manage climate-change-induced migration may thus play a key role in the vulnerability of a particular community to the effects of climate change and their subsequent migration. The degree of a State's development also plays an important role regarding the ability of governments to cope with, mitigate and adapt to environmental change. However, even where appropriate strategies are put in place, the adequacy of highly visible adaptive responses cannot always be assumed. For example, investment in specific infrastructures may contribute to increasing numbers of people choosing to remain in vulnerable areas, where they may be at increased risk owing to unforeseeable consequences of future environmental change.

39. Overall, the Special Rapporteur recognizes that in the case of many specific migration movements, it will not always be possible to clearly delineate between the vulnerability of an individual, group or community to climate change and the social, economic and political contexts in which such movements occur. Therefore, the Special Rapporteur reminds States that determining who will be affected by climate change and compelled to migrate cannot be ascertained in isolation. Attention must be paid to the full circumstances of individuals, groups and communities affected, including the political dimension. This must include an examination, based on a human rights approach, of why and how certain persons may be more vulnerable to climate change, as well as an examination of their effective access to different coping mechanisms through mitigation and adaptation strategies.

## **2. Identifying places vulnerable to climate-change-induced migration**

40. Environmentally induced migration may occur almost anywhere. No country is safe from natural disaster and slow-onset environmental changes. Nonetheless, some circumstances are evidently more conducive to environmentally induced migration. In any place where human settlement already faces precarious environmental circumstances, exposure to the slightest environmental change may reach a tipping point whereby people are compelled to move.

41. First, low-lying coastal areas and megadeltas are major sources of environmentally induced migration. This is particularly true in countries such as Bangladesh and Viet Nam, and regions such as the Egyptian Nile Delta and the Niger Delta in Nigeria. Those regions are vulnerable to slow-onset environmental phenomena related to sea level rise and change in precipitation patterns and are also increasingly affected by natural disasters, such as hurricanes, floods, storm surges, soil erosion and soil salinization.

42. Second, arid areas, such as the African Sahel and other dry regions in Central America, Africa and Asia, are vulnerable to increases in temperature and changes in precipitation patterns. In many places deserts are expanding, and regions that were barely habitable will become uninhabitable. Studies have shown that local populations have long coped with difficult environmental conditions through migratory strategies: seasonal migration to towns (African Sahel)<sup>12</sup> or pastoralism (Somalia).<sup>13</sup> In such circumstances, desertification triggers adaptive changes in those migratory strategies.

<sup>12</sup> Oli Brown, "Eating the dry season: labour mobility as a coping strategy for climate change" (Geneva, International Institute for Sustainable Development, 2007). Available from [http://www.iisd.org/pdf/2007/com\\_dry\\_season.pdf](http://www.iisd.org/pdf/2007/com_dry_season.pdf).

<sup>13</sup> Vikram Kolmannskob, "Climate change, disaster, displacement and migration: initial evidence from Africa", Research Paper No. 180 (Oslo, Norwegian Refugee Council, 2009).

43. Third, if current greenhouse gas emission trends continue, small-island, low-lying developing States, such as Tuvalu, the Maldives and Kiribati, may be lost to sea level rise, rendering their inhabitants stateless. Some countries, including Tuvalu, are already negotiating agreements with their neighbours to relocate their populations.<sup>14</sup> Other States such as the Maldives have started saving to buy land for its population in the future.<sup>15</sup>

44. Fourth, climate change in polar regions is occurring at a quicker pace. The sea ice cover is decreasing and the permafrost is melting, leading to accelerated erosion, significant flooding and changes in hunting or fishing capabilities. Many indigenous communities in Alaska and Canada, for instance, are located on the shoreline, and some are already in the process of resettling.<sup>16</sup>

45. Fifth, many other regions are now affected by sudden and extreme natural disasters, and “even societies with high adaptive capacity remain vulnerable to climate change, variability and extremes”.<sup>8</sup> Hurricane Katrina in Louisiana and bushfires in Australia, for instance, illustrate that no society is immune.

### 3. Where are climate-change-induced migrants moving to?

46. Though it is hard to predict precisely the patterns of where climate-change-induced migrants will move, current research indicates that much climate related displacement is likely to take place within national borders and that those most acutely vulnerable will often not be in a position to migrate internationally. Moreover, to date, event driven displacements have tended to be short-lived, with many returning to the source location once the event has receded. However, those trends may or may not continue, as much will depend on the severity and nature of future climate related conditions. Furthermore, the Special Rapporteur is aware that there are some indications of increased movement of environmentally induced migrants across international borders.<sup>17</sup>

47. Be it within or beyond borders, where migration is a spontaneous and unplanned event there is a risk that a large number of environmentally induced migrants will move towards other more exposed places, such as low-lying areas or to cities that themselves face threats from environmental change.<sup>18</sup> Furthermore, environmentally induced migrants will travel only as far as their resources allow

<sup>14</sup> Brad Crouch, “Tiny Tuvalu in ‘save us’ plea over rising seas”, Adelaide, Australia, *Sunday Mail*, 5 October 2008.

<sup>15</sup> Andrew Revkin, “Maldives Considers Buying Dry Land if Sea Level Rises”, *New York Times*, 10 November 2008; Ben Doher, “Climate Change Castaways Consider to Move to Australia”, *The Sydney Morning Herald*, 7 January 2012. See also report of the Special Rapporteur on the human rights of internally displaced persons, Mission to Maldives (A/HRC/19/54/Add.1).

<sup>16</sup> Robin Bronen, “Forced migration of Alaskan indigenous communities due to climate change: creating a human rights response”, in *Environment, Forced Migration and Social Vulnerability*, Tamer Afifi and Jill Jäger eds. (Springer-Verlag Berlin Heidelberg, 2010), p. 87.

<sup>17</sup> See Shuaizhang Feng, Alan B. Krueger and Michael Oppenheimer, “Linkages among climate change, crop yields and Mexico-United States cross-border migration”, *Proceedings of the National Academy of Sciences* (2010); see also Stefan Alscher, “Environmental Factors in Mexican Migration: The Cases of Chiapas and Tlaxcala”, in *Environment, Forced Migration and Social Vulnerability*, Tamer Afifi and Jill Jäger eds. (Springer-Verlag Berlin Heidelberg, 2010), p. 171.

<sup>18</sup> Foresight report on migration and global environmental change (Government Office for Science, London, 2011).

them to go, often towards slums in already overcrowded megacities, thus exacerbating poverty.<sup>19</sup>

48. The Special Rapporteur is also aware that the ability to migrate is a function of mobility and resources. Yet, populations who experience the impacts of environmental change may see a negative impact on their resources. That is to say, migration opportunities may in fact be least available to those who are most vulnerable to climate change.

49. In this context, the Special Rapporteur observes that where people have reduced options for migration, they may be more likely to become trapped in locations vulnerable to environmental hazards. For the international community, the Special Rapporteur emphasizes that this trapped population is likely to represent just as important a policy concern as those who do migrate. Planned and well-managed migration can be one important solution for this population of concern, with due respect paid, of course, to relevant human rights principles, such as safeguards in relation to avoiding forced evictions (see report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living: basic principles and guidelines on development-based evictions and displacement (A/HRC/4/18, annex 1)).

50. Those scenarios demonstrate that laissez-faire policies that respond to the needs of climate-change-induced migrants on an ad hoc basis are insufficient. Policies should organize environmentally induced migration in order to minimize impacts on the human rights of those affected and ensure they are not made more vulnerable by the migration process.

#### **4. Identifying needs**

51. Given their diversity, climate-change-induced migrants may have different needs. Overall, all public policies with respect to climate-change-induced migration should be guided by a general respect for the dignity and human rights of the affected individuals, groups and communities, taking into account their particular circumstances.

52. The Special Rapporteur observes that in the context of climate-change-induced international migration, early planning is essential. Without infringing on the freedoms of migrants, and in partnership with affected communities who may be most aware of their own vulnerabilities and needs, sustainable migratory strategies should be developed in advance by all States concerned through international cooperation and with the help of international organizations, civil society organizations and NGOs. This may mean developing mitigation and adaptation strategies, where appropriate. If an area will become uninhabitable prior to the necessity of resettlement, it may be advisable to encourage temporary, seasonal or permanent individual migration for some individuals to acquire new skills and new links in a possible place of destination, thus preparing for possible resettlement.

53. Finally, the rights of all migrants, including environmentally induced migrants, whatever their status, should be formally recognized, and a sustainable relationship between these individuals and the welcoming society should be defined and

---

<sup>19</sup> See, generally: World Bank, *Climate Change, Disaster Risk and the Urban Poor: Cities Building Resilience for a Changing World*, Washington, D.C., 2011; see also A/64/255.

monitored by appropriate international and domestic institutions. For temporary migrant workers, this should include rights equivalent to those of local workers. As all environmentally induced migrants should be recognized as an integral part of the society of destination, public authorities, with the help of international organizations, civil society organizations and NGOs, should implement specific policies targeting their specific needs.

## **D. International law and climate-change-induced migration**

### **1. Responses in the present human rights regime**

54. Although there is no one international human rights treaty designed to deal specifically with environmentally induced migrants, existing human rights law provides a range of situations that respond to their needs and rights. Indeed, human rights law already provides robust protection for migrants who are moving for multiple reasons. What is required, however, is a more concerted and concrete application of those norms to the situation of climate-change-induced migrants, and specific attention to the vulnerability of migrants in this particular context.

55. Under the International Covenant on Civil and Political Rights,<sup>20</sup> civil and political rights must first, as a rule, be recognized by a State to “all individuals within its territory and subject to its jurisdiction without distinction” (art. 2). The International Covenant on Economic, Social and Cultural Rights<sup>21</sup> further guarantees social, economic and cultural rights for all without discrimination. In this context, these Covenants ensure the applicability of fundamental rights for migrants, including the right to life,<sup>22</sup> among other basic rights, including the right to an adequate standard of living and health.<sup>23</sup> In particular, the Special Rapporteur notes that the well-established principles of non-discrimination established in both treaties<sup>24</sup> may require States to develop specific policies and programmes, taking into account the particular circumstances and needs of climate-change-induced migrants.

56. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families<sup>25</sup> explicitly applies the rights elaborated in the International Bill of Rights to the specific situation of migrant workers and members of their families. Entering into force in 2003, the Convention has now been ratified by 45 States, and the Special Rapporteur urges its prompt ratification by all remaining States. Furthermore, several conventions negotiated under the auspices of the International Labour Organization contain important provisions reaffirming the human rights of migrants.<sup>26</sup>

57. The Special Rapporteur notes further the obligation to provide humanitarian relief to persons affected by climate change. Such assistance should support

<sup>20</sup> United Nations, *Treaty Series*, vol. 2296, No. 40906.

<sup>21</sup> See resolution 2200A (XXI), annex.

<sup>22</sup> United Nations, *Treaty Series*, vol. 2296, No. 40906, art. 6.

<sup>23</sup> See resolution 2200A (XXI), annex, arts. 11 and 12.

<sup>24</sup> United Nations, *Treaty Series*, vol. 2296, No. 40906, art. 2 and resolution 2200A (XXI), annex, art. 2.

<sup>25</sup> United Nations, *Treaty Series*, vol. 2220, No. 39481.

<sup>26</sup> For example, the Convention concerning Migration for Employment (revised) (1949) (ILO C97); Migrant Workers (Supplementary Provisions) Convention, 1975 (ILO C143).

environmentally induced migrants around the time of their displacement and may take different forms, either as an emergency response to a sudden disaster, or planned in advance to accompany steady movements of migrants or to assist resettlement. Humanitarian relief should aim at ensuring the most basic rights of environmentally induced migrants, be premised on human rights principles and pay due regard to the fundamental principles of non-discrimination, participation, empowerment and accountability.

58. In the context of internal displacement, the Guiding Principles on Internal Displacement also provide a strong legal framework and restate relevant hard law, such as the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters and the Framework on Durable Solutions for Internally Displaced Persons. In this regard, the Special Rapporteur refers to the report of the Special Rapporteur on the human rights of internally displaced persons (A/66/285), which analysed in detail the applicability of those principles in relation to climate-change-induced internal displacement.

## **2. Inadequacy of existing categories**

59. Beyond the general norms of international human rights law, the Special Rapporteur observes that some of the definitional complexities around climate-change-induced migration are telling of the limitations of the current paradigm in which migration is largely framed within the context of international law. Political discourse has traditionally juxtaposed categories of the voluntary economic migrant — who is generally understood to be willingly migrating for economic reasons in search of a better life and whose migration is generally governed by the traditional rules based on territorial sovereignty — and asylum seekers and refugees — who are persons forced to migrate, fleeing persecution and deserving of international protection, including specific guarantees considered as exceptions to the “normal” regime governed by territorial sovereignty.

60. It must be acknowledged that many climate-change-induced migrants will fall in-between such categories. Many will be willingly moving, in anticipation of impending climate-change-induced economic disaster, and many will move only when becoming victims of a disastrous environmental event. For others, the compulsion to move will relate to the need to ensure food security or adequate access to basic services, such as water and sanitation, perhaps combined with a desire to reunite with family members abroad. Of those who do, many will move towards other disaster-prone areas. Many more will probably have no migration capability and will remain in disaster-prone areas: States will have to acknowledge that forced migration may encompass a range of situations and may need to recalibrate their rules to provide protection, assistance and migration opportunities for such persons.

61. One category of climate-change-induced migrants may be easier to position within the framework of refugee law — those for whom the direct impact of climate change triggers persecution and conflict, for example, as a result of tensions over resources, which exacerbate discrimination and human rights violations. Indeed, the security dimension of climate change has attracted increasing international attention

during past years,<sup>27</sup> and there is developing research that environmental disturbances may increase flows of refugees fleeing persecution. Such circumstances may allow for the application of international refugee law, as set out by the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol.

62. Yet, the Special Rapporteur is aware that the vast majority of expected climate-change-induced migrants will not be moving as a result of persecution. Some commentators have thus argued for the creation of a new category of protection: the “environmental refugee”. The Special Rapporteur acknowledges that with regard to migration induced by climate change, the established law and practice around refugee status will not, and perhaps should not, necessarily apply to most. Although disturbances owing to climate change may increase movements of refugees, it may be impractical, not to mention undesirable, to expand the definition of international refugee law. First, many climate-change-induced migrants are most often displaced within the borders of their State. Moreover, the refugee paradigm neglects the major differences between temporary, permanent or circular climate-change-induced migration. It is also questionable whether a distinction between refugees fleeing events induced by climate change and other refugees would be useful. Furthermore, simply expanding the category of refugee law has the potential to weaken the important system put in place for the protection of refugees and asylum seekers. Thus, the present international refugee protection regime may not be the most appropriate vehicle to accommodate the vast majority of climate-change-induced migrants.

63. The Special Rapporteur does not contend that this requires an automatic recalibration of the refugee category, although he does note that the regional instruments in Africa and in Latin America have enlarged the definition of refugees to individuals fleeing “events seriously disturbing public order”<sup>28</sup> or other forms of “generalized violence”<sup>29</sup> which may protect many climate-change-induced migrants. However, it seems clear that the above-noted normative frameworks, while generally applicable to environmentally induced migration, may not fulfil the specific needs of most environmentally induced migrants; they constitute only a partial response to the challenges of environmental migration. At present, beyond the rubric of international refugee law, there thus seems to be a gap in international law regarding protection of persons on the move for environmental reasons.

64. Under the current understanding of international migration management, the inapplicability of international refugee law to the majority of climate-change-induced migrants appears to leave only the residual category of “economic migrants”. Yet, this classification does not reflect the complex chain of causality between environmental change, loss of economic opportunities and forced migration.<sup>30</sup> For example, slow-onset environmental phenomena, such as desertification or diminishing natural resources, may create a stronger economic

<sup>27</sup> See report of the Secretary-General on climate change and its possible security implications (A/64/350); see also: [http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.7535735/k.BC1/July\\_2011brMaintenance\\_of\\_International\\_Peace\\_and\\_Security\\_Impact\\_of\\_Climate\\_Change.htm](http://www.securitycouncilreport.org/site/c.gIKWLeMTIsG/b.7535735/k.BC1/July_2011brMaintenance_of_International_Peace_and_Security_Impact_of_Climate_Change.htm).

<sup>28</sup> Convention Governing the Specific Aspects of Refugee Problems in Africa, art. 1(2).

<sup>29</sup> Cartagena Declaration on Refugees, 1984, para. 3.

<sup>30</sup> Indeed, the Special Rapporteur notes that this distinction also falls down in the case of many other categories of migrants.

tension, and thereby have an impact on a range of economic, social and cultural rights, thus spurring the need for mobility. Other climate-change-induced factors can also pose severe threats to human rights, including threats to life and livelihood, such as famine and drought, which often seem misclassified as mere incentives to migration and not worthy of proper human rights protections in themselves.

65. Thus, the phenomenon of climate-change-induced migration may require rethinking of the human rights categories afforded to migrants and the development of eventual protection mechanisms for persons on the move. The Special Rapporteur remains aware, however, that it may not necessarily be ideal to single out those migrants who move for environmental reasons. Over and above the aforementioned difficulties of proving causality, there are many other categories of vulnerable migrants who also need protection. Rather, the Special Rapporteur encourages the development of coherent policies regarding the rights of all migrants, which takes into account the myriad circumstances which lead people to migrate, including the need for human rights protections, in particular for those who are “induced” or “forced” to migrate.

### 3. Needs of citizens of low-lying island States

66. One category of climate-change-induced migrants that international law needs to consider urgently is those who inhabitant low-lying island States. Though it appears unlikely, despite sensationalist reports, that many countries will completely disappear owing to rising sea levels, a very real concern remains that some of those countries may become uninhabitable, likely owing to insufficiency of fresh water resources.<sup>31</sup>

67. To date, the international legal framework appears to be largely inadequate to address such a situation. The first article of the Montevideo Convention on the Rights and Duties of States requires that a State possess four elements: a permanent population; a defined territory; a government; and a capacity to enter into relations with other States.<sup>32</sup> Yet, a legal issue that remains unresolved is the status of the State after the disappearance of one of the elements established by the Montevideo Convention. Furthermore, although international law provides that a State may become extinct under certain circumstances such as absorption, merger and voluntary or involuntary dissolution,<sup>33</sup> the situation of a State abandoned by its population due to the effects of climate change is simply so new that no clear international legal framework appears to apply.

68. Of greater importance, perhaps, is the legal status of the population of a disappearing State. The Special Rapporteur notes that it remains unclear how international law would protect those affected persons. On the one hand, the international legal framework on statelessness is of little help, as the Convention does not automatically allow a stateless person to enter a third State.<sup>34</sup> On the other hand, as noted above, the need to leave one’s country as a result of environmental

<sup>31</sup> See generally: Jane McAdam, “Disappearing States”, *Statelessness and the Boundaries of International Law*, in *Climate Change and Displacement: multidisciplinary perspectives*, pp. 105-130, Jane McAdam ed. (Hart Publishing, Portland, Oregon, 2010).

<sup>32</sup> Montevideo Convention on the Rights and Duties of States (1933), art. 1.

<sup>33</sup> James R. Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford University Press, Oxford, 2007).

<sup>34</sup> Convention relating to the Status of Stateless Persons (1954).

change would not be sufficient for ensuring that such persons are protected under the international refugee law regime. The Special Rapporteur notes that, in all likelihood, political agreements would probably be reached whereby resettlement would be negotiated for the affected population. However, such agreements are usually triggered by disasters when lives have already been lost and thus come late in the day. A framework of protection for such vulnerable persons should be provided by international law, and not only depend upon the political will — or lack thereof — of benevolent States.

## **E. Looking ahead: political engagement on the issue of climate-change-induced migration**

69. In the light of the above analysis, the Special Rapporteur emphasizes that, as a complement to sustainable adaptation strategies, policies should facilitate some environmentally induced migration. Preventing or constraining such migration is not a risk-free option: it may in fact lead to accelerated impoverishment, increased displacement and irregular migration in many settings, particularly in low-lying coastal zones, drylands and mountain regions, making future migration crises more probable. As the foresight report observed: “the cost of inaction is likely to be higher than the costs of measures discussed in this report, especially if they reduce the likelihood of problematic displacement. Giving urgent policy attention to migration in the context of environmental change now will prevent a much worse and more costly situation in the future.”<sup>18</sup>

70. To respond appropriately to the situations of climate-change-induced migration, engagement is necessary at all levels of governance. Moreover, policy responses to the multiple impacts of climate change need to be developed simultaneously. Short-term response might be largely humanitarian, in the context of both sudden, climate-related disasters and that of slower impacts, such as food and water insecurity and access to other basic rights. However, such approaches need to be supplemented by medium- and long-term responses. Medium-term responses should focus on adaptation at the community and country levels, building resilience in populations at risk from environmental deterioration and the efficient use of technologies to better depend on the natural changing of the environment. Policy development and programming also need to be factored in. Long-term policies require international engagement in the limitation of greenhouse gas emissions in order to limit the pace of global warming.

71. In the light of these complex necessities, the section below outlines only a few of the key considerations regarding the role that Governments should play and highlights the equal importance of the engagement of not only individually affected States, but also the international community and civil society in responding to those needs.

### **1. Duties of Governments**

72. The complex dimensions of environmental change and migration demand coordination from a broad spectrum of governmental actors, including but not limited to: adaptation funding; development cooperation; urban planning; rural affairs; conflict management; disaster planning; migration policies; and environmental policy. Action and coordination will also be required between

different tiers of policymakers, from the local level to the national level. Importantly, these different levels of governance will need to act in coordination and cooperation if policy responses are to address the complexity of the issue effectively.

73. Given the multiplicity of locales which are affected by the issue, it is also useful to distinguish between the situation of States concerned by internal climate-change-induced migration, States of origin and States of destination of international climate-change-induced migration, and all States.

74. For countries concerned by internal climate-change-induced migration (and, within States, for local governments), States must ensure that climate-change-induced migrants are not discriminated against; their rights should be guaranteed like those of all other citizens. States should not infringe on the human rights of climate-change-induced migrants by preventing them from moving within the State or by restricting their choice of residence (International Covenant on Civil and Political Rights, art. 12 (1)). States concerned by internal climate-change-induced migration also have the obligation to take specific actions to ensure that individuals within their jurisdiction enjoy the benefit of their rights. It is a well-settled principle under human rights law that equality does not only mean that analogous situations should receive the same treatment, but also that dissimilar situations should receive, if necessary, differentiated treatments. Climate-change-induced migrants are more vulnerable because of a lack of social structure, possible linguistic disadvantage, and health fragility due to the displacement. The specific needs of climate-change-induced migrants should be recognized and dealt with through specific programmes. Furthermore, States must take specific measures to allow arriving climate-change-induced migrants to best adapt to the community of destination. This includes in particular urban planning: whenever a city is bound to a quick and massive growth of its population, infrastructures should accordingly be developed to ensure that all individuals (newcomers and previous inhabitants) maintain a dignified life (see report of the Special Rapporteur on the human rights of internally displaced persons (A/66/285)).

75. For States of origin of international climate-change-induced migration, it is important to recall that States cannot prevent their population from moving to another State (International Covenant on Civil and Political Rights, art. 12 (2)). Furthermore, in no case should a State prevent a national from returning to their country (International Covenant on Civil and Political Rights, art. 12 (4)). At the same time, there is the obligation on these States to provide necessary education and training for future migrants to be able to adapt to a new society. In particular, States of origin may engage in bilateral policies of circular migration, allowing individuals to get training abroad and thus facilitating the migratory process. Yet, States of origin should at no time force individuals to leave their country, but should strive to allow in situ adaptation as long as possible. They should protect individuals who decide not to move. The Special Rapporteur notes, however, that circular migration policies must be designed to respect human rights and be responsive also to the needs of climate-change-induced migrants, and not only to labour market imperatives, which can in fact operate to exacerbate migrants' vulnerability and increase irregular migration.

76. States of destination of international climate-change-induced migration have the obligation not to discriminate but to engage in specific policies to ensure the real

equality of climate-change-induced migrants with other individuals within their jurisdiction.

77. Regional cooperation on climate-change-induced migration will be essential. With the support and assistance of international organizations and international financial institutions, and as part of a coherent and negotiated regional sustainable adaptation strategy, bilateral and multilateral agreements should facilitate specific regional climate-change-induced migration movements, in order to relieve the pressure on the States of origin and provide for orderly movements into States of destination. Such agreements should provide for the guarantee of the dignity and human rights of migrants, as provided for in international law, and include the active participation of local civil society organizations and international NGOs.

78. Furthermore, courts at the regional and domestic levels can also play an important role in protecting the rights of climate-change-induced migrants. As irregular and vulnerable migrants are not part of the local polity, they largely have no voice in the political arena and rarely dare protest. In the face of increasingly strident anti-immigration political discourse, it is often the judiciary that can best protect migrants' rights. Access to justice becomes a key factor in imposing sanctions for human rights violations and reducing migrants' vulnerability.

## 2. Responsibility of the international community

79. The Special Rapporteur further observes that, beyond those States affected by climate-change-induced migration, whether States of origin, transit or destination, all States have the international responsibility to protect the human rights of foreign populations whose State is unable to do so. Respecting the basic human rights of climate-change-induced migrants should be considered as a basic tenet of international cooperation, defined by the purposes of the United Nations in Article 1 (3) of the Charter. In this regard, the existing human rights legal framework provides important protections to migrants, including through the monitoring and standard-setting functions of human rights mechanisms.

80. Beyond an overall responsibility of international cooperation, some other principles of international law may provide stronger impetus for all countries to protect migrants. In this regard, international environmental law provides some further guidance that can be drawn upon in the climate-migration context. In 1941, the *Trail Smelter* arbitral award established that, "under the principles of international law, [...] no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence".<sup>35</sup> The "no harm" principle has

<sup>35</sup> *Trail Smelter* case (United States of America v. Canada) United Nations, *Reports of International Arbitral Awards*, vol. III, p. 965; see also *Corfu Channel* case (United Kingdom v. Albania), *Merits, Judgement, I.C.J. Reports* 1949, p. 4, at p. 23; *Legality of the Threat or Use of Nuclear Weapons* case, Advisory Opinion (1996) P.C.I.J. (Ser. A/B) No. 226 at 241; *Gabčíkovo-Nagymaros Project* (Hungary v. Slovakia) at 41.

since become a foundation of international environmental law.<sup>36,37,38</sup> The strict criteria laid down by the court establish that the no harm principle can be invoked if the “case is of serious consequence” for the affected State and if “the injury is established by clear and convincing evidence”. Strong and convincing arguments have further highlighted the causal chain between historical emissions of greenhouse gas, mostly in countries of the global North, global environmental change, and the consequences mostly affecting countries of the global South. Individuals and communities are also turning to domestic courts to seek the responsibility of polluters,<sup>39</sup> reflecting a strong social demand that polluters pay for the damages they cause. Following this line of reasoning, countries of the global North and other States with economic means could be encouraged to contribute, financially and technically, to the implementation of bilateral and multilateral agreements facilitating specific regional climate-change-induced migration movements as part of coherent and negotiated regional sustainable adaptation strategies.

81. The notion of a common, but differentiated, responsibility may also be an important framework through which the causal link between anthropogenic climate change and the resultant human displacement can be approached (see United Nations Framework Convention on Climate Change, arts. 3 (1) and 4). As a distributive principle, it may help encourage international cooperation in terms of guaranteeing the human rights of displaced individuals, at least when the State jurisdictionally competent is not able to afford a sufficient level of protection. At the same time, as a dissuasive principle, it may push States to adopt more responsible conduct in order to mitigate climate change. This principle has already led to considerable international funding for adaptation, although adaptation has almost exclusively been conceived as in situ adaptation.

82. On the other hand, soft law instruments, such as guiding principles, may define and promote rights-based norms and responsibility-based principles, as has been illustrated by the Guiding Principles on Internal Displacement. Regional initiatives may also be developed as first steps towards international action.

83. Similarly, voluntary financial or organizational support, such as the international adaptation funding carried through the United Nations Framework Convention on Climate Change, can be instrumental. While the United Nations Framework Convention on Climate Change programme has long focused on the increasing resilience of populations, it has recently extended to “[m]easures to enhance understanding, coordination and cooperation with regard to climate displacement, migration and planned relocation, where appropriate, at the national, regional and international levels”.<sup>40</sup>

<sup>36</sup> See United Nations Framework Convention on Climate Change (1992), recitals 8 and 9.

<sup>37</sup> Principle 21 of the Stockholm Declaration, *Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972* (United Nations publication, Sales No. E.73.II.A.14 and corrigendum, chap. I).

<sup>38</sup> Principle 2 of the Rio Declaration, *Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992* (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I: *Resolutions adopted by the Conference*, resolution 1, annex I.

<sup>39</sup> *Native Village of Kivalina v. ExxonMobil Corp. et al.*, 663 F.Supp.2d 863, 2009 WL 3326113 (N.D. Cal. 2009).

<sup>40</sup> See Cancun Agreements: outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, decision 1/CP.16 (FCCC/CP/2010/7/Add.1).

84. Of course, debate continues regarding whether international protection for climate-change-induced migrants should take the form of a new multilateral agreement. The Special Rapporteur remains aware that the adoption and implementation of a universal treaty by a sufficient number of States may face great diplomatic hurdles, to say the least. In the absence of such a framework however, the Special Rapporteur believes that the above principles should assist States in developing specific local, national and regional responses, in the context of the human rights framework, and with the support of the international community. The Special Rapporteur believes that, in the absence of a specific legal framework, and given the multiple concurrent actors that would have an interest in the migration/climate change nexus, specific and innovative regional cooperation agreements will constitute stepping stones for the international community to agree on a coordinated universal plan for action.

### **3. Role of civil society in conveying the voice of migrants**

85. Civil society should not be left outside of global governance on climate-change-induced migration. Civil society organizations have played an important role in flagging the issue of climate-change-induced migration and will continue to play a key role at the stage of developing concrete actions and programmes.

86. Migratory strategies should, as far as possible, be decided locally by affected individuals and communities, with the support of their civil society organizations, and forced relocation or immobility should not be imposed arbitrarily. Central Governments can play a pivotal role by bringing together local actors and promoting consensus and by arbitrating between different local interests.

87. The Special Rapporteur notes that a striking feature of the contemporary debate on climate-change-induced migration is the absence of a voice from the climate-change-induced migrants themselves. In part, this comes from the lack of self-awareness: climate-change-induced migrants rarely consider themselves as such (and many of them have simply never heard about the notion). In part, this also comes from the general reluctance of migrants (especially if they are irregular or vulnerable migrants) to voice their concerns or to denounce the human rights violations that they suffer. It is highly desirable that States actively support the development and sustainability of organizations representing migrants and giving them a voice, including providing training and capacity-building at the local level. Only through such representation can the processes designed to elaborate policy options aimed at coping with climate-change-induced migration be inclusive and participatory, in that they involve affected populations as directly and as early as possible.

## **F. Migration as a solution: recognizing the opportunities of migration as adaptation to global environmental change**

88. While, in the climate change context, migration is generally considered as a failure of adaptation, it is often forgotten that migration may in fact be an important adaptation strategy. In this context, the Special Rapporteur wishes to emphasize that migration should be considered both a challenge and a solution to climate-change-induced displacement. Indeed, migration has been a traditional coping mechanism, widely used by populations around the world since time immemorial to adapt to

changing environments. If properly managed, migration can therefore also be a solution to cope with climate change.

89. Examples abound in which migration has provided benefits to both countries of origin and countries of destination. Appropriate programmes of permanent or circular migration may enhance a community's resilience through diminishing pressure on local environmental resources and fostering development through remittances. This has traditionally been the case of agricultural workers. One has witnessed "reverse migration" movements, where the migrants of the previous generation return to the country of origin in order to create businesses, or training centres, in their field of acquired expertise. Despite potential contrarian effects, remittances may play another important role in the economy of many countries of origin: valued at more than three times the total amount of official development aid (\$351 million in 2011), they can assist households to survive in the country of origin during difficult times, thus limiting migratory pressure by allowing economic opportunities to be created at home. Therefore, some degree of planned and proactive migration of individuals or groups may ultimately allow households and populations to remain in situ for longer.

#### **IV. Conclusions and recommendations**

90. **The global climate is already changing, and will continue to do so. The related impacts of these transformations, while not able to be precisely predicted, will certainly be far reaching, and have an impact on a wide range of human rights. In particular, climate change has significant implications regarding migration patterns and movements.**

91. **The Special Rapporteur recognizes that while no place will be protected from the impacts of climate change, already fragile environments are most vulnerable, including in particular, megadeltas, small island developing States, low-lying coastal zones, arid areas, polar regions, and places affected by sudden and extreme natural disasters. Particular groups living in these high-risk areas may thus be more affected than others, as will societies that are highly dependent on the environment for their subsistence needs. However, vulnerabilities may be exacerbated by political and social factors, with specific groups such as women, children, minority groups and indigenous peoples, often particularly vulnerable to the effects of climate change.**

92. **In this context, States must collectively recognize that migration is part of the solution to global environmental challenges, and planned and facilitated migration policies are legitimate coping mechanisms that may ease individuals, groups and communities out of situations of vulnerability. Moreover, States should recognize that territorial sovereignty should never be a permanent obstacle to migration when it has been determined that international migration is an appropriate coping mechanism.**

93. **The Special Rapporteur thus notes that coordinated international cooperation on climate-change-induced migration will be required in order to devise appropriate responses to the needs of affected populations. With a view to assisting States in the development of appropriate responses, the Special Rapporteur makes the following recommendations:**

(a) States should work together to reduce climate change by cooperating to reduce global warming by committing to reduce greenhouse gases, including through identifying clear targets through commitments within the United Nations Framework Convention on Climate Change;

(b) Considering the difficulty of obtaining reliable data on climate-change-induced migration, States, and especially States with economic means, should provide more support for research on climate-change-induced migration, including on the definition of such migration, and the production of reliable disaggregated statistical data, that would allow policymakers at all levels of governance to identify the populations most at risk of climate-change-induced displacement and develop strategies to alleviate their vulnerability;

(c) In their assessment and planning programmes for devising mitigation and adaptation strategies in order to cope with climate change, States must identify the priority vulnerable populations who are susceptible to migrate internally or internationally for causes at least partly related to climate change, as well as those who should migrate but are not able to do so, and identify their specific needs;

(d) States should support civil society organizations that give a voice to such vulnerable populations, including migrants or potential migrants, with a view to ensuring their meaningful participation in all the deliberations regarding their future as citizens and/or migrants;

(e) States should devise and implement local and national migration policies and strategies to facilitate internal climate-change-induced migration, where needed, including through building urban infrastructure that is sustainable, flexible and inclusive in order to accommodate internal migrants. Such policies and strategies should fully respect their domestic laws and obligations under international human rights norms and standards, including the political participation of vulnerable populations, as well as means of redress available to migrants against human rights violations;

(f) States should devise and implement regional migration policies and strategies to facilitate international climate-change-induced migration, where needed, including through the negotiation, conclusion and implementation of regional migration agreements. Such policies and strategies should be elaborated by all States concerned within the region, with the support and assistance of donor States. Such policies and strategies should also be elaborated with the support and collaboration of regional intergovernmental organizations, international organizations, international financial institutions, international NGOs and civil society organizations. Such policies and strategies should fully respect the international and regional human rights frameworks, including appropriate human rights guarantees for all migrants, the political participation of the vulnerable populations concerned in all decisions regarding their migration, as well as means of redress available to all migrants against human rights violations;

(g) Regional intergovernmental organizations, international organizations and international financial institutions should support, facilitate and, where necessary, initiate, the negotiation of such agreements, through political leadership, financial assistance and technical support.



# General Assembly

Distr.: General  
19 July 2022

Original: English

---

## Seventy-seventh session

Item 69 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Report of the Special Rapporteur on the human rights of migrants**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, submitted in accordance with Assembly resolution [74/148](#) and Human Rights Council resolution [43/6](#).

---

\* [A/77/150](#).



## **Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales**

### *Summary*

The present report outlines the main activities undertaken by the Special Rapporteur on the human rights of migrants, Felipe González Morales, during the reporting period since his most recent report to the General Assembly.

In the report, the Special Rapporteur reviews the complex relationship between climate change, human rights and migration, as well as the multifaceted drivers of cross-border migration in the context of climate change. He examines the human rights situation of migrants, especially women, children, indigenous peoples, minorities and other groups in specific vulnerable situations, affected by the adverse effects of climate change, and he analyses progress made on devising available and flexible pathways for regular migration in the context of climate change as an adaptation option.

On the basis of the information and analysis provided by States, international organizations, civil society and other stakeholders, the Special Rapporteur identifies promising practices, ongoing efforts and existing challenges and provides a set of recommendations aimed at promoting migration with dignity for all migrants, including those affected by climate change, and addressing their specific human rights and protection needs.

## I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of migrants, Felipe González Morales, pursuant to Assembly resolution 74/148 and Human Rights Council resolution 43/6.

## II. Activities undertaken by the Special Rapporteur

2. On 30 March 2022, the Special Rapporteur participated in a round table on migration and human rights in Africa, convened by the African Commission on Human and Peoples' Rights.

3. On 7 April, the Special Rapporteur participated in the launch of a book entitled *Acceso a la Justicia de las Personas Migrantes, Refugiadas y Otras Sujetas de Protección Internacional en las Américas* (Access to Justice for Migrants, Refugees and Other Persons Subject to International Protection in the Americas), published in Mexico by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Sin Fronteras and the International Committee of the Red Cross.

4. On 21 April, he was the keynote speaker at the thirtieth edition of a conference on migration and international protection, organized by the Spanish Bar Association, where he gave a presentation on current trends in migration from a human rights perspective.

5. On 29 April, the Special Rapporteur delivered the closing speech at a regional meeting on regularizing the migration status of Venezuela migrants and refugees, held in Peru and organized by the International Organization for Migration, where he spoke about challenges in regularization processes.

6. On 2 May, he participated in the inaugural conference of the international migration law course organized by the International Institute of Humanitarian Law in San Remo, Italy, and gave a presentation about current trends in migration.

7. On 3 May, the Special Rapporteur gave a presentation on migration and human rights for the participants of the specialized training on migration and asylum from a human rights perspective at the University of Lanús in Buenos Aires.

8. From 4 to 6 May, he participated in an international conference on the migration crisis in Europe and the Americas in the light of international human rights law, organized by the National Autonomous University of Mexico.

9. From 17 to 20 May, the Special Rapporteur participated in the International Migration Review Forum in New York. He was the keynote speaker at round table No. 2 on saving the lives of migrants, managing borders, promoting alternatives to immigration detention and other related issues. He also gave presentations at the side events entitled "Upholding the human rights guiding principle in the Global Compact for Safe, Orderly and Regular Migration", "By migrants, for migrants: advocating for migrants' meaningful participation in International Migration Review Forum and Global Compact for Safe, Orderly and Regular Migration processes", "Vulnerability to trafficking in mixed migration contexts: community perspectives and current approaches" and "Saving lives and missing migrants: from commitment to action".

10. On 24 May, the Special Rapporteur attended the launch of a report entitled *Bajo la Bota: Militarización de la Política Migratoria en México* (Under the Boot: Militarization of Migration Policy in Mexico) and a microsite, organized by the Fundación para la Justicia.

11. On 30 May, he gave the inaugural lecture, on the importance of the special procedures for the prevention of human rights violations, for the twenty-third edition of the programme of advanced studies on human rights and humanitarian law at the American University Washington College of Law.

12. On 14 June, the Special Rapporteur participated in a webinar, held in parallel to the forty-seventh session of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on the role of national prevention mechanisms in monitoring places where migrants are deprived of their liberty.

13. On 24 June, he presented his report entitled “Human rights violations at international borders: trends, prevention and accountability” (A/HRC/50/31) to the fiftieth session of the Human Rights Council.

### **III. The impact of climate change and the protection of the human rights of migrants**

#### **A. Introduction**

14. Climate change, an increasingly potent driver of migration, continues to compel millions of people to leave their homes every year. The latest *Groundswell* report released by the World Bank finds that climate change could force 216 million people across six world regions to move within their countries by 2050.<sup>1</sup> Given the interrelation between internal displacement and migration, this figure helps to illustrate the scope of cross-border climate change-related migration. Building on the findings of the report of his predecessor on the human rights of migrants (A/67/299), which was submitted to the sixty-seventh session of the General Assembly, the Special Rapporteur aims to examine the human rights situation of migrants, especially women, children, indigenous peoples, minorities and other groups in specific vulnerable situations, affected by the adverse effects of climate change, as well as to analyse progress made on devising available and flexible pathways for regular migration in the context of climate change as an adaptation option.

15. Every year, as millions of people are displaced in the context of sudden-onset disasters, the livelihoods of millions more are affected by slow-onset environmental change and degradation, with many being compelled to leave their countries of origin, while others remain trapped in at-risk areas. Such high levels of human mobility associated with disasters and the adverse effects of climate change may impose significant challenges that undermine sustainable development, climate change adaptation, disaster risk reduction and migration governance efforts. Likewise, desertification, rising sea levels and more frequent and severe weather events undermine the enjoyment of human rights, including the rights to life, food, water and sanitation, health and adequate housing. In addition, migrants who are compelled to move owing to the adverse effects of climate change are less likely to be able to make choices about when and how they move or to develop alternative options when facing difficulties. They are therefore more likely to migrate in conditions that do not respect human dignity and integrity. However, if well governed, safe, regular and orderly migration can also be a form of adaptation to climate change and environmental stressors, helping to build the resilience of affected individuals and communities.

---

<sup>1</sup> Viviane Clement and others, *Groundswell Part 2: Acting on Internal Climate Migration* (Washington, D.C., World Bank, 2021). The six regions refer to Eastern Europe and Central Asia, sub-Saharan Africa, North Africa, South Asia, East Asia and the Pacific, and Latin America.

16. In preparing the report, the Special Rapporteur issued a questionnaire on the impact of climate change and the protection of the human rights of migrants. He expresses his gratitude to all those States, United Nations entities, academia and civil society organizations who provided their contributions.<sup>2</sup> The report is based primarily on the inputs and submissions received, complemented by additional research, data and legal documentation issued by the United Nations, international organizations and States, as well as civil society organizations, academics and other open resources, that were publicly available as of May 2022.

## **B. International legal instruments and policy frameworks on cross-border migration in the context of climate change**

### **1. Human rights law and refugee law**

17. International human rights law, norms and standards relating to migration in the context of climate change offer a comprehensive and flexible framework for the protection of all migrants in vulnerable situations, including those affected by climate change. Under the International Covenant on Civil and Political Rights, in conjunction with the International Covenant on Economic, Social and Cultural Rights, the inherent right to life of every individual without discrimination is guaranteed, as is the applicability of other fundamental rights to migrants, including the right to an adequate standard of living, health, personal integrity and freedom of movement. Pursuant to the above-mentioned Covenants, all States have the obligation to respect, protect and fulfil human rights for all without discrimination. Human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change. Moreover, all international human rights instruments apply to all migrants, and discrimination against them is prohibited on the grounds of their nationality or migration status.

18. The Special Rapporteur further refers to the principles of equality and non-discrimination. Such principles are core human rights principles reflected in the above-mentioned Covenants and in several other instruments, including the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination. By disproportionately affecting persons in vulnerable situations, including migrants compelled to move owing to the adverse effects of climate change, children, older persons, persons with disabilities, women at risk, migrant workers, indigenous peoples, minorities and other groups, climate change threatens the fulfilment of States' obligations regarding non-discrimination and equality.<sup>3</sup> It must be acknowledged that human rights law can establish grounds of admission and stay for migrants, which give effect to international human rights obligations and principles. These include the right to private and family life and the deriving obligation to maintain family unity, the principle of the best interests of the child, the right to health, the principle of equality and non-discrimination, the fundamental principles and rights at work and the principle of non-refoulement.<sup>4</sup>

19. The Convention relating to the Status of Refugees may offer protection to individuals affected by the adverse effects of climate change in some circumstances, such as where: (a) national authorities' denial of protection from the adverse effects of climate change amounts to persecution; (b) national authorities use the negative

<sup>2</sup> A total of 22 submissions were received.

<sup>3</sup> See [www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Key\\_Messages\\_HR\\_CC\\_Migration.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Key_Messages_HR_CC_Migration.pdf).

<sup>4</sup> See [www.ohchr.org/en/migration/migrants-vulnerable-situations](http://www.ohchr.org/en/migration/migrants-vulnerable-situations).

impacts of climate change to persecute particular groups or individuals; or (c) serious human rights violations or armed conflict triggered by climate change causes people to flee based on a well-founded fear of persecution. In those cases, protection relates to the action/inaction by national authorities that constitutes persecution on prohibited grounds rather than the adverse effects of climate change. In rare circumstances, the Convention relating to the Status of Stateless Persons might also provide protection for people fleeing climate change; however, it should be noted that it does not apply to or respond to the needs of most people fleeing the adverse effects of climate change (A/HRC/38/21, paras. 25 and 32).

20. Broader definitions of the term “refugee” have been adopted at the regional level in the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees, thus increasing the possibility of refugee status and protections applying to persons displaced by climate change. Under article I (2) of the Convention Governing the Specific Aspects of Refugee Problems in Africa, refugee status is extended to persons who, owing to events seriously disturbing public order, are compelled to seek refuge outside their country of origin or nationality. Similarly, in article III (3) of the Cartagena Declaration on Refugees the definition is extended to persons who have fled their country because their lives, safety or freedom have been threatened by massive violation of human rights or circumstances which have seriously disturbed public order (A/HRC/38/21, para. 26).

## 2. Policy frameworks

21. In the United Nations Framework Convention on Climate Change, its Kyoto Protocol and the Paris Agreement, States are called upon to act jointly and separately to mitigate climate change and adapt to its adverse effects. Although the Framework Convention does not explicitly address migration, in the preamble to the Paris Agreement States are called upon to respect, promote and consider the rights of all persons in vulnerable situations, including migrants, when taking climate action. Similarly, State measures to address climate change must protect the rights of those most vulnerable to its impacts, including those whose vulnerabilities may render them unable to move.

22. It must be acknowledged that the work of the Conference of the Parties to the Framework Convention and its subsidiary bodies, including the Task Force on Displacement of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, serves to provide a forum for discussing issues relating to the protection of those displaced owing to the adverse effects of climate change. The Task Force and the Executive Committee of the Mechanism are mandated to develop recommendations for integrated approaches to avert, minimize and address displacement in the context of climate change (A/HRC/38/21, para. 29).

23. In the 17 Sustainable Development Goals and 169 related targets of the 2030 Agenda for Sustainable Development, the importance of including migration in development strategies in order to commit to protecting the rights of all migrants and leaving no one behind is explicitly recognized. For instance, Goal 6 on clean water and sanitation is relevant because both climate change and migratory patterns have the capacity to significantly affect water resources. In Goal 7 on access to affordable and clean energy the importance of managing local energy development planning in tandem with migration policy to address the economic and environmental drivers of migration, thereby facilitating environmentally sustainable socioeconomic opportunities for migrants, is highlighted. Goal 13 is on taking urgent action to combat climate change and its impact. Goal 15 on life on land is especially important when considering the impacts – both positive and negative – of migration upon local

land systems.<sup>5</sup> The 2030 Agenda further calls for international cooperation to achieve sustainable development and contains references to orderly, safe, regular and responsible migration, as well as to climate change.

24. There are also many policy processes and instruments that address important aspects of climate change. For example, the Sendai Framework for Disaster Risk Reduction 2015–2030 contains references to climate change-related migration. This instrument focuses on reducing disaster risks, strengthening disaster risk governance and enhancing disaster preparedness, especially for people in vulnerable situations. It further includes guiding principles that call for the promotion and protection of all human rights and the development of coherent policies covering climate change, disaster risk reduction and sustainable development agendas.

25. In the New York Declaration for Refugees and Migrants of 2016 (General Assembly resolution 71/1), Heads of State and Government and High Representatives recognize the interconnection between migration, environment and climate change issues. They further recognize climate change as a driver of migration, address the issue of migration in response to environmental degradation and climate change and call for the creation and expansion of safe, regular pathways for migration. This recognition was considered a pivotal step towards migration policymaking processes to address climate and environmental migration challenges.

26. The Global Compact for Safe, Orderly and Regular Migration contains specific commitments to address the drivers that compel people to leave their countries of origin in the context of disasters, climate change and environmental degradation, and to protect and assist those who leave their countries in such contexts (General Assembly resolution 73/195, annex). In objective 5 on enhancing availability and flexibility of pathways for regular migration, further details are provided on the commitment to cooperating to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation. It is the first intergovernmentally negotiated agreement on international migration in which the linkages between migration and climate change, disasters and environmental degradation are recognized.

27. On the occasion of the first International Migration Review Forum, States adopted the Progress Declaration (General Assembly resolution 76/266, annex), one of the commitments of which centred on efforts to enhance and diversify the availability of pathways for safe, orderly and regular migration for migrants in vulnerable situations, as well as those affected by disasters, climate change and environmental degradation. The need to conclude labour mobility agreements, optimize education opportunities, facilitate access to procedures for family reunification and regularize migrants in an irregular situation, in accordance with national laws, was further highlighted.

28. The Nansen Initiative, a State-led, multi-stakeholder, consultative process, specifically addressed cross-border migration in the context of natural disasters and climate change. Through its Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, endorsed by 109 States, the Initiative calls for the integration of human rights-based approaches in disaster risk reduction, adaptation measures and sustainable development efforts. It further calls for well-managed human mobility, including the broadened application of humanitarian protection measures and the use of planned relocation as a last resort (A/HRC/38/21, para. 35).

---

<sup>5</sup> See <https://environmentalmigration.iom.int/migration-environment-and-climate-change-sustainable-development-goals>.

29. In the light of the above-mentioned legal instruments and policy frameworks, the Special Rapporteur takes the opportunity to emphasize that States have obligations, including extraterritorial obligations, to respect, protect and fulfil all human rights of all peoples, including migrants. He specifically notes an increasing number of people being compelled to migrate owing to the hazardous, inadequate living conditions provided by their States of origin, which lead to the escalation of hydrometeorological disasters, evacuations of areas at high risk of disasters, environmental degradation, the disappearance of small island States as a result of rising sea levels, and an increase in conflicts over access to resources.

30. The Special Rapporteur notes with concern the insufficient pathways for regular migration, especially for climate-driven migration, putting migrants at risk. It is important to recognize the right to liberty and freedom of movement for all persons as a right to ensure that people can move away from areas affected by climate change to avoid or reduce climate impacts and build resilience. States have an obligation to provide access to regular status when the return of a migrant may be in breach of human rights obligations, including, but not limited to, the principle of non-refoulement under international human rights law.

### **C. Adverse effects of climate change, cross-border migration and human rights challenges**

31. Climate change, specifically slow-onset and sudden-onset events, can negatively affect an array of human rights. The increased vulnerabilities of migrants caused by the adverse effects of climate change and the need for approaches that respect, protect and fulfil human rights are well documented. Risks to human rights in situ contribute to vulnerabilities, which consequently can act as a driver of migration. There are also specific impacts on the human rights of migrants that need to be addressed, including a lack of rights protection for migrants at all stages of their journey, in particular when gaining admission to other countries.<sup>6</sup> Climate change-related migration is multicausal and complex, as it interacts with a wide range of factors that influence a decision to move and the degree to which that decision is voluntary. It further interacts with factors such as violations of economic, social, cultural, civil and political rights, conflicts, and multiple and intersecting forms of discrimination. The Special Rapporteur will briefly describe the rights implications of the adverse effects of climate change, including the challenges they pose.

#### **1. Climate change and cross-border migration: drivers and responses**

32. Climate change can constrain resources and access to rights and needs and pose a threat to human life. Climate change and slow-onset processes can also affect nutrition through disruption of food systems and sources, loss of livelihoods and increases in poverty. Moreover, when salinization or desertification reduces agricultural outputs or results in crop failure, access to adequate food is put at risk. The impacts on food sources are compounded in places where malnutrition and hunger are already problems.<sup>7</sup>

33. As the then Special Rapporteur on the right to food highlighted in her report entitled “Critical perspective on food systems, food crises and the future of the right to food” (A/HRC/43/44), an estimated half of the world’s 854 million hungry people live in already degraded lands, degradation which will be exacerbated by climate change. Furthermore, food insecurity can lead to migration, which is often precarious

<sup>6</sup> See [https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR\\_slow\\_onset\\_of\\_Climate\\_Change\\_ENweb.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_slow_onset_of_Climate_Change_ENweb.pdf).

<sup>7</sup> Ibid.

when undertaken without adequate resources. Water quality and availability are also negatively impacted by climate change. Sea-level rise can result in the salinization of fresh water sources, drought can reduce access to water supplies and flooding can affect the quality of water. Health is tied to adequate food and water, and thus, where access to these rights is limited, so too is human health. Migrants – and rural to urban migrants, in particular – face increased disease and health risks from conditions in slums and informal employment sectors.

34. Adequate housing is a component of the right to an adequate standard of living. The right to adequate housing includes protection against forced evictions, security of tenure, access to affordable housing, habitability and accessibility, and availability of facilities, services, materials and infrastructure.<sup>8</sup> The right to adequate housing also means that adequate housing must meet a number of criteria, including privacy, space, security and location. People who are compelled to leave their homes owing to slow-onset effects of climate change may face poor living conditions and, while in transit, are likely to live in precarious conditions.

35. Slow-onset events of climate change, such as coastal erosion in areas of Honduras, for instance, are exacerbating pre-existing poverty, inequality and exclusion, compelling people to migrate. In this sense, the absence of public policies on prevention and mitigation, as well as a lack of environmental due diligence by private companies, may be drivers that exacerbate these impacts on territories and peoples. Likewise, the adverse effects of sudden-onset events linked to climate change may have serious effects on subsistence in the territory, while they can also accentuate dynamics of violence, insecurity and political persecution.<sup>9</sup>

36. The adverse effects of climate change are placing existing environmental systems, governance and social structures under stress. They are also increasing the drivers of internal migration within Vanuatu, as people increasingly move towards urban centres. Storm surges represent the highest displacement risk for Vanuatu, and there is a 64 per cent probability that one will displace 10,900 people in the next 50 years.<sup>10</sup>

37. The Special Rapporteur on the human rights of migrants notes that climate change is challenging the adaptive capacities of many different communities and overwhelming some owing to its interaction with and exacerbation of existing problems of food security, water scarcity and the scant protection afforded by marginal lands. The critical aspects are clearly varying from place to place and from individual to individual. Natural disasters might displace large numbers of people for relatively short periods of time; however, the slow-onset drivers are likely to displace permanently many more people, those who can access migration as an adaptation strategy, in a less headline-grabbing way.<sup>11</sup>

38. It must be acknowledged that migration should serve as an important adaptation strategy to climate change and a means to build resilience among individuals and communities, while also reducing exposure and vulnerability to hazards. The Special Rapporteur reiterates the analysis of his predecessor that migration has been a traditional coping mechanism, widely used by populations around the world since time immemorial to adapt to changing environments. If properly managed, migration can therefore also be a solution to cope with climate change (A/67/299).

<sup>8</sup> See [www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing](http://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing).

<sup>9</sup> Submission by the Center for Justice and International Law and Franciscans International.

<sup>10</sup> Submission by Vanuatu.

<sup>11</sup> See <https://olibrown.org/wp-content/uploads/2019/01/2008-Migration-and-Climate-Change-IOM.pdf>.

39. When well governed, migration becomes a safe and accessible choice and can help people to adapt to environmental and climate change pressures. Making humane migration part of the solution is an important practice to address the climate emergency. Furthermore, there is a need to mitigate the adverse environmental and climate drivers that compel people to move, address and reduce the risks and vulnerabilities of migration, and boost community resilience to avert, minimize and address displacement. The extent to which migration can be a positive adaptation experience will be influenced by gender, age, race, disability status and other relevant factors.<sup>12</sup>

40. Existing international frameworks, mechanisms and practices to govern safe and regular migration in relation to climate change are limited, and those that do exist have not all adequately integrated a gender-responsive approach. Addressing the linkages among gender, age, race, disability status, climate change and migration requires an integrated multisectoral approach that brings together global, regional, national and local efforts in order to ensure that political commitments are translated into concrete actions.<sup>13</sup> It is equally important to take into account procedures to assess admission and stay claims submitted by migrants in situations of vulnerability that should be people-centred and child-sensitive, and uphold international human rights, including the prohibition of discrimination. States should put in place human rights-based, gender-responsive and child-sensitive procedural safeguards to ensure that all migrants are able to present their cases on the basis of equality and non-discrimination.<sup>14</sup>

## 2. People living in vulnerable areas

41. As previously stated by the former Special Rapporteur on the human rights of migrants, no country is safe from slow-onset and sudden-onset events. However, some circumstances are more conducive to climate change-related migration. Available data indicates that nearly 1 billion people live in areas “highly to very highly” exposed to climatic hazards. Vulnerable places bordered by major rivers, such as the Ganges, Indus and Brahmaputra, are highly susceptible to glacier melt and reductions in snowfall but are also densely populated. Likewise, sea-level rise poses a particular threat to deltas, large urban settlements and major infrastructure along the coast, as it is estimated that 13 per cent of cities are located in low-lying coastal zones, and particularly in small island developing States, where the ability to retreat to higher ground is limited. Rising sea levels will greatly increase risks from storm surges and tropical cyclones, in particular for highly exposed small island developing States and low-lying coastal zones. Regions at risk also include Arctic ecosystems, dry lands and, more generally, the least developed countries, which have systems that are less adapted to cope with climate change.<sup>15</sup>

42. According to the Nansen Initiative, Latin America is among the areas of greatest fragility and vulnerability to the impacts of climate change, together with the African Sahara region. The most vulnerable countries identified are: Bolivia (Plurinational State of), Guatemala, Guyana, Haiti and Honduras. In Central America, one of the impacts of slow-onset events of climate change is that a significant part of the movement of people is caused by droughts in the region’s dry corridor. In this regard, the Food and Agriculture Organization of the United Nations highlighted that drought-related food insecurity in the dry corridor of Central America has left

<sup>12</sup> Submission by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

<sup>13</sup> Ibid.

<sup>14</sup> See [www.ohchr.org/sites/default/files/2022-01/guidance\\_note\\_migrants\\_in\\_situations\\_of\\_vulnerability\\_2021.pdf](http://www.ohchr.org/sites/default/files/2022-01/guidance_note_migrants_in_situations_of_vulnerability_2021.pdf).

<sup>15</sup> Submission by the Carlos III University of Madrid.

3.5 million people in need of humanitarian assistance in El Salvador, Guatemala and Honduras.<sup>16</sup>

43. Many of the expanding urban areas are located in low-lying coastal areas, already threatened by sea-level rise. The confluence of these factors has led the World Bank to predict that the collective South Asian economy (Bangladesh, Bhutan, India, Maldives, Nepal and Sri Lanka) will lose 1.8 per cent of its annual gross domestic product owing to climate change by 2050.<sup>17</sup> While slow-onset processes and effects are a key factor for migration, it is difficult to predict or even know the number of people who will move in any given geographical area. This is due in part to a lack of data generally and to the particular difficulty of isolating slow-onset or gradual environmental change as a driver of migration. This difficulty stems from the complex relationship between environmental change and migration, the latter being influenced and the former being compounded by demographics, poverty, governance and other social, economic and political factors. Those challenges, and the risks posed by slow-onset effects, mean that effective mechanisms to protect rights and long-term planning and solutions are required.

44. The Pacific region constitutes approximately one fifth of the Earth's surface and includes the large island States of Australia, New Zealand and Papua New Guinea, as well as 22 countries and territories across the Federated States of Micronesia, Melanesia and Polynesia. According to the available data, 90 per cent of the population of the small island States and territories of Oceania live within 5 km of the coast.<sup>18</sup> As for the small coral atoll nations of Tokelau and Tuvalu, the entire population lives within 1 km of the ocean. With a largely coastal population, the Oceania region is highly vulnerable to climate change-related migration. While economic and social factors remain the primary reasons for migration, climate change-related migration associated with the loss of land owing to coastal erosion and sea-level rise, the increased frequency and severity of extreme weather events and the loss of traditional livelihoods are increasingly emerging as contributing components of the decision to migrate. Internal relocation, both on a temporary and permanent basis, remains the most common form of climate-related mobility within the region.

45. Despite the fact that the small island developing States of the Pacific region contribute minimally to global carbon emissions, they are disproportionately experiencing the adverse effects of climate change. Coastal populations are increasingly vulnerable to acute risks, such as natural disasters, and chronic climate-related risks, including coastal erosion, salinization of freshwater sources and sea-level rise. In general, the adverse effects of climate change are threatening the availability of food and fresh water and affecting the productivity of ecosystems, including reef and fisheries resources. The ocean, which for so long has been a source of fulfilment and nourishment, is increasingly threatening the lives and livelihoods of coastal populations.

### **3. Marginalized individuals and groups**

46. Climate change disproportionately affects women, girls, boys, young people, persons with disabilities, older persons, lesbian, gay, bisexual and transgender (LGBT) persons, minorities, indigenous peoples, people living in poverty and the least economically secure. The impact of natural disasters does not affect everyone equally. Marginalized people are often highly vulnerable to natural disasters, as they are more likely to be compelled to move into the most vulnerable areas as a result of unaffordable land and housing markets. Natural disasters and post-disaster events

<sup>16</sup> Submission by the Center for Justice and International Law and Franciscans International.

<sup>17</sup> John Podesta, "The climate crisis, migration, and refugees" (Brookings, 2019).

<sup>18</sup> See <https://www.britannica.com/place/Pacific-Islands>.

often kill more women than men. Indigenous groups are also particularly vulnerable to the adverse impacts of natural disasters, owing to certain risk factors such as climate change, vulnerable livelihoods, resource extraction, health risks, and loss of culture and identity. There is also a growing body of research demonstrating that climate change will disproportionately affect children's health and well-being.<sup>19</sup>

### **Women and girls**

47. The impacts of climate change can worsen the cycle of poverty and exacerbate situations of vulnerability for women and girls, such as gender-based discrimination in access to land, natural resources, financial services, social capital and technology, leaving them with limited or no assets to utilize in the case of natural hazards or disasters. While global sex-disaggregated data and gender statistics on migration in relation to climate change are limited, figures on internal displacement can shed some light on population movements associated with climate change, with some reports estimating that approximately 80 per cent of people currently displaced by climate-related events are women and girls. Moreover, as women are 4 per cent more likely than men to live in extreme poverty, the impacts of climate change, including slow-onset effects, may lead to higher numbers of women migrating as a result of decreasing crop productivity, increasing water shortages and rising sea levels.<sup>20</sup>

48. While migration may be an opportunity for increased autonomy and independence for some women, it may also expose them to risks. The increase in gender-based violence in the aftermath of disasters is well documented, in particular against women and girls who are displaced and those living in camps or other places without privacy. Domestic violence, intimate partner violence, sexual abuse and exploitation, and forced and early marriage also increase significantly during climate crises.<sup>21</sup> Women and girls face a heightened risk of gender-based violence and child marriage, negative impacts on maternal and neonatal health and a greater burden of unpaid care and domestic work.<sup>22</sup>

49. Climate change is linked to other drivers of migration, such as women's lack of access to information and resources and the disproportionate burden of unpaid care work on women, especially single mothers and women with dependants, which includes the responsibility for fetching water and fuel, as well as the challenge of seeking paid work. Climate change-related migration is also linked to human trafficking. Human trafficking does not always involve migration, but traffickers often exploit migrant women and girls who take risks to find work and shelter. Individuals, including women, leave their homes to flee poverty and unemployment, criminal violence, armed conflict or natural disasters, which can make them vulnerable to exploitation. As climate change affects the physical and social environments, and the incidence of natural disasters increases, more people will move and may be at risk of being trafficked.<sup>23</sup>

### **Children**

50. When sudden or slow-onset processes result in large-scale migration, children may be separated from their cultural heritage and face barriers in gaining access to schools, adequate health-care facilities and other necessary goods and services.

<sup>19</sup> Submission by the Center for the Human Rights of Children, Loyola University School of Law.

<sup>20</sup> Submission by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

<sup>21</sup> Ibid.

<sup>22</sup> See <https://migrationnetwork.un.org/events/approaches-gender-responsive-gcm-implementation-context-migration-and-climate-change>.

<sup>23</sup> See <https://giwps.georgetown.edu/resource/women-and-climate-change/>.

Overcrowded shelters with inadequate access to sanitation and clean water can increase the transmission of diarrhoea and malnutrition rates, both of which are leading causes of child mortality. Inadequate security and protection in some shelters can expose children to abuse and violence. Children who are travelling alone or separated from their parents can be particularly at risk of emotional, physical and sexual violence (see [A/HRC/35/13](#)).

51. The developing bodies of children are more sensitive to the impacts of climate change, including rising temperatures, decreased air quality, ecosystem disruption, floods, droughts and wildfires. Research shows that climate change impacts directly contribute to asthma, infectious and respiratory diseases, food insecurity and increased mortality. Children also experience exacerbated intersecting vulnerabilities that leave them increasingly at risk of harm. Girls, indigenous children, children with disabilities and other children with heightened vulnerabilities experience climate inequity at disparate levels.<sup>24</sup>

52. Children's education can be disrupted by displacement and migration in the context of disasters and the adverse effects of climate change. Even when the decision to migrate is linked to slow-onset impacts, children's education can suffer when families move from rural to urban areas and do not have the means to provide formal education to their children. Some children may also be forced to work to support their families, including in dangerous conditions.<sup>25</sup> In Chad, owing to the phenomenon of "child cattle herders", children on the move are particularly at risk of trafficking and sexual exploitation. As a result of precariousness and a lack of means worsened by the effects of climate change, parents send their children to work with herders in problematic conditions as well in isolated and hostile settings.

53. It is also important to consider the impacts of parents' migration on children who stay behind. Children who are left behind may remain exposed to hazards and the increasing impacts of environmental degradation, with acute potential impacts on their lives, health and physical integrity. The mental impacts linked to parental separation are also a matter of concern. All these disruptions have an impact on children's well-being and education and may reduce their resilience to future disasters.<sup>26</sup>

### **Indigenous peoples and minorities**

54. Owing to their isolation and exclusion, minorities and indigenous peoples in many countries are disproportionately exposed to the adverse effects of climate change, ranging from rising sea levels and higher temperatures to increasingly frequent extreme weather events, such as severe storms. Populations such as Dalits in South Asia are frequently concentrated in areas such as the flood-prone "colonies" of Dhaka, where a lack of access to water and sanitation leaves residents more vulnerable during monsoons. They may also be sidelined or excluded from emergency assistance in the aftermath of a monsoon owing to discrimination. Their stigmatization is therefore replicated at every stage and may be exacerbated further in the event of displacement, loss of income or illness.<sup>27</sup>

55. As has been highlighted by the Special Rapporteur on the rights of indigenous peoples, the adverse effects of climate change are exacerbating the migration and

<sup>24</sup> Submission by the Center for the Human Rights of Children, Loyola University School of Law.

<sup>25</sup> See [www.unicef.org/globalinsight/media/1821/file/Children%20on%20the%20Move:%20Why,%20Where,%20How?%20.pdf](http://www.unicef.org/globalinsight/media/1821/file/Children%20on%20the%20Move:%20Why,%20Where,%20How?%20.pdf).

<sup>26</sup> See [www.unicef.org/globalinsight/media/1821/file/Children%20on%20the%20Move:%20Why,%20Where,%20How?%20.pdf](http://www.unicef.org/globalinsight/media/1821/file/Children%20on%20the%20Move:%20Why,%20Where,%20How?%20.pdf).

<sup>27</sup> See [https://minorityrights.org/wp-content/uploads/2020/08/2019\\_MR\\_Report\\_170x240\\_V7\\_WEB.pdf](https://minorityrights.org/wp-content/uploads/2020/08/2019_MR_Report_170x240_V7_WEB.pdf).

urbanization of indigenous peoples. According to the United Nations Human Settlements Programme (UN-Habitat), indigenous peoples who are forced to migrate as a result of climate change often end up in precarious housing in the poorest urban areas, which are prone to natural disasters and environmental pollution. For example, droughts induced by climate change are forcing Tuareg herders to abandon traditional pastoralism practices and move to cities (see [A/76/202/Rev.1](#)).

56. For many Pacific islanders, as well as First Nations peoples in Australia and New Zealand, the ocean has long been a source of food, livelihoods, spirituality and cultural connection. With limited adaptation avenues available, indigenous peoples may be uprooted from their homes, which may result in the loss of traditional knowledge, the spiritual connection they have with their land, language and culture. Moving temporarily or permanently means sacrificing a part of their identity, potentially resulting in mental health illnesses, as well as other impacts on physical health.

57. The Special Rapporteur on the human rights of migrants particularly notes that indigenous peoples have an important contribution to make to address climate change. Owing to their close relationship with the environment, indigenous peoples are uniquely positioned to adapt to climate change. They are also repositories of learning and knowledge about how to cope successfully with local-level climate change and respond effectively to major environmental changes. Indigenous peoples' traditional knowledge of the environment can substantively enrich scientific knowledge and adaptation activities when taking climate change-related actions ([A/HRC/36/46](#)).

#### **Persons with disabilities**

58. The ability to migrate often depends on resources and mobility, and it is well-known that the most marginalized may be unable to migrate and forced to remain in locations that are subject to climate change harms. Persons with disabilities are at risk of being left behind in a degraded environment without social and support networks when members of their family or community move owing to the adverse effects of climate change. Those persons with disabilities who do move can face challenges related to mobility, the need for assistive devices and accessible transportation, accommodation and services. Many require support systems, including personal assistants, medical equipment and service animals, that are challenging to transport. Discriminatory migration policies constitute another challenge that persons with disabilities face with respect to migrating to other countries ([A/HRC/44/30](#)).

59. Persons with disabilities often face barriers to accessing information and resources, limiting their knowledge about and capacity to adapt to climate change. In addition, evacuation systems and personnel are not prepared in advance to support individuals with different impairments. Temporary shelters and evacuation centres are often inaccessible to persons with physical or visual impairments. Persons with disabilities may also face heightened protection risks, including discrimination, exploitation and violence, in disaster response contexts.<sup>28</sup>

---

<sup>28</sup> See [www.unhcr.org/protection/environment/60896a274/disability-displacement-climate-change.html](http://www.unhcr.org/protection/environment/60896a274/disability-displacement-climate-change.html) and submission by the Office of the United Nations High Commissioner for Refugees.

### **Older persons**

60. Older persons, particularly older persons with disabilities and older women, are among those most affected by climate-related harms, such as the increasing spread of vector-borne diseases, heat stress, pollution and the increasing frequency and intensity of sudden- and slow-onset disasters, which can impact their physical and mental health and well-being.

61. In emergencies, older persons with limited mobility may have difficulty reaching safety. Infrastructure and policy may be insufficient to ensure that they are aware of evacuation warnings, orders or services, especially if new technologies are relied on to disseminate such information, and to account for older persons' needs with regard to travel, adequate food, shelter, health care and services. Physical challenges that have only minor effects on day-to-day life may become serious impediments in an emergency, limiting older persons' mobility and adaptive capacity. In such context, some face disproportionate difficulties in returning to their homes and in accessing restitution for damage, both because of physical factors and because of ageist exclusion from humanitarian aid for rebuilding purposes. When older people do move, migration in later life can be particularly traumatic, owing to severed social ties and a lack of facilities, rights and protection in unfamiliar new environments (see [A/HRC/47/46](#)).

62. The Special Rapporteur recognizes that older persons possess vast reserves of knowledge, experience and resilience, making their participation, inclusion and leadership key to human rights-based global efforts to adapt to and mitigate the adverse effects of climate change.

#### **4. Addressing international law protection gaps in the context of climate change-related migration**

63. The Special Rapporteur observes that since the thematic report presented by his predecessor, in 2012, there have been few coherent policies in place regarding the rights of all migrants that take into account the motive behind their migration, including the need for human rights protection of climate change-related migration. At present, beyond the rubric of international refugee law, there seems to be a continuing gap in international law aimed at protecting persons on the move owing to climate change ([A/67/299](#)). It is well known that the impact that climate change has on migratory movement presents challenges for States and the international community. Current international law is able to meet some of these challenges and is lacking in other areas, in particular for many of the individuals who cross borders in the context of climate change.

64. Those who cross borders from areas adversely affected by climate change will do so under myriad circumstances. Some may move in the context of conflict and/or persecution, and thus may be refugees entitled to protection under international and regional refugee law. Others may not qualify for protection under the refugee regime or as stateless persons. Thus, gaps in protection under international law remain. However, these gaps do not imply that international inaction is acceptable; rather, they underline the need for and the importance of international cooperation and assistance. In this regard, States should enhance the flexibility and accessibility of pathways of admission and stay by ensuring that the criteria used are clear, transparent and rights-based and that they respond to the specific needs of migrants, the situations of vulnerability they face and their sociodemographic and economic reality. This includes expanding opportunities for admission and stay based on human rights according to international standards and best practices. Moreover, regardless of the specific procedure in place, human rights grounds and other considerations relevant

to migrants in vulnerable situations should be included in law or regulations as grounds to apply for admission and residence permits through a clear procedure.<sup>29</sup>

65. Some commentators propose to broaden the concept of “refugee” as contained in the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto and to transpose it into national legislation, thereby leading to the development of domestic policies. The Special Rapporteur particularly notes that States such as Canada, Finland and Sweden have taken measures to adopt this broader definition of “refugee” at the domestic level.<sup>30</sup> It should be acknowledged that the concept and requirement of “persecution” in the aforementioned Convention could not, in principle, be extended to all cases of climate change-related migration, as the majority will not be moving as a result of persecution. At the regional level, however, instruments in Africa and in Latin America have expanded the definition of refugees to include persons fleeing “events seriously disturbing public order”<sup>31</sup> or other forms of “generalized violence”<sup>32</sup> which may protect many migrants.

66. The Special Rapporteur welcomes the landmark decision of the Human Rights Committee in the case of *New Zealand v. Ioane Teitiota* (CCPR/C/127/D/2728/2016). The Committee acknowledged the relationship between climate change and human rights, stating that individuals who flee natural disasters and the adverse effects of climate change must not be returned to their country of origin if their human rights would be at risk upon return, specifically life-threatening risks (International Covenant on Civil and Political Rights, art. 6) or a real risk of facing cruel, inhuman or degrading treatment (art. 7). It supports the interpretation of existing protection frameworks, recognizing the applicability of international human rights law in the context of climate change and disaster displacement. Such an interpretation includes – but is not limited to – situations where natural disasters and climate change are intertwined with conflict and violence. The Committee’s decision further established that “environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats ... to life” (CCPR/C/127/D/2728/2016, para. 9.4). The Special Rapporteur therefore recognizes that, by assessing whether a State’s obligation not to forcibly return someone may arise, an interest is created in requiring concrete national, regional and international action to curb the adverse effects of climate change on people’s lives; otherwise, States will have to grant climate refugee protection in the future.

67. The Special Rapporteur emphasizes that international and regional refugee law should not be dismissed automatically in claims by migrants for refugee status. The adverse effects of climate change on migrants should be interpreted within a broader sociopolitical context and it should be considered how such a context can exacerbate pre-existing discrimination, persecution and marginalization, thereby reinforcing claims for refugee status under the 1951 Convention. State and non-State actors should equally conduct some form of “human agency”<sup>33</sup> and determine whether the claimant is facing direct, indirect or systemic discrimination leading to their potential persecution. Furthermore, the decision to grant admission and stay should be based on clear, transparent and human rights-based criteria and not be taken solely at the discretion of the State authority, in order to avoid discrimination and abuses of power. It must be noted that each case should be individually, impartially and independently

<sup>29</sup> See [www.ohchr.org/sites/default/files/2022-01/guidance\\_note\\_migrants\\_in\\_situations\\_of\\_vulnerability\\_2021.pdf](http://www.ohchr.org/sites/default/files/2022-01/guidance_note_migrants_in_situations_of_vulnerability_2021.pdf).

<sup>30</sup> Submission by the Carlos III University of Madrid.

<sup>31</sup> Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, art. 1 (2).

<sup>32</sup> Cartagena Declaration on Refugees, 1984, art. III, para. 3.

<sup>33</sup> See A/HRC/37/CRP.4.

examined by the State on its own merits, regardless of whether the criteria relate to individual or group situations.<sup>34</sup>

68. The Special Rapporteur wishes to highlight that human rights law is central to protection for all persons who move in the context of climate change. States have obligations to ensure human rights throughout the cycle of migration, including important protections for migrants whose rights are directly affected by climate change.

## **5. Climate-change-related migration and the coronavirus disease pandemic**

69. In his report on the Global Compact for Safe, Orderly and Regular Migration (A/76/642), the Secretary-General highlighted several ways in which climate change-related migration and the coronavirus disease (COVID-19) pandemic intersect. In April 2020, the Pacific Islands had to face a new threat, Cyclone Harold, while facing the paralyzing relief and recovery efforts and economic uncertainty caused by the COVID-19 pandemic. International aid workers could not enter Vanuatu because the borders were closed to prevent the spread of the virus. As previously mentioned, sudden-onset weather-related disasters have severe effects on children, including domestic violence, family separation, trauma and overcrowding in evacuation centres, where they are likely to be at increased risk of the spread of the virus. In the longer term, children's well-being will suffer from the economic impact of the COVID-19 pandemic on countries with long traditions of economic migration and intersections with environmental drivers. Furthermore, climate change, economic recession and the COVID-19 pandemic are likely to increase smuggling, trafficking, child labour and early marriage and lead to a diminished role for child protection advocates.

70. The COVID-19 pandemic has reminded us that, whenever human mobility is constrained, migrants in countries of origin, transit and destination may face unemployment, impoverishment, insecurity and exposure to risks, including health hazards (A/76/642). The Special Rapporteur is aware that major current disruptors, including those related to climate change and environmental degradation, health, security and sustainable development, should be addressed through integrated approaches.<sup>35</sup> To be efficient, such approaches should coherently articulate separate but connected dimensions, such as enhanced climate action, including necessary adaptation and mitigation measures, the promotion of green transition measures, public health considerations and the facilitation of safe and dignified migration. Integrated approaches will be key to successfully recovering from the COVID-19 crisis and reducing the potential impacts of future crises.<sup>36</sup>

## **D. Human rights-based approaches to cross-border migration in the context of climate change: towards prevention, protection and assistance**

71. The Special Rapporteur notes some of the measures that have been implemented by States to facilitate the admission and stay of migrants compelled to leave their countries of origin owing to the adverse effects of climate change and environmental degradation, as well as in the context of natural disasters. In the present section, the Special Rapporteur elaborates on and lists practices aimed at promoting prevention,

<sup>34</sup> See [www.ohchr.org/sites/default/files/2022-01/guidance\\_note\\_migrants\\_in\\_situations\\_of\\_vulnerability\\_2021.pdf](http://www.ohchr.org/sites/default/files/2022-01/guidance_note_migrants_in_situations_of_vulnerability_2021.pdf).

<sup>35</sup> See <https://publications.iom.int/books/institutional-strategy-migration-environment-and-climate-change-2021-2030>.

<sup>36</sup> Ibid.

protection and assistance to migrants, as well as discusses the pivotal role of civil and other stakeholders in the above-mentioned contexts.

**1. Promising practices aimed at expanding and facilitating pathways for safe and regular migration in the context of climate change**

72. Under the Global Compact for Safe, Orderly and Regular Migration, regular migration pathways for people affected by environmental drivers are explicitly addressed and several States are taking promising steps to make such pathways a reality. In 2020, the Intergovernmental Authority on Development<sup>37</sup> adopted a protocol on the free movement of persons that includes provisions allowing persons affected by disasters to enter and stay in other countries in the region. In 2021, the United States of America recommended the creation of a legal pathway for humanitarian protection for people facing serious threats to their lives because of climate change (A/76/642, para. 64).

73. In early 2020, the Supreme Court of Cassation of Italy found that the destruction of a claimant's home owing to a flood that hit large parts of Bangladesh in 2012 and again in 2017 could affect the vulnerability of the applicant if accompanied by adequate allegations and evidence relating to the possible violation of primary human rights, which may expose the applicant to the risk of living conditions that do not respect the core of fundamental rights that complement the dignity. In this case, the Court argued that natural disasters can amount to compelling drivers of migration insofar that they are able to exacerbate people's vulnerability and to violate core human rights.<sup>38</sup>

74. The national policy on climate change and disaster-induced displacement of Vanuatu focuses on how existing policy frameworks and actors can integrate mobility arising from climate change and disasters into their existing planning and processes. The policy contains 12 strategic priority areas, including on information and monitoring; safeguards and protections; capacity-building, training and resources; and land, housing, planning and environment. Furthermore, Vanuatu has established a Gender and Protection Cluster within the Ministry of Justice and Community Services, which serves to ensure that the needs of vulnerable groups are addressed during instances of internal displacement.<sup>39</sup>

75. In Switzerland, article 83 of the Federal Act on Foreign Nationals and Integration, to which article 44 of the Federal Act refers, provides that provisional admission may be granted when the execution of a removal order is in fact neither possible nor lawful, as the person concerned is in real danger in situations, such as in case of war, generalized violence or medical necessity, in his or her country of origin or provenance. Nonetheless, the Federal Council has stated its position on the applicability of this regulation to displacement owing to natural disasters and the adverse effects of climate change. It has explained that Switzerland can provisionally admit people whose return is not reasonably required owing to environmental events.<sup>40</sup>

76. In Mexico, the migration legislation provides for the possibility of issuing a visitor's visa for humanitarian reasons to applicants who have Mexican or foreign relatives temporarily or permanently residing in the country. The visa may be requested by their relatives or by any agency of the federal, state or municipal public administration so as to allow the entry of foreigners who are victims of a natural

<sup>37</sup> Member States: Djibouti, Ethiopia, Eritrea, Kenya, Somalia, South Sudan, the Sudan and Uganda.

<sup>38</sup> Submission by Sant'Anna School of Advanced Studies.

<sup>39</sup> Submission by Vanuatu.

<sup>40</sup> Submission by Switzerland.

disaster or whose life or integrity is in danger owing to such a cause. In addition, the holder of such a visa may be granted refugee status following fulfilment of some requirements established in law.<sup>41</sup>

77. In August 2018, the German Advisory Council on Global Change proposed to develop a “climate passport” that would offer those who are at risk of global warming the option to gain access to civil rights in safe countries. The climate passport would allow voluntary and humane migration routes for the population of States whose territory will likely become uninhabitable owing to climate change. In this case, the passport would generally apply to the entire population and would not require a direct application by individual citizens, who therefore would not have to prove to have been directly affected by the disaster.

78. Ecuador provides humanitarian protection to migrant applicants who can demonstrate the existence of exceptional reasons of a humanitarian nature as victims of natural or environmental disasters. The applicant can be granted access to a humanitarian visa for a period of up to two years. Argentina grants humanitarian visas to enter the country and has recognized the right to stay for humanitarian reasons to any persons who, despite not requiring international protection, are temporarily unable to return to their countries of origin by reason of the prevailing humanitarian conditions or owing to the consequences caused by environmental disasters. The residence permit lasts six months, with the possibility of renewal before the date of expiration.

79. Under the law on migration of Brazil (Law No. 13.445 of 2017), the requirements for granting a temporary humanitarian visa are established in article 14 (c), providing that the temporary humanitarian reception visa may be granted to a stateless person or a national of any country in a situation of serious or imminent institutional instability, armed conflict, major disaster, environmental catastrophe or serious violation of human rights or international humanitarian law. Similarly, article 30 (c) of the law provides for the possibility of granting a residence permit for humanitarian reasons.

80. New Zealand has a framework in place for accepting migrants from Pacific Island States and for building capacity locally in the affected areas. Under the New Zealand Pacific Access Category Resident Visa programme, there is a quota for a total of 650 migrants from Fiji, Kiribati, Tonga and Tuvalu to apply for permanent residency in New Zealand every year, while a quota of 1,100 is allocated for Samoan migrants under the Samoan Quota Resident Visa. Australia has prepared a framework for accepting workers, targeted at citizens of Pacific Island States. The Pacific Labour Mobility Scheme, launched in July 2018, serves to enhance capacity across the Pacific region and eliminate labour shortages in Australia by accepting workers from nine countries including Fiji, Kiribati and Nauru.<sup>42</sup>

81. In 2019, Fiji established a trust fund to support the planned relocation of communities affected by climate change. The 2019–2024 strategy on drought-related disasters of the Intergovernmental Authority on Development includes efforts to build resilience and promote migration as an adaptation mechanism. The Coordination Centre for the Prevention of Natural Disasters in Central America used guidelines on disaster displacement as a training tool to support its member countries. Some countries also incorporate migrants and migration into their disaster risk reduction or preparedness frameworks (see [A/76/642](#)).

---

<sup>41</sup> Submission by Mexico.

<sup>42</sup> See [www.spf.org/opri-intl/global-data/report/perspectives/20200526071205772.pdf](http://www.spf.org/opri-intl/global-data/report/perspectives/20200526071205772.pdf).

## 2. Engaging with civil society and other stakeholders and affected individuals

82. The Special Rapporteur recognizes the important role of civil society and other relevant stakeholders in bringing to the attention of the international community the issue of climate change-related migration and the crucial role of civil society in assisting Governments to develop effective actions, initiatives and programmes. It must be acknowledged that civil society, non-governmental organizations (NGOs), national human rights institutions, affected individuals and communities, and local leaders are likely to be the first players to take action in climate-related emergencies by supporting affected persons and communities while States' responses begin to be developed and implemented. Furthermore, they hold the advantage of understanding the context and challenges faced by communities affected by climate change, while also engaging in global processes with United Nations entities, the private sector and Governments, among others. Engagement with civil society actors equally facilitates access to timely, reliable data and evidence directly from the ground, enabling States to take a more accurate and targeted response.

83. Nonetheless, civil society organizations and affected communities have played a limited role in the development of policies and strategies related to migration in the context of climate change. While the participation of NGOs, communities and other stakeholders is recognized as being crucial to the implementation of States' initiatives, there is a lack of established frameworks to engage meaningfully with these stakeholders and encourage their active involvement on an ongoing and long-term basis. Effective measures have not been taken to raise awareness, build resilience and capacities and create an enabling environment for community engagement and policy change.<sup>43</sup>

84. The Special Rapporteur wishes to reiterate his predecessor's position with regard to the absence of the voice of migrants themselves. This is owing to the lack of self-awareness and general reluctance of migrants (especially those in vulnerable and irregular situations) to report the human rights violations that they suffer. Supporting the development and sustainability of organizations representing migrants and giving them a voice is pivotal to elaborating inclusive policies aimed at addressing climate change-related migration (see [A/67/299](#)). It is crucial that States focus on climate change mitigation and response, ensuring meaningful participation and collaborating closely with civil society organizations, communities and local leaders working on the front line.

## IV. Conclusions and recommendations

85. **The Special Rapporteur concludes that there is a need for migration with dignity for all migrants, including those affected by climate change, and to address their human rights and protection needs. Such protection needs include water and sanitation, adequate food and housing, access to health care, access to justice, social security, education and decent work. The fundamental principle of non-refoulement and the prohibition of collective expulsion, as well as the rights to liberty, personal integrity and family unity, must also be upheld. States should put into action their commitment to expand and diversify the availability of pathways for safe, orderly and regular migration, as well as to put in place appropriate mechanisms to guarantee that all migrants who require human rights protection and are unable to return to their countries owing to climate change are provided with a legal status.**

<sup>43</sup> See [www.wri.org/our-work/project/world-resources-report/mainstreaming-climate-change-adaptation-need-and-role-civil](http://www.wri.org/our-work/project/world-resources-report/mainstreaming-climate-change-adaptation-need-and-role-civil).

86. The Special Rapporteur particularly emphasizes the need for robust national, regional and international efforts to avoid human rights violations of individuals in the context of climate change. Small island developing States of the Pacific region are at extreme risk of being submerged by rising sea levels. Even before that risk is realized, conditions of life, health and housing in such a region may become incompatible with the right to life with dignity. States have the capacity to reduce adversity and build resilience through inclusive, rights-based mitigation, risk reduction and adaptation, and evidence-based approaches that prevent the negative impacts of climate change on human rights.

87. It is important to note that planned relocation can help to respond to the predicted adverse effects of climate change by moving individuals and communities to safe areas. However, it should be a measure of last resort. States must refrain from, and protect against, forced evictions by ensuring that any relocation of persons is grounded in human rights, including the right to adequate housing. Planned relocation should also involve the meaningful and informed participation of all affected persons, including migrants and receiving communities, and maintain their previous living standards.

88. With reference to national laws and policies for migrants' admission and stay in this context, the Special Rapporteur notes that some laws and policies of indirect relation are in place and could be and are being applied. However, in the absence of explicit recognition of climate change-related challenges and migrants' protection needs in the context of climate change, the latter is not guaranteed. Efforts to identify temporary and permanent protection for persons from countries of origin affected by climate change is still lacking. The Special Rapporteur therefore calls for the implementation of objective 5 of the Global Compact for Safe, Orderly and Regular Migration on the availability and flexibility of pathways for regulation migration, in particular on permanent protection for migrants unable to adapt or return to their countries owing to loss and damage associated with climate change.

89. The Special Rapporteur takes note of some progress on the recognition of internal human mobility challenges as a key step towards addressing the risks of cross-border migration in the context of climate change. Nonetheless, he believes that greater attention could be devoted in national instruments to both the challenges and opportunities associated with climate change-related migration, in full accordance with international human rights law instruments and climate change-related policy frameworks, including the Global Compact for Safe, Orderly and Regular Migration.

90. The Special Rapporteur urges States to ensure access to justice, accountability and access to remedies for human rights harms caused by climate change. If persons crossing borders in response to the adverse effects of climate change fall outside the specific legal category and have no other access to safe, orderly or regular migration, it becomes critical to ensure that their human rights are respected, protected and fulfilled. In this regard, the Special Rapporteur encourages States to develop grounds for stay and admission aimed at providing protection for migrants compelled to move owing to the adverse drivers of climate change.

91. The Special Rapporteur recommends that States:

(a) Ensure that they respect, protect and fulfil, in the design and implementation of climate change-related migration policies, the rights of all migrants, including through awareness-raising and by ensuring access to education and environmental information, and public participation in decision-making of all affected individuals and communities, including women, LGBT

persons, children, indigenous peoples and minorities, older persons, persons with disabilities and other groups;

(b) Build on lessons, guidance and commitments to address the implications of climate change for migration and to foster people's resilience to remain in place with dignity or move as a form of adaptation;

(c) Improve cooperation between the different policy levels – local, national, regional and global – which is essential to ensure protection throughout the entire migration route, considering that migratory movements generally start as internal movements from rural to urban contexts, but may be subject to secondary relocations and cross-border migration. Involving city administrations and regional organizations in international processes concerning migration and development and including them in resource allocation mechanisms is crucial to meet the objective of the enhanced protection and integration of displaced people and migrants;

(d) Ensure that climate action not only reaches climate-vulnerable countries but also reaches people moving in the context of climate change and their host communities, in particular people living in unstable, vulnerable and hard-to-reach areas;

(e) Scale up adaptation financing and support for climate action in countries and host community areas in which migrants settle or to which they hope to safely return following their displacement, by strengthening preparedness and building resilience to climate impacts;

(f) Apply existing human rights and refugee instruments where there may be the need for international protection when cross-border migration occurs in the context of climate change and disasters;

(g) Increase action and support for measures to avert, minimize and address displacement, in particular in the most climate-vulnerable countries and communities, based on their specific needs. In this regard, ensure that human rights are upheld through meaningful and informed voluntary participation in timely relocation schemes;

(h) Address data gaps through the collection of disaggregated data, while upholding the right to privacy and data protection. In addition, invest in the collection, analysis and dissemination of sex-disaggregated data and gender statistics on climate change impacts and migratory movements;

(i) Develop and implement gender-responsive migration policies that protect and promote the human rights of migrant women and gender non-conforming migrants in the context of climate change. Create gender-responsive regular migration pathways related to climate change which allow for both temporary and permanent migration;

(j) Reduce the vulnerability of migrants by promoting regular pathways for migration. These can take the form of visas (humanitarian, work or study), humanitarian corridors established through partnerships with civil society organizations, visa waivers for specific populations, family reunification, regularization mechanisms based on human rights and humanitarian grounds, and temporary protection measures allowing family members to join a relative in a safe country;

(k) Take measures to promote access to essential services and take into account the vulnerable situation and specific needs of migrants in the planning, response and recovery phases of emergency management, in particular those of

---

women and girls, LGBT persons, children, indigenous peoples and minorities, persons with disabilities, older persons and other groups;

(1) Ensure the participation of civil society, affected individuals and communities, and other stakeholders in international forums, discussions, policymaking and decision-making processes on migration in the context of climate change. Civil society organizations' work must be adequately and reliably funded for this crucial function to be sustainable.

---



# General Assembly

Distr.: General  
15 July 2021

Original: English

---

## Seventy-sixth session

Item 75 (b) of the preliminary list\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Right to development

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the right to development, Saad Alfarargi, submitted in accordance with Human Rights Council resolutions [33/14](#) and [42/23](#).

---

\* [A/76/50](#).



## Report of the Special Rapporteur on the right to development, Saad Alfarargi

### *Summary*

In the present report, the Special Rapporteur on the right to development, Saad Alfarargi, examines the relationship between the right to development and climate change. He notes the challenges that developing countries continue to face owing to limited participation, access to information, accountability and remedies, funding and technology.

The Special Rapporteur finds that there must be a just transition away from a carbon-based economy and towards one that is based on sustainable development, the protection of human rights and the principle that no one is left behind. Such a future can only be achieved by understanding the Paris Agreement in the context of the right to development and equity between the global North and South, whereby the global North assists the South in building a climate-resilient economy. This climate-resilient economy will require significant funding for developing countries so that they can adapt to climate change and become equal partners in mitigating greenhouse gas emissions. Lessons learned from the coronavirus disease (COVID-19) pandemic about global connectivity, along with the economic infusions that many Governments are putting towards recovery, can facilitate a just transition.

In the report, the Special Rapporteur finds that fostering diversified, “green” economies with climate-resilient, sustainable development will not only bolster the right to development and adaptation in developing countries, but will also improve global equity, allowing developing countries to become stronger partners in mitigating climate change.

The Special Rapporteur notes several key issues associated with climate change and the right to development and provides recommendations for furthering the right to development and for combating climate change.

## I. Activities of the Special Rapporteur

1. The present report is submitted to the General Assembly pursuant to Human Rights Council resolutions 33/14 and 42/23.
2. At the forty-eight session of the Human Rights Council, the Special Rapporteur on the right to development, Saad Alfaragi, will submit a thematic report to the Council (A/HRC/48/56), in which he will examine climate action practices at the national level from the perspective of the right to development. He will highlight good practices and review challenges in ensuring the meaningful participation of rights holders. He will conclude with recommendations on integrating the right to development into climate action. The report will also contain a summary of the activities of the Special Rapporteur between September 2020 and July 2021.

## II. Background information on the right to development and climate change

### A. Introduction

3. The Special Rapporteur on the right to development is mandated to contribute to the promotion, protection and fulfilment of the right to development in the context of the implementation of the 2030 Agenda for Sustainable Development and other internationally agreed outcomes of 2015, including the Paris Agreement on climate change. In order to implement this mandate, he intends to examine the intersection of climate action and the right to development.
4. To gather information about the extent to which rights holders have been placed at the centre of decision-making on climate action, the Special Rapporteur issued a call for submissions from States Members of the United Nations, international organizations, practitioners, non-governmental organizations, think tanks, academics and other stakeholders.<sup>1</sup>
5. In 2020, against a background of increasing impacts of climate change, the coronavirus disease (COVID-19) rapidly emerged as a global pandemic. People who are at greatest risk of vulnerability, most marginalized and least empowered have been hit the hardest by both COVID-19 and climate change. The COVID-19 pandemic and policies to mitigate it have sharpened the disparities between more developed countries, where vaccines became abundant in a relatively short time, and developing countries, which continued to experience outbreaks and large death tolls.<sup>2</sup> The Special Rapporteur will examine some issues related to pandemic recovery in the context of climate change and the right to development in the present report.
6. The present report serves to expand upon the Special Rapporteur's guidelines and recommendations on the practical implementation of the right to development, which were contained in the report he presented to the United Nations Human Rights Council in September 2019 (A/HRC/42/38).

---

<sup>1</sup> The call for information and all submissions from States Members of the United Nations and other stakeholders are available at: [www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/SRDevelopmentIndex.aspx](http://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/SRDevelopmentIndex.aspx).

<sup>2</sup> Indermit Gill and Philip Schellekens, "COVID-19 is a developing country pandemic", Brookings Institute, 27 May 2021; Reuters, "Fact check: COVID-19 deaths have occurred in developing countries and among the US homeless", 4 March 2021.

## B. Impact of climate change on the right to development

7. Climate change multiplies the threats to human rights worldwide. It already affects and will increasingly affect a wide range of internationally guaranteed human rights, including the right to development. For example, extreme weather events, natural disasters, rising sea levels, floods, heat waves, droughts, desertification, water shortages, and the spread of tropical and vector-borne diseases can impede civil and political rights (the rights to life, liberty and property), and economic, social and cultural rights (the rights to work, education, social security, mental health, adequate food, clothing and housing).<sup>3</sup>

8. Climate change is inherently discriminatory. Its impacts have already fallen on the most vulnerable parts of global society: those who have not yet reaped the benefits of development and are not able to shield themselves or adequately recover from the fires and floods aggravated by climate change. For example, the effects of climate change are detrimental and disproportionate for many small islands and developing States, as noted in the report of the Independent Expert on human rights and international Solidarity on International Solidarity and Climate Change (A/HRC/44/44). The loss and damage to these States implicate a wide range of human rights.<sup>4</sup> Thus far, countries that are more developed have been better able to adapt to climate change by building climate-resilient infrastructure and using technology to improve their livelihoods and comfort levels.

9. Disproportionate impacts stem from the historical circumstances that have led to inequality, including colonization that depleted the resources of indigenous peoples and created global wealth disparities,<sup>5</sup> as well as trade systems put in place after the Second World War.<sup>6</sup> Dominant economic models fail to support the transformation of production and consumption patterns to sustainable and equitable levels, impede States from adopting their own development objectives<sup>7</sup> and fail to ensure human rights within the constraints of our global borders.<sup>8</sup>

10. In addition, more developed countries tend to have diversified economies that are more resilient to economic shocks and harm caused by climate change. Populations with a limited adaptive capacity (e.g. limited financial resources, mobility and technology) have suffered greater impacts.<sup>9</sup>

<sup>3</sup> Centre for International Environmental Law, “Reviewing the compatibility of States’ climate policies with their obligations under the ICESCR”, Climate Governance Note 2019/1, February 2019.

<sup>4</sup> Patrick Toussaint and Adrian Martínez Blanco, “A human rights-based approach to loss and damage under the climate change regime”, *Climate Policy*, vol. 20, No. 6, pp. 744–745 (2020).

<sup>5</sup> Lucia Fry and Philippa Lei, *A greener, fairer future: Why leaders need to invest in climate and girls’ education*, (Washington, D.C., Malala Fund, 2021).

<sup>6</sup> See Martin Khor and others, “Promoting sustainable development by addressing the impacts of climate change response measures on developing countries”, Research Paper 81 (Geneva, South Centre, 2017).

<sup>7</sup> See, for example, Kepa Artaraz, Melania Calestani and Mei L. Trueba, “Introduction: *Vivir bien/Buen vivir* and post-neoliberal development paths in Latin America – scope, strategies, and the realities of implementation”, *Latin American Perspectives*, vol. 48, No. 3, pp. 4–16 (2021).

<sup>8</sup> See, for example, Kate Raworth, “What on Earth is the Doughnut?”.

<sup>9</sup> Florian Weiler, “Adaptation and health: Are countries with more climate-sensitive health sectors more likely to receive adaptation aid?”, *International Journal of Environmental Research and Public Health*, issue 16, No. 8, p. 1353 (2019).

### **C. How projects to mitigate climate change relate to the right to development and how projects to support development affect climate change**

11. Policies and projects to address climate change can have unintended impacts on human rights, including the right to development. The Paris Agreement includes mechanisms that have the potential to impede the right to development if adequate safeguards are not ensured.

12. For example, under article 6 of the Agreement, Governments agreed to fulfil part of their mitigation commitments through voluntary cooperation. The agreement establishes mechanisms to meet their respective climate commitments through joint implementation, including a sustainable development mechanism. This mechanism is meant to operate as a central United Nations mechanism to trade credits from emissions reductions generated through specific projects – building on the experience of past market mechanisms, such as the clean development mechanism, which had been established under the Kyoto Protocol. The mechanism was put in place with no social or environmental safeguards or requirements for stakeholder participation and consultation, or access to any remedy for local communities that might be harmed by projects supported through the mechanism. As a consequence, some projects under the mechanism caused significant harm to local communities and indigenous peoples. Despite the expression of concerns related to such harm by United Nations human rights mechanisms,<sup>10</sup> no remedy was provided to the communities affected and these projects continued to be registered under the mechanism. Even where there are no clear human rights abuses, investment in a project may not make economic sense in terms of the amount of carbon reduction, and benefits or harm to local communities.<sup>11</sup>

13. Development finance can contribute to climate change, but adequate safeguards are necessary to ensure that such finance protects and supports human rights. Global energy, transport, buildings and water infrastructure emit more than 60 per cent of current greenhouse gases and increased development will serve to drive increased emissions. Recent estimates from the Organization for Economic Cooperation and Development (OECD) indicate that around \$6.3 trillion for infrastructure investment is needed each year to 2030 to meet development goals, increasing to \$6.9 trillion a year to make this investment compatible with the goals of the Paris Agreement.

### **D. International policy background on climate change and the right to development**

14. The international policy background applicable to the intersection of the right to development and climate change includes, among others, the Declaration on the Right to Development, the United Nations Framework Convention on Climate Change and Paris Agreement, and the 2030 Agenda for Sustainable Development.

15. All human persons and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development. The Declaration on the Right to Development outlines principles that should guide policy decisions on climate action. For example, it states that the right to development implies the full

<sup>10</sup> See addendum to the report of the Special Rapporteur on the rights of indigenous peoples, James Anaya, on the status of indigenous peoples' rights in Panama ([A/HRC/27/52/Add.1](#)), para. 42.

<sup>11</sup> See, for example, Ian Mitchell and Rachael Calleja, "Aid and climate change" PowerPoint from Development Leaders Conference, Center for Global Development, 19 November 2020 (describing a mitigation project in Tonga that cost \$156/ton of carbon dioxide reduction; this same mitigation could have been achieved somewhere else with enough money left over to give every Tongan \$450, which is 7 per cent of the national income).

realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the right of peoples to full sovereignty over all their natural wealth and resources (art. 1), and that the benefits of development should be fairly distributed (art. 2).

16. The right to development is rooted in sustainable development and equity, reflecting the holistic nature of the right, which takes into account not only economic well-being but also social and environmental aspects.<sup>12</sup> The 1992 United Nations Conference on Environment and Development concluded with various significant instruments tied to sustainable development, including United Nations Framework Convention on Climate Change and the Rio Declaration on Environment and Development. It is stated in principle 3 of the Rio Declaration that the right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations. The 1993 Vienna Declaration, in reaffirming the right to development, made the connection with the concept of sustainable development by stating that the right to development “should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations” (art. 11).

17. The 2030 Agenda reaffirms the key principles of the Declaration on the Right to Development and further links them to sustainable development. It also reaffirms (para. 12) the principles of the Rio Declaration, including, inter alia, the principle of common but differentiated responsibilities. Its seventeen Sustainable Development Goals range from providing access to energy and sustained economic growth (Sustainable Development Goals 7 and 8) to combating climate change and its impacts (Sustainable Development Goal 13) and protecting the environment (Sustainable Development Goals 14 and 15). Sustainable Development Goal 16 specifically incorporates a justice component into sustainable development, referring to the need to provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

18. The 2030 Agenda is anchored in human rights-based principles and commits to leaving no one behind. Goals that specifically refer to these obligations include Sustainable Development Goal 10, which aims to reduce inequality within and among countries; Sustainable Development Goal 5, on gender equality, urging governments to end all forms of discrimination; Sustainable Development Goal 2, which encourages governments to secure land access for those working in resource-based sectors, including women and indigenous people, and Sustainable Development Goal 12 on sustainable production and consumption patterns. The 2030 Agenda also requires businesses to act in accordance with the Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, which establish the responsibility to respect human rights.

19. Several targets established to achieve Sustainable Development Goal 13 are of particular relevance from the perspective of the right to development: target 13.1 (Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries); target 13.2 (Integrate climate change measures into national policies, strategies and planning); target 13.3 (Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning); and target 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).

---

<sup>12</sup> See, for example, Report of the World Commission on Environment and Development (A/42/427), pp. 1–82.

20. United Nations Framework Convention on Climate Change is grounded in the need for equity between the global North and South. In article 3, parties are called upon to address climate change “on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.” Article 4 provides for technology transfer from developed to developing countries. According to article 4 (7), “economic and social development and poverty reduction are the first and overriding priorities of the developing country Parties” and such priorities are to be taken into account in the context of both developed and developing countries’ implementation of their respective commitments under the Convention.

21. The Paris Agreement emphasizes the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty (preamble, para. 8). It provides a framework for financial, technical and capacity-building support from more developed countries to developing countries, both to mitigate greenhouse gases and to adapt to the effects of climate change. Notably, to achieve such results, in its preamble the Agreement explicitly states that its parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, including the right to development, as well as gender equality, empowerment of women and intergenerational equity. The Agreement recognizes that climate change has an impact on human rights, and calls for parties to consider human rights obligations (which include the right to development) when taking actions to address climate change (para. 11).

22. The procedural rights and obligations relevant to climate change are specifically recognized in article 12 of the Paris Agreement, which requires States to cooperate to enhance public awareness, public participation and public access to information. Article 13 of the Paris Agreement provides for a “transparency framework” regarding States’ compliance with obligations under the Agreement. Furthermore, it is acknowledged in article 7 of the Paris Agreement that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, the knowledge of indigenous peoples and local knowledge systems.

23. States have parallel obligations under other instruments, including the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), which requires parties to guarantee the rights of access to information, public participation in decision-making and access to justice in environmental and climate-related matters (art. 1). Likewise, the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) provides for rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters (art. 1).

24. Companies planning projects related to climate change and development have a responsibility to have a human rights policy and they must engage in human rights-based due diligence prior to starting a project (A/HRC/17/31). Since 2014, the United Nations Human Rights Council has been working to develop a treaty governing the activities of companies with respect to human rights through its open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

### III. Current practices and cooperation at the international level

#### A. Level of implementation and State compliance with climate change policies

25. The Special Rapporteur is pleased to note that States responding to the call for inputs demonstrated a range of mechanisms to address climate change, including integrating climate change concerns into national development strategies<sup>13</sup> or sectoral plans,<sup>14</sup> creating stand-alone adaptation plans<sup>15</sup> and implementing new laws<sup>16</sup> and programmes.<sup>17</sup>

26. Many States have worked to reduce their greenhouse gas emissions and have agreed to specific nationally determined contributions since signing the Paris Agreement. According to the registry of nationally determined contributions, maintained by the secretariat of the United Nations Framework Convention on Climate Change, 192 parties have submitted their first contributions and 8 have submitted their second contributions.<sup>18</sup> These include not only more developed countries such as the United States of America, but also less developed countries and those who were in transition (annex 1) at the time Convention was created. A total of 77 countries, more than 100 cities and over 170 companies have pledged to become carbon-neutral by the middle of the twenty-first century.<sup>19</sup>

27. The Special Rapporteur wishes to highlight the following achieved and planned reductions reported by States: Ukraine, in its submission of 22 February 2021, reported a 63.99 per cent greenhouse gas emission reduction from 1990 levels (excluding land use, land-use change and the forestry sector). Romania and other members of the European Union have taken measures to reduce greenhouse gas emissions, as its membership requires, with the goal of reducing emissions by 40 per cent compared to 1990 levels.<sup>20</sup> As noted in its submission of 31 March 2021, Brunei Darussalam communicated its first nationally determined contribution to Convention in December 2020, committing to a reduction in greenhouse gas emissions by 20 per cent by 2030. In 2016, Azerbaijan ratified the Paris Agreement and set a target of reducing greenhouse gas emissions by 35 per cent from 1990 levels by 2030.<sup>21</sup> Maldives has gone so far as to commit to net-zero emissions as early as 2030, so long

<sup>13</sup> Submission of Thailand of 4 March 2021.

<sup>14</sup> Submission of Lebanon of 15 April 2021.

<sup>15</sup> See, for example, submission of Thailand of 4 March 2021; submission of Kenya of 28 March 2021.

<sup>16</sup> See, for example, submission of Ecuador of 25 March 2021.

<sup>17</sup> See, for example, submission of Saudi Arabia of 28 March 2021.

<sup>18</sup> Nationally Determined Contributions Registry (interim) of the United Nations Framework Convention on Climate Change. Available at: [www4.unfccc.int/sites/ndcstaging/Pages/Home.aspx](http://www4.unfccc.int/sites/ndcstaging/Pages/Home.aspx) (accessed on 23 May 2021).

<sup>19</sup> International Institute for Sustainable Development, “77 Countries, 100+ cities commit to net-zero carbon emissions by 2050 at Climate Summit”, 24 September 2019. Available at: <https://sdg.iisd.org/news/77-countries-100-cities-commit-to-net-zero-carbon-emissions-by-2050-at-climate-summit/>. See also International Institute for Sustainable Development, “177 companies have pledged to reach net-zero emissions by 2050”, 17 December 2019. Available at: <https://sdg.iisd.org/news/177-companies-have-pledged-to-reach-net-zero-emissions-by-2050/>.

<sup>20</sup> Submission of Romania of 5 April 2021; submission by Germany and the European Commission on behalf of the European Union and its member States of 17 December 2020.

<sup>21</sup> Submission of 31 March 2021.

as it receives adequate international aid.<sup>22</sup> Some least-developed countries, including Zambia, have submitted nationally determined contributions.<sup>23</sup>

28. The Special Rapporteur is pleased to see that States are cooperating with others in their regions to advance climate initiatives. A number of State submissions demonstrated some level of international cooperation in addressing climate change. Region-wide initiatives such as the Pacific Adaptation to Climate Change Programme, the first major climate change adaptation initiative in the Pacific region, are helping to integrate climate risks into national planning and processes. The European Union and its member States in Partner Countries are pursuing a “Team Europe Approach” to achieve the goals of the Paris Agreement, protect natural resources and promote an ecological transition in their development pathways.<sup>24</sup>

29. States are using their leadership of regional and international forums to advance Paris Agreement goals. For example, Saudi Arabia made climate change a theme of its G20 presidency. As Chair of the Association of South-East Asian Nations (ASEAN) in 2021, Brunei Darussalam is championing climate action for the ASEAN region by overseeing a number of climate-related programmes not limited to areas such as the green economy, climate ambition, youth representation, and research and development.

30. The Special Rapporteur is concerned that market-based mechanisms for climate mitigation have the potential to undermine human rights.<sup>25</sup> Land-based mitigation strategies threaten the right to self-determination and access to land, which are key to fulfilling the right to development. To fulfil their obligations under human rights law and under the Paris Agreement, States must ensure that activities under article 6 contribute to sustainable development while promoting, considering and protecting human rights effectively. Mechanisms to achieve mitigation can draw from the practices and policies widely adopted by States in the policies of development and climate finance institutions.<sup>26</sup>

31. In addition, the Special Rapporteur is pleased that many States are embracing the principle of leaving no one behind and specifically integrating Sustainable Development Goals into their policies.<sup>27</sup> However, as noted at the United Nations high-level political forum on sustainable development, progress is slow or has stalled in many areas, including in efforts to address rising inequalities within and among countries and combat climate change, which, in turn, impedes achievement of the Sustainable Development Goals. The high-level political forum concluded that the world is not on track to achieve many targets by 2030. The COVID-19 pandemic has further constrained the funding needed to achieve the Sustainable Development Goals.<sup>28</sup>

<sup>22</sup> Submission of 1 March 2021.

<sup>23</sup> Nationally Determined Contributions Registry (interim) of the United Nations Framework Convention on Climate Change – Zambia. Available at: <https://www4.unfccc.int/sites/NDCCStaging/pages/Party.aspx?party=ZMB> (committing to a 25 per cent reduction compared to 2010 levels alone and a 47 per cent reduction with international support).

<sup>24</sup> Submissions of Italy of 26 March and 1 April 2021.

<sup>25</sup> See, for example, Friends of the Earth International, “Chasing carbon unicorns: the deception of carbon markets and ‘net zero’”, 22 February 2021.

<sup>26</sup> Centre for International Environmental Law, *Rights, Carbon, Caution: Upholding Human Rights under Article 6 of the Paris Agreement* (2021).

<sup>27</sup> See, for example, The Department of Sustainable Development, Government of Romania, “Romania’s Sustainable Development Strategy 2030”. Available at <https://bit.ly/3wa484W>. (This includes 104 targets for 2030 that adapt the 17 Sustainable Development Goals of the 2030 Agenda).

<sup>28</sup> OECD, “COVID-19 crisis threatens Sustainable Development Goals financing”, 10 November 2020. Available at: <https://www.oecd.org/newsroom/covid-19-crisis-threatens-sustainable-development-goals-financing.htm>.

## **B. Pandemic recovery in the context of climate change and the right to development**

32. Many States have been working to recover from the economic downturns caused by the COVID-19 pandemic and simultaneously increase their resilience to future shocks. In the European Union, Next Generation EU is a €750 billion temporary recovery instrument to help to repair the immediate economic and social damage caused by the pandemic.<sup>29</sup> This stimulus package requires member States to submit national recovery and resilience plans, which are intended to promote clean technologies and renewables, energy efficiency, sustainable transport, and education and training, with a focus on youth and gender equality.

33. Lebanon has leveraged pandemic recovery opportunities with opportunities to implement the Paris Agreement. In April 2020, the Government of Lebanon issued a financial recovery plan that includes a comprehensive economic programme aimed at resolving deep-seated financial and institutional problems, restoring confidence, boosting economic growth and promoting a healthy financial system. The plan mandates the swift implementation of the Paris Agreement through a climate change implementation decree. According to Lebanon's 2020 update on its nationally determined contribution, climate action will be synchronized with sustainable development efforts, the just transition of the workforce and the mitigation of the adverse impact of the COVID-19 pandemic.<sup>30</sup>

34. The Special Rapporteur wishes to highlight the various State submissions providing other examples of "green recoveries". Saudi Arabia's post COVID-19 economic recovery programme will expedite the implementation of its national Vision 2030 programme, which provides for achieving 50 per cent renewables in energy mix by 2030, building the world's largest green hydrogen facility and expanding the biggest carbon capture and utilization project. Bahrain reports that its pandemic recovery, after attending to its immediate needs, shifted to a green recovery that satisfies the needs of sustainable development (e.g. banning single-use plastic bags at local bakeries). Thailand reports that COVID-19 recovery strategies are ensuring that sustainability is taken into account, including in relation to climate change mitigation and adaptation. For example, it is offering more than 16,000 jobs in the various departments related to conservation to help people affected by COVID-19 to increase their income and promote local community engagement in the conservation and management of natural resources and the environment. Ecuador joined a regional initiative called the Post COVID-19 Green Recovery for Food, Health and Water Security Strengthened by Financial and Technological Innovations in Latin American Countries, sponsored by the Inter-American Institute for Cooperation on Agriculture. This initiative seeks to strengthen the ability of countries in the region to generate and build optimal capacities for the implementation of post-COVID-19 actions.<sup>31</sup>

35. The significant public investments in COVID-19 recovery plans are a historical opportunity to reorient the processes that are leading to the irreversible destruction of the

---

<sup>29</sup> Submissions of 26 March and 1 April 2021.

<sup>30</sup> Lebanon's Nationally Determined Contribution – Updated 2020 version. Available at: <https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Lebanon%20First/Lebanon%27s%202020%20Nationally%20Determined%20Contribution%20Update.pdf>.

<sup>31</sup> Submission of Saudi Arabia of 30 March 2021; Submission of Bahrain of 28 March 2021; Submission of Thailand of 4 March 2021; Submission of Ecuador of 25 March 2021.

Earth towards more equitable and sustainable production and consumption patterns and a more democratic global governance of economic and financial systems.<sup>32</sup>

### C. Participation and access to information

36. Participation is a key component of the right to development, especially the participation of those at high risk of vulnerability. The United Nations High Commissioner for Human Rights has noted that “public participation rights encompass the rights to be consulted at each phase of legislative drafting and policymaking, to voice criticism and to submit proposals aimed at improving the functioning and inclusivity of all governmental bodies engaged in the conduct of public affairs” (A/HRC/27/29). Furthermore, companies engaged in projects to address climate change or promote development are responsible for ensuring access to information and participation through due diligence reviews prior to starting the projects.

37. The Special Rapporteur appreciates that States are mindful of their obligations to provide access to information and promote participation. For example, Lebanon reports that it regularly shares best practices through its donor organization for international exposure and meaningful South-South exchange.

38. One mechanism reported by Italy for increasing access to information is the International Aid Transparency Initiative, which organizes information and encourages transparent reporting in relation to development and humanitarian organizations in low-income countries to help donors to know where to spend.<sup>33</sup> Members include about 30 State Governments, as well as civil society organizations, development funders and banks.<sup>34</sup>

39. Many countries have laws mandating environmental impact assessments but few countries have a specific system for a human rights assessment that discloses the impacts of policies, legislation, programmes or a project on human rights.<sup>35</sup>

40. The Special Rapporteur notes the good policies included in the Information Disclosure Policy (2016) of the Green Climate Fund, which imposes on climate financers a duty to maximize information disclosure. Additionally, it is stated in the Environmental and Social Policy of the Fund that the information provided should be made available in different languages and multiple formats to ensure that marginalized groups reach a complete understanding of the project.

41. The right to development implies the right to participate in the global economy. In the trade regime, promoting the objective of sustainable development is clearly stated in the preamble of the Agreement Establishing the World Trade Organization (WTO), as well as in the Doha Ministerial Declaration (para. 6). However, there is great concern that trade measures ostensibly implemented by developed countries to address environmental concerns (such as climate change) may in fact have the effect of restricting the entry of low-income countries into high-income country markets and of enhancing the competitive edge of low-income countries. This could damage the trade and sustainable development prospects of low-income countries.<sup>36</sup> Penalizing

<sup>32</sup> Associazione Comunità Papa Giovanni XXIII, Call for information – Special Rapporteur on the right to development, “Climate change related policies and projects from a right to development perspective”, 2021.

<sup>33</sup> International Aid Transparency Initiative, “About IATI”. Available at: <https://iatistandard.org/en/about/> (accessed on 23 May 2021).

<sup>34</sup> International Aid Transparency Initiative, “Members’ Assembly”. Available at: <https://iatistandard.org/en/governance/members-assembly/> (accessed on 23 May 2021).

<sup>35</sup> World Bank, *Study on Human Rights Impact Assessments: A Review of the Literature, Differences with Other Forms of Assessments and Relevance for Development* (World Bank, 2013), p. 1.

<sup>36</sup> Khor and others, “Promoting sustainable development”, p. 46 (see footnote 6).

low-income countries for more carbon-intensive exports, as opposed to providing them with the technology to reduce emissions, is not consistent with the United Nations Framework Convention on Climate Change (arts 3 (1) and (5)).

#### D. Accountability and remedies

42. Domestic legislation is relatively undeveloped in terms of providing remedies to residents of a host country who are harmed by the projects or products of an external entity. There is some movement in Europe toward holding international entities accountable. For example, French law imposes a “duty of vigilance” on certain large French companies to prevent environmental and human rights harm caused abroad by their subsidiaries and other business relationships.<sup>37</sup> Parent companies must design, implement and account for the measures put in place to identify, prevent and address human rights risks and impacts throughout their global operations. Those harmed by an alleged lack of vigilance may sue the parent company in a French court.<sup>38</sup>

43. Standards to address climate change and sustainable development have not been backed by the creation of robust review and/or accountability mechanisms that address the issues in an integrated manner. Many of the mechanisms operate in silos, with limited roles for human rights mechanisms.<sup>39</sup> There are insufficient accountability mechanisms to hold businesses and States accountable for non-compliance with human rights.

44. Many international finance institutions have installed independent accountability mechanisms to assure that investments meet development goals and comply with social and environmental policies. Such mechanisms provide a means of raising and remedying harm associated with projects, thereby shining a light on the social and environmental risks of investments.<sup>40</sup> For example, the Independent Redress Mechanism of the Green Climate Fund provides recourse to those affected or who may be affected by Fund projects or programmes, and also accepts requests for reconsideration of funding proposals that have been denied by the Board of the Fund.<sup>41</sup> However, where projects are funded through private funds or bilateral agreements, few avenues for independent community feedback currently exist.<sup>42</sup>

45. Loss and damage refer to negative impacts of climate change that occur despite adaptation and mitigation efforts. Climate change impacts that are permanent and

<sup>37</sup> France, Law No. 2017-399 of 27 March 2017 on the duty of care of parent companies and contracting companies. This applies to companies domiciled in France with at least 5,000 employees in the parent and subsidiary companies or domiciled elsewhere with at least 10,000 employees in the parent and subsidiary company.

<sup>38</sup> Another model is the holding adopted in the case in the England and Wales Court of Appeal (Civil Division) of *David Brian Chandler v. Cape PLC* (25 April 2012), where the court held that a parent company may owe a direct duty of care to its subsidiary’s employees where (a) the businesses of the parent and subsidiary are in a relevant respect the same; (b) the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry; (c) the subsidiary’s system of work is unsafe as the parent company knew, or ought to have known; and (d) the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees’ protection.

<sup>39</sup> Franciscans International, *A Toolbox: Human Rights, Sustainable Development & Climate Policies – Connecting the Dots* (2018).

<sup>40</sup> Accountability Counsel, “The data speaks: sustainable recovery goals risk falling short without respect for human rights”, 2020. Available at: <https://www.accountabilitycounsel.org/wp-content/uploads/2020/11/human-rights-in-development-finance-data-110620.pdf>.

<sup>41</sup> Green Climate Fund, “Independent Redress Mechanism”. Available at: <https://irm.greenclimate.fund/> (accessed on 12 June 2021).

<sup>42</sup> Accountability Counsel, “The data speaks” (see footnote 40).

irreversible are categorized as a loss, while damage refers to impacts where reparation or restoration is possible.<sup>43</sup> Given the past decades of insufficient action to tackle the root causes of climate change, many of the States and communities most exposed to climate impacts now face loss and damages for which adaptation can no longer serve as a preventive measure.<sup>44</sup> In the majority of cases, this loss and damage undermines the rights of communities particularly at risk of vulnerability or marginalization, and threatens to undo any progress achieved in past decades towards the realization of the right to development.

46. Under the United Nations climate agreements, loss and damage were recognized as essential parts of the global response to the climate crisis with the establishment of the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts in 2013 and with the adoption of article 8 of the Paris Agreement. However, little progress has been achieved at the international level to meet the actual need of the most impacted countries. The inadequacy of international cooperation aimed at addressing loss and damage pose a systemic threat to the realization of a broad range of human rights for those communities and indigenous peoples most exposed to adverse climate impacts – in particular to their right to development.

47. The current international response to loss and damage does not sufficiently consider human rights. It was stated in a 2019 report that different market mechanisms (in the field of humanitarian crises), which fund efforts to remedy the harmful impacts of, inter alia, climate change, had failed to meet human rights criteria for responding to loss and damage caused by climate change.<sup>45</sup>

48. The duty of international cooperation applies in the context of climate change, as stressed by the 2018 statement by the Committee on Economic, Social and Cultural Rights<sup>46</sup> and the 2019 joint statement by five human rights treaty bodies.<sup>47</sup> The latter also added that “States must co-operate in good faith in the establishment of global responses addressing climate-related loss and damage suffered by the most vulnerable countries, paying particular attention to safeguarding the rights of those who are at particular risk of climate harm and addressing the devastating impact, including on women, children, persons with disabilities and indigenous peoples.” It was stated in the 2019 report on climate change and poverty of the Special Rapporteur on extreme poverty and human rights that “[h]uman rights law requires a remedy for violations and climate change is no different” (A/HRC/41/39). These obligations relate to mitigation, adaptation, finance and loss and damage, and the duty to regulate businesses and other actors to prevent any more human rights violations.<sup>48</sup>

<sup>43</sup> Ibid.

<sup>44</sup> Adelle Thomas, Inga Menke and Olivia Serdeczny, “Loss and damage costing and financing mechanisms: Caribbean outlook”, Climate Analytics. Available at: [https://climateanalytics.org/media/ln\\_d\\_costing\\_and\\_financing\\_mechanisms\\_caribbean\\_outlook.pdf](https://climateanalytics.org/media/ln_d_costing_and_financing_mechanisms_caribbean_outlook.pdf).

<sup>45</sup> ActionAid, “Market solutions to help climate victims fail human rights test”, 8 April 2019. Available at: <https://actionaid.org/sites/default/files/publications/Loss%20and%20Damage%20Finance%20and%20Hum....pdf>.

<sup>46</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Climate change and the International Covenant on Economic, Social and Cultural Rights – Statement of the Committee on Economic, Social and Cultural Rights”. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E>.

<sup>47</sup> OHCHR, “Five UN human rights treaty bodies issue a joint statement on human rights and climate change”, 16 September 2019. Available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E> (accessed on 8 April 2021).

<sup>48</sup> Centre for International Environmental Law, *Funding Our Future: Five Pillars for Advancing Rights-Based Climate Finance* (2021).

## E. Financial assistance and equitable access to science and technology to address climate change

49. Climate action requires ambitious action and significant financial resources to support substantial emissions reductions, adaptation to climate change and measures to address loss and damage owing to climate change.

50. As noted in the submissions by Ecuador (25 March 2021) and Maldives (1 March 2021), many low-income countries are not in a position to contribute to international financial support. Rather, they are seeking support. In contrast, some countries that were considered to be less developed when the Convention was created (e.g. Romania) are now supporting other countries through bilateral and multilateral channels. Bilateral projects implemented so far by Romania have gone to least developed countries (e.g. Democratic Republic of Congo and the Sudan), lower middle-income countries (e.g. Georgia and Republic of Moldova) and small island States prone to climate change-related natural disasters.

51. In order to develop in a climate-resilient manner, middle and low-income States (and people at high risk for vulnerability within high-income States) need assistance from those who contributed most to climate change. This concept, known as a “just transition”, has advanced from its origination in the labour union movement and is now relevant to all sectors of society.<sup>49</sup> It has become intertwined with the concept of climate justice,<sup>50</sup> whereby the global North, which is historically responsible for climate change, has the moral and legal obligation<sup>51</sup> to lead efforts to deal with the impact of climate change. Climate justice demands the equitable distribution of climate finance. As noted in the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/31/52), States acting individually and in cooperation must take steps to protect those most vulnerable to the impacts of climate change. Development contributes to adaptive capacity; indeed, many determinants of adaptive capacity are themselves indicators of the degree of development of a country.<sup>52</sup> By assisting those who are at high risk of vulnerability to fulfil their right to development, developed countries can help these populations to adapt.<sup>53</sup>

52. The current climate finance architecture is based on equity to ensure that developed States – historically most responsible for climate change – have the duty to help developing States, which are more vulnerable to the effects of climate change.<sup>54</sup> According to article 4 (3) and (4) of the United Nations Framework Convention on Climate Change, developed States “shall provide new and additional financial resources” to help developing States to achieve the objectives of the

<sup>49</sup> See Samantha Smith, *Just Transition, A Report for the OECD* (OECD, 2017). Available at: <https://www.oecd.org/environment/cc/g20-climate/collapsecontents/Just-Transition-Centre-report-just-transition.pdf>; see also the preamble to the Paris Agreement (“Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities”).

<sup>50</sup> See James Goodman, “From Global Justice to Climate Justice? Justice Ecologism in an Era of Global Warming”, *New Political Science*, vol. 31, No. 4, (2009) pp. 499–514.

<sup>51</sup> Article 3.1 of the United Nations Framework Convention on Climate Change provides for the principle of common but differentiated responsibilities.

<sup>52</sup> Indur Goklany, “Integrated strategies to reduce vulnerability and advance adaptation, mitigation, and sustainable development”, *Mitigation and Adaptation Strategies for Global Change*, vol. 12, No. 5 (June 2007), pp. 755–786.

<sup>53</sup> South Centre, “Sustainable development in the context of climate change: overriding priority of the South”, Analytical Note SC/GGDP/AN/ENV/, 6 September 2008. Available at: [https://www.southcentre.int/wp-content/uploads/2013/07/AN\\_ENV6\\_Sustainable-development-in-Climate-Change\\_EN.pdf](https://www.southcentre.int/wp-content/uploads/2013/07/AN_ENV6_Sustainable-development-in-Climate-Change_EN.pdf).

<sup>54</sup> Centre for International Environmental Law, *Funding Our Future* (see footnote 48).

Convention, and “shall also assist the developing country parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation.” In article 9 of the Paris Agreement, the duty of developed country parties to assist financially developing country parties for mitigation and adaptation action is reiterated, and in article 8 (1) and (2) the need for “averting, minimizing and addressing loss and damage associated with the adverse effects of climate change” is highlighted.

53. The 2015 Paris Agreement reaffirmed the commitment made in Cancun, Mexico, in 2010 by developed countries to mobilize \$100 billion per year by 2020, extending this to the year 2025 and making the \$100 billion a floor from which to scale up climate finance. Before 2025, the parties to the Paris Agreement are supposed to set a new goal (from a floor of \$100 billion), taking into account the needs and priorities of developing countries.<sup>55</sup>

54. In 2018, climate spending reached \$78.9 billion, with 80 per cent of that from the public sector.<sup>56</sup> This funding represents an 11 per cent increase from the previous year.<sup>57</sup> However, much of the current funding comes from the public sector and is distributed from one State to another through bilateral channels.<sup>58</sup> United Nations entities and lending institutions, such as the World Bank, provide a significant portion of public multilateral funding. In some cases, exaggerated amounts of aid are being reported.<sup>59</sup> The Special Rapporteur is concerned that a significant portion of official bilateral development assistance and other official flows (official sector transactions that do not meet official development assistance criteria) may have been characterized by States as “new” when they are really the same level of spending as before.<sup>60</sup>

55. The largest fund designed to help developing countries to address the climate crisis is the Green Climate Fund. Since its establishment in 2010, the Fund has taken significant steps to ensure that the adaptation and mitigation projects and programmes it funds do not undermine human rights. To that end, it has taken steps to create an environmental and social management system, ensure respect for the rights of indigenous peoples, and promote gender equality. It has adopted an Environmental and Social Policy, an Indigenous Peoples Policy, an Information Disclosure Policy, and a Gender Policy and Action Plan. It has also created an Independent Redress Mechanism to provide an avenue for access to remedy for communities who are or who may be affected by Fund projects.

56. However, to date, the Green Climate Fund has been operating under an interim environmental and social policy and has yet to adopt its own safeguards. The Fund is also in the process of reviewing and updating its Information Disclosure Policy and guidelines on observer participation, both of which are critical to ensuring the right to access to information and participation. It has not adopted an exclusion list to specify projects that cannot be funded. The Fund works through accredited entities, which also have to comply with its policies. While it has over 100 accredited entities,

<sup>55</sup> Adoption of the Paris Agreement – Proposal by the President – Draft decision -/CP.21, [FCCC/CP/2015/L.9/Rev.1](#), para. 54.

<sup>56</sup> Mitchell and Calleja, “Aid and climate change” (see footnote 11).

<sup>57</sup> Ibid.

<sup>58</sup> Weiler, “Adaptation and health” (see footnote 9). For example, the Italian Ministry for the Environment has signed 46 memorandums of understanding for climate change-related projects and more than 80 projects have been approved. See p. 6 of the Additional Contribution of Italy of March 2021.

<sup>59</sup> Ian Mitchell and others, “Improving the measurement of climate finance and progress on the \$100bn target”, Center for Global Development (29 October 2020).

<sup>60</sup> Mitchell and Calleja, “Aid and climate change” (see footnote 11).

many challenges remain to ensure access to finance for those on the frontlines who need it most.

57. Among United Nations programmes, the Green Climate Fund plays an important role in supporting and working with low-income countries to combat climate change and shifting toward low-emission and climate-resilient development pathways. Such programmes depend on States pledging and fulfilling pledges to donate funds to the Fund. Half of all Fund's funding is intended to be dedicated to adaptation, with half of that amount dedicated to the countries most vulnerable to climate changes.<sup>61</sup>

58. The Adaptation Fund specifically funds adaptation projects that either reduce the vulnerability of social organizations and natural systems, or that boost their adaptive capacity.<sup>62</sup>

59. The United Nations Environment Programme has estimated global adaptation investment needs as costing between \$140 billion and \$300 billion per year by 2030 and between \$280 billion and \$500 billion by 2050.<sup>63</sup> Unlike mitigation, adaptation does not lend itself easily to market-based tools,<sup>64</sup> and private-sector tools for adaptation have been slow to emerge.<sup>65</sup> The amount of adaptation spending has been inadequate, constituting 30 per cent of 2018 spending to address climate change,<sup>66</sup> and the Adaptation Fund has not reached its objectives for the past two years.

60. The Special Rapporteur is further concerned that funding for adaptation and development often is in the form of loans, not grants, which could increase the debt of low-income countries. The true value of support for climate action may be as little as \$19 billion to \$22.5 billion per year once loan repayments, interest and other forms of over-reporting have been stripped out.<sup>67</sup> An OECD assessment carried out in 2018 reveals that, while the mobilization of climate finance has increased in recent years, the majority of these resources are provided for mitigation, rather than for adaptation, loss and damage.<sup>68</sup> Moreover, only a small minority of resources are made available in the form of grants (rather than loans), which are the financial tool best suited to meeting the needs of the most vulnerable countries.<sup>69</sup>

61. The Special Rapporteur finds that the efficacy of spending on carbon reduction is varied. The cost of carbon reductions can range from under \$10 to over \$1,000 per ton of carbon dioxide reduced.<sup>70</sup> Higher costs are appropriate where a project has

<sup>61</sup> Green Climate Fund, "About GCF". Available at: <https://www.greenclimate.fund/about> (accessed on 12 June 2021).

<sup>62</sup> Adaptation Fund, "Operational Policies and Guidelines – Annex 1: Strategic Priorities, Policies, and Guidelines of the Adaptation Fund Adopted by the CMP", 2017. Available at: <http://www.adaptation-fund.org/wp-content/uploads/2015/01/OPG%20ANNEX%201.pdf>.

<sup>63</sup> United Nations Environment Programme, *The Adaptation Finance Gap Report* (2016). Available at: <https://climateanalytics.org/media/agr2016.pdf>.

<sup>64</sup> Aaron Atteridge, "Private sector finance and climate change adaptation", Stockholm Environment Institute Policy Brief, 2010. Available at: <https://www.sei.org/publications/private-sector-finance-climate-change-adaptation/>.

<sup>65</sup> Barbara Buchner and others, "Global landscape of climate finance 2019", Climate Policy Initiative, 2019. Available at: <https://www.climatepolicyinitiative.org/publication/global-landscape-of-climate-finance-2019/>.

<sup>66</sup> Mitchell and Calleja, "Aid and climate change" (see footnote 11).

<sup>67</sup> Oxfam, "True value of climate finance is just a third of that reported by developed countries", 20 October 2020. Available at: <https://reliefweb.int/report/world/true-value-climate-finance-just-third-reported-developed-countries-oxfam>.

<sup>68</sup> OECD, "Climate finance for developing countries rose to USD 78.9 billion in 2018", 6 November 2018. Available at: <https://www.oecd.org/newsroom/climate-finance-for-developing-countries-rose-to-usd-78-9-billion-in-2018oecd.htm>. (accessed on 8 April 2021).

<sup>69</sup> Ibid.

<sup>70</sup> Mitchell and Calleja, "Aid and climate change" (see footnote 11).

benefits to local communities beyond carbon reduction (i.e., providing local clean energy or sustainable development).

62. As noted above, much of the climate funding currently available takes the form of bilateral foreign aid, rather than going through channels of the United Nations Framework Convention on Climate Change, such as the Global Environment Facility, the Green Climate Fund or the Adaptation Fund. Other funding is channelled through multilateral development banks. This type of funding is voluntary and not accountable to Convention and can reflect the donor's priorities rather than those of the recipient.<sup>71</sup>

63. As Maldives notes in its response, an equitable balance must be struck between protecting the property interests of technology holders and protecting the lives of people who are vulnerable to climate change and the poverty associated with a lack of development.

64. Just as there is a historical disparity in financial resources and development between the global North and South, there is also a disparity in adaptive capacity and the capacity to achieve the Sustainable Development Goals. Particularly problematic is the unequal access to scientific information and technology, especially for the least developed countries and small island developing States, as noted at the United Nations high-level political forum on sustainable development held in 2019. Low-income countries often rely on older technologies that are less efficient and pollute more. Their economies are often based on just a few key sectors that are not resilient to climate change and external shocks. They may export only a limited range of commodities, often with a high carbon content and oriented towards markets that require long distance transportation by air or sea.<sup>72</sup> They therefore lack the technology and economic diversification to either mitigate or adapt to climate change.

## **F. Systems to evaluate progress in achieving climate-resilient and sustainable development**

65. The 2030 Agenda for Sustainable Development encourages States to “conduct regular and inclusive reviews of progress at the national and subnational levels which are country-led and country-driven” (para. 79). The United Nations Secretary-General provided guidelines for States to voluntarily review their progress in achieving the Sustainable Development Goals.<sup>73</sup> States share their voluntary national review annually at the Economic and Social Council and every four years before the United Nations General Assembly.<sup>74</sup> In 2021, 44 countries participated in the annual review.<sup>75</sup>

66. A United Nations task force has prepared a set of criteria specifically for evaluating state implementation of the right to development.<sup>76</sup> It considers (a) States acting collectively in global and regional partnerships; (b) States acting individually as they adopt and implement policies that may have impacts beyond State borders; and (c) States acting individually as they adopt and implement policies affecting persons within their jurisdiction. These criteria could be considered at the next stocktaking of the Paris Agreement. Additional criteria may be needed to measure the

<sup>71</sup> South Centre, “Sustainable development in the context of climate change” (see footnote 53).

<sup>72</sup> Khor and others, “Promoting sustainable development” (see footnote 6).

<sup>73</sup> *Handbook for the Preparation of the Voluntary National Reviews* (United Nations publication, 2018). Available at: [https://www.sdg16hub.org/system/files/2018-07/17354VNR\\_handbook\\_2018.pdf](https://www.sdg16hub.org/system/files/2018-07/17354VNR_handbook_2018.pdf).

<sup>74</sup> Ibid.

<sup>75</sup> United Nations, “Q&A for voluntary national reviews at the 2021 HLPF”. Available at: [https://sustainabledevelopment.un.org/content/documents/27144QA\\_VNR\\_2021.pdf](https://sustainabledevelopment.un.org/content/documents/27144QA_VNR_2021.pdf).

<sup>76</sup> See report of the Working Group on the Right to Development on its fifteenth session (A/HRC/27/45).

extent to which transnational corporations that may escape state jurisdiction are fulfilling or impeding the right to development.

67. The Special Rapporteur is concerned that there is not yet a clear method for determining the efficacy of the funds that assist low-income countries with climate change.<sup>77</sup> For example, some projects initially marked as having no mitigation focus are later designated as having a principal mitigation objective, while others claim to have a principal mitigation objective but do not mention mitigation in any project documents.<sup>78</sup>

68. Although some nations and regions have developed carbon trading regimes,<sup>79</sup> there is no single, coordinated global scheme to manage carbon reductions and assess their efficacy.<sup>80</sup> Various entities have developed standards for certifying the amount of carbon reduced through the clean development mechanism and other offset projects, including the Gold Standard<sup>81</sup> and the Verified Carbon Standard.<sup>82</sup> While these verification programmes may be able to certify the amount of carbon a project reduces at a particular point in time, there is not a standard mechanism for assessing how the project benefits (or harms) the local communities in the vicinity of the project. There are concerns that carbon offsets have been inflated.<sup>83</sup>

69. The Special Rapporteur considers that the climate change actions of low-income countries, whether in terms of mitigation or adaptation, should not be assessed by the same standards as those of high-income countries. Rather, the assessment should be done progressively and take into account the extent to which the developmental goals of low-income countries are met as the context under which their climate change actions take place.<sup>84</sup>

70. Projects that specifically address adaptation (as opposed to carbon reduction) should be evaluated on different terms as adaptation projects must benefit a specific group of people rather than the general public good. Ensuring efficient adaptation is more difficult than ensuring efficient mitigation, given the intertwined nature of development and adaptation and the broad range of interventions and infrastructure needed to develop climate resilient systems. Projects that only partially promote “adaptation” may still be valuable to a group of people at high risk of vulnerability if they help to alleviate poverty and provide for a diversified, sustainable economy (thereby facilitating adaptive capacity).

<sup>77</sup> Mitchell and others, “Improving the measurement of climate finance and progress” (see footnote 59).

<sup>78</sup> Ibid.

<sup>79</sup> For example, European Commission, “EU Emissions Trading System (EU ETS)”. Available at: [https://ec.europa.eu/clima/policies/ets\\_en](https://ec.europa.eu/clima/policies/ets_en).

<sup>80</sup> Martin Cames and others, “How additional is the Clean Development Mechanism? Analysis of the application of current tools and proposed alternatives”, DG CLIMA, March 2016. Available at: [https://ec.europa.eu/clima/sites/clima/files/ets/docs/clean\\_dev\\_mechanism\\_en.pdf](https://ec.europa.eu/clima/sites/clima/files/ets/docs/clean_dev_mechanism_en.pdf). Even with European Union Emissions Trading System, the extent of carbon reduction is not clear. For information on assessing the effectiveness of the Emissions Trading System, see Tim Laing and others, “Assessing the effectiveness of the EU Emissions Trading System”, Centre for Climate Change Economics and Policy Working Paper No. 126, 2013. Available at: <https://www.ccecp.ac.uk/wp-content/uploads/2015/10/WP106-effectiveness-eu-emissions-trading-system.pdf>.

<sup>81</sup> Gold Standard, “Certified SDG impacts for results based finance”. Available at: <https://www.goldstandard.org/impact-quantification/certified-sdg-impacts>.

<sup>82</sup> Verra, “Verified Carbon Standard”. Available at: <https://verra.org/project/vcs-program/>.

<sup>83</sup> See, for example, Thales A. P. West and others, “Overstated carbon emission reductions from voluntary REDD+ projects in the Brazilian Amazon”, *Proceedings of the National Academy of Sciences of the United States of America*, vol. 117, No. 39 (2020), pp. 24188–24194.

<sup>84</sup> Hesham Al-Zahrani and others, “Ensuring an operational equity-based global stocktake under the Paris Agreement”, Research Paper 99 (Geneva, South Centre, 2019), p. 12; see also Paris Agreement, art. 14.1, referring to global stocktaking “in the light of equity and the best available science”.

## **IV. Conclusions and recommendations**

### **A. International cooperation to address climate change**

71. In the face of the climate crisis, the international community must design and implement ambitious and comprehensive policies and measures that pave the way for a real and transformative ecological transition. Countries must ensure the right to development by supporting development models that achieve a safe climate and meet the Sustainable Development Goals, including the need to align both production and consumption patterns with sustainable and equitable levels.

72. States should uphold and fully implement their commitments under the United Nations Framework Convention on Climate Change and its related legal instruments, including the Kyoto Protocol and the Paris Agreement, consistent with the principle of common but differentiated responsibility and respective capabilities, in light of equity and taking into account States' differentiated historical responsibility for greenhouse gas emissions.

73. Efforts to combat climate change under the Convention and the Paris Agreement must not violate human rights. States should adopt rules for the sustainable development mechanism under article 6 (4) of the Paris Agreement that include activities that promote, respect and consider human rights. This should include the adoption of human rights-based social and environmental safeguards; requirements for ensuring the meaningful participation and consultation of communities and indigenous peoples throughout the design, development and implementation of any project under this mechanism, including ensuring the free, prior and informed consent of indigenous peoples; and an independent mechanism for redressing grievances.

74. Development banks should adhere to human rights principles, and should avoid funding further development of fossil fuels to ensure that development finance is compatible with international climate obligations.

### **B. Participation and access to information**

75. States must ensure that those affected by climate change and climate-related decision-making, in particular, indigenous and local communities and those who face intersectional discrimination, have ongoing access to information; free, prior, informed consent; and participation.

76. Such information must include scientific evidence about the risks of climate change and the State's plans to implement climate change and development policies consistent with this science and in accordance with State obligations under the Convention and the Paris Agreement, the 2030 Agenda for Sustainable Development and international human rights instruments.

77. Such information should also include an assessment of risks to human rights that are associated with climate change mitigation and adaptation, the impacts of response measures, and loss and damage arising from the impacts of climate change.

78. States should adopt laws requiring human rights impact assessments that consider the implications of development and climate mitigation and adaptation projects on the right to development.

79. The State's obligations to ensure participation and access to information apply extraterritorially, to activities outside a State's territories that are within the State's influence or control.

### **C. Accountability and remedy**

80. States should ensure that their court systems and/or administrative procedures provide rights holders a means through which they can seek restitution for violations of their human rights that result from climate change, climate change response measures (including mitigation and adaptation) or development finance, including for harm that occurs extraterritorially.

81. States should fulfil their extraterritorial obligations by regulating the actions of multinational corporations and their subsidiaries that are either headquartered or operating in their territories. States should actively participate in the Human Rights Council negotiations for a binding treaty on transnational corporations and human rights.

82. Activities to mitigate or adapt to climate change should provide for independent grievance mechanisms in line with the effectiveness criteria of the United Nations Guiding Principles.

83. States should urgently enhance their cooperation to address loss and damages resulting from climate change. Adequate political attention should be dedicated to loss and damage in the implementation of the Paris Agreement, including through a dedicated agenda item at the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change and subsequent annual Conferences of the Parties, focused on ensuring the effective operationalization of modalities for averting, minimizing and addressing loss and damage arising from the impacts of climate change, including through the provision of financial and technical assistance.

84. States should, as a matter of urgency, scale up financial support provided to communities most affected by loss and damage caused by climate change. An international funding facility should be established to channel new public commitments of finance, in particular from developed countries, on loss and damage. Until an agreement on such instruments can be found under the Convention, States should uphold their duty to cooperate through the establishment of national or multilateral mechanisms to mobilize adequate resources to address loss and damage.

85. Climate finance provided for loss and damage should contribute to the realization of human rights, including the right to development, of the most affected communities. The provision and distribution of these funds must be guided by the principles of transparency, participation, non-discrimination and accountability. Funding for loss and damage must be provided in a manner that adequately benefits communities and low-income countries that are particularly vulnerable, without aggravating the public debt of recipient States by prioritizing grants over loans.

86. The twenty-sixth Conference of the Parties to United Nations Framework Convention on Climate Change should effectively operationalize the Santiago Network for Averting, Minimizing and Addressing Loss and Damage, including with a well-resourced secretariat, be it as a new entity or a host organization, to ensure that the Network can begin its operations as soon as possible and deliver on the ground. The modalities for the Santiago Network must ensure that stakeholders can actively contribute to the work of the Network. The organizations, entities and experts participating in the Network should consider how to address issues related

to the promotion and protection of human rights most effectively, including the rights of indigenous peoples and gender equality, among other issues. In addition, the same consideration should be undertaken by the Executive Committee of the Warsaw International Mechanism for Loss and Damage.

87. Human rights institutions and authorities should, within the scope of their mandates, review and monitor the implementation by the States of their duty to address and remedy loss and damage caused by climate change, including in relation to their duty to cooperate internationally and to remedy the adverse extraterritorial impacts of activities taking place under their jurisdiction.

88. Developed countries listed in annex I of the Convention and lending entities should consider exchanging their historical carbon debt for debts incurred by low-income countries for development projects. Historical carbon debt could justify cancelling debts that will only keep low-income countries impoverished.

#### **D. Financial obligations for assistance to address climate change**

89. To provide for a just transition, and in accordance with the principles and provisions of the Convention and the Paris Agreement, States that have contributed disproportionately to climate change must provide adequate funding to developing countries. Adaptation funding must be sufficient to allow for climate-resilient, diversified economies that do not rely on limited, carbon-intensive sectors. Funding should be new and additional rather than shifted from other climate or development aid.

90. Funding should be channelled through entities that have enacted environmental and social safeguards. As the Climate Investment Funds conclude, this money should instead be used to fund Green Climate Fund, the Global Environment Facility and the Adaptation Fund.

91. Adaptation funding that provides for sustainable development should be prioritized over mitigation projects. Adaptation funding must be predictable and accessible so that developing countries can plan and deploy funds where there is a need.

92. The Green Climate Fund should develop and adopt its own environmental and social safeguards through a transparent, inclusive and participatory process. As the Fund has already approved over 100 projects and programmes, it is critical that it develop these safeguards to ensure that its projects and programmes do not cause harm to people or the environment, and have positive impacts.

93. The Green Climate Fund should update its Information Disclosure Policy to embrace its principles of maximum disclosure and transparency and to ensure the right to access to information. The presumption should be that information is disclosed in a timely manner allowing for participation, including that civil society and indigenous peoples should be made aware of and consulted on its policies. Furthermore, the Fund should improve the transparency of its project pipeline, (for example, as the Adaptation Fund does) so that local communities know about potential projects and programmes in their area and can participate in the design, development, implementation and monitoring of the projects.

94. The Green Climate Fund should work to improve access to climate finance for those particularly vulnerable to the impacts of the climate crisis by increasing its financing to direct access entities and considering ways to increase small grant financing. It should also provide climate finance primarily in the form of grants so as to not add to the debt burdens of countries.

95. In addition to providing direct funding and technology, developed countries can help to fulfil the right to development of low-income countries by enhancing the terms of trade in favour of low-income countries and supporting accommodations in trade policy for low-income countries, such as on special and differential treatment and flexibilities in the application of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

96. High-income countries can help to promote climate-resilient and sustainable development by removing barriers to low-carbon exports from low-income countries; refraining from penalizing higher carbon exports where low-income countries are in the process of transitioning to lower carbon exports; ensuring that WTO non-agricultural market access negotiations support the industrial development required to adapt to climate change; and ensuring WTO agriculture negotiations support the capacity of farmers in low-income countries to develop and improve their adaptive capacity.

#### **E. Technology transfer and capacity-building**

97. Low-carbon and climate-resilient technologies, along with the capacity to use them, are needed to ensure that all persons and governments are able to address climate change. Capacity-building activities should be as participatory as possible, reaching lower levels of government and involving groups at high risk of vulnerability. Technology must be disseminated into the domestic economies of low-income countries to help them to diversify and build sustainability. Job training is crucial to reducing the risks of rising unemployment, poverty and inequality in the face of climate change.

98. High-income countries could provide and license technology to government agencies in low-income countries tasked with climate adaptation or mitigation actions, or to government research and development agencies that can develop their own innovations. As with other forms of aid, there is a need for the research and development of technologies to be financed directly by UNFCCC funds. A technology policy board or council should be set up under UNFCCC to address technology issues.

99. Where technology is funded by UNFCCC, the intellectual property rights should be in the public domain. Technology, like other adaptation measures, should build on local, traditional and indigenous knowledges and practices.

#### **F. Systems to evaluate progress in achieving climate-resilient and sustainable development**

100. As part of the global stocktake under article 14 of the Paris Agreement, adaptation spending should be reported and evaluated as to whether it is above and beyond current assistance and the extent to which it supports the development objectives of the recipient State.

101. States should provide inputs into the global stocktake with respect to how their climate change actions under the United Nations Framework Convention on Climate Change and the Paris Agreement promote the right to development and how their development activities support their international climate obligations.



# General Assembly

Distr.: General  
15 July 2022

Original: English

---

## Seventy-seventh session

Item 69 (b) of the provisional agenda\*

**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## Trafficking in persons, especially women and children

### Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, in accordance with Human Rights Council resolution [44/4](#).

---

\* [A/77/150](#).



## **Report of the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally**

### **Addressing the gender dimensions of trafficking in persons in the context of climate change, displacement and disaster risk reduction**

#### *Summary*

The heightened risks of trafficking in the context of climate change are rooted in existing and persistent inequalities, in poverty, in racism, and in discrimination. These heightened risks and vulnerability to exploitation are not inevitable or fixed, nor are they inherent in the human condition. They arise from policy failures, failures of political will and failures of international cooperation and solidarity. Recognizing these risks is essential to ensuring effective prevention of trafficking and to ensuring that the gender dimensions of such risks are recognized. In the present report, the Special Rapporteur on trafficking in persons, especially women and children, Siobhán Mullally, analyses how gender shapes the experiences of climate-related disasters, displacement and migration and highlights how the negative impact of climate change, and of both sudden and slow-onset disasters, is shaped by gendered inequalities and systemic discrimination. Such inequalities overlap with and reinforce existing experiences of discrimination, including on the grounds of disability, race and ethnicity, migration status, age and religion. Taking seriously the obligations concerning prevention of trafficking in persons requires systemic and urgent law and policy reforms, rooted in international human rights law, addressing climate change, environmental degradation and loss of biodiversity. It also requires implementation and effective enforcement of the principle of non-discrimination, a core principle of international human rights law, and realization of the objective of expanding safe, orderly and regular migration, underpinned by the protection of human rights.

## I. Introduction

1. Submissions received by the Special Rapporteur on trafficking in persons, especially women and children, in preparing this report, and consultations with communities affected by the devastating impact of climate change, bring into sharp relief the urgency of addressing the serious human rights violations that are occurring and likely to increase as a consequence of climate change.<sup>1</sup> These human rights violations include increased risks of trafficking in persons, particularly in the context of climate-related displacement and migration and climate-related disasters. In concluding the Paris Agreement, States recognized climate change as an urgent threat to humanity. In the preamble to the Agreement, it is acknowledged that climate change is a common concern of humankind, and States parties are called upon, when taking action to address climate change, to “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.” In paragraph 85 of the Glasgow Climate Pact, States parties are called upon to “ensure just transitions that promote sustainable development and eradication of poverty, and the creation of decent work and quality jobs.” The Special Rapporteur has repeatedly emphasized the necessity of ensuring that measures to combat trafficking in persons are integrated into actions to combat racial injustice and promote disability rights, gender equality and the rights of the child. Similarly, law and policy reforms that are based in international human rights law and are effective in preventing trafficking in persons must be incorporated into responses to the climate crisis and measures to ensure just transitions.

2. Much of the attention to date on disaster risk reduction and displacement has focused on the more visible sudden-onset disasters. The moment of crisis requires immediate attention, mobilization and response. The work of humanitarian actors comes to the fore, and in such contexts those most affected are often positioned only as victims, with limited opportunities to participate in the design and delivery of policies and programmes to combat the risks arising or to ensure sustained, just transitions.<sup>2</sup>

3. The Special Rapporteur is concerned that less attention has been given to how slow-onset disasters may contribute to increased risks of trafficking in persons arising from loss of livelihoods, displacement, migration and increased poverty. People living in poverty are more negatively affected by climate change. They have access to “fewer resources to mitigate the effects; and get less support from social safety nets or the financial system to prevent or recover from the impact”.<sup>3</sup> Addressing the everyday, less dramatic consequences of climate change and environmental degradation requires structural policy changes and sustained attention to the requirements of a just transition, including respect for fundamental labour rights and principles, expanded social protection, implementation of socioeconomic rights, and effective protection of human rights law, without discrimination.

---

<sup>1</sup> The Special Rapporteur is grateful to the International Human Rights Law Clinic at Duke University School of Law for the background research provided for the present report. Submissions received from States, civil society and academia are published at <https://owncloud.unog.ch/s/kFQa8RmZP4mSGn9>.

<sup>2</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR) and Platform on Disaster Displacement, “The slow onset effects of climate change and human rights protection for cross-border migrants” (A/HRC/37/CRP.4), para. 2.

<sup>3</sup> Report of the Special Rapporteur on extreme poverty and human rights on climate change and poverty (A/HRC/41/39), para. 12.

## II. International human rights law: the obligations of prevention, protection and due diligence

4. The increased risks of trafficking in persons arising as a result of sudden-onset disasters, including climate-related disasters and resulting displacement, have been acknowledged. United Nations entities have addressed trafficking in humanitarian responses to specific disasters, with examples including the response of the Office of the United Nations High Commissioner for Refugees to floods in Pakistan in 2010<sup>4</sup> and International Organization for Migration initiatives implemented following Cyclone Aila in Bangladesh in 2009,<sup>5</sup> Typhoon Haiyan in the Philippines in 2013,<sup>6</sup> flooding and landslides in Myanmar in 2015<sup>7</sup> and Hurricane Matthew in Haiti in 2016.<sup>8</sup>

5. Despite such acknowledgment, however, there is as yet little explicit attention given to prevention measures specifically relating to trafficking in persons or to the international human rights law obligations of assistance, protection, partnership and accountability. States do not explicitly or comprehensively address trafficking in persons in their responses to climate change. For example, a review of 35 national adaptation plans,<sup>9</sup> and 194 first and second nationally determined contributions under the Paris Agreement,<sup>10</sup> revealed no references to trafficking in persons.

6. The obligations arising for States under international human rights law in the context of climate change include “procedural, substantive, and special obligations towards those in vulnerable situations.”<sup>11</sup> States are required to ensure that adaptation measures taken to address climate change protect and fulfil the rights of all persons, particularly those most endangered by the negative impacts of climate change.<sup>12</sup> Furthermore, State obligations concerning climate change specifically include the obligation to regulate the actions of non-State actors. States are required to ensure that all responses to climate change are “designed and implemented to avoid threatening or violating human rights”<sup>13</sup> and ensure effective protection against climate change-related human rights violations by businesses.<sup>14</sup>

<sup>4</sup> Guy S. Goodwin-Gill and Jane McAdam, “Climate Change, Disasters and Displacement” (Office of the United Nations High Commissioner for Refugees, 2017), p. 12. Available at <https://www.unhcr.org/596f25467.pdf>.

<sup>5</sup> International Organization for Migration, “The Climate Change-Human Trafficking Nexus” (2016), p. 10. Available at [https://publications.iom.int/system/files/pdf/mecc\\_infosheet\\_climate\\_change\\_nexus.pdf](https://publications.iom.int/system/files/pdf/mecc_infosheet_climate_change_nexus.pdf).

<sup>6</sup> *Ibid.*, p. 11.

<sup>7</sup> International Organization for Migration (IOM), “IOM Operations on Internal Displacement” (2017), pp. 31–32. Available at [https://reliefweb.int/sites/reliefweb.int/files/resources/iom\\_intdisplacement\\_country\\_summaries\\_2017\\_\\_0.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/iom_intdisplacement_country_summaries_2017__0.pdf).

<sup>8</sup> *Ibid.*, pp. 24–25.

<sup>9</sup> United Nations Framework Convention for Climate Change, “National adaptation plans: NAPs from developing countries”. Available at <https://www4.unfccc.int/sites/NAPC/Pages/national-adaptation-plans.aspx>.

<sup>10</sup> The most current nationally determined contribution document for each State Party was examined. See United Nations Framework Convention for Climate Change, “Nationally Determined Contributions”, available at <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/nationally-determined-contributions-ndcs>, and United Nations Framework Convention for Climate Change, “NDC Registry”, available at <https://www4.unfccc.int/sites/NDCStaging/Pages/All.aspx>.

<sup>11</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/74/161), para. 63.

<sup>12</sup> See Goodwin-Gill and McAdam, “Climate Change, Disasters and Displacement”, p. 4.

<sup>13</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/74/161), para. 69.

<sup>14</sup> OHCHR fact sheet No. 38, *Frequently Asked Questions on Human Rights and Climate Change* (New York and Geneva, 2021), p. 34.

7. The Special Rapporteur highlights the obligation of due diligence to prevent trafficking in persons and restates the requirement that States take “action to address the wider, more systemic processes or root causes that contribute to trafficking in persons.”<sup>15</sup> Given growing evidence of the links between climate change and an increased risk of trafficking in persons, States are obliged to exercise due diligence, address climate change in actions to prevent trafficking and ensure the protection of trafficked persons and persons at risk of trafficking. In particular, this requires addressing the gender and child rights dimensions of climate change in the context of heightened risks of trafficking arising from climate-related displacement and disasters.

### III. Climate change: migration and displacement

8. Climate change is now recognized as a key factor in and driver of migration and displacement.<sup>16</sup> The increased risks of human rights violations in the context of climate-related displacement and migration are also recognized,<sup>17</sup> including risks of trafficking in persons.<sup>18</sup>

9. The Special Rapporteur stresses the importance of ensuring that laws and policies on internal displacement and migration specifically address the obligations of States to prevent trafficking in persons, especially women and children, and to provide assistance to trafficked persons. Most importantly, it is essential that prevention programmes recognize and address climate change as a cause of displacement and migration and as contributing to increased risks of trafficking. Currently, this recognition is missing in policies to combat climate change and trafficking in persons.

10. The obligation to prevent trafficking in persons and protect persons at risk of trafficking requires States to ensure effective protection of displaced persons, including persons forced to migrate as a consequence of climate change. These obligations directly engage States’ laws and policies on migration, as well as international protection. The obligations of prevention and protection further require States to take effective action to protect both displaced persons and host communities, who may experience increased pressures on livelihoods, housing, access to social protection and employment, with consequent increased vulnerability to exploitation.

11. The Special Rapporteur has repeatedly called upon States to expand opportunities for safe, orderly and regular migration, including through the provision of humanitarian visas, family reunification, access to international protection and safe, regular routes for migration, residence and pathways to citizenship for migrant workers and their families. Unplanned, unsafe and irregular migration, displacement arising from climate change-related slow- and sudden-onset disasters and related conflicts all carry the possibility of increasing the risk of trafficking.<sup>19</sup> Where individuals are subject to

<sup>15</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children (A/70/260, para. 48).

<sup>16</sup> See United Nations Network on Migration, “Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability”, guidance note, July 2021 and Ritu Bharadwaj et al., “Climate-induced migration and modern slavery: a toolkit for policy-makers” (Anti-Slavery International and International Institute for Environment and Development, 2021), p. 7. Available at <https://pubs.iied.org/sites/default/files/pdfs/2021-09/20441G.pdf>.

<sup>17</sup> See report of the Office of the United Nations High Commissioner for Human Rights on the situation of migrants in transit (A/HRC/31/35), paras. 10–11.

<sup>18</sup> See Mikaila V. Smith, “Applying the United Nations Trafficking Protocol in the Context of Climate Change”, *Chicago Journal of International Law*, vol. 22, No. 1 (2021).

<sup>19</sup> See, for example, Institute for Economics and Peace, *Ecological Threat Report 2021* (October 2021), p. 7, available at <https://www.visionofhumanity.org/wp-content/uploads/2021/10/ETR-2021-web-131021.pdf> and report of the Special Rapporteur on trafficking in persons, especially women and children (A/71/303), paras. 17–38.

trafficking in persons under these circumstances, they “must be provided with full protection and respect for their human rights in the context of ... trafficking.”<sup>20</sup>

12. The negative impacts of climate change result from both sudden-onset disasters such as storms and cyclones and slow-onset disasters including sea-level rise, salinization, drought and desertification.<sup>21</sup> Each of these has potential effects on migration, with sudden-onset disasters estimated to have caused the displacement of 30.7 million people in 2020 alone.<sup>22</sup> Slow-onset disasters “may negatively impact people’s rights, livelihoods and their wider socio-economic situation, necessitating adaptive behaviour that may include seasonal, short- or longer term, as well as permanent migration.”<sup>23</sup> Displacement resulting from “the increasing frequency and intensity of extreme weather events and environmental degradation resulting from climate change” includes migration both within States and across borders.<sup>24</sup> The World Bank has estimated that the number of internal climate migrants could reach more than 143 million by 2050, noting that “the poorest people and the poorest countries are the hardest hit.”<sup>25</sup>

13. During the consultations for this report, it was highlighted that in the Sahel region, people migrating as a result of climate change impacts often move under conditions that make them particularly susceptible to trafficking, as they lack regular migration status or face legal or practical barriers to obtaining access to assistance and protection and the loss of community and family support networks.<sup>26</sup> Particular risks arising in the context of rural to urban migration in Mali for adolescents and youth, who often seasonally migrate from rural areas to cities to engage in domestic labour, were highlighted as an example. This practice is reported to be increasing, owing to diminishing agricultural yields. As a result, young people may be at risk of exploitation, and concerns arise regarding the “lack of law, policy, or programmes to offer them protection.”<sup>27</sup>

14. The Special Rapporteur highlights that those who move in irregular situations in response to the impact of climate change are particularly at risk of exploitation, including trafficking.<sup>28</sup> Furthermore, traffickers may be more likely to target areas where livelihoods are affected by slow-onset climate change impacts.<sup>29</sup> In the context of rural to urban migration, urban destinations and settlements of internally displaced persons may be targeted. Owing to loss of livelihoods and community and family support networks and to limited social protection and access to decent work, displaced persons have limited bargaining power to assert their rights and are particularly at risk of exploitation.

<sup>20</sup> A/HRC/37/CRP.4, para. 66.

<sup>21</sup> Ibid, para. 2.

<sup>22</sup> Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2021: Internal Displacement in a Changing Climate* (2021), p. 11. Available at [https://www.internal-displacement.org/sites/default/files/publications/documents/grid2021\\_idmc.pdf](https://www.internal-displacement.org/sites/default/files/publications/documents/grid2021_idmc.pdf).

<sup>23</sup> United Nations Network on Migration, “Regular pathways for Admission and Stay for Migrants in Situations of Vulnerability”.

<sup>24</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 on gender-related dimensions of disaster risk reduction in the context of climate change (CEDAW/C/GC/37), para. 73.

<sup>25</sup> Estimated: approximately 86 million in Sub-Saharan Africa, 40 million in South Asia and 17 million in Latin America. Kanta Kumari Rigaud et al, *Groundswell: Preparing for Internal Climate Migration* (Washington, D.C., World Bank, 2018), p. xxi. Available at <https://www.worldbank.org/en/news/infographic/2018/03/19/groundswell---preparing-for-internal-climate-migration>.

<sup>26</sup> See also *Human Rights, Climate Change and Migration in the Sahel* (United Nations publication, 2021).

<sup>27</sup> Ibid., p. 22.

<sup>28</sup> See generally Ritu Bharadwaj et al., “Climate-induced migration and modern slavery”.

<sup>29</sup> See A/HRC/41/39.

## IV. Protection of human rights in the context of migration and displacement

15. Of continuing urgent concern is the absence of a general right of admission for people who are forcibly displaced as a result of climate change. The Special Rapporteur is concerned that, while international law and policy frameworks explicitly refer to people crossing borders and migrating as a consequence of climate change, there is not, as yet, any comprehensive response to address climate-related migration or ensure the protection of persons at risk in the context of climate-related migration or displacement.<sup>30</sup>

16. The Special Rapporteur highlights the limited attention given to preventing trafficking or to ensuring effective access to assistance and protection of trafficked persons in situations of internal displacement. The report of the High-level Panel on Internal Displacement specifically highlights the risks of child trafficking where children lose access to formal education and become “more vulnerable to recruitment by gangs or armed groups, ... trafficking and negative coping strategies.”<sup>31</sup>

17. The state-led Platform on Disaster Displacement has highlighted the weaknesses of international legal provisions to protect displaced persons in the context of disasters and the adverse effects of climate change (for example, on admission and conditions for return).<sup>32</sup> However, while the Platform acknowledges the protection gap, it has agreed that efforts will focus on better implementation of existing standards and legal instruments and on future standard-setting activities at the national and regional levels, rather than on advocacy for new legally binding standards. This is perhaps a recognition of the likely failure of any such attempts. At the same time, the continuing protection gaps constitute a serious concern and are likely only to increase the risks of exploitation of displaced persons. The protection gaps are highlighted in the litigation leading to the decision of the Human Rights Committee in *Teitiota v. New Zealand*. The Special Rapporteur highlights the importance of using international and regional human rights law standards to ensure protection in the context of climate change for displaced persons, migrants and refugees.<sup>33</sup>

18. The Special Rapporteur, in her statement delivered at the International Migration Review Forum in 2022, highlighted the obligations of States to prevent

<sup>30</sup> OHCHR, “Climate Change: Protecting the Rights of Migrants”, available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/materials/2PMigrationLight.pdf>.

<sup>31</sup> High-level Panel on Internal Displacement, *Shining a Light on Internal Displacement: A Vision for the Future*, p. 3.

<sup>32</sup> Platform on Disaster Displacement, “Platform on Disaster Displacement (PDD) Strategy 2019–2022”, p. 5. Available at <https://disasterdisplacement.org/resources>.

<sup>33</sup> See: Human Rights Committee, *Teitiota v. New Zealand*, views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016 (CCPR/C/127/D/2728/2016). See also International Law Commission, draft articles on the protection of persons in the event of disasters (2016); African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, articles 1, 4, 5, 11 and 12; OAU Convention Governing the Specific Aspects of Refugee Problems in Africa; and the Cartagena Declaration on Refugees adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama (1984). In the thirty-second preambular paragraph of the Brazil Declaration and Plan of Action of 3 December 2014, the challenges posed by climate change and natural disasters, as well as by the displacement of persons across borders, are recognized. See also UNHCR, “Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters”, 1 October 2020, available at <https://www.refworld.org/docid/5f75f2734.html>.

trafficking in persons in the context of climate change.<sup>34</sup> The Global Compact for Safe, Orderly and Regular Migration includes objectives explicitly related to preventing trafficking in persons in the context of migration (objective 10, “Prevent, combat and eradicate trafficking in persons in the context of international migration”) and to climate change as a root cause of migration (objective 2, “Minimize the adverse drivers and structural factors that compel people to leave their country of origin”). However, it does not explicitly link the two phenomena. The need for states to “develop coherent approaches to address the challenges of migration movements in the context of sudden-onset and slow-onset natural disasters” is stressed in the Global Compact.<sup>35</sup>

19. Despite limited progress made in some regions,<sup>36</sup> however, we continue to see restrictions imposed on migration, pushing people into more precarious journeys and dangerous entry attempts. These restrictions include the construction of barriers to entry and policies and practices such as the use of violence, pushbacks, dangerous interceptions, the erection of fences, restricted access to international protection and limited rights of residence or pathways to citizenship. Such policies and practices do not expand safe migration routes or prevent trafficking in persons but rather contribute to migration emergencies. Furthermore, many such practices are incompatible with international human rights law and contribute to further risks, vulnerability to trafficking in persons and the re-trafficking of persons on return or in transit.

20. The Special Rapporteur is concerned that, as a result of failures to develop a human rights-based response to climate-related migration, people may be compelled to move in circumstances where they lack safe migration opportunities or legal protections, putting them “at greater risk of human rights violations throughout their migration”<sup>37</sup> and rendering them unable or unwilling to return to their country of origin.<sup>38</sup>

## V. Gendered risks of trafficking in persons in the context of displacement and migration

21. Trafficking in the context of climate change-related migration and displacement also has a gendered dimension, with women and women-headed households often being more vulnerable to trafficking,<sup>39</sup> owing to gendered inequalities and discrimination. They may also be at risk of specifically gendered forms of trafficking, such as trafficking for the purposes of forced marriage, sexual exploitation, forced labour or domestic servitude. These risks apply at various stages of the migration process, including in transit, in camps, at borders and in destination countries.<sup>40</sup>

22. An analysis of climate-related displacement and migration highlights examples of situations where internal or cross-border migration in the context of climate change

<sup>34</sup> See Siobhán Mullally, Special Rapporteur on Trafficking in Persons, especially women and children, statement delivered at the International Migration Review Forum (round table 2), New York, 17 May 2022. Available at <https://www.ohchr.org/sites/default/files/2022-06/IMRF-May-17-2022.pdf>.

<sup>35</sup> Paras. 18 (h)–(l).

<sup>36</sup> See International Migration Review Forum, “Summaries of the plenary, round tables and policy debate”, p. 3. Available at [https://migrationnetwork.un.org/system/files/resources\\_files/IMRF%20final%20summary%20report.pdf](https://migrationnetwork.un.org/system/files/resources_files/IMRF%20final%20summary%20report.pdf).

<sup>37</sup> OHCHR and Global Migration Group, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* (2018), p. 6.

<sup>38</sup> *Ibid.*

<sup>39</sup> International Organization for Migration, “The Climate Change-Human Trafficking Nexus”, p. 5.

<sup>40</sup> CEDAW/C/GC/37, paras. 74–75.

has led to increased risks of trafficking in persons, including gendered risks. Rural women frequently bear the primary burden of the negative impact of climate change, leading to migration to urban areas or to travel abroad to seek employment. The absence of decent work and safe opportunities for migration and employment increases risks of trafficking for purposes of sexual exploitation and forced labour.<sup>41</sup> For example, in its concluding observations on the sixth periodic report of Cambodia, the Committee on the Elimination of Discrimination against Women expressed concern that women living in rural areas “are excluded from participation in the formulation and implementation of policies and action plans on climate change and disaster risk reduction, even though they are disproportionately affected by the effects of climate change and disasters, as women in the State party are more likely to depend on agriculture than men” (CEDAW/C/KHM/CO/6, para. 42). Research highlights that in Ghana, young women and men migrating from the drought-stricken north to urban centres in the south reportedly leads to increased risks of trafficking for purposes of labour and sexual exploitation, with young female migrants who work as *kayayie* particularly at risk of debt bondage and trafficking.<sup>42</sup> The Commission on Human Rights of the Philippines has highlighted that “climate change disproportionately affects women especially those from rural areas.”<sup>43</sup> This disproportionate impact may lead to increases in female overseas migration. Without expanded safe and regular opportunities for migration, women and girls from affected rural communities, in particular – given their more limited education and employment opportunities – may be at risk of trafficking.<sup>44</sup> Reports indicate that, in the Sundarbans region of South Asia, many people are forced into taking dangerous and irregular routes to cross borders and seek employment and safety owing to the impact of repeated climate-related disasters and resulting displacement.<sup>45</sup> Widows and women-headed households are often targeted and at particular risk of exploitation, owing to their more limited access to resources and livelihoods and the prevalence of gender-based discrimination. Migrant workers leaving the region to seek employment may also be at risk of trafficking for forced labour and sexual exploitation, with children, particularly girls in disaster-affected families, at risk.<sup>46</sup>

## VI. Gender inequality and the rights of women and girls

23. The impact of climate change may contribute to increased risks of trafficking in persons, including for purposes of child, early and forced marriages. These risks are frequently linked to climate-related displacement and migration and arise at different stages, including during and following climate-related disasters.<sup>47</sup> The Special

<sup>41</sup> Asian-Pacific Resource and Research Centre for Women, response to the questionnaire in relation to Human Rights Council resolution 38/4, 2018, p. 4. Available at <https://www.ohchr.org/en/climate-change/gender-responsive-climate-action>.

<sup>42</sup> Ritu Bharadwaj et al., “Climate-induced migration and modern slavery”, p. 22. *Kayayie* are women head-porters who carry heavy loads for a fee (Ibrahim Wallee, “African ingenuity and resilience of the ‘Kayayie’ in the streets of Accra”, *African Thinker*, 2 November 2021. Available at <https://africanthinker.com/2021/11/african-ingenuity-and-resilience-of-the-kayayie-in-the-streets-of-accra/>).

<sup>43</sup> Commission On Human Rights of the Philippines, response to the questionnaire in relation to Human Rights Council resolution 38/4, 30 December 2018, para. 4. Available at [https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/GenderResponsive/HRC\\_Philippines.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/GenderResponsive/HRC_Philippines.pdf).

<sup>44</sup> Ibid.

<sup>45</sup> Ritu Bharadwaj et al., “Climate-induced migration and modern slavery”, p. 26.

<sup>46</sup> Ibid.

<sup>47</sup> United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), “Tackling Violence Against Women and Girls in the Context of Climate Change”, 2022, p. 3. Available at <https://www.unwomen.org/en/digital-library/publications/2022/03/tackling-violence-against-women-and-girls-in-the-context-of-climate-change>.

Rapporteur stresses the need for greater understanding of the gendered risks of trafficking in persons in the context of climate change that, in particular, goes beyond focusing on the potential vulnerabilities of women and girls and recognizes that such vulnerabilities arise from failures to remedy systemic gender inequality and discrimination.

24. The Special Rapporteur highlights and welcomes the agreed conclusions of the sixty-sixth session of the Commission on the Status of Women, in which the Commission urged governments at all levels, United Nations entities and other organizations to take actions to address trafficking in persons, which it stated might be exacerbated in contexts of climate change, environmental degradation and disasters (E/CN.6/2022/L.7, para. 62 (mm)).

25. Additional factors that contribute to increased risks of gender-based violence, exploitation and trafficking, particularly of girls and women, in the aftermath of climate change-related disasters include “family fragmentation and stress, a loss of livelihoods and support networks, a disruption of social norms and controls, displacement into insecure disaster relief camps, and heightened physical and socio-economic precarity.”<sup>48</sup> Submissions received by the Special Rapporteur and consultations for this report highlight the risks arising from displacement and breakdowns in social and security structures, as well as increases in gender-based violence related to conflict over resources, loss of livelihoods, situations of environmental degradation and climate-related emergencies, all of which can contribute to increased risks of trafficking in persons.<sup>49</sup>

26. The Special Rapporteur highlights the multiple and intersecting forms of discrimination that may exacerbate gendered vulnerabilities to trafficking in the context of climate change. Climate-induced loss of livelihoods, income reduction or deterioration of working conditions in the agricultural sector have particular implications for rural women. At the same time, the socioeconomic inequalities experienced by some women can be compounded as a result of intersecting dynamics such as discrimination, including on the grounds of race or ethnicity or migrant or disability status, worsening conditions for women living in poverty, women with disabilities, older women and girls.<sup>50</sup> The challenges experienced by women and girls may be increased by overlapping axes of discrimination arising from poverty and inequalities in decision-making and control over land and resources. The Special Rapporteur has previously expressed concern that policymaking and programmes on climate-smart agriculture too often fail to address gender inequality in security of land tenure and control over natural resources, reinforcing disadvantages faced by rural women, increasing risks of exploitation and limiting the effectiveness of policies to combat trafficking.<sup>51</sup>

<sup>48</sup> Naomi Molinari, “Intensifying Insecurities: The impact of climate change on vulnerability to human trafficking in the Indian Sundarbans”, *Anti-Trafficking Review*, No. 8, 2017, p. 50.

<sup>49</sup> OHCHR, United Nations Environment Programme and UN-Women, “Human Rights, the Environment and Gender Equality: Key messages”, 2021, p. 6. Available at [https://www.ohchr.org/Documents/Issues/ClimateChange/materials/Final\\_HumanRightsEnvironmentGenderEqualityKM.pdf](https://www.ohchr.org/Documents/Issues/ClimateChange/materials/Final_HumanRightsEnvironmentGenderEqualityKM.pdf).

<sup>50</sup> SA/HRC/37/CRP.4, para. 54; see also International Labour Organization (ILO), “Gender, Labour and a Just Transition Towards Environmentally Sustainable Economies and Societies for All”, 7 November 2017, p. 3. Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/GenderResponsive/ILO.pdf>.

<sup>51</sup> Report of the Special Rapporteur on Trafficking in Persons, especially women and children, on trafficking in persons in the agriculture sector: human rights due diligence and sustainable development (A/HRC/50/33), para. 5.

## VII. Rights of the child

27. It is estimated that more than 500 million children live in areas, mostly in Asia, that have extremely high likelihoods of flooding, and approximately 115 million live in zones of high or extremely high risk of tropical cyclones.<sup>52</sup> The Special Rapporteur highlights that while all children are exceptionally vulnerable to climate change, children with disabilities, migrant and refugee children, children living in poverty, children separated from their families and the youngest children are most at risk.<sup>53</sup> Children may be particularly at risk as a result of climate-related displacement and disasters, owing to separation from families and communities and the breakdown of child protection services.

28. The Special Rapporteur highlights the ongoing work of the Committee on the Rights of the Child in preparation for its general comment No. 26 on children's rights and the environment with a special focus on climate change. The Special Rapporteur highlights the recent decision of the Committee indicating that failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations.<sup>54</sup> The Special Rapporteur highlights that in accordance with the principle of common but differentiated responsibilities, as reflected in the Paris Agreement, "the collective nature of the causation of climate change does not absolve the State party of its individual responsibility".<sup>55</sup> In order to acknowledge foreseeable harm and fulfil their obligation of due diligence, States are required to take action to prevent heightened risks of child trafficking, particularly in the context of climate-related displacement and migration. These obligations apply also in the context of the slow-onset disasters, increased risks of poverty and loss of livelihoods arising from climate change.

29. The Special Rapporteur is concerned that global frameworks addressing the impact of climate-driven migration and displacement do not adequately address the rights of the child or States' heightened obligations towards children.<sup>56</sup> The Special Rapporteur highlights the obligations arising under the Convention on the Rights of the Child, towards all children, to ensure full respect for the principles of non-discrimination and best interests of the child throughout the entire migratory process. The specific vulnerable circumstances that may increase the risks of trafficking of children in the context of climate-related displacement and migration include those related to gender and to factors such as poverty, racism, disability, religion, sexual orientation and gender identity, among others.

<sup>52</sup> Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/37/58), para. 24.

<sup>53</sup> Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration (CMW/C/GC/3-CRC/C/GC/22), para. 42.

<sup>54</sup> Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019 (CRC/C/88/D/104/2019). See also preamble to the Convention on the Rights of the Child; report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/HRC/31/52); and Committee on the Rights of the Child, "Report of the 2016 Day of General Discussion: Children's Rights and the Environment", p. 23, available at: <https://www.ohchr.org/en/hrbodies/crc/pages/discussion2016.aspx>.

<sup>55</sup> CRC/C/88/D/104/2019, para. 10.10.

<sup>56</sup> See for example the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (for drylands); the Small Island Developing States Accelerated Modalities of Action (SAMOA) Pathway (for low-lying coastal areas); and the New Urban Agenda (for urban areas).

30. The Special Rapporteur stresses the importance of guaranteeing that the rights of the child and the participation of children and young people are ensured in decision-making on all climate change policies, in recognition of the urgent claims arising from the requirements of climate justice and intergenerational equity. The Special Rapporteur highlights the intervention submitted to the European Court of Human Rights by the Council of Europe Commissioner for Human Rights in the case brought by Cláudia Duarte Agostinho and others against Portugal and 32 other States,<sup>57</sup> which highlights the extent to which “young people’s present and future rights are in jeopardy” and emphasizes States’ legal commitments to intergenerational equity.<sup>58</sup>

31. The Special Rapporteur also highlights and agrees with the resolution adopted by the Working Group on Children’s Rights and Climate Change of the African Committee of Experts on the Rights and Welfare of the Child, in which the Working Group calls upon States to “incorporate a child-rights-based approach to climate action, ensuring that the specific risks faced by children are taken into account in the development and implementation of climate policies and programmes, paying particular attention to the needs of those children who are most vulnerable to the effects of climate change, such as girls, indigenous groups and children with disabilities”.<sup>59</sup>

32. The Special Rapporteur highlights also the obligation to ensure the best interests of the child and to ensure children’s right to participate in decision-making. The Inter-American Principles on the Human Rights of All Migrants, Refugees, Stateless Persons and Victims of Trafficking in Persons, while not specifically addressing climate-related displacement or disasters, highlight the specific obligations of States towards children, including in the context of emergencies.<sup>60</sup>

## VIII. Intersectional approaches to trafficking in persons in the context of climate change

33. The Special Rapporteur stresses the necessity of recognizing the intersections of discrimination and exclusion that exacerbate the negative impact of climate change. Specific groups experiencing both intersectional discrimination and heightened risks of trafficking in the context of climate change include, among others, indigenous women,<sup>61</sup> women and girls with disabilities and women and girls of

<sup>57</sup> European Court of Justice, *Duarte Agostinho and Others v. Portugal and Others*, Application No. 39371/20.

<sup>58</sup> See the third party intervention by the Council of Europe Commissioner for Human Rights under article 36, paragraph 3, of the European Convention on Human Rights, in *Duarte Agostinho and Others v. Portugal and Others*. Available at <https://www.coe.int/en/web/commissioner/-/commissioner-publishes-observations-on-the-human-rights-impact-of-climate-change>.

<sup>59</sup> Resolution No. 18/2022 of the Working Group on Children’s Rights and Climate Change of the African Committee of Experts on the Rights and Welfare of the Child. Available at <https://www.acerwc.africa/wp-content/uploads/2022/04/Resolution-No-182022-on-Integrating-a-Child-Rights-Based-Approach-to-Climate-Change-Responses.pdf>.

<sup>60</sup> Resolution 04/19 approved by the Inter-American Commission on Human Rights on December 7, 2019. See also Inter-American Court of Human Rights, *Rights and guarantees of children in the context of migration and/or in need of international protection*, Advisory Opinion OC-21/14 of 19 August 2014.

<sup>61</sup> ILO, *Indigenous peoples and climate change: From victims to change agents through decent work* (Geneva, 2017), p. 16. Available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_551189.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_551189.pdf).

African descent.<sup>62</sup> Indigenous women and girls are at increased risks of trafficking arising from climate-related disasters and displacement.<sup>63</sup>

34. The United Nations Working Group of Experts on People of African Descent dedicated its 2021 annual session to the topic of environmental justice, the climate crisis and people of African descent. The Special Rapporteur highlights the report on the session, in which the Working Group stressed that people of African descent “continue to be subjected to environmental racism and are disproportionately affected by the climate crisis”<sup>64</sup> and that “climate change is a byproduct of an economic system that is heavily reliant on extraction, exploitation and accumulation through dispossession.”<sup>65</sup> The Special Rapporteur highlights that this exploitation includes trafficking for purposes of forced labour, servitude and sexual exploitation, among other purposes.

## **IX. Rights of persons with disabilities**

35. The Special Rapporteur is concerned that as a result of discrimination, harmful stereotypes and failures to ensure reasonable accommodation, people with disabilities, in particular women and girls, are at heightened risk of violence, including trafficking in persons, during climate-related disasters and emergencies, especially in emergency shelters. Constraints imposed on decision-making and situations of dependency may limit mobility, including opportunities for migration, planned relocation or resettlement, and increase risks of harm and human rights violations, including trafficking in persons.<sup>66</sup> Discrimination and stereotyping may also limit the participation of persons with disabilities in decision-making and policy planning in relation to climate change and disaster resilience and responses.

## **X. Rights of lesbian, gay, bisexual and trans persons and persons of diverse gender identities**

36. As with gendered vulnerabilities of men and boys to trafficking in persons in the context of climate change, further attention and analysis is needed to understand the specific vulnerabilities of lesbian, gay, bisexual and trans persons and persons of diverse gender identities arising from the linked experiences of discrimination, violence and poverty. In the context of extreme weather events and climate-related disasters and displacement, lesbian, gay, bisexual and trans persons may be particularly vulnerable, owing to stigmatization and discrimination. Experiences of discrimination include being excluded from recovery, relief and response efforts and lack of access to emergency shelters and services. Increased risks arise for lesbian, gay, bisexual and trans persons in the context of displacement and migration, where

<sup>62</sup> National Birth Equity Collaborative, response to the questionnaire in relation to Human Rights Council resolution 47/24 on human rights and climate change, 2021, pp. 1–2. Available at <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-people-vulnerable-situations>.

<sup>63</sup> See also the joint written statement submitted by International Organization for the Elimination of All Forms of Racial Discrimination, Association Ma’onah for Human Rights and Immigration, International-Lawyers.Org, Union of Arab Jurists, United Towns Agency for North-South Cooperation, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster (A/HRC/45/NGO/152), p. 3.

<sup>64</sup> A/HRC/48/78, para. 55.

<sup>65</sup> Ibid., para. 66.

<sup>66</sup> See, for example, OHCHR, analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change (A/HRC/44/30), para. 12.

support networks may no longer be available.<sup>67</sup> Groups that were already marginalized prior to displacement – for example, lesbian, gay, bisexual and trans persons or persons of diverse gender identities – often face further stigma and exclusion.

## XI. Rights of indigenous peoples

37. The Special Rapporteur is concerned that, as a result of climate change, indigenous peoples may be forced to migrate or may be forcibly displaced, in precarious conditions, thus becoming at risk from forms of exploitation that include debt bondage, domestic servitude, forced labour and trafficking in persons.<sup>68</sup>

38. The combined impacts of dependency on natural resources, climate change and environmental degradation (including loss of biodiversity) are increasingly forcing indigenous peoples to seek alternative sources of livelihoods. In the context of climate-related displacement or migration, indigenous peoples are at increased risk of exploitation, owing to discrimination and other social, economic and environmental risks, as compared to other groups.<sup>69</sup> They may face multiple and intersecting forms of discrimination as both migrants and as indigenous peoples. Limited regular migration opportunities and more limited access to information and opportunities for safe, regular migration, particularly in the context of sudden-onset disasters, may increase the risks of exploitation.<sup>70</sup> Discrimination may limit access to planned relocation or resettlement opportunities.

39. In the consultations for this report, one example given of increased risks of trafficking in persons for indigenous peoples is that of the Sundarbans region of West Bengal, where climate change is having a negative impact and there is a high incidence of trafficking in persons, with indigenous peoples recognized as being particularly at risk.<sup>71</sup> In its gender strategy and action plan for the period 2019–2023, the Indigenous Peoples of Africa Coordinating Committee highlights the gendered impact of climate change on indigenous women arising from structured inequalities in control over natural resources and land use and tenure, as well as caring roles and household management.<sup>72</sup> The Special Rapporteur also highlights the particular risks faced by indigenous children, including in situations arising from actions taken to mitigate climate change. Projects related to the production of biofuel or hydroelectric power, for example, have on some occasions resulted in the displacement of indigenous communities, including children, without their free, prior and informed consent.<sup>73</sup>

<sup>67</sup> Special Procedures of the Human Rights Council, “Forcibly displaced LGBT persons face major challenges in search of safe haven”, statement delivered on the International Day against Homophobia, Transphobia and Biphobia, 17 May 2022. Available at <https://www.ohchr.org/en/statements/2022/05/forcibly-displaced-lgbt-persons-face-major-challenges-search-safe-haven>.

<sup>68</sup> Chris O’Connell, “From a vicious to a virtuous cycle: Addressing climate change, environmental destruction and contemporary slavery” (Anti-Slavery International, 2020), p. 7. Available at [www.antislavery.org/wp-content/uploads/2021/04/ASI\\_ViciousCycle\\_Report\\_web2.pdf](http://www.antislavery.org/wp-content/uploads/2021/04/ASI_ViciousCycle_Report_web2.pdf).

<sup>69</sup> ILO, *Indigenous peoples and climate change*, p. 14.

<sup>70</sup> United Nations, Department of Economic and Social Affairs, “Climate Change”. Available at <https://www.un.org/development/desa/indigenouspeoples/climate-change.html>.

<sup>71</sup> Molinari, “Intensifying Insecurities”, p. 60.

<sup>72</sup> See Indigenous Peoples of Africa Coordinating Committee, *Gender Strategy and Action Plan 2019–2023*, pp. 4–6. Available at <https://www.ipacc.org.za/publications/>.

<sup>73</sup> OHCHR, analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13), para. 23.

40. The Special Rapporteur recalls that, in its general recommendation No. 34 (2016), the Committee on the Elimination of Discrimination against Women underscores the importance of indigenous women's rights to land and collective ownership, natural resources, water, seeds, forests and fisheries (CEDAW/C/GC/34, para. 56). The Committee, in its draft general recommendation on indigenous women, points out that the lack of harmonization of laws and their ineffective implementation at the national and local levels hinder the effective implementation of those rights, increasing the risks of exploitation of indigenous women.

## **XII. Climate change, business and human rights**

41. The Special Rapporteur highlights that the sectors recognized as having a negative impact on climate change and causing environmental degradation and loss of biodiversity are also high-risk sectors where trafficking for the purposes of forced labour and other forms of exploitation frequently occur. The importance of taking decent work into account in action to combat climate change, in order to ensure just transitions and sustainable development, is explicitly highlighted in paragraph 85 of the Glasgow Climate Pact. Much work remains to be done to achieve this objective. The Special Rapporteur stresses the continuing reliance on the exploited labour of victims of trafficking in sectors that, owing to limited regulation and intensive and often violent working conditions, have a negative impact on climate change.

42. Several special procedures of the United Nations have highlighted the links between climate change and violations of the human rights of workers and communities in poorer States.<sup>74</sup> The serious human rights violations occurring in the context of such global extractivism include trafficking in persons, usually for purposes of forced labour and often combined with increased risks of sexual exploitation and trafficking of children. The Working Group on the issue of human rights and transnational corporations and other business enterprises has highlighted particular sectors at risk in Italy, stating that “migrant workers, including from African and Asian countries, working in sectors such as agriculture, garment and logistics, are trapped in a cycle of exploitation, debt bondage and human rights abuses that must be broken.”<sup>75</sup> Extractive industries and intensive farming activities attract significant rural-rural migrants in Western Africa and increase environmental pressures on host communities as well as the risks of exploitation of children.<sup>76</sup> ILO, in the preamble to the Durban Call to Action, expresses alarm that “in the 2016–2020 period, child labour increased by 8.9 million, entirely among children aged 5–11.” In her recent report on trafficking in persons in the agriculture sector: human rights due diligence and sustainable development (A/HRC/50/33), the Special Rapporteur

<sup>74</sup> As has been highlighted by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in her report on global extractivism and racial equality, “powerful States and their transnational corporations, and the political elites of weaker States that are territories of extraction, emerge as the clear winners” (A/HRC/41/54, para. 5). The Special Rapporteur on the right to food has highlighted the power and lack of accountability that transnational corporations have in respect of communities and workers, which contribute to increases in human rights abuses in global supply chains (A/76/237).

<sup>75</sup> Working Group on Business and Human Rights, “Italy: Government must break cycle of exploitation of workers, hold businesses accountable”, press release, 6 October 2021. Available at <https://www.ohchr.org/en/press-releases/2021/10/italy-government-must-break-cycle-exploitation-workers-hold-businesses>.

<sup>76</sup> Save the Children, “Walking into the Eye of the Storm: How the climate crisis is driving child migration and displacement”, October 2021, p. 58. Available at <https://resourcecentre.savethechildren.net/document/walking-into-the-eye-of-the-storm-how-the-climate-crisis-is-driving-child-migration-and-displacement/>.

stresses the increased risks of trafficking of children in the context of weak regulation and intensive agribusiness work practices.

43. Intensive fishing contributes negatively to climate change and is also highly reliant on the labour of trafficked persons.<sup>77</sup> The specific risks of trafficking of refugees and asylum seekers, in particular of persons from Rohingya communities in Myanmar, for purposes of forced labour in the fishing sector and palm oil plantations of Malaysia has been highlighted by the mandate of the Special Rapporteur on trafficking in persons, especially women and children.<sup>78</sup> Trafficking for purposes of forced labour in the construction sector in Serbia, including the role of transnational corporations, has also been highlighted by the Special Rapporteur.<sup>79</sup> The construction sector, in a context of limited regulation and enforcement of environmental and labour standards, may contribute negatively both to human rights violations and to climate change.

44. The Special Rapporteur also highlights the findings of treaty bodies. In its concluding observations on the combined fourth to eights reports of Thailand, the Committee on the Elimination of Racial Discrimination expressed concerns about trafficking in persons, including in relation to child labour, forced labour practices and sexual and labour exploitation of victims of trafficking, particularly in the fishing, agriculture and tourism sectors, which are all sectors that have an impact on climate change (CERD/C/THA/CO/4-8, para. 29). In its concluding observations on the second periodic report of Turkmenistan, the Committee on Economic, Social and Cultural Rights expressed concern about the reported continued “widespread use of forced labour among workers and students under threat of penalties during the cotton harvest” (E/C.12/TKM/CO/2, para. 23). With regard to the Democratic Republic of the Congo, the Committee has expressed concern at the absence of information on the application of social and environmental responsibility measures to mining and logging businesses and a lack of due diligence in respect of human rights. The Committee has also specifically highlighted concerns in relation to climate change impacts in these sectors (E/C.12/COD/CO/6, paras. 18–20).

45. Concerns have also been expressed by civil society in relation to the trafficking of children for purposes of forced labour in cobalt mines linked to extractive industries developing new green technologies.<sup>80</sup> The Human Rights Council, in paragraph 9 of its resolution 45/20 on the situation of human rights in the Bolivarian Republic of Venezuela, expressed, “deep concern at the human rights and environmental situation in the Arco Minero del Orinoco region, which is the site of labour exploitation of miners, including child labour, trafficking in persons and forced prostitution, and expresses particular concern about the violations of the rights of indigenous peoples in the region”.

<sup>77</sup> See the report of the Special Rapporteur on the right to food (A/HRC/40/56).

<sup>78</sup> Report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, on her mission to Malaysia in 2015 (A/HRC/29/38/Add.1). See also letter to Ireland (OL IRL 1/2019) and selected communications, including the communication addressed to Guatemala by Special Rapporteurs of 9 November 2020 (JAL GTM 3/2020).

<sup>79</sup> See communication addressed to Serbia by Special Rapporteurs of 18 January 2022 (JUA SRB 1/2022).

<sup>80</sup> See Rights and Accountability in Development (RAID) and Centre d’Aide Juridico-Judiciaire, “The Road to Ruin: Electric vehicles and workers’ rights abuses at DR Congo’s industrial cobalt mines”, November 2021. Available at [https://www.raid-uk.org/sites/default/files/report\\_road\\_to\\_ruin\\_evs\\_cobalt\\_workers\\_nov\\_2021.pdf](https://www.raid-uk.org/sites/default/files/report_road_to_ruin_evs_cobalt_workers_nov_2021.pdf).

### **XIII. Human rights and environmental due diligence: prevention of trafficking in persons**

46. The Special Rapporteur highlights that mandatory human rights due diligence laws can ensure that corporations address the human rights implications of climate change and trafficking in persons. Due diligence obligations, including mandatory obligations for businesses, play a critical role in preventing the human rights violations associated with trafficking in persons and in addressing and remedying such violations when they do occur. In the context of climate change, there has been some recognition of the potential value of mandatory human rights due diligence laws that cover environmental harms, which are commonly recognized as including climate change.<sup>81</sup> In practice, however, when “environmental impacts, including climate change” are covered in corporate due diligence practices, “human rights and climate change processes often take place in ‘silos.’”<sup>82</sup>

47. The Special Rapporteur stresses that efforts to combat trafficking for forced labour in global supply chains will continue to be inadequate if they do not extend beyond immediate suppliers to include actors operating at all levels, and particularly those further upstream in global supply chains. As has been well documented, trafficking in persons is a “whole-of-supply-chain problem.”<sup>83</sup> Current proposals for enhanced corporate due diligence obligations are welcome, but they fail to ensure that the human rights of trafficked persons are effectively protected or that effective prevention action is taken to combat trafficking in persons, in particular for forced labour. The failure to specifically address gender equality in human rights and environmental due diligence measures is a serious concern.<sup>84</sup> Law and policy measures to ensure mandatory human rights and environmental due diligence are essential to effective prevention of trafficking in persons in the context of climate change, and to the prevention of trafficking and of further negative climate impacts.<sup>85</sup>

### **XIV. Disaster risk reduction: prevention, protection and partnership**

48. The Special Rapporteur highlights the disproportionate impact of climate-related disasters on women and girls and on persons with disabilities. Increased loss of livelihoods, and the consequent disruption to physical, social, economic and

<sup>81</sup> See, for example, Lise Smit and Ivano Alogna, eds., *Human Rights Due Diligence for Climate Change Impacts: Webinar Series Report* (British Institute of International and Comparative Law, January 2021), pp. 48–68. Available at [https://www.biiicl.org/documents/125\\_hrdd\\_for\\_climate\\_change\\_impacts\\_webinar\\_series\\_report\\_8\\_jan\\_2020.pdf](https://www.biiicl.org/documents/125_hrdd_for_climate_change_impacts_webinar_series_report_8_jan_2020.pdf).

<sup>82</sup> European Commission, Directorate-General for Justice and Consumers, *Study on Due Diligence Requirements Through the Supply Chain: final report* (Publications Office of the European Union, 2020), p. 16. See also World Benchmarking Alliance, “Corporate Human Rights Benchmark: 2020 Key Findings” (November 2020), p. 14. Available at <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/WBA-2020-CHRB-Key-Findings-Report.pdf>.

<sup>83</sup> ILO, Organisation for Economic Co-operation and Development (OECD), IOM and United Nations Children’s Fund (UNICEF), *Ending Child Labour, Forced Labour and Human Trafficking in Global Supply Chains* (Geneva, 2019), p. 16.

<sup>84</sup> Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (A/HRC/17/31, annex). See also communication addressed to the European Union by the Special Rapporteur on trafficking in persons, especially women and children, ref.: OL OTH 49/2022. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27363>.

<sup>85</sup> Surya Deva, “Climate Change, Human Rights, and the UN Guiding Principles: Interlinkages and Red Flags”, in Smit and Alogna, *Human Rights Due Diligence for Climate Change Impact*, pp. 48–50.

environmental networks and support systems, disproportionately affect persons with disabilities and their families. Gender, and specifically gender inequality and discrimination, shape and determine the impact of climate-related disasters. Women experience greater loss of livelihoods as a result of the impact of disasters, have less control over resources and have more limited opportunities for migration or employment to mitigate the impact of disasters. These inequalities are not inevitable or unexpected. They arise from and are a consequence of gender discrimination and gendered inequalities.

49. The Special Rapporteur highlights the core provision of the Sendai Declaration and the Sendai Framework for Disaster Risk Reduction 2015–2030 on “building back better”. While the importance of integrating gender equality and the participation of women in the design and implementation of disaster preparedness and response policies is recognized, more action is needed to address the gendered risks arising from climate-related disasters. The Special Rapporteur stresses the obligation of States to strengthen partnerships with civil society and women human rights defenders, in order to achieve the objective of participatory disaster risk governance and to meet their obligations concerning the prevention of trafficking in persons for all purposes of exploitation.<sup>86</sup>

## **XV. Climate change and conflict: women, peace and security**

50. Climate change also contributes to increased risks of insecurity and to conflict, as communities compete for increasingly scarce resources and bear the burden of failures of international solidarity, international law and policymaking. It is recognized that conflict increases risks of trafficking in persons for all purposes of exploitation. Climate-related conflict is no exception, and the risks of serious human rights violations including trafficking in persons must be addressed in prevention and protection measures and through effective protection of human rights in all conflicts.<sup>87</sup>

51. Several Security Council resolutions highlight the links between climate change, environmental degradation and risks of conflict and insecurity. Related concerns in relation to the prevalence of sexual violence in conflict are also highlighted, but without explicit attention being given to conflict related trafficking in persons. Women are at the front lines of both climate change and insecurity, “burdened with new economic responsibilities in ever degraded environments.”<sup>88</sup> Reports highlight the gendered impact of climate-related insecurity. Across the Sahel region, for example, the impacts on livelihoods of rising temperatures and unpredictable rainfall may lead to increased risks of intercommunal violence and are already leading to shifting migration patterns. In many communities, such as those in Northern Kordofan, in the Sudan, men are increasingly leaving villages in search of alternative livelihoods to farming, while herders migrate to search for grazing land in increasingly insecure environments. As noted earlier, indigenous women and girls are particularly at risk in the context of climate-related displacement, loss of livelihoods and food insecurity and increasing conflict over resources, as are rural women and girls.

52. The Special Rapporteur highlights the urgency of recognizing the linkages between gender, climate and security, and the need to ensure meaningful participation of women in policymaking and planning regarding the distribution of natural

<sup>86</sup> See General Assembly resolution [76/204](#), para. 28.

<sup>87</sup> See [A/HRC/41/39](#), para. 67.

<sup>88</sup> Report of the Secretary-General on women and peace and security ([S/2020/946](#)), para. 77.

resources in conflict-affected regions.<sup>89</sup> Implementation of obligations to prevent trafficking in persons, especially women and children, through systemic policy changes, must be integrated into policymaking processes to support nationally determined contributions, national adaptation plans, national climate change action plans, land tenure policies and the reduction of emissions from deforestation and forest degradation.

53. The Special Rapporteur is concerned that current measures to address the gender dimensions of climate insecurity and conflict, including in peacebuilding and peacekeeping transitions, do not take account of obligations to prevent trafficking in persons, or to ensure effective protection for victims of trafficking, and do not require strengthening of partnerships with civil society organizations, which are essential to women's empowerment and gender equality.

## XVI. Promising practices

54. Some States have incorporated actions to combat trafficking in persons into climate change and disaster response policies. For example, Mozambique has issued updated standard operating procedures for provincial and district reference groups on better equipping officials to combat trafficking in the context of natural disasters. The Philippines has adopted and implemented emergency relief policies that include a number of provisions designed to address trafficking in the context of disasters and, in particular, to address trafficking risks faced by children.<sup>90</sup> It has also enacted the Children's Emergency Relief and Protection Act, "the first and only [law] in the world that protects children during emergencies and disaster situations", including "heightened surveillance against child trafficking, ... especially in the aftermath of disasters".<sup>91</sup> The Government of Vanuatu has undertaken efforts to address trafficking in communities displaced by natural disasters, and its National Policy on Climate Change and Disaster-Induced Displacement links displacement resulting from climate change with trafficking and includes policies to address trafficking risks.<sup>92</sup>

55. Several States address climate-related migration and displacement and the need for human rights-based responses. These include Bangladesh, whose National Strategy on the Management of Disaster and Climate Induced Internal Displacement recognizes the "multiple human rights challenges" faced by those displaced in climate change-related disasters.<sup>93</sup> Law No. 370 of 2013 of the Plurinational State of Bolivia "explicitly reference[s] climate change migration and the need to protect those migrating".<sup>94</sup> Italy has concluded "several bilateral agreements that could potentially

<sup>89</sup> See also report of the Secretary-General on women and peace and security (S/2021/827), para. 77.

<sup>90</sup> Report of the Office of the United Nations High Commissioner for Human Rights on the summary of the panel discussion on the adverse impact of climate change on States' efforts to realize the rights of the child and related policies, lessons learned and good practices (A/HRC/35/14), para. 38.

<sup>91</sup> Inputs from the Philippines for the OHCHR analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child 2, 16 March 2017. Available at <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/RightsChild/Philippines.pdf>.

<sup>92</sup> Vanuatu, National Disaster Management Office, *National Policy on Climate Change and Disaster-Induced Displacement* (2018), pp. 10 and 32. Available at [https://www.iom.int/sites/g/files/tmzbd1486/files/press\\_release/file/iom-vanuatu-policy-climate-change-disaster-induced-displacement-2018.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/press_release/file/iom-vanuatu-policy-climate-change-disaster-induced-displacement-2018.pdf).

<sup>93</sup> Bangladesh, *National Strategy on the Management of Disaster and Climate Induced Internal Displacement* (2015), p. 5. Available at [https://www.preventionweb.net/files/46732\\_nsmdcidfinalversion21sept2015withc.pdf](https://www.preventionweb.net/files/46732_nsmdcidfinalversion21sept2015withc.pdf).

<sup>94</sup> OHCHR, "Climate change: Protecting the rights of migrants", p. 2.

facilitate safe migration pathways as a climate change adaptation strategy”.<sup>95</sup> In Kenya, “the National Climate Change Action Plan calls for migration to be defined as a potential coping mechanism for climate change”.<sup>96</sup> In the National Climate Change Policy for Nigeria, it is recognized that “the consequences of climate change are likely to continue to generate gender-based violence and large-scale migration, which can potentially lead to various sorts of conflicts including group vs. group conflict” and that “forced migration often leaves women and girls to manage the ecosystem, without being actively involved in the discourse around home-grown solutions.”<sup>97</sup> The Policy includes measures to “integrate migration and human displacement issues in national climate change planning”.<sup>98</sup> The Peruvian Climate Change Act and its implementing regulations provide for the development of an action plan to prevent and address forced migration caused by the effects of climate change, under the shared responsibility of the Ministry of Women and Vulnerable Populations and the Ministry for the Environment.<sup>99</sup> The National Adaptation Plan of South Sudan includes a commitment to “develop [a] long-term research plan and related tracking indicators with institutional partnerships and funding streams to further understanding of the nexus between climate change, migration and conflict.”<sup>100</sup> Switzerland “takes account of environmental and socioeconomic situations to extend humanitarian protection to persons who would be endangered by a return to their country of origin.”<sup>101</sup> The Africa Climate Mobility Initiative is a critically important regional programme to address climate-forced migration and displacement, and it will be essential to ensuring a human rights-based approach that prevents trafficking in persons. In article 16 of the 2021 Protocol on Free Movement of Persons in the Intergovernmental Authority on Development (IGAD) Region, IGAD member States are called upon to facilitate entry and stay for people who are moving in anticipation of, during or in the aftermath of a disaster. This is the first time that a free movement protocol has specifically addressed the needs of people affected by disasters.

## XVII. Conclusion

56. Urgent action to combat climate change is essential to the protection of human rights and to ensuring that people are able to live their lives in dignity, without discrimination. Climate justice must be at the heart of anti-trafficking laws and policies, including in ensuring just transitions and protection of workers’ rights. Meaningful, urgent and ambitious action to prevent trafficking in persons must address the gendered impact of climate change, climate-related displacement and disasters. Recognizing the intersections of discrimination and inequality, measures to combat trafficking in persons must be integrated into actions to combat racial

<sup>95</sup> Ibid. These “agreements with climate vulnerable countries can facilitate safe migration provided such agreements are non-discriminatory and comply with international human rights obligations” (ibid.).

<sup>96</sup> Ibid.

<sup>97</sup> Nigeria, Federal Ministry of Environment, Department of Climate Change, *National Climate Change Policy for Nigeria 2021–2030* (2021), p. 36. Available at [https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP\\_NIGERIA\\_REVISIED\\_2-JUNE-2021.pdf](https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_NIGERIA_REVISIED_2-JUNE-2021.pdf).

<sup>98</sup> Ibid.

<sup>99</sup> Peru, Ministerial Resolution No. 096-2021-MINAM and *National Climate Change Adaptation Plan of Peru: Input for the updating of the National Climate Change Strategy* (2021). Available at [https://www4.unfccc.int/sites/NAPC/Documents/Parties/Per%c3%ba\\_NAP\\_Spanish.pdf.pdf](https://www4.unfccc.int/sites/NAPC/Documents/Parties/Per%c3%ba_NAP_Spanish.pdf.pdf).

<sup>100</sup> South Sudan, Ministry of Environment and Forestry, *First National Adaptation Plan for Climate Change* (2021), p. 87. Available at <https://unfccc.int/sites/default/files/resource/South-Sudan-First-NAP%20.pdf>.

<sup>101</sup> OHCHR, “Climate Change: Protecting the Rights of Migrants”, p. 2.

injustice and to promote disability rights, gender equality and the rights of the child. Responses to the climate crisis and measures to ensure just transitions must incorporate law and policy reforms that are effective in preventing trafficking in persons, including through expanded pathways to safe and regular migration, rights of entry and stay and equal protection of rights. It is essential that meaningful actions to prevent trafficking in persons be integrated into all measures to promote gender equality and women's empowerment in peacebuilding and peacekeeping transitions, recognizing the increased risks of climate related conflict and insecurity.

## **XVIII. Recommendations**

**57. Pursuant to objective 10 of the Global Compact for Safe, Orderly and Regular Migration to prevent, combat and eradicate trafficking in persons, States should expand access to regular migration routes and pathways to residence and citizenship for victims of trafficking. To prevent trafficking in persons and protect victims of trafficking, States must ensure effective access to international protection, expanded resettlement opportunities, humanitarian visas and family reunification, without discrimination. States must ensure the effective implementation of the principle of non-refoulement, including in the context of climate-related disasters and climate change. States must cooperate to ensure an expansion of planned relocation opportunities, without discrimination and fully respecting human rights, ensuring the prevention of trafficking in persons in all actions to achieve realization of Sustainable Development Goal target 10.7.**

**58. States, both individually and in cooperation, must adopt human rights-based migration policies to respond to the protection needs of persons displaced owing to climate change. These policies should include the creation and expansion of human rights-based and humanitarian avenues for entry and stay for persons displaced as a result of climate change, in full recognition of the principle of non-discrimination in international human rights law.**

**59. States must strengthen measures to prevent the trafficking of children by enhancing the capacity of child protection systems, adopting poverty eradication measures and expanding free access to education and vocational training to include all children and young people, without discrimination, including in particular unaccompanied and separated children and young people.**

**60. Recognizing the urgent claims of climate justice and intergenerational equity, States must ensure the protection of the rights and best interests of all children, without discrimination, in particular in the context of climate-related migration and displacement, and planned relocation, and ensure the participation of children and young people in the design and implementation of prevention and protection measures on climate change, on climate-related disaster responses and on trafficking of children.**

**61. Recognizing the negative impact of climate change and climate-related disasters on persons with disabilities, States must ensure that the rights of persons with disabilities are effectively protected in all climate and disaster risk reduction and response policies; ensure non-discrimination, reasonable accommodation and disability inclusion in all anti-trafficking measures, including in the provision of information, assistance and protection, and in comprehensive prevention measures; and ensure the inclusion and participation of persons with disabilities in all decision-making related to climate action and resilience to disasters.**

62. States must ensure that, in actions to combat trafficking in persons in the context of climate change, the increased risks of exploitation faced by internally displaced persons are recognized and effectively addressed through comprehensive prevention measures, and ensure effective protection for displaced persons and host communities.
63. States, United Nations entities and humanitarian actors must integrate responses to preventing and addressing trafficking in persons in human rights-based, gender-responsive, community-informed disaster risk reduction, prevention and response measures.
64. States must ensure that climate policies, including those on adaptation, mitigation and financing, address the rights of persons at risk of trafficking in the context of climate change, ensuring gender equality, the rights of the child, the rights of persons with disabilities, the rights of indigenous peoples, non-discrimination and racial justice.
65. States must, individually and through international cooperation, strengthen social protection systems and safety nets, and child protection systems, in order to reduce the risks of trafficking in persons and limit the adverse impacts of climate change.
66. States should ensure protection of livelihoods and provide meaningful alternatives in the face of environmental degradation, including by taking steps to transform systems of production and consumption in order to create a more sustainable relationship with nature.<sup>102</sup> States must ensure effective protection of the rights of indigenous peoples, who are particularly affected by climate change and increased risks of exploitation, and fully implement the United Nations Declaration on the Rights of Indigenous Peoples.
67. States should integrate accountability and remedies for trafficking-related human rights violations and the right of redress for victims of trafficking in persons when addressing climate change-related loss and damage.
68. States must, individually and through international cooperation, protect against climate change-related human rights abuse by businesses, including those most associated with risks of trafficking. States should enact and enforce mandatory environmental and human rights due diligence obligations, regardless of the size of the company or employer, that require disclosure of harmful impacts identified in respect of the rights of workers, risks of forced labour and trafficking and environmental degradation, ensure that consultations are held with workers' representatives and affected communities, and require reporting on concrete and verifiable results achieved. States must ensure an enabling environment for trade unions and workers' organizations to support measures to combat climate change and ensure a just transition. Gender equality and women's empowerment must be ensured in all environmental and human rights due diligence measures.
69. States, United Nations entities and private actors, when financing or taking action to mitigate or adapt to climate change, should ensure that those actions are human rights-based<sup>103</sup> and do not aggravate trafficking risks.
70. States should ensure the full, equal and effective participation and leadership of women, as well as of persons with disabilities, in the design,

---

<sup>102</sup> See, for example, General Assembly resolution 70/1, entitled "Transforming our world: the 2030 Agenda for Sustainable Development".

<sup>103</sup> Note by the Secretary-General on rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/74/161), para. 69.

management, resourcing and implementation of gender-responsive and disability-inclusive disaster risk reduction policies, plans and programmes.

71. States should ensure that gender equality and the rights of women are integrated into disaster risk reduction programmes and regional and national action plans, including, specifically, those concerning the implementation of the Sendai Framework for Disaster Risk Reduction 2015–2030.

72. States should ensure the participation of migrant and displaced women in the development, implementation and monitoring of policies designed to prevent trafficking in persons in the context of climate-related displacement, migration and disasters.

73. United Nations entities should ensure that the gender dimensions of climate-related conflict and security risks are systematically addressed, including in peacebuilding and in peacekeeping transitions, and that the heightened risks of trafficking in persons, especially women and children, are recognized and addressed in comprehensive prevention and protection measures.

74. In action plans, programmes and measures relating to women, peace and security, measures to prevent trafficking in persons for all purposes of exploitation must be incorporated and the increased risks of trafficking arising in the context of climate change, displacement, disasters and conflict must be recognized. The participation of women, particularly women most affected by the negative impacts of climate change and climate insecurity, in the design and implementation of peacebuilding measures must be ensured.

75. With regard to climate financing, States and United Nations entities should ensure that gender equality and child rights perspectives are prioritized when making decisions and applying climate finance instruments and ensure women's participation in the allocation of financial resources, especially in crisis and conflict settings.

76. States must ensure that prevention, protection and partnership responses to trafficking in persons are informed and led by survivors of all forms of trafficking, and that civil society is enabled and supported to design, lead and implement comprehensive programmes to prevent trafficking in persons in the context of climate change and climate-related displacement and disasters.

77. The impact of environmental racism must be recognized and addressed in comprehensive measures to combat climate change and prevent trafficking in persons for all purposes of exploitation. Such measures must also ensure racial justice and non-discrimination.



# General Assembly

Distr.: General  
11 July 2022

Original: English

---

**Seventy-seventh session**  
Item 26 of the preliminary list\*  
**Advancement of women**

## **Violence against women and girls, its causes and consequences**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, in accordance with Assembly resolution [75/161](#).

---

\* [A/77/50](#).



**Report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem**

**Violence against women and girls in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response**

*Summary*

In the present report, the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, explores the nexus between the climate crisis, environmental degradation and related displacement, and violence against women and girls. She assesses the intersecting vulnerabilities experienced by groups of women most at risk of the adverse impacts of climate change and introduces good practices and challenges in integrating a gender-responsive approach for addressing the climate crisis.

## I. Introduction

1. The present report of the Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, is submitted to the General Assembly pursuant to its resolution [75/161](#) and Human Rights Council resolution [41/17](#). In the report, the Special Rapporteur assesses violence against women and girls and its varied manifestations in the context of the climate crisis, including environmental degradation and related disaster risk mitigation and response.

## II. Activities of the Special Rapporteur

2. The activities carried out by the Special Rapporteur during the reporting period are included in her thematic report submitted to the Human Rights Council at its fiftieth session ([A/HRC/50/26](#)).

3. The Special Rapporteur presented the thematic report, entitled “Violence against indigenous women and girls”, in which she highlighted the causes, manifestations and consequences of gender-based violence against indigenous women and girls and introduced good practices and challenges with regard to access to justice, truth and redress, and support services, and participation in initiatives and processes related to prevention of and protection from gender-based violence. At the same session, the Special Rapporteur also presented her country visit report to Mongolia ([A/HRC/50/26/Add.1](#)).

4. On the sidelines of the fiftieth session of the Human Rights Council, the Special Rapporteur attended the thirteenth meeting of the Platform of Independent Expert Mechanisms on the Elimination of Discrimination and Violence against Women with representatives of regional expert mechanisms.

5. In preparing the present report, the Special Rapporteur sought contributions from Member States, international and regional organizations, national human rights institutions, non-governmental organizations and other stakeholders. She is grateful to all those who submitted a response and shared testimonies. The Special Rapporteur is also grateful to the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the Economic and Social Commission for Asia and the Pacific for their extensive support with regard to online consultations with experts and civil society partners, including in South-East Asia and the Pacific region. The Special Rapporteur appreciates the inputs of the Special Rapporteur on the promotion and protection of human rights in the context of climate change and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in the expert consultations.

## III. Overview and objective of the report

6. The impacts of climate change and environmental degradation have been exacerbating existing inequalities and creating new vulnerabilities. Between 2000 and 2019, floods, droughts and storms affected nearly 4 billion people worldwide, costing over 300,000 lives.<sup>1</sup> Pollution has destroyed the ecosystem, leaving scarring effects and resulting in the annual death of 3.8 million persons due to household pollution, most of whom are women and children.<sup>2</sup> Environmental degradation is worsening at

<sup>1</sup> Centre for Research on the Epidemiology of Disasters and United Nations Office for Disaster Risk Reduction, “Human cost of disasters: an overview of the last 20 years, 2000–2019” (2020).

<sup>2</sup> [E/CN.6/2022/3](#), para. 9; and [E/CN.6/2022/4](#).

an alarming rate, due to the unsustainable management of industrial agriculture, grazing and forestry. If the current rate of global warming continues, the rise in global average temperature will not remain below 2°C above pre-industrial levels by the end of the century,<sup>3</sup> putting small island developing States in the global South among the most at risk.<sup>4</sup>

7. As has been stressed in the landmark studies of the Intergovernmental Panel on Climate Change, climate change acts as a threat multiplier and its impacts are felt more severely by those already on the margins.<sup>5</sup> Studies found that women are 14 times more likely to die in a climate catastrophe than men.<sup>6</sup> The combined impacts of sudden-onset natural disasters and slow-onset events, environmental degradation and forced displacement seriously affect women's and girls' rights to life, access to food and nutrition, safe drinking water and sanitation, education and training, adequate housing, land, decent work and labour protection. The prolonged exposure to health risks, such as chemicals in pesticides or persistent organic pollutants, disrupt the endocrine system of women and girls differently, including with pregnancies.<sup>7</sup> The lack of safe water results in water-borne diseases, both of which have negative consequences for breastfeeding and pregnant women.<sup>8</sup>

8. The economic and social fallout from the coronavirus disease (COVID-19) pandemic has compounded the climate and environment crises, disproportionately affecting women and girls.<sup>9</sup> During the pandemic, all types of violence against women and girls intensified, with the growing violence dubbed as a “shadow pandemic”.<sup>10</sup> The gendered consequences of exogenous shocks and crises<sup>11</sup> illustrate how structural inequities amplify and reproduce broader power imbalances and vulnerabilities, essentially rendering the climate change crisis a climate justice issue.<sup>12</sup>

9. For the purposes of the present report, climate change refers to a change in the state of the climate that can be identified (e.g. using statistical tests) by changes in the mean and/or the variability of its properties, and that persists for an extended period, typically decades or longer. It refers to any change in climate over time, whether due to natural variability or as a result of human activity.<sup>13</sup>

10. Violence against women and girls is a pervasive form of gender discrimination, affecting an estimated one third of women during their lifetime.<sup>14</sup> It inhibits women's

<sup>3</sup> World Meteorological Organization, *State of the Global Climate 2021* (Geneva, 2022).

<sup>4</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change.

<sup>5</sup> Hans-O. Pörtner and others, *Climate Change 2022: Impacts, Adaptation and Vulnerability – Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Intergovernmental Panel on Climate Change, 2022).

<sup>6</sup> Submission by Marianne Sarah Sauliner.

<sup>7</sup> Sara Brosché, *Women, Chemicals and the SDGs* (United Nations Environment Programme (UNEP) and International Pollutants Elimination Network, 2021).

<sup>8</sup> M. Anwar Hossen and others, “Gendered perspective on climate change adaptation: a question for social sustainability in Badlagaree Village, Bangladesh”, *Water*, vol. 13, No. 14 (July 2021).

<sup>9</sup> E/CN.6/2022/3, para. 2.

<sup>10</sup> Ramaya Emandi and others, *Measuring the Shadow Pandemic: Violence against Women during COVID-19* (UN-Women, 2021).

<sup>11</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018); and A/HRC/42/26. See also Committee on the Elimination of Discrimination against Women, statement of the Committee on gender and climate change during its forty-fourth session, July 2009.

<sup>12</sup> United Nations, “The highest aspiration: a call to action for human rights”, 2020.

<sup>13</sup> See United Nations Framework Convention on Climate Change, “Fact sheet: climate change science – the status of climate change science today”, February 2011.

<sup>14</sup> World Health Organization (WHO), “Violence against women”, fact sheet, 9 March 2021.

ability to enjoy rights and freedoms on an equal basis with men and is interconnected with and indivisible from other human rights.<sup>15</sup> It includes any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering, including threats, coercion or arbitrary deprivation of liberty.<sup>16</sup>

11. While violence against women is a global phenomenon, it disproportionately affects women with multifaceted vulnerabilities, such as those living in poverty, members of indigenous groups and persons with disabilities. Violence against women also intersects with sociopolitical and economic phenomena, including armed conflict, displacement and resource scarcity, which results in the feminization of vulnerability. This begs the important question of how climate change and environmental degradation – and strategies to avoid, mitigate or adapt to these phenomena – may broaden and/or intensify women’s vulnerability to violence, which the Special Rapporteur tries to address in the present report.

12. The increased awareness of the impact of the climate crisis on women and girls has not sufficiently influenced policies at the global, regional and national levels. In the Sendai Framework for Disaster Risk Reduction 2015–2030, States are invited to collect data on disaster impacts for both men and women disaggregated by hazard, income, sex, age and disability.<sup>17</sup> However, among the 38 indicators of the Framework (see [A/71/644](#)), only 2 target indicators, namely on mortality and affected people, are gender-specific. Around 128 countries did not start reporting for these indicators in 2021,<sup>18</sup> and data on the nexus between climate change and violence against women and girls remain scarce and abstract.<sup>19</sup> Studies seldom address the subset of climate impacts due to the technical challenges in standardizing, quantifying and monetizing impacts and related measures,<sup>20</sup> which limits a culturally varied and nuanced understanding.

13. Against this backdrop, in the present report the Special Rapporteur intends to further the understanding of the nexus between the climate crisis, environmental degradation and related displacement, and violence against women and girls. Despite largely anecdotal evidence and nascent efforts in data collection, the Special Rapporteur also demonstrates how different groups of women experience the crisis and how certain groups are more at risk as a result of intersecting vulnerabilities. Furthermore, the Special Rapporteur takes stock of the extent to which climate governance and related financing processes have factored in the needs of women and girls who are at risk or survivors of violence. Finally, the Special Rapporteur shares examples of good practices and challenges in integrating a gender-responsive approach for addressing the climate crisis, including through disaster management.

#### **IV. International law and the nexus between climate change and violence against women and girls**

14. While there is no dedicated or established international legal instrument addressing violence against women and girls in the context of climate change,<sup>21</sup> the

<sup>15</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19; and [A/HRC/35/30](#).

<sup>16</sup> Declaration on the Elimination of Violence against Women, art. 1.

<sup>17</sup> See General Assembly resolution [69/283](#), annex II.

<sup>18</sup> See <https://sendaimonitor.undrr.org/>.

<sup>19</sup> Submission by Lebanon.

<sup>20</sup> UNEP, *The Adaptation Finance Gap Report* (Nairobi, 2016).

<sup>21</sup> Bharat H. Desai and Moumita Mandal, “Role of climate change in exacerbating sexual and gender-based violence against women”, *Environmental Policy and Law*, vol. 51, No. 3 (2021).

wider relationship between climate change and human rights is increasingly recognized in international human rights mechanisms,<sup>22</sup> including in the decision of the Human Rights Committee in the *Teitiota v. New Zealand* case.<sup>23</sup> In the Beijing Declaration and Platform for Action, it was recognized that women are “particularly affected by environmental disasters, serious and infectious diseases and various forms of violence against women” and that displacement resulting from environmental deterioration has had a negative impact on women’s well-being.

15. The Convention on the Elimination of All Forms of Discrimination against Women does not have an explicit reference to climate change. However, in its general recommendation No. 37 (2018), the Committee on the Elimination of Discrimination against Women acknowledged that women and girls are at a greater risk of violence after disasters, in the absence of social protection schemes and in situations of food insecurity.<sup>24</sup> The Committee also highlighted the precarity in camps and temporary settlements, and noted the different forms of violence against women and girls during and after disasters.<sup>25</sup>

16. In 2019, several human rights treaty bodies, including the Committee on the Elimination of Discrimination against Women, referenced the position set out in the 2018 report of the Intergovernmental Panel on Climate Change that climate change poses a significant threat to the rights protected under international treaties. Treaty bodies noted how the adverse impacts identified in that report jeopardize a range of human rights, including the rights to life, food, adequate housing, health and water. Treaty bodies also considered the heightened risks for those in vulnerable situations or those who, “due to discrimination and pre-existing inequalities, have limited access to decision-making or resources”, including women, children, persons with disabilities, indigenous peoples and persons living in rural areas.<sup>26</sup>

17. Climate change may expose those affected, including women and girls, to human rights violations that may amount to persecution within the meaning of the Convention relating to the Status of Refugees, of 1951, and the Protocol relating to the Status of Refugees, of 1967.<sup>27</sup> A well-founded fear of persecution may arise for vulnerable persons or those defending, conserving and reporting on ecosystems and resources. As resources diminish, access may be denied in a discriminatory fashion amounting to persecution for one or more grounds of the 1951 Convention.<sup>28</sup>

18. Treaty bodies have also increasingly addressed measures adopted by States to assist the population to adapt to climate change, including those with specific needs.<sup>29</sup> In its concluding observation on Norway, the Committee on the Elimination of Discrimination against Women requested information on measures Norway is adopting to ensure that its climate change and energy policies take account of the differentiated and disproportionate impact of climate change on women.<sup>30</sup>

<sup>22</sup> See Human Rights Council resolution [47/24](#).

<sup>23</sup> [CCPR/C/127/D/2728/2016](#).

<sup>24</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018).

<sup>25</sup> *Ibid.*

<sup>26</sup> Committee on the Elimination of Discrimination against Women and others, joint statement of five United Nations treaty bodies on human rights and climate change, 16 September 2019.

<sup>27</sup> Office of the United Nations High Commissioner for Refugees, “Legal considerations regarding claims for international protection made in the context of adverse effects of climate change and disasters”, 1 October 2020.

<sup>28</sup> *Ibid.*

<sup>29</sup> Centre for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, “States’ human rights obligations in the context of climate change: guidance provided by the UN human rights treaty bodies – 2022 update”, 2022.

<sup>30</sup> [CEDAW/C/NOR/CO/9](#), para. 15.

19. In its resolution 38/4, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights to conduct an analytical study on the integration of a gender-responsive approach into climate action. The study confirmed that intersectional forms of discrimination can further increase the vulnerability of some women and girls to climate change, while the exclusion of women from climate action inhibits its effectiveness and further exacerbates climate harms.<sup>31</sup> In its landmark resolution 48/13, the Council recognized the right to a safe, clean, healthy and sustainable environment and encouraged States to abide by and adopt policies related to human rights obligations, including on gender equality. The Council has also recognized the disproportionate effect of climate change on women and girls, inter alia, concerning the realization and enjoyment of their rights.

20. In the global policy framework, the 2030 Agenda for Sustainable Development has a dedicated Sustainable Development Goal on climate action and a cross-cutting Goal on gender equality and women's empowerment. The Sendai Framework repeatedly refers to the diverse ways in which women experience disasters and to their increased vulnerability in disasters. Notably, the Framework adopts a narrow approach to gender, focusing on the binary sex categories of male and female,<sup>32</sup> although it explicitly incorporates a goal on gender integration and emphasizes taking a differentiated approach to risk reduction and mitigation.

21. In the preamble of the Paris Agreement on climate change, States are called upon to consider their human rights obligations when taking action on climate change, including for indigenous peoples, children and people in vulnerable situations, as well as to factor in gender equality and women's empowerment.

22. The women and peace and security agenda has historically focused on the protection of women from gender-based violence in conflict situations, and there has been increasing yet insufficient recognition of the relevance of climate change to peace and human security. Of 80 national action plans on women and peace and security, only 17 referred to climate change, suggesting more space for framing climate-related security risks in the women and peace and security agenda.<sup>33</sup>

## V. Manifestations of violence against women and girls in the context of the climate crisis

23. The differentiated impact of climate change on women and girls necessitates a contextual gender analysis of distinct groups.<sup>34</sup> Evidence suggests that climate change and biodiversity loss aggravate all types of gender-based violence against women and girls,<sup>35</sup> which are exacerbated by discriminatory legal systems and governance structures and unequal power distribution, resulting in limited avenues of participation, public services and infrastructure.<sup>36</sup> As more women and girls are exposed to violence, their access to effective assistance mechanisms, including social protection, psychological and sexual and reproductive health services, is severely impeded.<sup>37</sup> Lower access to information and communications technologies also

<sup>31</sup> A/HRC/41/26, para. 60.

<sup>32</sup> R. Zehra Zaidi and Maureen Fordham, "The missing half of the Sendai Framework: gender and women in the implementation of global disaster risk reduction policy", *Progress in Disaster Science*, vol. 10 (April 2021).

<sup>33</sup> Elizabeth Seymor Smith, "Climate change in women, peace and security national action plans", SIPRI Insights on Peace and Security, No. 2020/7 (June 2020).

<sup>34</sup> FCCC/SBI/2019/INF.8.

<sup>35</sup> Submission by Mexico.

<sup>36</sup> E/CN.6/2022/L.7.

<sup>37</sup> A/HRC/47/38. See also submission by the European Union.

negatively affect women's and girls' access to life-saving information in post-disaster situations.

## A. Physical and sexual violence

24. In the follow-up to natural disasters, risks and experiences of physical violence are particularly pronounced. While the parameters of studies differ, a post-disaster increase in violence, including sexual violence against women, has been identified in contexts as varied as Hurricane Katrina (2005), the earthquake in Haiti (2010), the earthquake in Christchurch, New Zealand (2011), tropical cyclones in Vanuatu (2011), heatwaves in Spain (2008–2016) and bush fires in Australia (2019–2020).<sup>38</sup>

25. The likelihood of violence is multiplied when women and girls are displaced and/or in emergency shelters, whereby a breakdown of law and order curbs their access to reporting and protection mechanisms. Limited access to safe shelters has deterred women and girls from evacuating and resulted in gendered mortality outcomes.<sup>39</sup>

26. The loss of livelihoods and limited resources tied to the aftermath of large-scale natural disasters or slow-onset environmental degradation force women and girls into sexual exploitation in exchange for food and natural resources, including water or fuel from common areas.<sup>40</sup> Water scarcity from droughts pushes women and girls to travel longer distances into unfamiliar areas or without usually-available safeguards, such as travelling in a group or during daylight. Women have been targeted at water collection spots in a number of countries<sup>41</sup> with requests for sexual favours,<sup>42</sup> threats of sexual violence and rape.<sup>43</sup> Anecdotal evidence suggests that sexual violence against girls intensified following droughts, as girls were exposed to unprotected sex with older men while collecting water.<sup>44</sup>

27. There are numerous accounts of women and girls being attacked, raped or psychologically abused while fetching firewood and/or water.<sup>45</sup> Survivors attributed the attacks to the increased distances to services and a lack of electricity for lighting and cooking.<sup>46</sup> Importantly, women in these situations are often forced to choose between risk-imbued options: placing themselves at risk of violence or using unsafe resources, such as dirty or salinized water.<sup>47</sup> Women who migrate to cities, towns and

<sup>38</sup> Submission by Advocates for Human Rights. See also Monica Campo and Sarah Tayton, *Domestic and Family Violence in Regional, Rural and Remote Communities: An Overview of Key Issues* (Melbourne, Australian Institute of Family Studies, 2015).

<sup>39</sup> Alvina Erman and others, *Gender Dimensions of Disaster Risk and Resilience* (Washington, D.C., World Bank, 2021).

<sup>40</sup> Submission by Humanium.

<sup>41</sup> Submissions by WI-HER, Plan International and the United Nations Population Fund (UNFPA) refer to several incidents, including from Jordan, Somalia, the United Republic of Tanzania and South Africa.

<sup>42</sup> Submission by Anglican Consultative Council.

<sup>43</sup> Hans-O. Pörtner and others, *Climate Change 2022: Impacts, Adaptation and Vulnerability – Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Intergovernmental Panel on Climate Change, 2022).

<sup>44</sup> CARE International, “Hope dries up? Women and girls coping with drought and climate change in Mozambique”, November 2016.

<sup>45</sup> Itzá Castañeda Camey and others, *Gender-Based Violence and Environment Linkages: The Violence of Inequality* (Gland, Switzerland, International Union for the Conservation of Nature, 2020).

<sup>46</sup> UNFPA, *2021 Impact Assessment Report of the UNFPA Multi-Country Response to the Syria Crisis: Iraq, Jordan, Lebanon, Syria, Turkey and Turkey Cross-Border Programmes – Bridges to Hope*, vol. I (2021).

<sup>47</sup> Submission by Asia-Pacific Forum on Women, Law and Development.

peri-urban environments as a result of forced displacement or planned relocation are also at risk of sexual violence and are vulnerable to new hazards and opportunistic violence, due to weak access to safe housing, employment and community protection mechanisms.<sup>48</sup>

28. Sexual violence is also rife when farmers, vendors, landowners or authorities coerce women to offer transactional sex in exchange for food,<sup>49</sup> essential non-food items or access to land<sup>50</sup> for food production.<sup>51</sup> In communities on Lake Victoria, diminishing fish stocks and stagnating income resulted in the “jaboya” system, under which women fish vendors are forced to offer sex in lieu of paying for the product.<sup>52</sup>

29. The extractive industry, energy and production-related ventures, commercial logging and extractive energy sourcing have had negative, gendered and often violent impacts. These industries are predominantly dominated by a male workforce that comes from outside the region and is not tied to the community. Industries are also accompanied by male-dominated private security companies that operate autonomously from State policing and accountability mechanisms.<sup>53</sup> The situation creates scope for opportunistic sexual violence, for which there is no or limited accountability.<sup>54</sup> The protection gap for indigenous women is wider, due to territorial and jurisdictional conflicts that beget legal loopholes and interjurisdictional neglect.<sup>55</sup>

30. The risk of trafficking for women and girls can increase to as high as about 20 to 30 per cent in displacement sites and during a disaster,<sup>56</sup> due to the breakdown of law enforcement and local protection measures,<sup>57</sup> and as a response to diminished livelihoods. Women and girls can be trafficked for domestic labour, sexual exploitation or other forms of organized crime, and children may be exposed to other forms of violence in addition to sexual abuse.<sup>58</sup> Family separation and orphaning are additional risk factors for girls.<sup>59</sup> In the Philippines, women and girls reportedly fell victim to trafficking after Typhoon Haiyan in 2013,<sup>60</sup> as recruiters targeted displaced and uninformed families in emergency accommodation and makeshift shelters on roadsides and in parks.<sup>61</sup> In resource-dependent communities, such as in Indonesia, women migrate to foreign countries due to diminished resources and enter the domestic labour market at the destination, which may subject them to forced labour or sex work.<sup>62</sup>

31. Physical violence, threats and/or intimidation are common tactics forcing women off the land where they reside and work. The most dangerous situation tends

<sup>48</sup> Submission by World Vision.

<sup>49</sup> Submission by Global Forest Coalition.

<sup>50</sup> Submission by International Development Law Organization.

<sup>51</sup> UN-Women, “Challenges and opportunities in achieving gender equality and the empowerment of rural women and girls”, 2018. See also Castañeda Camey and others, *Gender-Based Violence and Environment Linkages*.

<sup>52</sup> Submissions by Femmes Force Changement and Anglican Consultative Council.

<sup>53</sup> Submission by Canadian Women’s Foundation.

<sup>54</sup> Submission by Tamar Ezer.

<sup>55</sup> Submission by Humanium.

<sup>56</sup> Christian Nellesmann, Ritu Verma and Lawrence Hislop, eds., *Women at the Frontline of Climate Change: Gender Risks and Hopes* (UNEP, 2011).

<sup>57</sup> International Development Law Organization, “Climate justice for women and girls: a rule of law approach to feminist climate action”, 2022.

<sup>58</sup> Nellesmann, Verma and Hislop, eds., *Women at the Frontline of Climate Change*.

<sup>59</sup> Submission by Save the Children.

<sup>60</sup> Women’s Legal and Human Rights Bureau, *Upholding Women’s Strengths and Access to Justice in Disaster: Narratives of Women Survivors of Typhoon Yolanda in Samar and Leyte* (2017).

<sup>61</sup> Amihan Federation of Peasant Women, “Typhoon Haiyan claims lifetime loss and damages for women in the Philippines”, 2015.

<sup>62</sup> Submission by Asian-Pacific Resource and Research Centre for Women.

to be where women are formally entitled to their land, whether through direct tenurial rights, legally recognized customary rights, indigenous rights or guarantee-to-land rights through free, prior and informed consent.

## **B. Psychological and cultural violence**

32. There have been reports of women and girls experiencing depression, anxiety, suicidal ideation and post-traumatic stress disorder due to climate change.<sup>63</sup> Reduced privacy is understood as a form of psychological violence and is causally related to a variety of cognitive, emotional, psychological and behavioural problems, including the normalization of violence. Women displaced in shelters following Typhoon Haiyan reported distress due to unsafe partitions that allowed men to peek into the rooms of teenage girls, taunting and harassing them.<sup>64</sup> As mentioned in the report of the Special Rapporteur to the Human Rights Council on violence against indigenous women and girls, the climate crisis and environmental degradation also contribute significantly to the loss of traditional and spiritual ways of life of indigenous peoples, including women and girls, and negatively affects their cultural identity.<sup>65</sup>

## **C. Domestic and intimate partner violence**

33. Most references to domestic violence are those that take place during and in the immediate aftermath of sudden disasters, as a reaction to economic stress, loss of control and trauma associated with unanticipated and catastrophic events<sup>66</sup> leading to an erosion of community and cultural ties and the scarcity of food and basic provisions.<sup>67</sup>

34. Slow-onset climate events exacerbate violence in homes, where domestic violence manifests as intimate partner violence. Women also carry out violence on other women in extended family or cohabitation settings, where women power-holders in the household target daughters-in-law, girls, elderly women, women with disabilities, domestic workers, tenants or lodgers. Girls can be the targets of domestic violence in all its forms, and are particularly at risk of sexual abuse, incest and early pregnancy. Vulnerability to domestic and communal violence increases due to ineffective and unavailable reporting mechanisms, cultural norms and lack of resources.<sup>68</sup>

35. Emerging evidence points to climate change affecting socialized gender roles. Anecdotal evidence suggests that climate change impacts also complicate or prevent women from performing gender-ascribed domestic roles<sup>69</sup> and exacerbate gendered divisions of labour.<sup>70</sup> Women living in areas affected by drought, salinity or water austerity measures often struggle to secure household water, creating violent

<sup>63</sup> Kim Robin von Daalen and others, “Extreme events and gender-based violence: a mixed methods systematic review”, *The Lancet: Planetary Health*, vol. 6, No. 6 (June 2022).

<sup>64</sup> Women’s Legal and Human Rights Bureau, *Upholding Women’s Strengths and Access to Justice*.

<sup>65</sup> A/HRC/50/26, para. 28. See also submission by Defensoría del Pueblo de Ecuador.

<sup>66</sup> Submission by Plan International.

<sup>67</sup> Submission by International Development Law Organization.

<sup>68</sup> Michaela Raab and Jasmin Rocha, *Campaigns to End Violence against Women and Girls* (UN-Women, 2011).

<sup>69</sup> Submission by AIX Global Justice.

<sup>70</sup> Submission by National Indigenous Disabled Women Association Nepal.

knock-on effects.<sup>71</sup> Women's inability to meet family or household expectations exposes them to violence, recrimination or punishment.<sup>72</sup>

36. Climate change affects gender roles through the loss of livelihoods or food insecurity, whereby men lose their ability to perform socially ascribed roles, such as that of "provider" or "breadwinner". Women are compelled to take on employment to supplement or substitute losses in male earnings or production, further adding to the feeling of emasculation. One way in which men in some communities respond is by asserting harmful notions of masculinity, such as violence,<sup>73</sup> and alcohol abuse also exacerbates domestic violence.<sup>74</sup> In drought-affected agricultural communities in Australia, women's uptake of financial responsibility for family sustenance and surges in domestic violence are understood to be interconnected and mutually reinforcing.<sup>75</sup>

#### D. Economic violence

37. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 35 (2017), recognizes that gender-based violence takes multiple forms that are likely to result in economic harm, among other things. Overall, climate change exacerbates gender and intergenerational poverty, which is a form of grave economic violence.<sup>76</sup> In rural and agriculture-dependent areas, women tend to be vested with disproportionate household responsibilities, including cleaning, collecting fuel and water, shopping for food and cooking. Climate impacts make such tasks more labour-intensive and difficult to complete, which extends women's economic burden and decreases their ability to achieve economic autonomy.<sup>77</sup>

38. Women's livelihoods may be compromised when extractive, energy and production-related ventures deplete the quantity and quality of resources women depend on for food and income, particularly as more women are employed in agriculture, forestry and fisheries.<sup>78</sup> Where agribusiness and shrimp farming monopolized resource areas, polluting water sources and driving up the cost of lease plots, women were forced to procure livelihoods and offset rent hikes by offering sexual favours to lessors.<sup>79</sup>

39. The intersection of climate and structural inequality sharpens the cycle of women's disempowerment by further skewing the gendered nature of land ownership and control. In the global South, agriculture is the most important sector for female employment; however, against the disproportionate dependence of women on land for food and livelihoods, less than 15 per cent of agricultural landholders globally are women.<sup>80</sup> Within families, jointly held property is more likely to be registered or titled

<sup>71</sup> Achintha C. Vithanage, "Addressing correlations between gender-based violence and climate change: an expanded role for international climate change law and education for sustainable development", *Pace Environmental Law Review*, vol. 38, No. 2 (Spring 2021).

<sup>72</sup> Submission by AIX Global Justice. See also Anik Gevers, "Why climate change fuels violence against women", *Apolitical*, 9 December 2019.

<sup>73</sup> Submission by International Union for the Conservation of Nature.

<sup>74</sup> Global expert group meeting, 12 May 2022. See also Elizabeth M. Allen, Leso Munala and Julie R. Henderson, "Kenyan women bearing the cost of climate change", *International Journal of Environmental Research and Public Health*, vol. 18, No. 23 (December 2021).

<sup>75</sup> *Ibid.*

<sup>76</sup> [A/HRC/50/57](#).

<sup>77</sup> Allen, Munala and Henderson, "Kenyan women bearing the cost".

<sup>78</sup> Deutsche Gesellschaft für Internationale Zusammenarbeit, "Gender and climate change adaptation in the NDCs", policy paper, February 2022.

<sup>79</sup> Submission by Fian International.

<sup>80</sup> Food and Agriculture Organization of the United Nations, "The gender gap in land rights", 2018.

in a way that privileges men. The knock-on effects are threefold. First, women have less power or voice in how climate change-driven food insecurity may be mitigated or managed.<sup>81</sup> Second, as fertile land becomes scarcer and sought after, women are more vulnerable to forced eviction and dispossession. Third, to the extent that they are not informed, women – as land users and not proprietors – tend to be excluded from adaptation tools such as livelihood diversification or climate financing.<sup>82</sup>

40. Women’s limited power to mitigate climate-related vulnerabilities is exacerbated by their reduced access to bank accounts and formal sources of finance.<sup>83</sup> As a result, women are caught in a mutually reinforcing cycle of exclusion, economic marginalization, food insecurity and violence and have reduced ability to avoid or leave situations of violence.

41. As non-landowners, women’s claims to land may be undermined in law and in practice. Research shows that disinheritance of the surviving spouse occurs in 96 countries, where there are contradictions or unclear uniformity in legal regimes governing inheritance rights.<sup>84</sup> Even with safeguards, women may need to yield land ownership, entitlement or inheritance to a male relative.<sup>85</sup> Land ownership transfers can be used to offset livelihood pressure, or – where resource scarcity has increased the value of and demand for land – allow quick economic gains to be exploited. In some areas, inheritance renouncement was a long-abandoned customary norm that has recently resurfaced.<sup>86</sup> As the climate emergency worsens, the same trend may apply to “wife inheritance”, another harmful traditional practice that keeps property and wealth under male control in an extended family. Women living in countries where inheritance rights and their protection is not set out in legislation and those living under customary legal systems that do not protect women’s inheritance rights are at risk. Women’s low legal awareness and limited access to legal services act as compounding factors.

42. Disrupted livelihoods and unemployment impel women to adopt negative coping mechanisms, including alternate forms of income generation that are informal, precarious or gender-discriminatory.<sup>87</sup> In Kenya, for example, indigenous women who lost their traditional occupation as pastoralists after the construction of a wind farm were reportedly forced to sustain their families through prostitution.<sup>88</sup>

43. Where climate impacts impel outmigration among men, women need to earn income, in addition to their existing responsibilities. Up to 15 per cent of household expenditure was spent on risk reduction for rural families in flood-prone Bangladesh. Female-headed households spent up to 30 per cent, as most flood-affected districts

<sup>81</sup> Submission by National Human Rights Institute of Mexico. See also Women Watch, “Fact sheet: women, gender equality and climate change”, 2009.

<sup>82</sup> Bina Agarwal, “Does women’s proportional strength affect their participation? Governing local forests in South Asia”, *World Development*, vol. 38, No. 1 (January 2010).

<sup>83</sup> Erman and others, *Gender Dimensions of Disaster Risk*.

<sup>84</sup> Secretariat of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, “Study on the differentiated impacts of desertification, land degradation and drought on women and men”, 2022.

<sup>85</sup> Submission by WI-HER.

<sup>86</sup> Norwegian Refugee Council, “Housing, land and property rights for Somalia’s displaced women”, 2016.

<sup>87</sup> CARE International and UN-Women, *Latin America and the Caribbean Rapid Gender Analysis for COVID-19* (2020).

<sup>88</sup> Submission by International Work Group for Indigenous Affairs.

are in the Greater Rangpur region, where seasonal migration and absent male heads are more common.<sup>89</sup>

44. Climate change worsens women's economic burden and "time poverty" and exposes them to unsafe forms of employment. Few economic opportunities exist for women in agriculture, which force them towards sex work or other unregulated sectors. Women may be forced to work in the very economic venture that caused their unemployment, whether it be in large-scale farming, fishing or energy production, which can be poorly regulated and unsafe.<sup>90</sup> When women are forced into new markets, they can be subject to gender pay gaps, exacerbating economic disempowerment. In rural Honduras, women have reportedly been pushed into fishing as a livelihood but continue to get paid less than men.<sup>91</sup>

45. Climate change adaptation programmes that are not inclusive or gender-sensitive can reduce women's livelihood opportunities. As women constitute most of the agricultural workforce, initiatives that favour technology, mechanization and automation may exclude them. Adaptive planning for traditional farming methods and technologies increasing climate-resilient cash crop varieties thus need strong participation by women and a gender-transformative lens.

## E. Other harmful practices

46. Economic stress, loss of livelihoods and food insecurity promote negative coping mechanisms, including forced marriage and harmful traditional practices, such as female genital mutilation and cutting.<sup>92</sup> An alarming increase in female genital mutilation linked to the climate crisis was noted across the Horn of Africa, where 14 of the 23 countries affected by drought are hotspots for female genital mutilation. Girls are in danger of being cut at younger ages as their families prepare them for marriage.<sup>93</sup> Forced marriage is used to reduce household expenses and damage-related expenses or to protect single women from an uncertain future, including reputational harm from exposure to sexual violence.<sup>94</sup>

47. Early and child marriage can be used as a response to sudden or unsustainable reductions in family income or food security, with girls being bartered for material resources.<sup>95</sup> It can also be used as a means for girls and young women to escape the risk of sexual violence or trafficking, unsafe employment or forced migration.<sup>96</sup> In all cases, early and child marriage is a form of violence in and of itself, as well as an enabler of other forms of violence against women, such as rape and forced pregnancy. Following Cyclones Idai and Kenneth in Mozambique in 2019, families reportedly resorted to early marriage and forced unions as a coping mechanism.<sup>97</sup> In drought-ridden areas of Ethiopia, families reportedly entered into child marriage agreements

<sup>89</sup> Shaikh Eskander and others, *Still Bearing the Burden: How Poor Rural Women in Bangladesh Are Paying Most for Climate Risks*, IIED Working Paper (London, International Institute for Environment and Development, 2022).

<sup>90</sup> Submission by Wide Bay Conservation.

<sup>91</sup> Submission by FIAN International.

<sup>92</sup> Submission by Plan International.

<sup>93</sup> United Nations Children's Fund (UNICEF), "Child marriage on the rise in Horn of Africa as drought crisis intensifies", 29 June 2022.

<sup>94</sup> [A/HRC/41/19](#). See also von Daalen and others, "Extreme events and gender-based violence".

<sup>95</sup> Submissions by International Union for Conservation of Nature and Advocates for Human Rights.

<sup>96</sup> Paola Perezniето and others, "Ending violence against children while addressing the global climate crisis", ODI Working Paper, No. 591 (London, Overseas Development Institute, 2020).

<sup>97</sup> Save the Children, "Double disasters: the effect of Cyclones Idai and Kenneth on child marriage in Mozambique", 2019.

in exchange for livestock.<sup>98</sup> Propositions of child marriage can be a front for child trafficking and/or sexual exploitation.

48. Another negative coping strategy that has a disproportionate impact on girls and young women is premature withdrawal from education, which curbs income earning potential, correlates with early marriage and poverty and perpetuates gender discrimination. Nearly one in three adolescent girls in poor households miss school due to the lack of funds and menstrual health and hygiene.<sup>99</sup> The increased shortage of water, coupled with a lack of adequate sanitation facilities, exacerbates this trend.<sup>100</sup> Common programming entry points, such as raising awareness of harmful practices and strengthening of laws, need to be twinned with programmes supporting livelihoods and legal empowerment.

## VI. Groups of women that are particularly at risk

49. In its Sixth Assessment Report, the Intergovernmental Panel on Climate Change recognized indigenous women, elderly women and women belonging to minority groups as being most vulnerable to climate change. The Panel did not, however, point to a link between their increased exposure to climate change and the actual level of violence they experience.

50. Severe violence is perpetrated against women defending their communities, means of livelihoods or scarce environmental resources. In addition to generalized threats faced by human rights activists worldwide, women environmental human rights defenders face gender-specific violence, with 70 per cent of the 122 reported attacks on human rights defenders directed at women environmental human rights defenders,<sup>101</sup> including both indirect violence, such as slander and threats against children of women environmental human rights defenders, and direct violence, such as rape.<sup>102</sup> Of all fatal attacks against environmental human rights defenders, a third targeted indigenous people.<sup>103</sup>

51. Indigenous women and girls, particularly those defending their territories and communities, are at high risk of violence. In some countries, such as Guatemala and the Philippines, indigenous women and women human rights defenders faced threats, violence and criminalization in relation to their activism against land encroachment by hydroelectric plants, mining companies, illegal logging ventures and farmers.<sup>104</sup> Despite the circumstances, only a few nationally determined contributions in Asia paid attention to indigenous women.<sup>105</sup> The violence is often connected to corporate and State entities in extractive, energy and production-related ventures whose projects target fertile lands home to indigenous and forest communities, as these areas tend to hold scarce and valuable natural resources. Rights over such lands are generally State-owned or customarily held or exist in a legal “grey zone” without redress

<sup>98</sup> United Nations, Office for the Coordination of Humanitarian Affairs, “Horn of Africa: a call for action”, February 2017.

<sup>99</sup> World Bank, “Menstrual health and hygiene”, brief, 12 May 2022.

<sup>100</sup> UNICEF and World Association of Girl Guides and Girl Scouts, “Bring in the girls! Girls’ and young women’s views on climate change”, 2022.

<sup>101</sup> Business and Human Rights Centre, “International Women’s Day 2022: recognizing the role of women in advancing human rights and defending the planet”, 28 February 2022.

<sup>102</sup> Submission by Advocates for Human Rights.

<sup>103</sup> Global Witness, *Last Line of Defence: The Industries Causing the Climate Crisis and Attacks against Land and Environmental Defenders* (2021).

<sup>104</sup> Submission by Indian Law Resources Centre and Asia Indigenous Peoples Pact.

<sup>105</sup> Asia Indigenous Peoples Pact, “Nationally determined contributions in Asia: are governments recognizing the rights, role and contribution of indigenous peoples?”, April 2022.

mechanisms,<sup>106</sup> creating scope for violent land expropriation, exploitation, theft and grabbing.<sup>107</sup>

52. Although studies predominantly focus on cisgender women and girls,<sup>108</sup> few show that women of diverse sexual orientations and gender identities experience heightened discrimination and violence in disasters.<sup>109</sup> Following Cyclone Winston in Fiji, persons with diverse sexual orientations and gender identities experienced violence, harassment, isolation and stigmatization.<sup>110</sup> Similarly, same-sex couples were reportedly prevented from receiving aid from the United States Federal Emergency Management Agency after Hurricane Katrina.<sup>111</sup> In at least one instance in the United Republic of Tanzania, women were scapegoated for the negative natural phenomenon and accused of being witches.<sup>112</sup>

53. Climate change will continue to have a disproportionate impact on older persons, as vulnerabilities are exacerbated by ageism.<sup>113</sup> Older women are particularly vulnerable to climate change, and limited access to emergency services during extreme weather events and a corresponding increase in the death toll of older people from heat has been well documented.<sup>114</sup> Similarly, women with disabilities are up to four times more at risk of experiencing violence than women without disabilities, for which a similar trend has a more acute impact on older women with disabilities and those in refugee settings.<sup>115</sup> Currently, only 35 of the 192 States parties to the Paris Agreement refer to persons with disabilities in nationally determined contributions and 45 refer to them in climate adaptation plans.<sup>116</sup>

54. Women in poverty and those heading households suffer from heightened risks and low or reduced adaptive capacity, and the lower the socioeconomic status of women, the higher the gender gap in mortality rates.<sup>117</sup> Women make up 70 per cent of those living below the poverty line, 60 per cent of the population facing chronic hunger and a majority of those whose livelihoods are connected to rural agriculture. Women's dependency on climate-dependent and volatile natural resources results in severe impacts from externalities, such as drought, biodiversity and habitat loss, land degradation, extreme weather events and rising sea and temperature levels, although these gendered impacts are not always visible. Adverse impacts are manifested as heightened economic burden and time poverty, reduced incomes, acute economic shocks and food insecurity, and diminish a range of women's rights. Furthermore, poorer households are also affected by male outmigration.<sup>118</sup>

55. Women and girls forcibly displaced by climate change and environmental degradation are at particular risk of violence, including sexual violence. Of the 38 million who are estimated to have been displaced in 2021, 23.7 million were

<sup>106</sup> Submission by Wide Bay Conservation.

<sup>107</sup> Submission by Haitian Women's Solidarity.

<sup>108</sup> Von Daalen and others, "Extreme events and gender-based violence".

<sup>109</sup> Zehra Zaidi and Fordham, "The missing half of the Sendai Framework".

<sup>110</sup> Von Daalen and others, "Extreme events and gender-based violence".

<sup>111</sup> Ibid.

<sup>112</sup> Ibid. See also Rumbi Chakamba, "Women accused of witchcraft face assault and death in Tanzania", *The New Humanitarian*, 3 January 2018.

<sup>113</sup> [A/HRC/48/53](#).

<sup>114</sup> [A/HRC/47/46](#).

<sup>115</sup> Submissions by Egypt and Australia. See also Emma Pearce, "Disability considerations in GBV programming during the COVID-19 pandemic", May 2020.

<sup>116</sup> McGill University and International Disability Alliance, "Status report on disability inclusion in national climate commitments and policies", June 2022.

<sup>117</sup> Submissions by Anna Schroer and Timothy Wang.

<sup>118</sup> Anwar Hossen and others, "Gendered perspective on climate change".

displaced due to climate-related disasters,<sup>119</sup> most of them women and children. Children can be unaccompanied, separated or orphaned due to the erosion and breakdown of normal social controls and protections.<sup>120</sup> They can be targeted at border crossings or when driven into high-risk work. While there is less data, submissions indicate that sexual violence tied to migration can be punitive when host communities blame resource exploitation by outsiders. Attacks can come from anyone who has a vested interest aligned to large-scale development ventures, including management who hire vigilantes and employees, State and local authorities, landowners and community members who stand to benefit.

56. In the aftermath of the 2021 earthquake and tropical storm in Haiti, Gaborone and Papa Numa displacement camps reportedly had high rates of sexual harassment, rape and resulting pregnancies.<sup>121</sup> In the Bihar region of India, seasonal flooding resulted in large-scale displacement, with poor families moving to unsafe shelters along highways and railway tracks. Displaced women who sought refuge in shelters in India, Indonesia and Pakistan after floods were subjected to verbal and sexual harassment and sexual, physical and emotional violence committed by a number of actors, including relief workers.<sup>122</sup> Where emergency shelters lack safeguards such as lockable tents and rooms, sex-segregated latrines, lighting and security in resource distribution areas, these risks are exacerbated.<sup>123</sup> Confusion in registering complaints regarding incidents of violence, and disrupted reception and referral mechanisms, also increase vulnerabilities.<sup>124</sup>

## VII. Policies and initiatives with implications for the nexus between violence against women and the climate crisis

57. The nexus between violence against women and climate change, environmental degradation and disaster risk reduction opens spaces for cooperation at different levels. The Commission on the Status of Women shed light on the importance of utilizing regional conventions, instruments and initiatives and their follow-up mechanisms in addressing climate change in the context of violence against women in numerous conclusions, most recently at its sixty-sixth session.<sup>125</sup>

58. Intergovernmental mechanisms are an important juncture through which siloed multilateral mechanisms can be brought closer to inform regional and domestic policies. Intergovernmental collaboration has culminated in crucial milestones at times, as evidenced by the adoption of the Ministerial Declaration on Gender Equality and Climate Change at the twenty-fourth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. Governmental efforts, such as the For All Coalition spearheaded by the Government of Costa Rica, help to guide international processes by seeking to integrate human rights and gender equality in multilateral environmental agreements.<sup>126</sup> Furthermore, the Lima work programme on gender, established in 2014, advances gender balance and integrates gender into the implementation of the Framework Convention and the Paris

<sup>119</sup> Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2022: Children and Youth in Internal Displacement* (Geneva, 2022).

<sup>120</sup> Submission by International Development Law Organization.

<sup>121</sup> Joint submission by Nègès Mawon, Institute for Justice and Democracy in Haiti and Global Justice Clinic.

<sup>122</sup> Von Daalen and others, “Extreme events and gender-based violence”.

<sup>123</sup> Submission by International Union for the Conservation of Nature.

<sup>124</sup> See Women’s Legal and Human Rights Bureau, *Upholding Women’s Strengths and Access to Justice*.

<sup>125</sup> E/CN.6/2022/L.7, para. 5.

<sup>126</sup> A/HRC/41/26, para. 50.

Agreement.<sup>127</sup> In 2017, the Conference of the Parties to the Framework Convention adopted a gender action plan in recognition of the importance of gender-responsive climate action.<sup>128</sup>

59. The Sendai Framework emphasized the importance of women’s participation in its guiding principles and priority areas. Nevertheless, none of the indicators under its seven main targets are gender-specific, nor do the targets themselves specifically address gender-responsiveness.<sup>129</sup> More recently, the text of the draft post-2020 global biodiversity framework acknowledges the need for gender equality, women’s empowerment and gender-responsive approaches.<sup>130</sup>

60. At the regional level, the European Commission committed to integrate a gender perspective in the “European Green Deal” to respond to climate change.<sup>131</sup> A number of regional agreements in the Pacific, including the Framework for Pacific Regionalism, the 2050 Strategy for the Blue Pacific Continent, the Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management and the Boe Declaration on Regional Security and its Action Plan, recognize gender equality as a key policy objective. In particular, the Action Plan of the Boe Declaration dedicates one of the action areas to eradicating gender-based violence and strengthening the participation of women.<sup>132</sup> The Pacific Resilience Partnership’s technical working group on localization also brings localized and women-led initiatives to the fore, with a specific focus on age and disability inclusion.<sup>133</sup>

61. Initiatives led by individual Governments also allow for localized and context-specific engagement,<sup>134</sup> which is crucial for reflecting differentiated national circumstances and capabilities, as underscored in article 2 of the Paris Agreement. A recognition of the acute vulnerabilities of small island developing States culminated in the SIDS Accelerated Modalities of Action (SAMOA) Pathway, which enumerates multiple clauses on gender equality and the elimination of violence against women.<sup>135</sup>

62. In nationally determined contributions, which are climate action plans to cut emissions and adapt to climate impacts, there are increased references to gender as a cross-cutting issue.<sup>136</sup> Other good practices at the national level abound. The national policy of Mexico on climate change, entitled “Estrategia nacional de cambio climático: visión 10-20-40”, stipulates that gender should be considered in all policies relating to climate change.<sup>137</sup> Guatemala has a plan of action on gender and climate change and the Ministry of Food, Livestock and Agriculture is developing a guide for the inclusion of gender in sustainable and environmentally friendly agricultural activities.<sup>138</sup> The development cooperation guidelines of Italy on gender equality for the period 2020–2024 focus on women and climate change.<sup>139</sup> Jordan has recognized

<sup>127</sup> FCCC/CP/2014/10/Add.3.

<sup>128</sup> FCCC/CP/2017/11/Add.1, decision 3/CP.23, annex.

<sup>129</sup> Zehra Zaidi and Fordham, “The missing half of the Sendai Framework”.

<sup>130</sup> CBD/WG2020/3/3.

<sup>131</sup> Submission by the European Union.

<sup>132</sup> Pacific Islands Forum Secretariat, Boe Declaration Action Plan, 2019.

<sup>133</sup> See [www.resilientpacific.org/en/technical-working-groups](http://www.resilientpacific.org/en/technical-working-groups).

<sup>134</sup> Ibid.

<sup>135</sup> General Assembly resolution 69/15, annex, paras. 76–77.

<sup>136</sup> Deutsche Gesellschaft für Internationale Zusammenarbeit, “Gender and climate change adaptation”.

<sup>137</sup> Submission by Mexico.

<sup>138</sup> Submission by Guatemala.

<sup>139</sup> Italian Agency for Development Cooperation, “Guidelines on gender equality and the empowerment of women and girls (2020–2024)”, 2022.

and integrated a gender equality perspective in its national climate change policy.<sup>140</sup> In the light of increasing climate mobility concerns, countries like Vanuatu have a dedicated national policy on climate change and disaster-induced displacement, in which gender equality is broadly mainstreamed, especially with respect to instituting gender-inclusive and participatory measures and conducting gender-sensitive needs assessments.<sup>141</sup>

63. Despite the increasing focus on women in national initiatives, less than 2 per cent of national climate strategies explicitly mention girls.<sup>142</sup> Moreover, reference to women only as a vulnerable group persists and their participation is often restricted to the planning stage. Reporting on gender-responsive implementation continues to be limited.<sup>143</sup>

## VIII. Lack of participation of women and girls in governance processes on climate change

64. Women and women-led organizations are often the first responders during a crisis, with strong local networks that can help to identify the most vulnerable in need of assistance.<sup>144</sup> Girls and young women are also active in tackling climate change.<sup>145</sup> However, women and girls are largely absent from policymaking and decision-making spaces, which has been a persisting problem since the adoption of the Beijing Declaration and Platform for Action in 1995. Similarly, an extensive consultation with girls and young women across 90 countries found that 6 out of 10 girls and young women were never consulted by the Government on policies related to the environment.<sup>146</sup>

65. The participation of women and girls in climate change governance is recognized in key international agendas, including the 2030 Agenda for Sustainable Development in its Sustainable Development Goal 5 on gender equality and target 13.b, to “promote mechanisms for raising the capacity for effective climate change-related planning and management ... including focusing on women, youth and local and marginalized communities”.<sup>147</sup> Similar recognition is given in the draft post-2020 global biodiversity framework, in which States are called upon to ensure equitable and effective participation in decision-making related to biodiversity by women, girls and youth, as well as women’s groups.<sup>148</sup>

66. The Conference of the Parties to the United Nations Framework Convention on Climate Change has formulated goals for achieving gender equality<sup>149</sup> and

<sup>140</sup> “The National Climate Change Policy of the Hashemite Kingdom of Jordan 2013–2020” (2013); “Jordan’s Third National Communication on Climate Change” (2014); and “The National Climate Adaptation Plan of Jordan” (2021). See also submission by UNFPA.

<sup>141</sup> Vanuatu, National Disaster Management Office, *National Policy on Climate Change and Disaster-Induced Displacement* (Port Vila, 2018).

<sup>142</sup> UNICEF and World Association of Girl Guides and Girl Scouts, “Bring in the Girls!”.

<sup>143</sup> Deutsche Gesellschaft für Internationale Zusammenarbeit, “Gender and climate change adaptation”.

<sup>144</sup> Mary Picard, *Beyond Vulnerability to Gender Equality and Women’s Empowerment and Leadership in Disaster Reduction: Critical Actions for the United Nations System* (UN-Women, UNFPA and United Nations Office for Disaster Risk Reduction, 2021).

<sup>145</sup> [A/HRC/50/25](#).

<sup>146</sup> UNICEF and World Association of Girl Guides and Girl Scouts, “Bring in the Girls!”.

<sup>147</sup> See General Assembly resolution [70/1](#).

<sup>148</sup> CBD/WG2020/3/3.

<sup>149</sup> [FCCC/PA/CMA/2021/10/Add.1](#), decision 1/CMA.3 (Glasgow Climate Pact, adopted at the twenty-sixth session of the Conference of the Parties).

empowering women to fill a 25-year vacuum,<sup>150</sup> and has since adopted positive practices, such as using gender balance as a criterion for speaker selection as well as incorporating the participation of women in activities organized by its constituent bodies.<sup>151</sup> Member States of the European Union have supported women in travelling to participate in events related to the Framework Convention.<sup>152</sup> Gender parity was almost achieved in 2021, with women comprising 49 per cent of party delegations, yet men still accounted for 60 per cent of the speakers and 74 per cent of the speaking time in plenaries.<sup>153</sup>

67. In recent years, human rights monitoring bodies, including the Committee on the Elimination of Discrimination against Women, have regularly recommended that States ensure the meaningful participation and recognition of children and women as constituents of climate and disaster risk reduction processes and programmes.<sup>154</sup> For example, in relation to Japan, the Committee requested data on the proportion of women among members of the Central Disaster Management Council,<sup>155</sup> and requested Indonesia to clarify measures it had taken to ensure the participation of indigenous, rural and poor women in decision-making processes related to climate change.<sup>156</sup> The Committee has also asked States whether they have integrated a gender perspective into their framework for climate change and disaster risk reduction.<sup>157</sup> Similarly, in recent years the Committee on the Rights of the Child has focused on the importance of child participation in climate change-related policymaking.<sup>158</sup>

68. At the national level, a recent review of the national adaptation plans in parallel with the midpoint of the gender plans of action of the parties to the Framework Convention demonstrates that more countries are referring to gender equality and gender-responsiveness in their plans.<sup>159</sup> There is also increasing recognition of women as agents of change in adaptation, even though they are still predominantly regarded as a vulnerable group. The national adaptation plans do not generally refer to preventing and responding to violence against women and girls. Anecdotal evidence in Viet Nam suggests that increased governmental efforts to combat violence against women pre-typhoon may have had a pre-emptive effect in reducing post-typhoon violence.<sup>160</sup> Cuba has a high proportion of women managing its disaster risk reduction and early warning centres.<sup>161</sup> Togo is reinforcing women's leadership in the national plan to reduce emissions and is discouraging deforestation by establishing multifunctional platforms in villages, where women are provided with small gardens, livestock and mills to grind seeds.<sup>162</sup>

<sup>150</sup> Wing Ka Ho, "Gender and indigenous climate justice at the United Nations", Earth.Org, 11 June 2022.

<sup>151</sup> Ibid.

<sup>152</sup> Submission by the European Union.

<sup>153</sup> NAP Global Network, "Gender-responsive national adaptation plan (NAP) processes: progress and promising examples – NAP Global Network synthesis report 2021–2022", June 2022.

<sup>154</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018).

<sup>155</sup> CEDAW/C/JPN/QPR/9, para. 20.

<sup>156</sup> CEDAW/C/IDN/Q/8, para. 20.

<sup>157</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 37 (2018).

<sup>158</sup> Centre for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, "Children's rights obligations of States in the context of climate change: synthesis of statements on climate change by the Committee on the Rights of the Child (2022 update)", 2022.

<sup>159</sup> NAP Global Network, "Gender-responsive national adaptation plan".

<sup>160</sup> Von Daalen and others, "Extreme events and gender-based violence".

<sup>161</sup> Submission by Cuba.

<sup>162</sup> Submission by Togo.

69. As participation goes beyond sitting at the table and allows space for sharing valuable knowledge, in Vanuatu, the effective participation of indigenous women paved the way for the improved uptake of indigenous knowledge and its translation into practice, such as the adoption of traditional preservation and storage techniques.<sup>163</sup> Furthermore, Australia supported women leaders from 12 Pacific Islands in becoming advocates for climate action.<sup>164</sup>

## IX. Climate financing and violence against women

70. According to the Organisation for Economic Co-operation and Development (OECD), “developed countries” remain behind in their pledge to provide \$100 billion per year in climate finance to “developing countries” by 2020, and execution will be delayed to 2025.<sup>165</sup> Most climate financing is provided as loans rather than as grants, which has serious implications for the existing financial inequities and for dealing with the human rights aspects of climate change.<sup>166</sup> Countries such as Mexico have stressed that fulfilling this global commitment is essential to address the human rights dimensions of climate change.<sup>167</sup>

71. Understanding avenues for accessing complex and stringent funding streams is challenging for small grass-roots organizations, including women-led organizations.<sup>168</sup> Climate funds are channelled through large-scale initiatives, are not well connected with local actors and lack a gender lens across the board.<sup>169</sup> Despite the general increase in nationally determined contributions referring to gender-responsive budgeting, the overall number of references remains low.<sup>170</sup>

72. So far, climate change mitigation, adaptation and financing for loss and damages have primarily focused on male livelihoods, neglecting the important and usually unpaid responsibilities fulfilled by women. While low financial literacy and limited access to information and property ownership heighten barriers for women to access climate financing, there are also risks associated with women having control over resources, when it triggers change in the intrahousehold and communal power dynamics. The push for a gender-inclusive lens and locally appropriate measures is also difficult, as disaster risk management agencies, such as those in the Pacific, remain underfunded and available monitoring and evaluation mechanisms face challenges in tracking progress and ensuring accountability.<sup>171</sup>

<sup>163</sup> Expert consultations in the Asia-Pacific region, 14 June 2022.

<sup>164</sup> Submission by Australia.

<sup>165</sup> Mathias Cormann, Secretary-General of OECD, “Developed countries likely to reach USD 100 billion goal in 2023”, statement by the OECD Secretary-General on future levels of climate finance, 25 October 2021.

<sup>166</sup> Centre for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, “States’ human rights obligations in the context of climate change”.

<sup>167</sup> Submission by Mexico.

<sup>168</sup> “How can a climate-resilient future address inequality”, *New York Times*, online event, 23 June 2022.

<sup>169</sup> Submission by the European Union. See also joint publication by Both ENDS, Heinrich Böll Stiftung North America, Aksi! for gender, social and ecological justice and Prakriti Resources Centre, “Local actors ready to act: six proposals to improve their access to the Green Climate Fund”, 2018.

<sup>170</sup> Deutsche Gesellschaft für Internationale Zusammenarbeit, “Gender and climate change adaptation”.

<sup>171</sup> Stockholm Environment Institute and others, “Gender-responsiveness and disability inclusion in disaster risk reduction in the Pacific”, 2021.

## X. Conclusions

73. Climate change is and will undoubtedly be the most consequential phenomenon that dictates new and existing forms of gendered inequities, profoundly shaping the ways in which violence against women and girls manifests itself across societies and in different contexts, including in non-disaster, mid-disaster and post-disaster settings. Immediate and long-term impacts of environmental degradation, along with sudden-onset and slow-onset climatic events, will wield a cumulative effect over women unless met with contextually appropriate and location-specific responses that are informed by intersecting needs. Violence against women and girls needs to be addressed as part of the climate emergency,<sup>172</sup> for which stakeholders need to fulfil procedural and substantive obligations under international human rights law and development commitments to ensure “equitable, non-retrogressive, non-discriminatory, and sustainable” action against the gendered impacts of climate change.<sup>173</sup>

74. The exacerbation of violence against women and girls underscores the importance of addressing the underlying root causes and intensifying the engagement of stakeholders at all levels and in all walks of society, including men and boys. The fight against climate change and gender-based violence spares no one, and there are good examples that point to the potential of society-wide and inclusive initiatives. In Kyrgyzstan, as part of a project supporting livelihood activities for rural women through the planting of 500 trees, men and boys were invited to simultaneously participate in an exercise on gender-based violence.<sup>174</sup> Similarly, in Nepal, a cadre of men supported a programme tackling gender-based violence against women environment defenders.<sup>175</sup> Efforts to widen avenues of engagement, coupled with safe and active spaces to channel women’s voices, will allow climate action to embed and advance gender equality.

## XI. Recommendations

75. Girls and women should be placed at the centre of climate change mitigation and adaptation policies. States should therefore continue to prioritize the adoption and enactment of gender-responsive legal and institutional frameworks on gender-based violence, including when combating climate change. All stakeholders should support and strengthen a multisectoral response, which is fundamental to disaster preparedness and resilience, integrating measures to provide access to reproductive and sexual health care, legal aid and psychosocial support in affected areas.

76. All stakeholders should ensure that gendered vulnerability to climate change and disaster is addressed in a comprehensive manner, taking into consideration the way in which gender intersects with other aspects of power relations and identities.

77. States and the United Nations system must ensure that the global processes, particularly the “three Rio conventions”, and bodies mandated with mitigating climate change and driving solutions are adequately and firmly anchored in a

<sup>172</sup> EGM/ENV/EP.8.

<sup>173</sup> Office of the United Nations High Commissioner for Human Rights, UNEP and UN-Women, “Human rights, the environment and gender equality: key messages”, 2021, p. 2.

<sup>174</sup> Secretariat of the Convention on Biological Diversity, *Best Practices in Gender and Biodiversity: Pathways for Multiple Benefits* (Montreal, 2022).

<sup>175</sup> Ibid.

human-rights-based approach; incorporate a gender-transformative lens into all their undertakings; and address the implications of climate change and environmental degradation for the acceleration of violence against women. As recommended by the Special Rapporteur on the promotion and protection of human rights in the context of climate change, particular attention should be paid to establishing a comprehensive and robust gender action plan for the three Rio conventions and related mechanisms, including the twenty-seventh session of the Conference of the Parties to the United Nations Framework Convention on Climate Change. The recommendations of the Commission on the Status of Women and human rights bodies should also be integrated.

78. All stakeholders should continue to adopt all measures to end and respond to gender-based violence, doubling efforts to address multiple underlying causes and consequences of violence that are exacerbated by climate change and environmental degradation. These efforts should adopt a “whole-of-society approach”, strengthening the participation of community leaders, as well as men and boys.

79. Risk mitigation in the context of violence against women and gender-differentiated impacts needs to be integrated into early warning, preparedness and disaster risk reduction strategies.

80. All stakeholders should adopt robust gender approaches to monitoring and evaluating climate mitigation, adaptation and disaster risk reduction policies, while ensuring that these approaches are built on and informed by gender risk analysis.

81. States must enhance multisectoral and cross-ministerial coordination to adopt a gender-responsive approach to their climate change mitigation plans, including through the enhancement of the capacity of national gender and climate change focal points.

82. All stakeholders should invest in obtaining disaggregated, quality data on the impact of the climate crisis on gender-based violence on a larger scale, particularly on the impact on different groups of women, respecting all diversity. A gendered approach must inform risk analyses by including different perspectives on risk and analytics to formulate context and vulnerability-specific risk triggers and related thresholds. Contingency and response plans must be adjusted to take the specific needs of those most at risk into consideration.

83. States should ensure that access to finance and other resources for adaptation are equitable and take into consideration the needs of people of different groups, specifically dedicating resources to preventing and responding to acts of violence against women and girls. Costs for gendered needs must be accounted for up front, such as those for supplying temporary shelters, sanitary products, maternal and neonatal health-care facilities and livelihood support for marginalized groups.

84. All stakeholders should ensure that women and girls participate fully and effectively in all processes that are intended to design, implement, monitor and evaluate mitigation and response to climate change, environmental degradation and disaster risk reduction at the international, regional and national levels. Such participation could receive an impetus through a mandatory 50 per cent representation of women and girls in these processes. Climate change and biodiversity-related treaties and processes need to explicitly call for enabling conditions to be made available for women and girls to participate fully and effectively in creating a knowledge base on climate change and engage in decision-making, including by enjoying equal rights and control over land and

resources and the fair sharing of benefits arising from genetic and biological resources. Women and girls need to be seen as resilient change makers rather than only vulnerable victims.

85. All stakeholders should increase investment in enhancing women's sustainable livelihoods and resilience, as well as promoting their adaptive capacity, particularly for those working in agriculture, fishing, waste management and ecotourism. States should also increase investments in social protection systems to increase the capacity of societies and individuals to respond to climate impacts and to build resilience.

86. All stakeholders should ensure the protection of knowledge on the sustainable use of resources, especially that kept by indigenous women, as well as securing indigenous women's access and rights to their lands and resources.

87. To ensure that those affected and displaced by climate change, environmental degradation and related natural hazards are properly protected, States should ensure that those whose claims for protection arise from sudden or slow-onset effects of climate change or natural hazards have access to fair and efficient refugee status determination procedures to assess their needs for international protection, including on multiple grounds. States are also encouraged to adopt temporary protection arrangements or make pragmatic arrangements to provide protection for those forcibly displaced in the context of climate change, environmental degradation or natural hazards.

88. All stakeholders should strengthen understanding of the nexus between violence against women, conflict and climate change by examining the women and peace and security agenda and related national action plans, as well as assessing security-related risks.

89. States should ensure that women and girls, particularly those who are marginalized and discriminated against on intersecting grounds, have access to environmental education and are provided with accessible information on climate change adaptation and mitigation policies, including on how to participate, how to access protection and assistance in the wake of natural hazards and how to access remedies when they suffer from climate change action and inaction. Such an approach requires a deliberate effort to enhance access and contributions to the information base on climate change and to improve the digital literacy of women and girls.



# General Assembly

Distr.: General  
1 November 2017

Original: English

---

## Human Rights Council

Thirty-sixth session

11-29 September 2017

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the rights of indigenous peoples\***

### **Note by the Secretariat**

In the present report the Special Rapporteur on the rights of indigenous peoples provides a thematic study on the impacts of climate change and climate finance on indigenous peoples' rights.

---

\* The present report was submitted after the deadline in order to include the most recently available information.

GE.17-19275(E)



\* 1 7 1 9 2 7 5 \*

Please recycle The recycling symbol, consisting of three chasing arrows forming a triangle.



## Report of the Special Rapporteur on the rights of indigenous peoples

### Contents

	<i>Page</i>
I. Introduction .....	3
II. Activities of the Special Rapporteur .....	3
III. Indigenous peoples and climate change .....	3
A. Impact of climate change on indigenous peoples .....	3
B. Indigenous peoples' contributions to adaptation and mitigation strategies .....	5
IV. Human rights bodies, indigenous peoples and climate change .....	6
V. Human rights and other international standards, including the United Nations Framework Convention on Climate Change and the Paris Agreement .....	7
A. Self-determination and the right to development.....	8
B. Land rights, the right to participation and free, prior and informed consent .....	9
C. Rights to health, water and food and an adequate standard of living.....	10
D. Culture and traditional knowledge.....	10
E. International cooperation .....	11
F. Right to redress and reparation .....	12
G. Sustainable Development Goals .....	13
VI. State commitments, national reports and intended nationally determined contributions .....	14
VII. Climate finance and safeguards.....	15
A. Global Environment Facility .....	16
B. Clean Development Mechanism.....	16
C. United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (REDD-plus) .....	17
D. Adaptation Fund .....	17
E. Green Climate Fund.....	18
VIII. Examples of mitigation projects of concern .....	18
A. Barro Blanco hydroelectric project in Panama .....	19
B. Water Tower Protection and Climate Change Mitigation and Adaptation Programme in Kenya.....	19
C. Agua Zarca hydroelectric project in Honduras .....	19
D. Other related situations .....	20
IX. Conclusions and recommendations .....	20
A. Conclusions .....	20
B. Recommendations.....	21

## I. Introduction

1. The present report is submitted to the Human Rights Council by the Special Rapporteur on the rights of indigenous peoples pursuant to her mandate under Council resolution 33/12. In the report, the Special Rapporteur provides a brief summary of her activities since her previous report to the Council (A/HRC/33/42) as well as a thematic study on the impacts of climate change and climate finance on indigenous peoples' rights.

## II. Activities of the Special Rapporteur

2. As part of the mandate from the Human Rights Council, the Special Rapporteur undertakes four interrelated areas of work: country visits, thematic studies, promotion of good practices and communications to Governments on alleged cases of human rights violations.

3. Since she presented her last report to the Council, the Special Rapporteur has carried out two official country visits: to the United States of America in February 2017 (A/HRC/36/46/Add.1) and to Australia in March/April 2017 (A/HRC/36/46/Add.2).

4. With a view to improving the effectiveness of and coordination between the existing bodies within the United Nations system with specific mandates on the rights of indigenous peoples, the Special Rapporteur participated in the annual meetings of the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples.

5. In relation to climate finance, the Special Rapporteur has participated in a number of assessments and consultations over the past two years, such as the global training of indigenous peoples on the Green Climate Fund and climate finance, held in Bangkok in September 2015; regional trainings on the same topic held in Hanoi, Lima and Nairobi in April 2016; and the dialogue on the engagement of the Green Climate Fund as a possible funding window for indigenous peoples, held in Marrakech, Morocco, in November 2016.

## III. Indigenous peoples and climate change

### A. Impact of climate change on indigenous peoples

6. Indigenous peoples are among those who have contributed least to the problem of climate change, yet they are the ones suffering from its worst impacts. They are disproportionately vulnerable to climate change because many of them depend on ecosystems that are particularly prone to the effects of climate change and extreme weather events such as floods, droughts, heatwaves, wildfires and cyclones. Some of the most affected regions are small islands, high altitudes, humid tropics, coastal regions, deserts and polar areas. Global warming increases the risk of disease, changes animal migration routes, reduces biodiversity, causes saltwater inundation of fresh water, destroys crops and results in food insecurity.<sup>1</sup>

7. Indigenous peoples are heavily dependent on lands and natural resources for their basic needs and livelihoods, such as food, medicine, shelter and fuel, and they are among the poorest and most marginalized people in the world. While indigenous peoples account for 5 per cent of the world's population, they comprise 15 per cent of those living in poverty. Some 33 per cent of people living in extreme rural poverty globally come from indigenous communities. The World Bank estimates that more than 100 million people

<sup>1</sup> United Nations Environment Programme (UNEP), *Climate Change and Human Rights* (Nairobi, 2015), pp. 2-8.

across the world risk being forced into extreme poverty by 2030 due to climate change.<sup>2</sup> This has significant implications for indigenous peoples, who are already facing severe socioeconomic disadvantages. These figures are particularly alarming given the wealth of natural resources that are located within indigenous territories and the valuable contributions indigenous peoples can provide in alleviating climate change. Traditional indigenous territories encompass about 22 per cent of the world's land surface and overlap with areas that hold 80 per cent of the planet's biodiversity.<sup>3</sup> Their role is vital for sustainable environmental management of natural resources and biodiversity conservation, both of which are essential elements for combating climate change.

8. The correlation between secure indigenous land tenure and positive conservation outcomes is well known (A/71/229), as are the related implications of reduced deforestation resulting in lower global carbon dioxide emissions. For example, in the Brazilian Amazon, in areas where the State has recognized the forest rights of indigenous peoples, the deforestation rate was 11 times lower than in forests where their rights were not recognized. A recent study of 80 forest areas in 10 countries in South Asia, East Africa and Latin America showed that community-owned and -managed forests delivered both superior community benefits and greater carbon storage, and concluded that strengthening indigenous peoples' rights to their forests is an effective way for Governments to meet climate goals.<sup>4</sup>

9. The impact of climate change has been a long-standing concern for the mandate of the Special Rapporteur on the rights of indigenous peoples. As the previous mandate holder stated back in 2007: "Extractive activities, cash crops and unsustainable consumer patterns have generated climate change, widespread pollution and environmental degradation. These phenomena have had a particularly serious impact on indigenous people, whose way of life is closely linked to their traditional relationship with their lands and natural resources, and has become a new form of forced eviction of indigenous peoples from their ancestral territories, while increasing the levels of poverty and disease" (see A/HRC/4/32, para. 49). Climate change not only poses a grave threat to indigenous peoples' natural resources and livelihoods, but also to their cultural identity and survival.

10. Examples of the impact of severe climate change on indigenous peoples include the large-scale thawing of the ice in the traditional Arctic territories of the Inuit. Indigenous peoples on the islands of the Pacific are directly threatened with total or partial disappearance of their lands as a result of climate change.

11. Gendered impacts of climate change such as migration (being forced to seek informal wage labour) and water scarcity (being forced to walk longer distances to seek drinkable water) are likely to affect women and girls in particular, making them more vulnerable to discrimination and exploitation.<sup>5</sup>

12. Compounding these vulnerabilities, programmes to mitigate and adapt to climate change, if designed without consulting indigenous peoples and implemented without their participation, may adversely affect indigenous peoples' rights and undermine their customary rights to lands and natural resources.

13. The Special Rapporteur, in her previous role as Chair of the Permanent Forum on Indigenous Issues, undertook a study in 2007 on the impact of climate change mitigation measures on indigenous peoples and on their territories and lands (E/C.19/2008/10). In the study she called for increased consultation with and participation of indigenous peoples in climate change mitigation processes, raised concerns over the failure to apply a human

<sup>2</sup> World Bank, *Shock Waves: Managing the Impacts of Climate Change on Poverty* (Washington, D.C., 2016) p. 2.

<sup>3</sup> World Bank, *The Role of Indigenous Peoples in Biodiversity Conservation: The Natural but Often Forgotten Partners* (Washington, D.C., 2008), p. 5.

<sup>4</sup> World Resources Institute and Rights and Resources Initiative, *Securing Rights, Combating Climate Change: How Strengthening Community Forest Rights Mitigates Climate Change* (Washington, D.C., 2014).

<sup>5</sup> International Labour Organization (ILO), *Indigenous Peoples and Climate Change: From Victims to Change Agents through Decent Work* (Geneva, 2017), pp. 16-18.

rights-based approach to such measures and highlighted that indigenous peoples had not benefited from climate change funds, which were largely market-driven.

14. Since being appointed Special Rapporteur on the rights of indigenous peoples in 2014, the mandate holder has received an increasing number of allegations concerning situations where climate change mitigation projects have negatively affected the rights of indigenous peoples, notably renewable energy projects such as biofuel production and the construction of hydroelectric dams.

15. Indigenous peoples are, however, not simply victims of climate change but have an important contribution to make to address climate change. Due to their close relationship with the environment, indigenous peoples are uniquely positioned to adapt to climate change. Indigenous peoples are also repositories of learning and knowledge about how to cope successfully with local-level climate change and respond effectively to major environmental changes such as natural disasters. Indigenous peoples play a fundamental role in the conservation of biological diversity and the protection of forests and other natural resources, and their traditional knowledge of the environment can substantively enrich scientific knowledge and adaptation activities when taking climate change-related actions.

## **B. Indigenous peoples' contributions to adaptation and mitigation strategies**

16. As they are among those most affected by climate change, indigenous peoples have for over two decades been demanding greater protection of their human rights and increased participation in the context of international discussions on climate change. They continue to advocate for the development of a human rights-based approach to climate change, in accordance with the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

17. In the early days of climate change law and policy, notably in the negotiations for the United Nations Framework Convention on Climate Change in the early 1990s, indigenous peoples were not involved in any significant way. However, persistent and successful advocacy has resulted in recognition of indigenous peoples as a constituency with observer status under the Convention. Indigenous peoples' organizations can thus apply for observer status, and those accepted can nominate participants to attend the sessions of the different climate change bodies. The International Indigenous Peoples' Forum on Climate Change is a joint indigenous peoples' caucus established in 2008 to coordinate indigenous peoples' efforts and activities concerning Convention-related processes.<sup>6</sup>

18. International climate change law and policy revolve around the twin strategies of mitigation (the State obligation to reduce greenhouse gas emissions) and adaptation (the State obligation to protect people against the effects of climate change by supporting their capacity to adapt to its effects). Under the Convention's equity principle, developed States, as the principal producers of greenhouse gases historically and the most resource rich, shall carry a heavier burden in mitigation and adaptation strategies, including assistance to poorer countries and the development of technology.

19. The International Union for Conservation of Nature has raised the concern that the emphasis on monetary, knowledge and technology transfer from developed to developing countries tends not to recognize indigenous peoples' own coping and adaptive strategies.<sup>7</sup>

20. The Intergovernmental Panel on Climate Change is the international body responsible for assessing the science related to climate change. The Panel was established in 1988 by the World Meteorological Organization and the United Nations Environment

<sup>6</sup> See [www.iipfcc.org/](http://www.iipfcc.org/).

<sup>7</sup> International Union for Conservation of Nature, *Indigenous and Traditional Peoples and Climate Change*, Issues Paper (2008), p. 4.

Programme (UNEP) to provide policymakers with regular scientific assessments of climate change, its impacts and future risks, and options for adaptation and mitigation. Its assessments provide a scientific basis for governments at all levels to develop climate-related policies.<sup>8</sup>

21. In its Fifth Assessment Report, published in 2014, the Panel raised concerns that the existing climate change policies and regulations might lead to limiting access to territories, substitution of traditional livelihoods, reduced genetic diversity and harvesting opportunities as well as loss of transmission of indigenous knowledge, which in turn may limit the effect of climate change adaptation measures in many regions.<sup>9</sup>

22. The Panel also noted that indigenous knowledge has been effective in developing measures to cope with climate hazards and has contributed to increased food security in many parts of the world. Examples include the Inuit knowledge of climate variability when hunting, the Inca traditions of crop diversification and knowledge of genetic diversity and, in the Sahel, the use of water-harvesting strategies and weather forecasting.<sup>10</sup>

23. The Panel confirmed indigenous peoples' long-standing claim in relation to traditional knowledge that "indigenous, local, and traditional knowledge systems and practices, including indigenous peoples' holistic view of community and environment, are a major resource for adapting to climate change, but these have not been used consistently in existing adaptation efforts. Integrating such forms of knowledge with existing practices increases the effectiveness of adaptation".<sup>11</sup>

24. Indigenous peoples can assist in providing solutions to mitigate and adapt to the effects of climate change. The International Indigenous Peoples' Forum on Climate Change and UNEP have noted that indigenous peoples can contribute to numerous potential adaptation activities by drawing on their traditional knowledge. Examples of such activities include documentation of traditional knowledge; climate monitoring and reporting; traditional fire management, disaster preparedness and response and early warning systems; rainwater harvesting; traditional agriculture techniques; coastal marine management; alternative energy development; and the development of sustainable livelihoods. Furthermore, indigenous peoples can play a role in stopping deforestation by land titling, forest management and conservation and local governance strengthening.<sup>12</sup>

#### **IV. Human rights bodies, indigenous peoples and climate change**

25. Human rights bodies are devoting increased attention to violations of indigenous peoples' rights in the context of climate change.

26. The Permanent Forum on Indigenous Issues, which addresses human rights issues as part of its advisory mandate, as long as a decade ago decided to debate climate as a special theme at its annual session and has undertaken several studies on the impact of climate change on indigenous peoples (E/C.19/2008/10, E/C.19/2010/7).

27. Human rights treaty bodies, notably the Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, have addressed the impact of climate change on indigenous peoples in the context of their periodic reviews of States parties. Human rights treaty bodies have specifically called on States to develop national plans, policies and programmes to address climate change, while fully engaging indigenous peoples in their design. They have also called for disaster preparedness and emergency

<sup>8</sup> See [www.ipcc.ch/](http://www.ipcc.ch/).

<sup>9</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014: Impacts, Adaptation, and Vulnerability, Part A: Global and Sectoral Aspects, Working Group II Contribution to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (New York, Cambridge University Press, 2014), chap. 7, p. 517. Available from [www.ipcc.ch/report/ar5/wg2/](http://www.ipcc.ch/report/ar5/wg2/).

<sup>10</sup> *Ibid.*, chap. 11, p. 718.

<sup>11</sup> *Ibid.*, Summary for Policymakers, p. 26.

<sup>12</sup> UNEP, *Climate Change and Human Rights*, p. 27; see also [www.iipfcc.org/key-issues](http://www.iipfcc.org/key-issues).

management and strengthened social protection frameworks to more effectively mitigate the multiple social, economic and environmental impacts on indigenous peoples. Furthermore, they have urged States to intensify the efforts to address climate change, including through carbon reduction schemes, and to take all necessary measures to mitigate the adverse consequences on the rights to food and to water of indigenous peoples.<sup>13</sup>

28. The Office of the United Nations High Commissioner for Human Rights has addressed the adverse effects of climate change on human rights (A/HRC/10/61) and in October 2016 hosted an expert meeting which highlighted the impact climate change has on indigenous peoples.<sup>14</sup> The Office's key messages on climate change and human rights, published prior to the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Paris in December 2015, emphasized the right of indigenous peoples to participate in decision-making and to benefit from the use of their knowledge, innovations and practices.

29. On 5 June 2015, World Environment Day, in a joint public statement, 27 special procedure mandate holders, including the Special Rapporteur on the rights of indigenous peoples, urged States to make sure that human rights are at the core of climate change governance.<sup>15</sup>

30. In 2016, the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment examined States' human rights obligations in the context of climate change and highlighted the rights of indigenous peoples (A/HRC/31/52).

31. Concerns over climate change are also increasingly being raised by States in the context of the universal periodic review process, further highlighting the growing recognition of climate change as a human rights issue. The Council has adopted several resolutions related to climate change and indigenous peoples.<sup>16</sup>

## **V. Human rights and other international standards, including the United Nations Framework Convention on Climate Change and the Paris Agreement**

32. Climate change has a negative impact on a broad range of human rights and indigenous peoples are particularly vulnerable due to the exposure of their traditional lands and territories. Human rights obligations entail State obligations to respect, protect and fulfil human rights and redress violations. These duties require States to take action to meet their obligations on human rights issues stemming from climate change. Human rights bodies have established that States' human rights obligations include a duty to protect rights holders against foreseeable environmental impairment of human rights, whether or not the particular environmental harm violates human rights law and even when the harm is not directly caused by the State (A/HRC/25/53, A/HRC/31/52). States have specifically committed to international cooperation through a range of international treaties.

33. As noted by the Permanent Forum on Indigenous Issues, the international system as a whole requires that all the various international legal "subsystems", including those governing human rights and climate change, act consistently (E/C.19/2010/7).

34. The rights of indigenous peoples pertinent to climate change are firmly established in a range of international standards that converge in various branches of international law, notably international human rights law, international environmental law and international labour law. In the preparation of the present report, the Special Rapporteur requested States

<sup>13</sup> See CEDAW/C/HND/CO/7-8, CEDAW/C/VCT/CO/4-8, CRC/C/SUR/CO/3-4, CRC/C/NZL/CO/5, E/C.12/CAN/CO/6, E/C.12/FIN/CO/6 and E/C.12/AUS/CO/4. Treaty body concluding observations are available from <http://uhri.ohchr.org/>.

<sup>14</sup> See [www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx](http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx).

<sup>15</sup> See [www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E](http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16049&LangID=E).

<sup>16</sup> Resolutions 10/4 (2009), 18/22 (2011), 26/27 (2014), 29/15 (2015) and 32/33 (2016).

to reply to a questionnaire and was pleased to note that in their responses States recognized the importance of applying the rights of indigenous peoples to climate change adaptation and mitigation measures, and that additional funding was being allocated for such purposes.

35. Among the key rights affected are self-determination; the right to development; free, prior and informed consent and the right to participation; land rights; the rights to health, food, water and an adequate standard of living; and cultural rights. All these rights are closely linked, and thus their interrelatedness requires consideration.<sup>17</sup>

36. The United Nations Framework Convention on Climate Change, which entered into force in 1994, sets a lofty goal: to stabilize greenhouse gas concentrations at a level that would prevent dangerous human-induced interference with the climate system, based on a dual strategy of mitigation and adaptation measures.<sup>18</sup>

37. Building on the Convention, the Paris Agreement, which entered into force in 2016, aims to strengthen the global response to the threat of climate change by keeping a global temperature rise this century to below 2° Celsius above preindustrial levels and to pursue efforts to limit the temperature increase even further, to 1.5° Celsius.<sup>19</sup> As of 1 September 2017, of the 197 parties to the Convention, 160 had ratified the Paris Agreement.

38. The Paris Agreement is the first climate change treaty to explicitly recognize human rights and the rights of indigenous peoples. The preamble acknowledges that climate change is a common concern of humankind and that parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health and the rights of indigenous peoples. These references provide an important milestone and commitment, as in implementing the Agreement, parties should ensure that indigenous peoples' rights are respected in their climate change measures.

39. Despite these important developments, indigenous peoples were disappointed that indigenous peoples' rights were not more securely included in the Paris Agreement. One of their key objectives was to include references to the rights of indigenous peoples in all the relevant provisions on mitigation and adaptation. During the negotiations, Canada, Guatemala, Mexico, Nicaragua, Peru and the Philippines, along with several Pacific island States, supported the inclusion of references to indigenous peoples in the text. On the other hand, other countries argued against their inclusion on the grounds that they were not directly relevant to the purposes of the Agreement and out of concern over the potential liability of including such references in the operative part of the text. The voluntary nature of the references to indigenous knowledge systems in article 7 (5) on adaptation is viewed as falling short of the goals of indigenous peoples.

## **A. Self-determination and the right to development**

40. Self-determination is a fundamental principle of international law and of utmost importance for indigenous peoples as it affirms their right to freely pursue their economic, social and cultural development. It is a key right in the areas of climate change and climate finance because of its links with land rights and the right of indigenous peoples to participate in processes and decisions affecting them. The right to self-determination is enshrined in common article 1 of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and in article 3 of the United Nations Declaration on the Rights of Indigenous Peoples.

41. Denial of indigenous peoples' right to self-determination and their economic, social and cultural rights is strongly linked to indigenous peoples' historical experiences of marginalization, dispossession, the environmental destruction of their ancestral lands and their lack of autonomy. Unless climate finance recognizes this inequality, it could

---

<sup>17</sup> See <http://unsr.vtaulicorpuz.org/site/index.php/en/statements/63-panel-hrc-cc> and A/HRC/31/52.

<sup>18</sup> See [http://unfccc.int/essential\\_background/convention/items/6036.php](http://unfccc.int/essential_background/convention/items/6036.php).

<sup>19</sup> See [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php).

contribute to the causes of poverty and further denial of the right to self-determination among indigenous communities.

42. The right to development is affirmed in several provisions of the Declaration, notably article 32 (1), which states that “indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources”.<sup>20</sup>

43. Climate actions that do not consider differentiated responsibilities among States may undermine the right to development of indigenous peoples, especially those who live in developing countries. When the burden of climate change is not shared in a differentiated manner, developing countries are compelled to divert funding away from social policies to deal with the emergency and long-term impacts of climate change.

## **B. Land rights, the right to participation and free, prior and informed consent**

44. The Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) enshrines land rights for indigenous peoples in articles 14 to 19. The Declaration, which consolidates the rights of indigenous peoples already recognized in other human rights instruments and through the jurisprudence of human rights treaty bodies, affirms the right of indigenous peoples to own and control their lands (arts. 25, 26 and 27).

45. The Declaration sets out that States shall consult and cooperate with indigenous peoples to obtain their free, prior and informed consent before adopting measures or approving projects that may affect them (arts. 27 and 32). The Declaration furthermore affirms that indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions (arts. 5, 18 and 27).

46. The right to participation is also entrenched in the United Nations Framework Convention on Climate Change. Article 6 establishes that all parties to the Convention shall promote and facilitate public access to information on climate change and its effects, and public participation in addressing climate change and its effects and developing adequate responses.

47. The Cancun Agreements, adopted at the sixteenth session of the Conference of the Parties to the Convention, held in 2010 (FCCC/CP/2010/7/Add.1), recognize that the participation of indigenous peoples is important for effective action on all aspects of climate change. In an analogous manner, the General Assembly has also recognized the importance of public participation in addressing the impacts of climate change and recognized the need to engage a broad range of stakeholders at the global, regional, national and local levels, and that indigenous peoples are important for effective action on all aspects of climate change.<sup>21</sup>

48. A prerequisite to ensuring effective participation is the provision of and access to information. As set out in article 4 (1) (f) of the Convention, States should undertake environmental impact assessments and ensure that such information is publicly available.<sup>22</sup> The Special Rapporteur on human rights and the environment has underlined the importance of undertaking assessments of actions designed to alleviate the effects of climate change (see A/HRC/31/52, para. 53). Furthermore, the International Court of Justice has affirmed that it is a requirement under general international law to undertake an environmental impact assessment where there is a risk that an activity may have a

<sup>20</sup> See also articles 21 and 23.

<sup>21</sup> Resolution 67/210, para. 12.

<sup>22</sup> UNEP, *Climate Change and Human Rights*, pp. 16-17; see also A/HRC/31/52, paras. 50-55.

significant adverse impact in a transboundary context and, in particular, on a shared resource.<sup>23</sup>

49. The participation of indigenous peoples in decision-making and the availability of information and engagement mechanisms for them to do so are crucial elements in efforts to tackle climate change in a manner that is consistent with human rights obligations.

50. Climate change projects may create barriers to indigenous landownership. This is underlined by concerns that climate finance has been provided for mitigation measures such as biofuel production and renewable energy projects, including hydroelectric dams, on indigenous territories without undertaking consultations to ensure the free, prior and informed consent of the affected peoples. Such projects risk compounding long-standing and systemic violations of the rights of indigenous peoples. Displacements caused by the loss of land and territory further undermine the cultural integrity and protection of indigenous peoples.

### **C. Rights to health, water and food and an adequate standard of living**

51. Article 11 of the International Covenant on Economic, Social and Cultural Rights upholds the fundamental right of everyone to be free from hunger. While the Covenant does not explicitly refer to the right to water, the Committee on Economic, Social and Cultural Rights has underlined that the right to water is part of the right to an adequate standard of living and has stressed that the right to water is inextricably linked to the rights to health, adequate housing and food. It has also affirmed that States should adopt comprehensive programmes to ensure sufficient water for future generations by assessing the impacts of actions that may impinge upon water availability and natural ecosystems, such as climate change.<sup>24</sup> States are obliged to progressively realize the rights contained in the Covenant.

52. Article 2 of both the United Nations Framework Convention and the Paris Agreement affirms the objective to ensure that food production is not threatened by climate change. The right to health is explicitly referred to in the preamble to the Agreement. In relation to indigenous peoples and climate change, human rights treaty bodies have expressed concern over how climate change mitigation measures such as biofuel projects affect indigenous peoples, and in particular the threats monoculture poses to food security.<sup>25</sup>

53. In the Fifth Assessment Report, the Intergovernmental Panel on Climate Change concludes that indigenous peoples, who depend heavily on local resources and live in parts of the world where the climate is changing quickly, are generally at greater risk of economic losses and poor health.<sup>26</sup> The Panel furthermore notes that indigenous knowledge is important for food security in many parts of the world and that climate change policies may risk reducing the contribution that indigenous knowledge can make to effective climate adaptation.<sup>27</sup>

### **D. Culture and traditional knowledge**

54. The Declaration establishes, in article 31, that “indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, [and] knowledge of the properties of fauna and flora”.

<sup>23</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14.

<sup>24</sup> General comment No. 15 (2002) on the right to water; submission by the Office of the United Nations High Commissioner on Human Rights to the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change.

<sup>25</sup> E/C.12/IDN/CO/1; CERD/C/IDN/CO/3; CERD/C/COL/CO/14; CERD/C/NLD/CO/19-21.

<sup>26</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014*, chap. 11, p. 718.

<sup>27</sup> *Ibid.*, chap. 7, p. 520.

55. Article 7 (5) of the Paris Agreement provides: “Parties acknowledge that adaptation action should follow a country-driven, gender-responsive, participatory and fully transparent approach, taking into consideration vulnerable groups, communities and ecosystems, and should be based on and guided by the best available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems, with a view to integrating adaptation into relevant socioeconomic and environmental policies and actions.” The recognition of these knowledge systems provides an important foundation for climate change adaptation and mitigation policies.

56. In the outcome document adopted at the World Conference on Indigenous Peoples, held in 2014, States explicitly confirm that indigenous peoples’ knowledge and strategies to sustain their environment should be respected and taken into account in developing national and international approaches to climate change mitigation and adaptation.<sup>28</sup>

57. In the Fifth Assessment Report, the Intergovernmental Panel on Climate Change notes that indigenous knowledge is challenged by climate change impacts and is often neglected in policy and research, and that its mutual recognition and integration with scientific knowledge will increase the effectiveness of adaptation strategies.<sup>29</sup> The Panel furthermore states that local and indigenous knowledge and diverse stakeholder interests, values and expectations are fundamental to building trust within climate change decision-making processes.<sup>30</sup>

58. In a positive development, the decision adopted by the Conference of the Parties to the United Nations Framework Convention at its twenty-first session accompanying the adoption of the Paris Agreement, which lays out the programme of work for the coming years, specifically recognizes the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and to establish a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner (see FCCC/CP/2015/10/Add.1, para. 135).

59. As noted by the International Indigenous Peoples’ Forum on Climate Change, it is essential to respect the traditional knowledge that indigenous peoples bring to address issues relating to climate change, including causes, adaptation, mitigations and solutions. Indigenous peoples are committed to protect, use and apply traditional knowledge and practices to implement solutions and ways to adapt to climate change within indigenous communities. Climate change solutions cannot be limited to Western scientific knowledge, but must include indigenous peoples’ traditional knowledge, innovations and practices, which have historically contributed to the efforts of conservation of ecosystems and biodiversity.<sup>31</sup>

## E. International cooperation

60. Under the Convention, industrialized States agree to support climate change activities in developing countries by providing financial support for action. The Convention acknowledges the vulnerability of all countries to the effects of climate change and calls for special efforts to ease the consequences, especially in developing countries that lack the resources to do so on their own.<sup>32</sup>

61. International cooperation to promote and protect human rights lies at the heart of the Charter of the United Nations (see A/HRC/10/61, para. 85). The obligation to undertake such cooperation is explicitly affirmed in provisions of the Declaration,<sup>33</sup> the International

<sup>28</sup> General Assembly resolution 69/2, para. 36.

<sup>29</sup> Intergovernmental Panel on Climate Change, *Climate Change 2014*, chap. 12, p. 758.

<sup>30</sup> *Ibid.*, chap. 2, p. 198.

<sup>31</sup> See [www.iipfcc.org/key-issues/](http://www.iipfcc.org/key-issues/).

<sup>32</sup> See [http://unfccc.int/essential\\_background/convention/items/6036.php](http://unfccc.int/essential_background/convention/items/6036.php).

<sup>33</sup> Articles 39 and 41.

Covenant on Economic, Social and Cultural Rights<sup>34</sup> and the Convention on the Rights of the Child.<sup>35</sup>

62. The specific reference to conservation in article 29 of the Declaration is also relevant to many climate change mitigation projects. This article states that indigenous peoples have the right to the conservation and protection of the environment and to the productive capacity of their lands or territories and resources and that States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

63. International cooperation is imperative to address climate change. The effects of climate change are significantly higher in developing countries, where indigenous peoples often are the most exposed due to their geographic location and high poverty rates.

## F. Right to redress and reparation

64. Climate change is already having a severe impact on indigenous peoples by damaging their natural resources. Climate mitigation measures undertaken without their free, prior and informed consent are forcing indigenous peoples to leave their lands and territories.

65. The rights to redress and reparation are well-established principles of international law<sup>36</sup> and reflected in human rights treaties.<sup>37</sup> Article 8 of the Declaration sets out the right to effective mechanisms for prevention of, and redress for, actions which have the aim or effect of dispossessing indigenous peoples of their lands, territories or resources.

66. The Declaration (art. 10) stipulates that indigenous peoples shall not be forcibly removed from their lands unless they have provided their free, prior and informed consent. Should such violations have occurred, victims have the right to fair redress, including restitution and compensation, and, where possible, the option of returning to their lands. When this is not possible, they are entitled to just, fair and equitable compensation for the lands, territories and resources which they have traditionally owned or otherwise occupied or used and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress (article 28 of the Declaration).

67. Human rights treaty bodies have expressed concerns over the forcible displacement of indigenous peoples, noting the special relationship that indigenous peoples have with their land and the profound impact forced displacement has on their survival, and urged States to provide reparation, with emphasis on the obligation to provide restitution of the original lands.<sup>38</sup> Reparation measures should be provided in accordance with international standards and, where appropriate, entail elements of restitution, compensation, rehabilitation, satisfaction and guarantees of non-recurrence.<sup>39</sup>

68. The United Nations Framework Convention does not recognize a right to access justice or remedies for individuals; it refers only to modalities for dispute settlement between parties. At the nineteenth session of the Conference of the Parties, held 2013,

<sup>34</sup> Articles 2 (1), 11 (2), 15 (4), 22 and 23.

<sup>35</sup> Articles 4 and 24 (4).

<sup>36</sup> *Factory at Chorzów (Germany v. Poland)*, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, pp. 21, 47; International Law Commission, draft articles on responsibility of States for internationally wrongful acts, *Official Records of the General Assembly, Fifty-sixth Session (A/56/10)*, chap. IV.E.1.

<sup>37</sup> Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2 (3) (a), International Convention on the Elimination of All Forms of Racial Discrimination, art. 6.

<sup>38</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on the rights of indigenous peoples; CERD/C/BWA/CO/16; CERD/C/NAM/CO/12; E/C.12/MEX/CO/4.

<sup>39</sup> General Assembly resolution 60/147.

parties established the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts, including extreme events and slow-onset events in developing countries that are particularly vulnerable to the adverse effects of climate change.<sup>40</sup>

69. The Paris Agreement affirms in article 8 that parties should enhance understanding, action and support, including through the Warsaw International Mechanism, on a cooperative basis with respect to loss and damage associated with the adverse effects of climate change. As noted by the Special Rapporteur on human rights and the environment, it is important to apply a human rights perspective when identifying the types of loss and damage (see A/HRC/31/52, para. 64). It is furthermore of crucial importance that the rights of indigenous peoples be taken into due account when addressing loss and damage caused by climate change.

70. In conclusion, the present section of the report demonstrates the synergies and complementarity between human rights and international environmental law. There is increasing convergence regarding key principles and standards, notably in relation to the right to access information, the right to participation and the rights to seek redress and receive reparation. It is an important and positive development that climate change law and policy are gradually recognizing and incorporating human rights provisions in response to calls from indigenous peoples and human rights bodies.

## G. Sustainable Development Goals

71. Although not legally binding, the Sustainable Development Goals, adopted in 2015, constitute the global development agenda until 2030. They incorporate several important elements relevant to climate change and indigenous peoples' rights.

72. The voice of indigenous peoples is key in moving towards greater policy coherence. This is particularly the case when development interventions seek to attain intrinsically linked objectives related to economic growth, poverty reduction, sustainable development and climate change.<sup>41</sup> The following highlights some of the Goals that climate change policy and finance need to take into account to address the rights of indigenous peoples.

73. The Goal relating to climate change establishes targets for the promotion of mechanisms for raising capacity for effective climate change-related planning and management in least developed countries, including focusing on women, youth and local and marginalized communities (target 13.b). This target relates to, and should be read in conjunction with, the Declaration which in article 5 provides that "indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State" and to article 18, which provides indigenous peoples with the "right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions".

74. The Goal relating to the need to sustainably manage forests, combat desertification, halt and reverse land degradation and halt biodiversity loss calls for the mobilization and significant increase of financial resources from all sources to conserve and sustainably use biodiversity and ecosystems (target 15.a). It also calls for the mobilization of 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 (target 15.b). The latter target relates to article 39 of the Declaration, which provides for the right of indigenous peoples to access financial and technical assistance from States and through international cooperation for the enjoyment of the rights contained in the Declaration.

<sup>40</sup> See [http://unfccc.int/adaptation/workstreams/loss\\_and\\_damage/items/8134.php](http://unfccc.int/adaptation/workstreams/loss_and_damage/items/8134.php).

<sup>41</sup> ILO, *Indigenous Peoples and Climate Change*, p. 20.

## VI. State commitments, national reports and intended nationally determined contributions

75. Parties to the United Nations Framework Convention on Climate Change must submit national reports, also known as communications, on implementation of the Convention to the Conference of the Parties.<sup>42</sup> The required content of national reports and the timetable for their submission are different for annex I and non-annex I parties, in accordance with the principle of “common but differentiated responsibilities” enshrined in the Convention.<sup>43</sup>

76. A study by the Mary Robinson Foundation of national reports submitted between 2010 and 2015 concluded that the majority did not refer to human rights, such as the right to health, the right to adequate food or the right to water and sanitation, although the majority of the reports contained references to domestic policies and measures that related to human rights protection. The vast majority — over 95 per cent — of the references to substantive rights were in reports from developing countries, probably because these countries were already feeling the impacts of climate change on such rights as water, food, health and shelter due to extreme events, rising sea levels and changing seasons.

77. The study concluded that international reporting processes still tended to deal with human rights and climate change as separate issues. The authors urged the adoption of a more cohesive approach that would better reflect realities on the ground, where rights, development and climate change are interlinked.<sup>44</sup>

78. Furthermore, in 2013 the Conference of the Parties invited all parties to develop reports by 2015 on intended nationally determined contributions (INDCs) towards achieving the objective of the Convention, as set out in its article 2.<sup>45</sup> INDCs play an important role in the framework established by the Paris Agreement as they form the implementation plans through which each Government defines the level of its commitment and identifies how it will implement its obligations. UNEP has raised concerns that only 14 of the first 119 INDCs submitted referred to linkages between climate change and the impact of mitigation and or adaptation measures on indigenous peoples.<sup>46</sup> Of further concern is that references in INDCs to respect for human rights tended to be general, without concrete detail.

79. Furthermore, a review undertaken by the non-governmental organization (NGO) Rights and Resources Initiative of 161 INDCs noted that only 21 of them, representing less than 13 per cent of the world’s tropical and subtropical forest area, included clear commitments to implement community-based tenure or natural resource management strategies as part of their climate change mitigation plans or adaptation actions.<sup>47</sup>

80. Parties to the Convention should prepare their INDCs in a manner that enables the full and effective participation by indigenous peoples and civil society, as well as other parts of the population particularly affected by climate response measures.<sup>48</sup> Furthermore, parties should explain the steps taken to increase participation of all stakeholders in developing the INDC reports.

81. Without a participatory approach and public access and awareness of reporting processes, States may seek to eschew their obligations under human rights law by conceptualizing climate change processes as disconnected from human rights. In order to prove their commitment to honour their human rights obligations, States must acknowledge

<sup>42</sup> Article 7.

<sup>43</sup> See [http://unfccc.int/national\\_reports/non-annex\\_i\\_natcom/items/10124.php](http://unfccc.int/national_reports/non-annex_i_natcom/items/10124.php).

<sup>44</sup> See [www.mrfcj.org/](http://www.mrfcj.org/).

<sup>45</sup> See [http://unfccc.int/files/focus/indc\\_portal/application/pdf/synthesis\\_report\\_-\\_overview.pdf](http://unfccc.int/files/focus/indc_portal/application/pdf/synthesis_report_-_overview.pdf); and [http://unfccc.int/focus/indc\\_portal/items/8766.php](http://unfccc.int/focus/indc_portal/items/8766.php).

<sup>46</sup> UNEP, *Climate Change and Human Rights*, pp. 30-31.

<sup>47</sup> See [http://rightsandresources.org/wp-content/uploads/2016/04/Indigenous-Peoples-and-Local-Community-Tenure-in-the-INDCs-Status-and-Recommendations\\_RRI\\_April-2016.pdf](http://rightsandresources.org/wp-content/uploads/2016/04/Indigenous-Peoples-and-Local-Community-Tenure-in-the-INDCs-Status-and-Recommendations_RRI_April-2016.pdf).

<sup>48</sup> See [www.ciel.org/wp-content/uploads/2017/05/Delivering-On-Paris-Web.pdf](http://www.ciel.org/wp-content/uploads/2017/05/Delivering-On-Paris-Web.pdf).

the implications of climate change on human rights in the context of climate change mitigation and adaptation law and policies.

82. It is encouraging that an increasing number of countries are recognizing the importance of integrating adaptation measures into agriculture and food production, while ensuring food security and sustainability of agriculture in a manner that supports indigenous farming practices and traditional knowledge.

83. Global and national climate change interventions are gradually acknowledging the benefit of collaboration with indigenous peoples to identify and document trends in regional and local climate changes in order to understand their long-term implications and to develop effective and appropriate adaptation responses based on traditional knowledge. Recognition of the important role indigenous peoples can play not only assists in combating climate change but also helps revitalize and strengthen indigenous peoples, their knowledge and culture.

## VII. Climate finance and safeguards

84. Considerable investments are required in both developed and developing countries to adapt to, and mitigate effects of, climate change. However, developing and geographically vulnerable countries face by far the greatest adaptation challenges. Indigenous peoples are at particularly high risk of being pushed into extreme poverty.

85. UNEP has warned that a significant gap is likely to emerge between the resources needed to adapt to warming of 2° Celsius and the funding that will be made available through international climate funds and other finance mechanisms. The existing estimates of global adaptation costs are probably significantly underestimated, notably for the period after 2030. Most international climate finance to developing countries in the past few years has been channelled towards mitigation, rather than adaptation.<sup>49</sup>

86. Article 9 of the Paris Agreement provides that “developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation” and that the “mobilization of climate finance should represent a progression beyond previous efforts”. It states furthermore that “such mobilization of climate finance should represent a progression beyond previous efforts” and that “the provision of scaled-up financial resources should aim to achieve a balance between adaptation and mitigation, taking into account country-driven strategies, and the priorities and needs of developing country Parties”.

87. In 2009, developed countries committed to a goal of mobilizing \$100 billion per year by 2020 to address the needs of developing countries in the context of “meaningful mitigation actions”. However, pledges have remained far below the \$100 billion annual target and financial commitments for loss and damage caused by the effects of climate change remain unpaid.

88. Climate finance refers to funding sourced from public and private sectors and channelled through various mechanisms and funds for climate change mitigation and adaptation projects and programmes. A key concern of developing countries is that climate finance prioritizes financial support for mitigation over adaptation measures. They prefer that climate finance be channelled through a global mechanism or fund to ensure that the allocations are more equally distributed between adaptation and mitigation.

89. While it is beyond the scope of the present report to refer to the multitude of climate finance mechanisms and funds that exist, some observations are presented on those that particularly affect indigenous peoples’ rights.

<sup>49</sup> UNEP, *Climate Change and Human Rights*, p. 32.

## A. Global Environment Facility

90. The Global Environmental Facility, established in 1991 through the World Bank, is the oldest financial mechanism under the United Nations Framework Convention on Climate Change. Between 15 and 20 per cent of the Facility's projects involve indigenous peoples and some projects have indigenous executing agencies. Important steps have been undertaken by the Facility to support indigenous participation. Principles and guidelines for engagement with indigenous peoples were adopted in 2012.<sup>50</sup> Among the positive initiatives undertaken by the Facility is the establishment of the Indigenous Peoples Advisory Group and the creation of the Indigenous Peoples Fellowship Programme.

91. The Facility has created a small grants programme which has provided over \$850 million to over 22,000 projects in 129 countries. However, it has to be noted that as yet there are no disaggregated data available on how much of these funds went directly to indigenous peoples' communities. An assessment is needed of the lessons learned in terms of impact and of ensuring that the rights and priorities of indigenous peoples are respected and to show the real amount of funds received by indigenous peoples compared with the overall amounts released.

## B. Clean Development Mechanism

92. The Clean Development Mechanism has been operational since 2006. Through its emission reduction projects, developing countries earn certified emission reduction credits which can be used by developed countries to meet a part of their emission reduction targets under the Kyoto Protocol.<sup>51</sup> The Mechanism has been widely criticized for having failed to safeguard human rights as its lack of safeguards has resulted in support for projects which have resulted in the displacement of local communities, and the Special Rapporteur has received allegations of violations of indigenous peoples' rights experienced in such renewable energy projects funded by the Mechanism as hydroelectric dams and tree plantations. The International Indigenous Peoples' Forum on Climate Change has been very critical of Mechanism projects set up in indigenous communities without consultation or the free, prior and informed consent of the affected community.

93. UNEP also notes that the Mechanism projects have been characterized by insufficient local stakeholder consultations and clear evidence that they have caused harm to the local populations and/or ecosystems.<sup>52</sup> The Special Rapporteur on human rights and the environment referred to the Mechanism in 2016 as the one climate mechanism which most obviously lacks effective social and environmental safeguards and which has been dogged by the strongest accusations of supporting projects with serious human rights abuses.<sup>53</sup>

94. There is criticism of the very nature of the Mechanism. Developed countries are the main greenhouse gas emitters and, according to the Convention, they are the ones that should carry the heavier burden of mitigation. However, the Mechanism allows developed countries to buy carbon credits from developing countries so that they can emit more but still meet the Kyoto targets. As a result, developed world's burden of cutting back emissions is met by the efforts of the developing world. Developed countries support mitigation projects in developing countries through subsidies in the form of loans or grants, and the certified emission reductions from such Mechanism projects will be owned by the developed countries to add to their emission reduction targets.

---

<sup>50</sup> See [www.thegef.org/publications/principles-and-guidelines-engagement-indigenous-peoples](http://www.thegef.org/publications/principles-and-guidelines-engagement-indigenous-peoples).

<sup>51</sup> See <http://cdm.unfccc.int/index.html>.

<sup>52</sup> UNEP, *Climate Change and Human Rights*, p. 36.

<sup>53</sup> See [www.ohchr.org/Documents/Issues/Environment/Letter\\_to\\_SBSTA\\_UNFCCC\\_May2016.pdf](http://www.ohchr.org/Documents/Issues/Environment/Letter_to_SBSTA_UNFCCC_May2016.pdf); and [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19962&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19962&LangID=E).

### C. United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation (REDD-plus)

95. In 2007, the parties agreed that a comprehensive approach to mitigating climate change should include incentives to reduce emissions from deforestation. REDD-plus is a global initiative to pay countries to protect their forests in order to reduce emissions of greenhouse gases.

96. The strong advocacy of indigenous peoples and NGOs at the sixteenth session of the Conference of the Parties in 2010 resulted in the adoption of safeguards for REDD-plus which call, inter alia, for respect for the knowledge and rights of indigenous peoples and members of local communities by taking into account relevant international obligations, national circumstances and laws, and noting that the General Assembly had adopted the Declaration.<sup>54</sup>

97. The “Cancun safeguards” also include the need to ensure the full and effective participation of indigenous peoples and local communities. Subsequent guidance notes developed by REDD-plus have further elaborated on how the free, prior and informed consent of indigenous peoples will be obtained. However, implementation of these safeguards has proved problematic. Indigenous peoples and local communities are often not recognized as owners of forests by the State in national laws; there is therefore concern that they will not see equitable benefits from REDD-plus projects and that forest and climate schemes risk driving a global “green land grab”.<sup>55</sup>

98. Several indigenous peoples in countries where REDD-plus is being implemented have actively engaged with Governments to ensure that the safeguards are implemented. REDD-plus finance provided by Governments, including Australia, Germany, Norway and the United States of America, include resources to help build capacity to implement the safeguards. While there are still serious challenges in efforts to implement REDD-plus safeguards, opportunities for indigenous peoples to enter into constructive dialogues with Governments have been enhanced.

### D. Adaptation Fund

99. The Adaptation Fund was created in 2001 under the United Nations Framework Convention and designed to finance climate change adaptation projects based on the priorities of eligible developing countries. Its primary funding comes from a 2 per cent share of proceeds of the certified emission reductions issued by the Clean Development Mechanism.<sup>56</sup>

100. The environmental and social policy of the Fund requires that all projects comply with the rights and responsibilities contained in the Declaration and other applicable international instruments relating to indigenous peoples. The implementing entity has to describe how the project complies with the Declaration, particularly with regard to free, prior and informed consent, during project design and implementation, as well as how expected outcomes will affect the indigenous communities. The implementing entity must provide documentary evidence, including detailed outcomes of the consultation process.

101. The policy also requires that environmental and social assessments be available for public consultation. The Adaptation Fund is one of the better mechanisms for addressing the relevant human rights obligations of States.

<sup>54</sup> See FCCC/CP/2010/7/Add.1, decision 1/CP.16, appendix I, para. 2 (e).

<sup>55</sup> See [www.forestpeoples.org/en/work-themes/climate-forests/redd-and-related-initiatives](http://www.forestpeoples.org/en/work-themes/climate-forests/redd-and-related-initiatives).

<sup>56</sup> See [www.adaptation-fund.org/about/](http://www.adaptation-fund.org/about/).

## E. Green Climate Fund

102. In 2010, the Conference of Parties to the United Nations Framework Convention also established the Green Climate Fund as its financial operating entity to disburse funds for low-emission and climate-resilient projects, taking into account the needs of States that are particularly vulnerable to climate change impacts.<sup>57</sup> The Fund, which began approving proposals in 2015, aims for an equal balance between mitigation and adaptation investments. It is the largest international climate fund helping developing countries respond to climate change.

103. In 2014, the Fund's board decided to adopt, on an interim basis, the environmental and social performance standards of the International Finance Corporation for projects financed by the Fund. These standards and the Fund's governing instrument stipulate the need to demonstrate full respect for the rights of indigenous people and to protect their cultural heritage. The board also adopted terms of reference for an independent redress mechanism to receive complaints related to the operation of the Fund.<sup>58</sup>

104. Despite these aims, barriers to effective engagement by indigenous peoples in the Fund's activities and access to funding remain. For example, indigenous peoples' organizations have yet to be accredited, or even apply to become accredited, as entities or executing entities for projects. The high costs and complexities of preparing proposals disadvantage indigenous peoples, given their limited resources.

105. At its fifteenth meeting, the board requested the secretariat to develop a Fund-wide indigenous peoples policy. A draft was published on 12 July 2017 for consultation.<sup>59</sup> The overall objective is to provide a framework for ensuring that activities of the Fund are developed and implemented while fostering full respect for indigenous peoples' dignity, human rights and cultural uniqueness so that they receive culturally appropriate social and economic benefits and do not suffer adverse effects during the development process. The policy provides an opportunity for the Fund to incorporate indigenous peoples' considerations into its decision-making and operations in ways that not only include safeguard measures of "do no harm", but also identify opportunities to "do good" and improve outcomes.

106. In conclusion, the safeguards, policies and practices, including for redress, that have been developed for indigenous peoples, in particular by the Adaptation Fund and the Green Climate Fund, are significant. Their practical application, however, does require continuous independent monitoring.

## VIII. Examples of mitigation projects of concern

107. Since assuming the mandate in 2014, the Special Rapporteur has received a number of allegations regarding specific projects funded in the context of climate finance which have not respected safeguards and have negatively affected indigenous peoples' rights. Cases relating to renewable energy projects as mitigation measures which have been subject to urgent actions by the mandate include the Barro Blanco hydropower project in Panama,<sup>60</sup> the Water Towers Protection and Climate Change Mitigation and Adaptation Programme in Kenya<sup>61</sup> and the Agua Zarca dam in the Río Blanco region in Intibucá, Honduras.<sup>62</sup> These cases highlight the risks associated with climate change mitigation projects which do not uphold respect for indigenous peoples' rights, notably their rights to be consulted and to provide their free, prior and informed consent.

<sup>57</sup> See [www.greenclimate.fund/](http://www.greenclimate.fund/).

<sup>58</sup> See [www.greenclimate.fund/independent-redress-mechanism](http://www.greenclimate.fund/independent-redress-mechanism).

<sup>59</sup> Tebtebba Foundation, *Indigenous Peoples and the Green Climate Fund* (Baguio City, Philippines, 2017).

<sup>60</sup> PAN1/2016. All public cases are available from [www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx](http://www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx).

<sup>61</sup> KEN1/2017.

<sup>62</sup> HND4/2013, HND3/2014, HND2/2016, HND4/2016, HND4/2017.

108. Alleged human rights violations include evictions and forced displacements, suppression of the freedom of expression and assembly, arbitrary arrests and extrajudicial executions. Indigenous peoples who defend the right to their lands are increasingly coming under threat and being persecuted in the context of investment projects, which may include climate change mitigation measures. As a result, projects may come to a halt and result in the withholding of financial support by multilateral funds, as was the case in Honduras.

#### **A. Barro Blanco hydroelectric project in Panama**

109. Test flooding at the Barro Blanco reservoir project in 2016 prompted allegations of displacement and negative impacts on the traditional lands and cultural sites of the Ngäbe peoples. The project was eligible for carbon credits and registered under the Clean Development Mechanism, which, as previously noted, does not have standards to protect against human rights violations, nor does it provide a forum for affected communities to register complaints. In late 2016, under pressure from indigenous communities and international organizations, Panama withdrew the project from the Mechanism's registry.<sup>63</sup> The Center for International Environmental Law reported that this was the first time that a host country had taken such action because of human rights concerns.<sup>64</sup>

#### **B. Water Tower Protection and Climate Change Mitigation and Adaptation Programme in Kenya**

110. Despite the Sengwer people's strong ties to their ancestral lands in the Embobut forest, members of the community have been subjected to numerous displacements by the Kenyan authorities since the 1970s. An escalation of the situation took place in December 2016, despite ongoing judicial proceedings to clarify the rights of the Sengwer to remain in the forest. Conservation projects in the past have resulted in loss of access to the forest, as recognized by the World Bank Inspection Panel in the context of activities undertaken by the Natural Resource Management Project run by the World Bank from 2007 to 2013. A World Bank investigation report<sup>65</sup> concluded that the project had neglected the customary rights of the Sengwer and that the implementation agent, the Kenya Forest Service, then funded by the World Bank, had applied a policy based on undertaking evictions, in violation of World Bank safeguards and international law.

111. In the context of climate change projects, concerns about the intensification of forced evictions and the threats to the Sengwer people's rights to lands and livelihoods remain. Allegations have been received regarding the Water Towers Protection and Climate Change Mitigation and Adaptation Programme, which is supported by the European Union. The Kenya Forest Service is among the implementation agencies. The project has reportedly failed to consult adequately with the indigenous peoples affected and to undertake an assessment of the human rights impacts.

#### **C. Agua Zarca hydroelectric project in Honduras**

112. The Agua Zarca dam in Honduras is another emblematic case of violence, impunity and lack of access to justice that threatens indigenous peoples in the context of climate change-related investment projects. Following her country visit to Honduras in 2015, the Special Rapporteur drew attention to the impacts generated by investment projects on the lands, natural resources, cultures, spirituality, social coexistence, lives and personal integrity of the indigenous peoples in Honduras. Between 2010 and 2014, 101 human rights

<sup>63</sup> See <http://carbonmarketwatch.org/press-statement-in-landmark-decision-panama-withdraws-un-registration-for-barro-blanco-hydrodam-project/>.

<sup>64</sup> See [www.ciel.org/panama-withdraws-problematic-barro-blanco-dam-project-cdm-registry/](http://www.ciel.org/panama-withdraws-problematic-barro-blanco-dam-project-cdm-registry/).

<sup>65</sup> World Bank, *Kenya: Natural Resource Management Project: Management Report and Recommendation in Response to the Inspection Panel Investigation Report* (Washington, D.C., 2014).

defenders were killed in Honduras, many of them from indigenous communities that resisted development projects on their territory.<sup>66</sup>

113. The Agua Zarca dam is a renewable energy project carried out on the Gualcarque River by the Government of Honduras as part of its larger energy policy supporting the implementation of hydroelectric and wind projects to reduce the use of fossil fuels. It is one of about 40 hydroelectric projects. The project involves a 20-year concession in favour of the Honduran company Desarrollo Energético S.A. and was initially funded by a private equity fund whose main contributor was the International Finance Corporation, part of the World Bank Group. In 2011, the company began to acquire lands that were part of the ancestral territory of indigenous Lenca communities. The communities objected to the project as it affected their lands, crops, water sources and habitat. In addition, they consider the Gualcarque River sacred as it is home to female spiritual beings. The dam has resulted in great community divisions, death threats, harassment, criminalization and the extrajudicial executions of indigenous Lenca leaders opposed to the project.

114. Protests against the dam in 2013 led to the withdrawal of the private equity fund, so the World Bank ceased active participation in the project. In March 2016, Lenca leaders Berta Cáceres and Nelson García, who had both led protests against the Agua Zarca project, were assassinated. Following their killings, the investors, the Netherlands Development Finance Company-FMO, the Central American Bank for Economic Integration and Finnfund, suspended funding for the project.

#### D. Other related situations

115. There are numerous projects related to human rights violations against indigenous peoples in the context of renewable energy projects but where the funding cannot be certifiably linked to climate finance. A potential example includes the construction of the Don Sahong dam in the Lao People's Democratic Republic.<sup>67</sup>

116. The Don Sahong dam project is currently under construction, affecting indigenous peoples living along the banks of the Lower Mekong River (which also spans Cambodia, Thailand and Viet Nam). Mega First, a Malaysian company which is leading the construction, manifests its intention to increase investments in clean, renewable sources of energy.<sup>68</sup>

117. The company makes no references to respect for human rights in its reports. A number of violations, including of the right to information and participation and the rights to food, health, housing and culture of indigenous peoples, have occurred. No known efforts have been made to obtain the free, prior and informed consent of the indigenous peoples whose lands, territories and resources are affected.

## IX. Conclusions and recommendations

### A. Conclusions

**118. Indigenous peoples have been engaged with the climate change processes since 1992, when the United Nations Framework Convention on Climate Change was opened for ratification, and have consistently advocated for respect and protection of their rights. While there are no references to indigenous peoples in the Convention, indigenous peoples' rights have been recognized in subsequent decisions of the Conferences of the Parties and in the Paris Agreement. Respect for human rights**

<sup>66</sup> See [www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/](http://www.globalwitness.org/en/campaigns/environmental-activists/honduras-deadliest-country-world-environmental-activism/).

<sup>67</sup> LAO1/2016.

<sup>68</sup> See [http://mega-first.com/pdf/ar\\_2016.pdf](http://mega-first.com/pdf/ar_2016.pdf).

must be an integral component of all decisions and actions taken on climate change mitigation and adaptation measures.

119. In order to prove their commitment to honour their human rights obligations, States must acknowledge the implications of climate change on human rights in the context of climate change mitigation and adaptation law and policies. As noted by the Intergovernmental Panel on Climate Change, indigenous traditional knowledge systems and practice are a major resource for adapting to climate change and will contribute to making such measures more effective.

120. Climate finance has the potential to reinforce the efforts of indigenous peoples to adapt to the impacts of climate change and contribute to climate change mitigation. However, it also has the potential to create adverse impacts which undermine the rights of indigenous peoples. Violations of indigenous peoples' rights have been seen in the implementation of renewable energy projects such as hydroelectric dams and windmills and REDD-plus projects.

121. Regarding climate change funds, indigenous peoples' rights are referred to in the policies and safeguards of REDD-plus, the Green Climate Fund, the Adaptation Fund and the Global Environmental Facility. The practical application of these policies, however, requires continuous independent monitoring. Some climate finance mechanisms still fail to acknowledge the United Nations Declaration on the Rights of Indigenous Peoples and human rights standards. The adoption of a human rights-based approach to all climate finance is crucial.

## **B. Recommendations**

122. States should:

(a) Adopt all necessary policy, legal and administrative measures to effectively engage indigenous peoples in climate change adaptation and mitigation measures with full recognition of their rights over their lands, territories and resources as enshrined in international human rights law and recognized in the United Nations Framework Convention and the Sustainable Development Goals;

(b) Ensure that indigenous peoples are effectively included in national climate change planning and monitoring processes;

(c) Comply with the duty to consult and obtain the free, prior and informed consent of indigenous peoples at all stages in the development of climate change initiatives which may affect their rights;

(d) Promote participation of indigenous self-governance structures, which should be formally included in decision-making relating to international climate change policies and finance measures;

(e) Devote resources to providing capacity-building for all stakeholders relating to climate finance, in particular supporting long-term capacity-building that enhances the transfer of technical knowledge;

(f) Support partnerships between government authorities and indigenous peoples to encourage intercultural engagement in order to build trust and collaboration to favour shared goals of climate change action;

(g) Ensure that gender considerations are adequately integrated into the development of climate change adaptation and mitigation policies and projects;

(h) Provide funding for reparation, and notably for the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts.

123. **Funds and donors should:**

(a) **Respect and support the rights of indigenous peoples as recognized in international human rights law and enhance their ability to engage in climate change activities by advocating for recognition of their collective and individual rights;**

(b) **Implement existing policies and safeguards and ensure their effective dissemination as well as trainings for staff, especially for those involved in implementation at the regional and national levels;**

(c) **Develop more dedicated direct funding mechanisms to support indigenous peoples' own initiatives for climate change and sustainable development;**

(d) **Support indigenous peoples to develop and implement their own initiatives and exchange experiences with them. This will allow learning from traditional indigenous measures and transfer of technical skills to engage indigenous peoples in climate change management;**

(e) **As part of due diligence, improve monitoring and include compliance with indigenous peoples' rights in regular project, programme and policy assessments;**

(f) **Promote awareness of grievance mechanisms for indigenous peoples in the context of climate change projects and ensure that such mechanisms are culturally appropriate.**

---



# General Assembly

Distr.: General  
21 July 2023

Original: English

---

## Human Rights Council

### Fifty-fourth session

11 September–6 October 2023

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Green financing – a just transition to protect the rights of Indigenous Peoples**

**Report of the Special Rapporteur on the rights of Indigenous Peoples,  
José Francisco Calí Tzay**

### *Summary*

In the present report, prepared pursuant to Human Rights Council resolution 51/16, the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, focuses on the impact of green finance on Indigenous Peoples and addresses the social and environmental safeguards needed to protect their rights.

---

\* Reissued for technical reasons on 15 September 2023.



## I. Introduction

1. The present report is submitted by the Special Rapporteur on the rights of Indigenous Peoples, José Francisco Calí Tzay, pursuant to Human Rights Council resolution 51/16. The Special Rapporteur provides a brief summary of his activities since his previous report to the Council and a thematic study on green finance and its role in guaranteeing a just transition for Indigenous Peoples.

## II. Activities of the Special Rapporteur

2. In the past year, the Special Rapporteur has continued to carry out work within the scope of his mandate to examine ways and means of overcoming existing obstacles to the full and effective realization of the rights of Indigenous Peoples and to identify, exchange and promote best practices. He conducted academic visits to Argentina, Bolivia (Plurinational State of), Chile, Ecuador, Guatemala, Honduras, Jamaica, Mexico, Peru and Sweden, during which he met with a number of Indigenous Peoples and authorities, as well as representatives of government and the international community. In 2023, the Special Rapporteur conducted two official country visits: to Denmark and Greenland from 1 to 10 February and to Canada from 1 to 10 March.

3. With a view to improving the effectiveness of and coordination between the existing bodies within the United Nations system with specific mandates relating to the rights of Indigenous Peoples, during the past year the Special Rapporteur participated in the annual meetings of the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples. He was a keynote speaker at a number of meetings and events organized by Member States, civil society and Indigenous Peoples, presenting his expertise and views on the protection of the rights of Indigenous Peoples in different parts of the world. He has continued to send communications jointly with other special procedure mandate holders to States and other relevant stakeholders, raising awareness of human rights issues and challenges affecting Indigenous Peoples.

## III. Green financing and the rights of Indigenous Peoples

### A. Background

4. The Special Rapporteur presents his report on green financing to update and build on the findings of previous work conducted by the mandate on the topic of climate finance,<sup>1</sup> international investment agreements<sup>2</sup> and protected areas,<sup>3</sup> with a focus on the accountability of financial actors. The Special Rapporteur compiled the report with information collected during his academic and official visits, as well as the submissions provided in response to a questionnaire addressed to States, international finance institutions, Indigenous Peoples' organizations and non-governmental organizations (NGOs), meetings with individual experts and a consultation held with Indigenous Peoples' representatives on 26 May 2023.<sup>4</sup>

5. Green financing involves loans and investments for projects, programmes and initiatives that promote environmental sustainability and climate action. Green financing, as defined by the United Nations Environment Programme (UNEP), "is to increase the level of financial flows (from banking, micro-credit, insurance and investment) from the public, private and not-for-profit sectors to sustainable development priorities".<sup>5</sup> Green financing is critical to achieving the Sustainable Development Goals and the targets set by agreements

---

<sup>1</sup> [A/HRC/36/46](#).

<sup>2</sup> [A/HRC/33/42](#).

<sup>3</sup> [A/77/238](#).

<sup>4</sup> The submissions are available from <https://www.ohchr.org/en/calls-for-input/2023/green-financing-just-transition-protect-indigenous-peoples-rights>.

<sup>5</sup> <https://www.unep.org/regions/asia-and-pacific/regional-initiatives/supporting-resource-efficiency/green-financing>.

under the United Nations Framework Convention on Climate Change and the Kunming-Montreal Global Biodiversity Framework adopted at the fifteenth meeting of the Conference of the Parties to the Convention on Biological Diversity.

6. The Special Rapporteur emphasizes that green financing has an important human rights dimension.<sup>6</sup> The processes and associated finance to achieve the climate and biodiversity targets could have significant negative impacts on Indigenous Peoples unless the protection of their internationally recognized human rights is defined as central to successfully achieving those goals. In addition, as economic transition requires large amounts of financial flows, nature credit markets have been considered important tools to mobilize the financial resources needed to meet international environmental targets, such as the reduction in greenhouse gases and other conservation and green economy initiatives. Securing a “just transition” inclusive of respect for human rights should address the social and environmental interventions and safeguards needed to protect the rights and livelihoods of Indigenous Peoples when economies shift to sustainable development practices to combat climate change and biodiversity loss. This will ensure that those who are most affected by environmental harm do not bear the costs of the transition and that they participate in the formation of policy solutions.

7. The purpose of the present report is not to condemn or deter the financing of green projects and green market strategies but to ensure that Governments and other financial actors take all precautions to ensure their support for the much-needed transition to a green economy and that climate change action does not perpetuate the violations and abuses currently plaguing extractive and other fossil fuel-related projects. The Special Rapporteur aims to remind Governments and other financial actors enabling the transition that many green projects and nature-based solutions are likely to occur on Indigenous lands,<sup>7</sup> whether or not the land rights of Indigenous Peoples are recognized by the State, and human rights due diligence should therefore be undertaken from the outset, using a human rights-based approach that acknowledges their collective rights to land and right to self-determination.

8. The present report is not an exhaustive study of the implications of green finance for Indigenous Peoples. It reflects on the international obligations of States and the duty of their public and private financial partners to respect the right of Indigenous Peoples to self-determination in any green project occurring on or near their lands and territories, and seeks to shift mindsets to consider Indigenous Peoples as a gauge for project sustainability rather than a risk to financial investment. In the report, the Special Rapporteur looks specifically at addressing Indigenous issues from the outset of any project, prior to the decision to fund, and provides recommendations for financing mechanisms to strengthen governance and accountability structures in order to reduce negative impacts on the rights of Indigenous Peoples and facilitate their access to economic opportunities and global markets. The report also presents good practices, particularly in terms of providing direct financing to Indigenous-led conservation initiatives and renewable energy projects.

## **B. Indigenous Peoples and green finance**

9. The Paris Agreement adopted at the twenty-first Conference of the Parties to the United Nations Framework Convention on Climate Change in 2015 represented a landmark moment for climate financing, as it clearly established the need for financial flows to align with climate goals and called for developed countries to mobilize \$100 billion per year to address the needs of developing countries for climate-induced loss and damage. Since then, climate action has been considered a strategic priority for most financial institutions.

<sup>6</sup> See recent communications related to fossil fuels and other extractive energy projects: AUS 3/2022, CAN 2/2022, BRA 4/2022, SWE 2/2022, BWA 3/2021 and NAM 2/2021, available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>7</sup> According to a recent study, 54 per cent of energy transition mineral and metals projects are located on or nearby the lands of Indigenous Peoples. See John R. Owen and others, “Energy transition minerals and their intersection with land-connected peoples”, *Nature Sustainability*, vol. 6, No. 2 (February 2023).

10. At the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change in 2021, parties acknowledged the important role of Indigenous Peoples and their scientific knowledge for mitigating the crises of global climate change and biodiversity loss. Indigenous Peoples contribute little to greenhouse gas emissions and maintain some of the largest carbon stores within their lands. Their role in protecting biodiverse environments, maintaining healthy forests and mitigating climate change through their scientific knowledge has been widely documented by the mandate and many other sources.<sup>8</sup> Scientific evidence supports the need to engage Indigenous Peoples in the planning and implementation of green development projects that affect their territories. The scientists on the Intergovernmental Panel on Climate Change have also acknowledged that “supporting Indigenous self-determination, recognizing Indigenous Peoples’ rights and supporting Indigenous knowledge-based adaptation are critical to reducing climate change risks and effective adaptation”.<sup>9</sup>

11. Climate finance and official development aid for climate-related issues have so far failed to direct sufficient funding to support initiatives led by Indigenous Peoples, advance recognition of their collective land rights, preserve their lifestyle that allows nature to thrive and balance out the carbon-emitting activities of the rest of the world, and protect them from encroachment, attacks and other violence by third parties. Similarly, international financial institutions are struggling to consider Indigenous Peoples as rights holders, rather than vulnerable affected peoples, and fail to consistently apply safeguarding policies, leading to violations of Indigenous Peoples’ rights. Typical human rights risks in the context of green financing include forced evictions and resettlement, lack of consultation regarding land use and decision-making, environmental degradation, limited information provided on the governance of natural resources and inadequate environmental and social impact assessments.

12. The twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change saw Governments and philanthropic organizations pledge \$1.7 billion to advance the tenure rights and tropical forest guardianship of Indigenous Peoples. Similarly, in December 2022 the Kunming-Montreal Global Biodiversity Framework was adopted, explicitly recognizing the rights of Indigenous Peoples, including the distinct nature of their lands, territories and resources and the need to include their full and equitable decision-making for implementation of the Convention on Biological Diversity. However, a lack of transparency, reporting and monitoring mechanisms will make it challenging to assess whether these commitments to support Indigenous Peoples under the two conventions will be met. Investors’ current funding practices must change to adopt a human rights-based approach and redress the current gap in funding for Indigenous Peoples and their own renewable energy, climate action and conservation projects.<sup>10</sup>

### C. Financial actors

13. Green finance consists of two interplaying driving forces: global efforts to comply with international commitments for climate change mitigation and biodiversity loss, and financial imperatives to rapidly place and deliver funding or investment. Green funds and financing are controlled and administered by international development finance institutions,<sup>11</sup> development banks,<sup>12</sup> United Nations specialized agencies,<sup>13</sup> international climate and

<sup>8</sup> See, for example, A/HRC/36/46 and A/HRC/33/42.

<sup>9</sup> [https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC\\_AR6\\_WGII\\_TechnicalSummary.pdf](https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_TechnicalSummary.pdf).

<sup>10</sup> Rainforest Foundation Norway, “Falling short: donor funding for Indigenous Peoples and local communities to secure tenure rights and manage forests in tropical countries (2011–2020)” (2021), p. 4; and Charapa Consult, *Directing Funds to Rights. Principles, Standards and Modalities for Supporting Indigenous Peoples’ Tenure Rights and Forest Guardianship* (November 2022).

<sup>11</sup> The World Bank and the International Finance Corporation.

<sup>12</sup> The Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank, Inter-American Development Bank and African Development Bank.

<sup>13</sup> The International Fund for Agricultural Development (IFAD), United Nations Development Programme and UNEP.

biodiversity finance mechanisms<sup>14</sup> and increasingly the private sector (including large conservation organizations)<sup>15</sup> and public-private partnerships. International development finance institutions occupy an intermediary space between public aid and private investment. They are distinct from aid agencies through their focus on profitable investment and operations according to market rules but share a common focus on fostering economic growth and sustainable development.<sup>16</sup> In Africa, development finance plays a critical role in financing private enterprises and acts as a complement to overseas aid.

14. The complexity of green finance, as it relates to potential human rights violations, lies in the fact that it encompasses a variety of financial acts and objectives, including grants, loans, lucrative investments and speculation. It is often the product of interaction between multiple actors (States, international organizations, international development finance institutions and public and private banks), intermediaries (national development agencies or other national ministries, non-profit organizations and private entities) and the final recipients of the funding, as well as the interface of the project proponents with local populations. In addition, green finance can be official and public when loans are issued by States or international development finance institutions, or fully private (private banking investments, investments or purchases of carbon credits by private companies, conservation organizations) and is increasingly the product of public-private partnerships. In the midst of complex and sometimes undisclosed lines of funding, rights holders, such as Indigenous Peoples, have found it extremely difficult to challenge projects and hold actors accountable for the human rights violations they have experienced.

15. Host States, whether as borrower, co-financer or recipient of development aid, bear the primary responsibility for establishing appropriate institutional mechanisms and legal frameworks for protecting the rights of Indigenous Peoples in the development of green projects, even when international development finance institutions have safeguarding policies. Where host States do not recognize the status of Indigenous Peoples, or where national protection mechanisms or legal frameworks are not operational, other funders and donors will need to take additional precautionary measures to ensure that Indigenous Peoples are not negatively impacted by projects and ensure robust enforcement of their own safeguarding policies. In such cases, Indigenous Peoples may have to rely exclusively on the safeguarding policies of international finance institutions to seek redress.

16. States regulate the activities of private conservation organizations by requiring registration, regular reporting and monitoring, and compliance with relevant laws and regulations. In addition to regulatory oversight, States may also provide funding or other support to private conservation organizations in the form of grants, tax incentives or other financial incentives to support conservation efforts. Some countries have adopted national action plans on business and human rights to assist in the implementation of the Guiding Principles on Business and Human Rights and ensure that businesses, whether private or State-owned, respect human rights.<sup>17</sup>

17. States are also likely to become buyers of carbon credits in the voluntary market; for example, Norway, the United Kingdom of Great Britain and Northern Ireland and the United States of America are part of the Lowering Emissions by Accelerating Forest finance coalition, a public-private partnership. States are responsible for establishing the rules defining who the carbon rights holders will be, whether such rights will acknowledge the forest and land ownership of Indigenous Peoples and how benefit-sharing will be arranged.

18. International development finance institutions are the financial actors that have received the most scrutiny for the impact of their projects on human rights, and on those of Indigenous Peoples in particular. As a result, they developed, early on, internal frameworks and policies for socially and environmentally responsible investment. However, efforts are still needed to secure greater participation of Indigenous Peoples in the design of policies and

<sup>14</sup> The Global Environment Facility.

<sup>15</sup> The World Wildlife Fund, Wildlife Conservation Society, Conservation International Foundation and Nature Conservancy.

<sup>16</sup> Thomas Dickinson, "Development finance institutions: profitability promoting development", Organisation for Economic Co-operation and Development (2019).

<sup>17</sup> Submission by the Indigenous Peoples of Africa Co-ordinating Committee.

projects so as to ensure that the frameworks are well understood and effectively implemented by staff, with institutional support at the highest levels. Those frameworks must include safeguards for Indigenous Peoples that provide concrete and human rights-based guidance to financial institutions and their partners on how to perform independent human rights and environmental impact assessments, implement ongoing free, prior and informed consent throughout the project cycle, foster the participation of Indigenous Peoples and their ownership of a project, and ensure benefit-sharing that is agreed by the rights holders affected. The establishment of independent grievance mechanisms is also critical to ensuring the accountability of those principles and should be made available to rights holders even after a project has been completed. However, even where grievance mechanisms are in place, the negative impacts of large infrastructure projects on Indigenous Peoples are often not remedied. International development finance institutions need to address the fact that government non-compliance with international and domestic law increases the risk of Indigenous rights violations.

19. The World Bank began implementing its environmental and social framework in 2018, replacing its operational policy/Bank procedures on Indigenous Peoples (OP/BP 4.10). The new framework emphasizes principles such as borrower capacity-building and transparent stakeholder engagement through meaningful and ongoing consultations throughout the life cycle of a project. It also seeks to enhance the responsiveness of grievance mechanisms to facilitate the resolution of concerns of parties affected by projects. The framework advances the existing policy of the Bank on Indigenous Peoples by including the requirement of free, prior and informed consent in projects affecting their territories, natural resources or cultural heritage, or requiring involuntary resettlement and ensuring that grievance mechanisms take into account the availability of judicial recourse and customary dispute settlement mechanisms among Indigenous Peoples.<sup>18</sup>

20. However, stakeholders are of the opinion that there are several limitations to the new World Bank framework and the frameworks of other international development finance institutions that are based upon it, including a reference to human rights as aspirational and not binding; delegation of World Bank due diligence duties to borrowers, giving them the responsibility for carrying out environmental and social impact assessments for projects; and flexibility for borrowers and financial intermediaries to apply local laws and regulations as benchmarks for projects instead of higher and more protective international standards.<sup>19</sup> Regarding the rights of Indigenous Peoples, critiques include a lack of compliance with international human rights standards on consultation and free, prior and informed consent; failure to consider impacts outside the immediate project area; limiting remedies to monetary compensation; and the absence of engagement, dialogue and consultation with Indigenous Peoples regarding the establishment of grievance mechanisms, as required by principle 31 of the Guiding Principles on Business and Human Rights.<sup>20</sup>

21. As the Asian Development Bank is currently in the process of updating its 2009 safeguarding policy statement, Indigenous Peoples are asking it to uphold international standards on free prior and informed consent and to expand the triggering of free, prior and informed consent processes to include all projects funded by the Bank, not only the ones that could have severe impacts on the rights of Indigenous Peoples.<sup>21</sup> The 2023 update to the integrated safeguarding system of the African Development Bank requires borrowing States to obtain free, prior and informed consent from affected “highly vulnerable rural minorities”, a term it defines as potentially including Indigenous Peoples, but only as recognized by

<sup>18</sup> World Bank, Environmental and social standard No. 7, paras 24 and 34.

<sup>19</sup> See <https://earthrights.org/blog/world-banks-new-environmental-and-social-framework-is-a-huge-step-backward-for-human-rights/> and <https://www.law.georgetown.edu/environmental-law-review/wp-content/uploads/sites/18/2020/08/GT-GELR200022.pdf>.

<sup>20</sup> See <https://minorityrights.org/2016/09/16/comments-regarding-world-banks-environmental-social-framework-8953/>.

<sup>21</sup> See joint submission by Asia Indigenous Peoples Network on Extractive Industries and Energy and Community Empowerment and Social Justice Network to the Working Group on the issue of human rights and transnational corporations and other business enterprises. March 2023, available from <https://cemsoj.wordpress.com/2023/03/06/aipnee-and-cemsojs-joint-submission-on-development-finance-institutions-and-human-rights-to-the-un/>.

national laws and not in accordance with international standards on the identification and rights of Indigenous Peoples.<sup>22</sup> That is despite the Bank having previously acknowledged the need to do more in this area.<sup>23</sup>

22. In 2022, the European Investment Bank updated its environmental and social standards framework, including standard 7, which addresses vulnerable groups including Indigenous Peoples and women.<sup>24</sup> The Inter-American Development Bank adopted an Indigenous Peoples safeguarding policy in 2006 (updated in 2020),<sup>25</sup> established a social investment funds policy and put in place programmes to increase access to financial resources for Indigenous Peoples and other vulnerable communities.<sup>26</sup> However, the grievance mechanisms currently in place have been criticized for delays in the claims process and a lack of mitigation and reparation measures for the damages suffered by the people and communities affected.

23. The International Fund for Agricultural Development (IFAD) has formalized the participation of Indigenous Peoples in the work of the agency, including by convening since 2013 an annual Indigenous Peoples forum during meetings of the IFAD Governing Council. The forum enables a more systematic dialogue between Indigenous Peoples and IFAD at the headquarter and regional levels, receiving Indigenous Peoples' concerns and recommendations to inform IFAD-funded projects. Other good practices to enhance Indigenous Peoples' participation in decision-making include the Facilitative Working Group of the Indigenous Peoples and Local Communities Platform of the United Nations Framework Convention on Climate Change, which reviews and provides feedback to Green Climate Fund projects, and the International Indigenous Forum on Biodiversity

24. The Global Environment Facility (GEF), an intergovernmental fund permanently established in 1992, is the main financial mechanism for the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity. GEF funds are available to countries in economic transition to meet the objectives of international environmental conventions and agreements to address the global climate and biodiversity loss crises.<sup>27</sup> Financial support is provided to government agencies, civil society, the private sector, research institutions and other partners. In 2017, the mandate noted good practices undertaken by GEF, including its rights-based policy, "Principles and guidelines for engagement with Indigenous Peoples", adopted in 2012.<sup>28</sup> In 2019, GEF updated its policy on environmental and social safeguards, including provisions on Indigenous Peoples' free, prior and informed consent, and designated a focal point for Indigenous Peoples within its secretariat. More than 15 per cent of the GEF small grants projects are accessed and managed by Indigenous Peoples' organizations.<sup>29</sup> GEF has implemented initiatives to provide resources and funding to Indigenous-led conservation initiatives, including through securing land rights.<sup>30</sup> Although GEF continues to fund projects that do or could negatively impact the rights of Indigenous Peoples, it has undertaken investigations on safeguarding compliance and suspended projects in cases where human rights violations have been documented.<sup>31</sup> A GEF trust fund was recently established to support the implementation of the Global

<sup>22</sup> African Development Bank, Updated Integrated Safeguards System (April 2023), pp. 11, 21, 104, 138 and 142.

<sup>23</sup> "African Development Bank Group's development and Indigenous Peoples in Africa", Safeguards and Sustainability Series, vol. 2, No. 2 (2016).

<sup>24</sup> See [https://www.eib.org/attachments/publications/eib\\_environmental\\_and\\_social\\_standards\\_en.pdf](https://www.eib.org/attachments/publications/eib_environmental_and_social_standards_en.pdf).

<sup>25</sup> See <https://www.iadb.org/document.cfm?id=2032081>.

<sup>26</sup> See <https://www.iadb.org/es/gender-and-diversity/el-bid-y-los-pueblos-indigenas> (in Spanish).

<sup>27</sup> See <https://www.thegef.org/who-we-are/funding>.

<sup>28</sup> See [https://www.thegef.org/sites/default/files/publications/Indigenous\\_Peoples\\_Principle\\_EN.pdf](https://www.thegef.org/sites/default/files/publications/Indigenous_Peoples_Principle_EN.pdf).

<sup>29</sup> See [https://www.thegef.org/sites/default/files/publications/GEF\\_IndigenousPeople2016\\_CRA.pdf](https://www.thegef.org/sites/default/files/publications/GEF_IndigenousPeople2016_CRA.pdf) (2016), p. 12.

<sup>30</sup> GEF Inclusive Conservation Initiative, available from <https://www.inclusiveconservationinitiative.org>.

<sup>31</sup> See GEF Conflict Resolution Commissioner, safeguards-related cases, available from <https://www.thegef.org/projects-operations/conflict-resolution-commissioner>.

Biodiversity Framework<sup>32</sup> and could provide an important opportunity to ensure direct access to financing for Indigenous Peoples.

25. Considering the scale of the financial need for green transition, the World Bank is in the process of expanding the engagement of private sector finance,<sup>33</sup> which will present some challenges as corporations are under less scrutiny and, in most cases, either do not have or do not follow internal policies for Indigenous Peoples. On the contrary, they may actively seek to avoid triggering the application of safeguarding policies. As such, there is even less clarity as to responsibilities, monitoring and grievance mechanisms in private sector financing.

26. Private sector financial actors include not only corporations and investment banks involved in the extraction of energy transition minerals and other renewable energy projects, but also private conservation organizations, acting as intermediaries to allocate large funds for the creation of conservation areas that may lead to violations of the rights of Indigenous Peoples, as detailed in the Special Rapporteur's 2022 report on protected areas.<sup>34</sup> The boards of directors of large conservation organizations are usually comprised of representatives of high-profile academic, political and corporate entities and capital management firms, and there is minimal Indigenous representation. In recent years, large conservation organizations have started to develop policies on stakeholder engagement that are more respectful of the rights of Indigenous Peoples, following reports of violations by entities funded by them.<sup>35</sup>

27. Other private actors, such as certifying companies in the context of the carbon market and projects for reducing emissions from deforestation and forest degradation in developing countries and additional forest-related activities that protect the climate (REDD-plus), may not be considered as financial actors, but bear a significant role in enabling financial flows to projects with potentially negative impacts on Indigenous Peoples. It is important to have oversight on such actors, considering their influence on green finance. Retail traders are businesses that purchase carbon credits directly from the supplier, bundle those credits into portfolios and sell them to the end buyers, typically with some commission. End buyers are companies committed to offsetting part or all of their greenhouse gas emissions. Private sector standards, guidelines and grievance mechanisms often do not meet international human rights standards with respect to Indigenous Peoples.

28. Philanthropic funders are another model for development financing. The Bezos Earth Fund was created in 2020 by Amazon founder and Chief Executive, Jeff Bezos, with a commitment of \$10 billion in disbursed grants over the next decade to focus on conserving and restoring nature, the future of food, environmental justice, decarbonizing energy and industry, economics, next technologies and data monitoring and accountability. Private funders have more flexibility in their operational requirements and can channel direct support to Indigenous Peoples, especially in countries with weak recognition of and weak institutional capacity to deal with the rights of Indigenous Peoples.<sup>36</sup>

29. Perhaps more important than the question of who is involved in the allocation and administration of climate finance is the question of who is excluded: those who are experiencing the greatest impacts of climate change, namely Indigenous Peoples, particularly those in the Global South. At best, climate-related funds have included Indigenous Peoples as stakeholders to be consulted, but they are not given decision-making power or meaningful opportunities for participation.<sup>37</sup>

<sup>32</sup> See CBD/COP/DEC/15/7, paras. 29–30.

<sup>33</sup> See [https://www.nrdc.org/sites/default/files/media-uploads/wbg\\_evolution\\_roadmap\\_paper\\_december\\_18\\_2022.pdf](https://www.nrdc.org/sites/default/files/media-uploads/wbg_evolution_roadmap_paper_december_18_2022.pdf).

<sup>34</sup> A/77/238.

<sup>35</sup> See, for example, World Wildlife Fund, "Statements of principles and environmental and social safeguards" (2023), pp. 34–36, available from [https://wwfint.awsassets.panda.org/downloads/essf\\_sops\\_\\_download\\_all\\_documents\\_english\\_1.pdf](https://wwfint.awsassets.panda.org/downloads/essf_sops__download_all_documents_english_1.pdf).

<sup>36</sup> See Charapa Consult, *Directing Funds to Rights. Principles, Standards and Modalities for Supporting Indigenous Peoples' Tenure Rights and Forest Guardianship*.

<sup>37</sup> See submission by Indigenous Environmental Network.

## D. International legal framework and standards

30. The United Nations Declaration on the Rights of Indigenous Peoples contains the minimum human rights standards with regard to the protection of the rights of Indigenous Peoples against any negative impact or potential impact they may experience as a consequence of a project funded by national and foreign multilateral investors, including international development finance institutions.<sup>38</sup> The right to free, prior and informed consent is emphasized throughout the Declaration, including in relation to the use of Indigenous lands (art. 32). States must provide redress where free, prior and informed consent is not implemented (art. 28). Article 29 provides for assistance programmes for Indigenous Peoples to conserve and protect the environment and productive capacity of their lands, territories and resources. Article 39 sets out the right of Indigenous Peoples to access financial and technical assistance from States and through international cooperation.

31. The Committee on Economic, Social and Cultural Rights declared in its general comment No. 26 (2022): “States shall avoid those policies for mitigating climate change, such as efforts for carbon sequestration through massive reforestation or protection of existing forests, which lead to different forms of land grabbing, affecting especially land and territories of populations in vulnerable situations such as peasants or indigenous peoples.” Other treaty bodies have also developed relevant jurisprudence in relation to climate change and Indigenous Peoples.<sup>39</sup>

32. The International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) provides further guidance for a just transition for Indigenous Peoples. The right to participation (art. 7.1) clearly applies to the development and implementation of projects related to conservation, clean energy, transition and carbon markets. The convention also affirms the right to ownership and control over lands, territories and resources (art. 17).

33. States are the primary bearers of responsibility to Indigenous Peoples for the realization of their rights. However, private actors, including conservation organizations and international development finance institutions, also have duties and responsibilities to respect the rights of Indigenous Peoples. The Guiding Principles on Business and Human Rights provide a framework of concrete measures for such actors, articulated around three pillars: protect, respect and remedy. The Working Group on the issue of human rights and transnational corporations and other business enterprises has clarified that all private and institutional investors should respect these principles through meaningful and ongoing human rights due diligence, including by identifying and addressing the risks to people and to the environment associated with their products, services, clients and investment activities, and should provide or contribute to remedies for adverse impacts.<sup>40</sup> The Working Group has emphasized the responsibility of institutional investors and banks to avoid negative human rights impacts.<sup>41</sup> It has also emphasized that international development finance institutions need robust policies and practices on human rights due diligence and remedy, which should be elaborated in consultation with Indigenous Peoples.<sup>42</sup>

<sup>38</sup> For further guidance on human rights remedy in development finance, see <https://www.ohchr.org/sites/default/files/2022-02/Remedy-in-Development.pdf>; and [A/HRC/53/24/Add.4](https://www.ohchr.org/sites/default/files/2022-02/Add.4.pdf).

<sup>39</sup> [E/C.12/AUS/CO/4](https://www.ohchr.org/en/treaty-bodies/cerd/decisions-statements-and-letters); [E/C.12/KHM/CO/1](https://www.ohchr.org/en/treaty-bodies/cerd/decisions-statements-and-letters); Committee on the Elimination of Racial Discrimination, letters sent under the early warning and urgent action procedure to Peru (dated 28 April 2023, in Spanish) and Indonesia (dated 28 September 2009), available from <https://www.ohchr.org/en/treaty-bodies/cerd/decisions-statements-and-letters>.

<sup>40</sup> See <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-investor-implementation.pdf>.

<sup>41</sup> See [https://www.ohchr.org/Documents/Issues/TransCorporations/WG\\_BHR\\_letter\\_Thun\\_Group.pdf](https://www.ohchr.org/Documents/Issues/TransCorporations/WG_BHR_letter_Thun_Group.pdf).

<sup>42</sup> See, for example, [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/20200911\\_UNWG\\_submission\\_IFC.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/20200911_UNWG_submission_IFC.pdf); <https://www.ohchr.org/en/special-procedures/wg-business/financial-sector-and-human-rights> and <https://www.ohchr.org/sites/default/files/2021-12/ungps10plusroadmap.pdf>.

34. Safeguarding policies for the private sector were developed by the International Finance Corporation in its performance standard 7 on Indigenous Peoples (2012)<sup>43</sup> and the guidelines for multinational enterprises on responsible business conduct of the Organisation for Economic Co-operation and Development (OECD).<sup>44</sup> They both recall the right to free, prior and informed consent and/or human rights impact assessments, but still fall short of interpreting international human rights law.

35. The OECD guidelines include a national contact point for responsible business conduct grievance mechanism, which handles complaints against companies alleged to have failed to meet the guideline standards. To date, 51 countries, concentrated in Europe and the Americas, have established national contact points and grievance mechanisms. In 2022, facing a growing number of grievance cases involving Indigenous Peoples, OECD published a guide for national contact points on the rights of Indigenous Peoples when handling specific instances.<sup>45</sup> OECD parties can also find useful guidance on Indigenous Peoples in the decision of the Norwegian national contact point in 2011 related to the Intex nickel mine in the Philippines, as it considered free, prior and informed consent requirements in some detail as part of community and stakeholder engagement, as well as impact assessments, disclosure and transparency.

36. The Equator Principles are voluntary guidelines adopted by 97 financial institutions in 37 countries to ensure that the projects they finance and advise on are developed in a socially responsible manner that reflects sound environmental management practices.<sup>46</sup> They follow the International Finance Corporation performance standards, but only apply them to projects with a volume of over \$100 million and only refer to free, prior and informed consent being applied in “non-designated” countries, namely non-OECD countries. There is no grievance mechanism or other independent compliance monitoring mechanism.<sup>47</sup>

37. The so-called Cancun safeguards address all levels of financial actors, in calling for “The full and effective participation of relevant stakeholders, in particular indigenous peoples and local communities”.<sup>48</sup> The Convention on Biological Diversity also provides guidance through its Akwé: Kon Voluntary Guidelines (2004) and section C of the Global Biodiversity Framework recalls the human rights of Indigenous Peoples.

38. Seeking the free, prior and informed consent of Indigenous Peoples is recognized as an essential element of human rights due diligence, risk mitigation and human rights responsibilities.<sup>49</sup> Safeguarding policies and guidelines have not elaborated on the scope and meaning of “consent”, which is sometimes wrongly understood as requiring only consultation, rather than as a substantive prerequisite to proceeding with a project. A study by the Expert Mechanism on the rights of Indigenous Peoples that points to the important role of the autonomous free, prior and informed consent protocols of Indigenous People as authoritative guidance should also act as a reference for the scope and meaning of “consent”.<sup>50</sup>

<sup>43</sup> See <https://documents1.worldbank.org/curated/es/729401491377002155/pdf/113847-WP-ENGLISH-PS7-Indigenous-peoples-2012-PUBLIC.pdf>.

<sup>44</sup> See [https://www.oecd-ilibrary.org/finance-and-investment/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct\\_81f92357-en](https://www.oecd-ilibrary.org/finance-and-investment/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en).

<sup>45</sup> See <http://mneguidelines.oecd.org/guide-for-national-contact-points-on-the-rights-of-indigenous-peoples-when-handling-specific-instances.pdf>.

<sup>46</sup> See <https://equator-principles.com/>.

<sup>47</sup> See Jose Aylwin and Johannes Rohr, *The UN Guiding Principles on Business & Human Rights and Indigenous Peoples: Progress Achieved, the Implementation Gap and Challenges for the Next Decade* (International Work Group on Indigenous Affairs and Indigenous Peoples Rights International, 2021), pp. 35 and 36.

<sup>48</sup> FCCC/CP/2010/7/Add.1, appendix 1, para. 2 (d).

<sup>49</sup> [A/71/291](#).

<sup>50</sup> [A/HRC/39/62](#).

## IV. Growing recognition of the role of Indigenous Peoples in the transition to a green economy

### A. Renewable energy

39. The finance sector is expected to increasingly fund projects related to the transition to renewable energy, such as hydropower, wind farms and the mining of lithium for batteries. The transition is both urgently necessary to respond to climate change and is expected to support economic growth. Regulation of such projects at the national level must ensure respect for and protection of Indigenous Peoples, including in terms of access to energy and inclusiveness.<sup>51</sup> Financial actors should recognize that renewable energy projects are often located on or near Indigenous territories<sup>52</sup> and should undertake human rights due diligence to address all actual and potential negative impacts of their projects on Indigenous Peoples and identify, assess and address all the risks to rights holders.

40. Financial actors should be especially cautious when investing in projects such as lithium mining, a sector frequently fast-tracked to accelerate the transition to electric vehicles, too often without due regard for the rights of Indigenous Peoples. Inadequate and non-participatory environmental and social impact assessments, lack of free, prior and informed consent, insufficient or non-existent remuneration of Indigenous Peoples on whose lands the mining sites are located, as well as negative health and environmental impacts from extraction through to battery disposal, have been reported as important issues for some Indigenous Peoples.<sup>53</sup>

41. Nomadic and semi-nomadic Indigenous Peoples are particularly at risk from energy transition and other green projects. In Africa and Europe, wind farms and geothermal projects have been undertaken without their free, prior and informed consent.<sup>54</sup> Too often, Governments and foreign investors assume that land used by nomadic herders and pastoralists is simply “empty”. Investors too often rely on formal registration of State or private ownership, or government assurances that land is available to use, when a diligent independent analysis prior to investment would have indicated that the land may be subject to the customary rights of Indigenous Peoples.

42. Indigenous Peoples have typically been excluded or marginalized in national energy distribution grids. Benefit-sharing should therefore be an important consideration in the funding of renewable energy projects. The Special Rapporteur has observed instances where electricity-generating projects failed to include a plan for distributing electricity to the Indigenous Peoples on whose land and resources the electricity was produced. Indigenous Peoples have sometimes even been required to buy the electricity produced on their lands at market prices.<sup>55</sup> At the same time, funders should be aware that the promise of employment and other benefits offered to Indigenous Peoples to acquire their lands does not, in itself, constitute proper consultation for obtaining free, prior and informed consent.

43. The mandate has received numerous complaints concerning dams and associated infrastructures that were planned or implemented without the consent of Indigenous Peoples, causing their forced displacement or the degradation of their environment and means of sustenance.<sup>56</sup> Recent complaints involved a hydropower project in Nepal funded by the

<sup>51</sup> See Committee on the Elimination of Discrimination against Women, general recommendation No. 39 (2022); and <https://www.humanrights.dk/publications/womens-human-rights-energy-transition-sub-saharan-africa-roundtable-event-outcome>.

<sup>52</sup> See, for example, John R. Owen, Eleonore Lebre and Deanna Kemp, “Energy transition minerals (ETMs): a global dataset of projects”, University of Queensland data collection (2022), available from <https://doi.org/10.48610/12b9a6e>.

<sup>53</sup> See submission by the Shoshone Paiute Tribes of the Duck Valley.

<sup>54</sup> See, for example, [https://media.business-humanrights.org/media/documents/Lake\\_Turkana\\_Wind\\_Power\\_Judgment\\_October\\_2021.pdf](https://media.business-humanrights.org/media/documents/Lake_Turkana_Wind_Power_Judgment_October_2021.pdf) and <https://www.domstol.no/globalassets/upload/hret/decisions-in-english-translation/hr-2021-1975-s.pdf>.

<sup>55</sup> See Dan Chu, “Investing with tribal partners to create a climate safe world”, GreenMoney, (March 2020).

<sup>56</sup> See Submission by the Shoshone Paiute Tribes of the Duck Valley.

European Investment Bank and wind power projects in Norway and Mexico funded by a German-based investment and asset company and Electricité de France, respectively.<sup>57</sup> There are growing concerns that hydropower projects are funded under the “clean energy” umbrella, despite their negative impacts on people and the deterioration of surrounding ecosystems that they cause.

44. Participation or co-ownership of projects with Indigenous Peoples reduces risks for investors. For example, Hydro-Québec, a bond-funded Canadian public corporation, adopted a policy in 2019 formalizing its commitment to involve Indigenous Peoples in its decisions and initiatives. The policy was built on long-standing partnerships with Indigenous Peoples, including a 1992 agreement to implement remedial works jointly and a 2002 agreement on joint planning, studying, implementation and operation of hydropower projects.<sup>58</sup>

45. Governments need to incorporate a human rights-based approach in their energy transition plans.<sup>59</sup> For example, in 2022 the Government of Chile launched its national energy transition strategy, with specific reference to clean energy projects designed and co-led by Indigenous Peoples, and a mechanism to facilitate access to funding for Indigenous projects through partnerships. The strategy provides for transparent mechanisms to foster the leadership of Indigenous Peoples in the design and management of such projects and prioritize investment and financing initiatives aimed at improving Indigenous Peoples’ access to energy services and their development.<sup>60</sup>

46. Canada has many examples of Indigenous-led green energy projects that receive federal funding or are a result of joint ventures between Indigenous Peoples and private companies. Indigenous Peoples in Canada currently own, co-own or derive financial benefit from almost 20 per cent of the country’s electricity-generating infrastructure as owners of land and treaty rights, including the right to economic self-determination.

## **B. Carbon emission-reducing initiatives and programmes**

47. In recent years, private investors, Governments, NGOs and businesses have increasingly purchased carbon credits from the mechanism for reducing emissions from deforestation and forest degradation in developing countries and additional forest-related activities that protect the climate (REDD-plus) and other offset projects to negate their own emissions – either in the context of the compliance market or the voluntary market. This increased interest from international carbon markets poses a threat to the land security of Indigenous Peoples. The booming voluntary carbon market is not yet fully regulated and where regulations exist, there are no mechanisms to ensure enforcement. The rising economic value of carbon sequestered on Indigenous lands promotes land-grabbing by both the public and private sectors.<sup>61</sup> Failure to regulate carbon market prices also means that Indigenous Peoples living in developing countries receive remuneration at a highly underestimated value. Indigenous representatives at the twenty-seventh Conference of the Parties to the United Nations Framework Convention on Climate Change declared that carbon markets and offsets, geo-engineering, net zero frameworks, nature-based solutions and ecosystem services did not cut emissions and were new forms of green colonialism.<sup>62</sup>

48. In the Amazon Basin, Indigenous Peoples are increasingly being taken advantage of by so-called carbon pirates operating in this underregulated sector. The Special Rapporteur was informed of opaque deals for carbon rights that can last up to a century, involving lengthy

<sup>57</sup> See communications NPL 2/2022, NOR 2/2021 and MEX 13/2021.

<sup>58</sup> See [https://www.un.org/esa/sustdev/sdissues/energy/op/hydro\\_seelos\\_paper.pdf](https://www.un.org/esa/sustdev/sdissues/energy/op/hydro_seelos_paper.pdf).

<sup>59</sup> E/2022/43-E/C.19/2022/11, para. 10.

<sup>60</sup> See [https://energia.gob.cl/sites/default/files/documentos/pen\\_2050\\_-\\_actualizado\\_marzo\\_2022\\_0.pdf](https://energia.gob.cl/sites/default/files/documentos/pen_2050_-_actualizado_marzo_2022_0.pdf) (in Spanish).

<sup>61</sup> See Committee on the Elimination of Racial Discrimination, letters to Peru (dated 28 April 2023, in Spanish) and Indonesia (dated 28 September 2009). See also A/77/238, para. 33, and A/HRC/36/46, para. 97.

<sup>62</sup> See <http://www.iipfcc.org/blog/2022/11/7/statement-of-the-iipfcc-at-the-joint-opening-plenary-at-cop27>.

contracts written in English, with communities being pushed out of their lands for projects.<sup>63</sup> Indigenous Peoples are seeking to train themselves in carbon market regulation, to better understand the mechanics and avoid falling victim to carbon pirates. Forest-offsetting schemes are often found on land belonging to Indigenous Peoples whose rights have not been secured. The main protection against this trend is to recognize their right to land as part of any carbon-offsetting agreements. Considering that Indigenous Peoples are the best stewards for protecting forests, this fundamental safeguard can only serve the wider goal of greenhouse gas emissions reduction.

49. A 2021 study revealed that of the 31 countries that contain almost 70 per cent of the world's tropical forests, only around one quarter of them explicitly recognized the rights of communities to govern and benefit from carbon rights. Just five countries have defined how carbon and non-carbon benefits will be shared, with only Viet Nam having an operational benefit-sharing scheme.<sup>64</sup>

50. At the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change, countries agreed on regulations to enhance the environmental integrity and transparency of market-based activities under article 6 of the Paris Agreement. Article 6 (2) of the Paris Agreement allows countries to trade emissions reductions and removals with one another through bilateral or multilateral agreements and article 6 (4) creates a global carbon market to be overseen by a [supervisory body](#) designated by the Conference of the Parties. At the twenty-seventh Conference of the Parties, Indigenous Peoples discussed with States parties how to ensure that they did not bear the brunt of carbon-offsetting projects and instead benefited from increased direct financial flows for forest protection, conservation and improved livelihood opportunities.

51. Carbon finance stakeholders should adopt high-integrity, rights-based approaches to secure the collective rights of Indigenous Peoples to their lands and resources, adopt human rights safeguards, including free, prior and informed consent, and secure their participation in projects from initial design to implementation, monitoring and reporting. Integrity should include transparent information about the final buyer of credits, as in many cases credits are used as offsets by companies whose activities are damaging the territories of Indigenous Peoples. Additionally, they should provide accessible grievance redress mechanisms and increase direct financing support for community-led initiatives.<sup>65</sup>

52. Financial actors will rely heavily on the assessment of certifying entities before directing funds towards a REDD-plus or other carbon-sinking project. Indigenous Peoples and NGOs have expressed concerns over the lack of transparency and independence of the entities in charge of certifying the carbon emission reduction units of carbon projects and the lack of adequate, independent and accessible grievance mechanisms.<sup>66</sup> Additionally, processes may not always include respect for the rights of Indigenous Peoples among the criteria for certification, or as a framework to decide cases brought before their complaint mechanisms. For instance, even where the REDD-plus environmental excellence standard used by the certifier, Architecture for REDD+ Transition, recalls the Cancun safeguards, the certifier's complaint mechanism failed to apply an Indigenous Peoples human rights framework to decide a recent case concerning Indigenous Peoples.<sup>67</sup>

53. Some States have strengthened the participation of Indigenous Peoples in the regulation of carbon and biodiversity offset markets. In Canada, Indigenous Peoples have participated in the development of federal offset protocols under the country's greenhouse gas offset credit system and the Government is working on free, prior and informed consent mechanisms to develop federal offset protocols for land-based projects that will be applicable

<sup>63</sup> See <https://www.theguardian.com/environment/2023/jan/21/amazon-indigenous-communities-carbon-offsetting-pirates-aoe>.

<sup>64</sup> Rights and Resources Initiative and McGill University, "Status of legal recognition of Indigenous Peoples', local communities' and Afro-descendant Peoples' rights to carbon stored in tropical lands and forests" (2021).

<sup>65</sup> See <https://www.energymonitor.ai/policy/carbon-markets/the-interwoven-fortunes-of-carbon-markets-and-indigenous-communities/>.

<sup>66</sup> See <https://www.elclip.org/resguardo-indigena-cumbal-bonos-de-carbono> (in Spanish).

<sup>67</sup> See <https://www.artredd.org/complaints/>.

on Indigenous territories.<sup>68</sup> In Malaysia, the national guidance on voluntary carbon market mechanisms requires carbon projects to be conducted in conformity with national regulations on the participation of Indigenous Peoples.<sup>69</sup> In Argentina, REDD-plus initiatives are implemented with the participation and respect for the knowledge and rights of Indigenous Peoples.<sup>70</sup>

54. In some cases, Indigenous Peoples participate in the voluntary carbon market to strengthen their autonomy and collective rights. The Yurok Tribe in the United States has used the profits from forest offset projects to pay back a loan taken to buy a part of their ancestral territory, support youth programming, housing and road improvement, and help develop off-reservation businesses.<sup>71</sup> In Mexico, the Indigenous municipality of Capulálpam de Mendez joined the carbon offset market in 2008, using the profits for forestry work, education and athletic programmes.<sup>72</sup> In the United Republic of Tanzania, the Yaeda-Eyasi Landscape REDD project strengthened land tenure, management capacity and local natural resource management in Hadza hunter-gatherer and Tatoga pastoralist communities.<sup>73</sup>

### C. Biodiversity protection and conservation

55. Funding for the creation of protected areas for biodiversity protection is set to increase significantly with the implementation of global biodiversity target 3 of the Convention on Biological Diversity, according to which at least 30 per cent of terrestrial and inland water areas and marine and coastal areas are to be effectively conserved before 2030. Given that 80 per cent of the world's remaining biodiversity lies within Indigenous lands, this target will have a significant impact on Indigenous Peoples. With the creation of a new global biodiversity framework fund,<sup>74</sup> large conservation organizations will have even greater influence and financial power, as they receive investment and tax breaks from Governments, corporations and other transnational organizations. Conservation organizations have long been heralded as champions of biodiversity protection and climate change efforts, but in recent years have come under scrutiny for increasing reports of human rights violations, including the violent evictions of Indigenous Peoples from their lands. A more detailed explanation is provided in the Special Rapporteur's report to the General Assembly in 2022.<sup>75</sup>

56. The Global Biodiversity Framework also includes a commitment by States to encourage and enable businesses, transnational corporations and financial institutions to "monitor, assess and transparently disclose their risks, dependencies and impacts on biodiversity", along with their operations, supply and value chains and portfolios, to provide information to consumers to promote sustainable consumption and to report on compliance with access and benefit-sharing regulations and measures (target 15). While target 15 identifies the important need for disclosure, risk assessment and benefit-sharing, it is only a voluntary measure and does not mandate the regulation of private sector investors.

57. Target 18 of the Framework establishes an expedited time frame to phase out subsidies harmful for biodiversity by 2025, reducing them by at least \$500 billion per annum by 2030, while scaling up positive incentives for conservation and sustainable use. Target 19 calls for an increase in funding in an "effective, timely and easily accessible manner, including domestic, international public and private resources" of at least \$200 billion per annum and for enhancing the role of Indigenous Peoples in natural resource management aimed at the conservation of biodiversity.

<sup>68</sup> See submission by Canada.

<sup>69</sup> See submission by Malaysia.

<sup>70</sup> See submission by Argentina.

<sup>71</sup> See <https://www.yesmagazine.org/environment/2021/04/19/california-carbon-offset-program-yurok-tribe-land-back>.

<sup>72</sup> See <https://www.context.news/nature/custodians-of-mexicos-indigenous-forests-confront-climate-change>.

<sup>73</sup> See submission by Amazon Watch.

<sup>74</sup> See <https://www.thegef.org/newsroom/news/statement-gef-ceo-and-chairperson-creation-global-biodiversity-framework-fund>.

<sup>75</sup> [A/77/238](#).

58. Those targets present an opportunity for increased funding of Indigenous-led conservation projects and direct financing to Indigenous Peoples. However, that requires a complex understanding of how biodiversity offsets and credits work in practice and how to access and leverage the market. There is concern that Governments will be overly dependent on private financing and may fall short of meeting their biodiversity targets. Financial resources must target the right beneficiaries to empower Indigenous Peoples and effect transformative change.<sup>76</sup>

59. For example, Canada is using the project finance for permanence funding model to support Indigenous-led conservation projects, bringing together Indigenous organizations, Governments and the philanthropic community to identify shared goals for protecting nature and realizing long-term community benefits. Impact and benefit agreements, formal contracts between Indigenous Peoples and private industry outlining the obligations of each party throughout the business relationship are a further vehicle for delivering funding to Indigenous Peoples for conservation governance and stewardship, provided they are based on a framework of free, prior and informed consent.<sup>77</sup> Mexico has created an Advisory Council to promote the participation of Indigenous Peoples in the conservation of protected areas.<sup>78</sup>

#### **D. Emerging digital and technology issues**

60. The Special Rapporteur was made aware of private projects involving emerging technologies for conservation activities and sustainable investments. These projects collect, digitalize and archive information concerning Indigenous Peoples and their territories (satellite images, audio and video documentaries) without any protection for the rights of Indigenous Peoples over their intellectual property or data sovereignty. The information is converted into digital tokens (digital security assets), and traded as a financial product on blockchain or other ledger technology.

61. New technology companies conclude contracts with Indigenous Peoples without any good faith consultation or proper explanation of the implications of such contracts. Based on such contracts, companies may acquire full ownership of information from Indigenous territories, allowing them to sell geological data to mining or oil companies, or to those who buy and sell environmental services for the carbon market. The Indigenous territory may be subject to monitoring and surveillance so that buyers of digital assets can “observe” the territory via satellite. Under the guise of addressing climate change and biodiversity loss, companies involved in the collection and monetization of environmental data and the creation of digital assets may be violating the rights of Indigenous Peoples. Financial stakeholders seeking to buy environmental services (such as forests, biodiversity and soil) to offset carbon on the digital market are likely to contribute to a transfer of ownership of Indigenous land value without the consent or maybe even the knowledge of the Indigenous Peoples concerned.

#### **V. Direct access to funding for Indigenous Peoples**

62. Following the \$1.7 billion pledge made by bilateral donors and philanthropic funders at the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change and the finding that international funding does not effectively reach Indigenous Peoples and their own projects,<sup>79</sup> studies emerged to provide donors and investors

<sup>76</sup> Helen Tugendhat and Maurizio Farhan Ferrari, “Unpacking the Kunming-Montreal Biodiversity Agreement: identifying key advances and making them work”, Forest Peoples Programme, 20 March 2023.

<sup>77</sup> See submission by Canada; and <https://news.mongabay.com/2023/03/indigenous-funding-model-is-a-win-win-for-ecosystems-and-local-economies-in-canada/>.

<sup>78</sup> See submission by Mexico.

<sup>79</sup> Rainforest Foundation Norway, “Falling short: donor funding for Indigenous Peoples and local communities to secure tenure rights and manage forests in tropical countries (2011–2020)”, p. 4; and Charapa Consult, Directing Funds to Rights. Principles, Standards and Modalities for Supporting Indigenous Peoples’ Tenure Rights and Forest Guardianship.

with principles, standards and mechanisms to make their green investments sustainable by providing financial support to Indigenous Peoples to secure their tenure rights and forest guardianship.<sup>80</sup>

63. At the twenty-seventh Conference of the Parties to the United Nations Framework Convention on Climate Change, Indigenous Peoples themselves came forward with principles and guidelines for direct access funding for climate action, biodiversity conservation and fighting desertification for a sustainable planet.<sup>81</sup> This initiative calls for an independent Indigenous-led global green funding mechanism to support global coordination, solidarity, experience- and knowledge-sharing, and lobbying and advocacy work for Indigenous Peoples from the seven sociocultural regions. The Special Rapporteur believes that direct funding to Indigenous Peoples is critical to ensuring a just transition to a green economy that supports Indigenous Peoples' self-determined climate and biodiversity actions.

## A. Obstacles to direct financing

64. Several factors have prevented the direct financing of Indigenous Peoples' projects. Obstacles to financing must be understood in the context of the underlying structural racism and colonialism that continue to affect Indigenous Peoples but also, in some situations, in the context of the political and economic interests of States in maintaining Indigenous Peoples in the margins of power. Additionally, financial actors may consider that investing in projects led by Indigenous Peoples are high risk because they may perceive participatory and consent processes as onerous delays in the implementation of their projects, or because Indigenous Peoples may lack or be perceived to lack sufficient collateral or other revenue streams and the necessary capacity and experience with fund management and accounting.<sup>82</sup> Another important obstacle is the rigidity of funding practices (short-term projects, tight deadlines) and the fact that Indigenous world views and realities are rarely accommodated.<sup>83</sup> In remote communities, the lack of a State presence and infrastructure barriers also hamper access to international funding mechanisms.<sup>84</sup>

65. The mandate has previously observed how national Governments may impose onerous reporting requirements on Indigenous Peoples who are seeking funding for management of their resources and sometimes involve non-Indigenous third parties in the management of the funding. Indigenous governance institutions applying for funds are expected to respond within relatively short time frames to government-issued notices; the onus is placed on them to carry out studies and develop evidence identifying and supporting their concerns.<sup>85</sup>

## B. Inclusive grant-making

66. Funding practices and grant design need to be modified to enable Indigenous Peoples to access, manage and benefit from funds more easily and quickly.<sup>86</sup> Funding must be channelled in ways that are relevant and appropriate for Indigenous Peoples, funding engagements should as far as possible be led by Indigenous Peoples, be flexible, long-term, gender-inclusive, timely and accessible, and ensure accountability. Transformative changes need to occur in the practices and infrastructure of climate and conservation funders,

<sup>80</sup> Amazon Watch, *Respecting Indigenous Rights: an Actionable Due Diligence Toolkit for Institutional Investors* (2023); Charapa Consult, *Directing Funds to Rights*; and Rights for Resources Initiative and Rainforest Foundation Norway, "Funding with purpose: a study to inform donor support for Indigenous and local community rights, climate, and conservation" (2022).

<sup>81</sup> See <https://www.oneearth.org/indigenous-leaders-call-for-independent-funding-mechanism-to-support-climate-and-biodiversity-action/>.

<sup>82</sup> See submission by Canada.

<sup>83</sup> See submission by the Indigenous Peoples of Africa Co-ordinating Committee and Maliasili and Synchronicity Earth, "Greening the grassroots: rethinking African conservation funding" (July 2022).

<sup>84</sup> See submission by Canada.

<sup>85</sup> *A/HRC/27/52/Add.2*, para. 72.

<sup>86</sup> Fred Nelson and others, "Better climate funding means centering local and indigenous communities", *Stanford Social Innovation Review*, 11 May 2023.

including international NGOs, private foundations and philanthropic bodies, and government funding agencies, to accommodate the world view and realities of Indigenous Peoples and support Indigenous self-determination.

67. Access to capital alone may be insufficient; capacity support to help Indigenous Peoples hire external legal, financial and technical experts and gain experience through deal-making is likewise important. As part of the transition to direct financing, Indigenous Peoples should be supported to build their own technical units within their organizations so that they can meet the minimal requirements of donors and other funders.

68. In many cases, Indigenous organizations will need intermediaries, such as NGOs, multilateral agencies or funding mechanisms to access funds from donors. Such intermediaries also play a critical role in providing fund management expertise to Indigenous organizations and the necessary tools to apply for funds and manage and prepare financial reports themselves. Intermediaries have a role to play in training donors, funders and investors on how existing standards may need to be adapted to suit the needs of Indigenous organizations, including by adapting priorities within projects to address diverse community needs and imminent threats or seize opportunities.<sup>87</sup> Indigenous Peoples should be given, wherever possible, a choice as to the intermediaries with whom they will work.

69. The Special Rapporteur received additional practical suggestions for ensuring Indigenous Peoples' access to funding, including (a) meaningful participation of Indigenous Peoples in the design and implementation of funding opportunities from the outset to ensure that funding is responsive to their needs, priorities and aspirations, and that it aligns with their vision of sustainable development; (b) terms of funding that recognize self-determination over lands, territories and resources; (c) simplification of grant application procedures and reporting requirements; (d) flexible financing mechanisms that take into account the diverse needs and circumstances of Indigenous Peoples; and (e) a reduction in intermediaries.<sup>88</sup>

### C. Funding land tenure security

70. A necessary component of the green finance objective is the urgent need to support Indigenous Peoples in securing their collective land rights and self-determination over their territories, which are instrumental for the conservation of biodiversity and climate change adaptation.<sup>89</sup>

71. The land rights standard is a process instigated by the Indigenous Peoples Major Group for Sustainable Development and the Rights and Resources Initiative aimed at developing a comprehensive set of principles, in consultation with Indigenous Peoples to, inter alia, establish a framework for guiding rights-based climate, biodiversity and sustainable development actions and investments in the world's lands, forests and other natural ecosystems that is driven and determined by rights holders.<sup>90</sup>

72. Intermediary organizations, such as the International Land and Forest Tenure Facility, offer grants and technical assistance directly to Indigenous Peoples with a view to securing their tenure, as part of their work to mitigate climate change, reduce conflict and promote gender equality. It is important that all finance actors, in particular international development finance institutions or States, allocate funding for activities to support Indigenous Peoples seeking recognition of their collective land rights, including legal documentation, mapping, monitoring, conflict resolution and other activities that strengthen their capacity to protect, plan, manage and sustainably use their forests and lands.

73. Relatively few donors prioritize land tenure and forest management as part of their development aid. According to the Rainforest Foundation Norway: "The United States and Norway have been the largest contributors in absolute terms, followed by other major donors

<sup>87</sup> Rainforest Foundation Norway, "Falling short: donor funding for Indigenous Peoples and local communities to secure tenure rights and manage forests in tropical countries (2011–2020)".

<sup>88</sup> See submission by the Indigenous Peoples of Africa Co-ordinating Committee.

<sup>89</sup> Paul De Wit, "Securing land tenure for prosperity of the planet and its peoples" (Rights and Resources Initiative, 2023).

<sup>90</sup> See <https://rightsandresources.org/wp-content/uploads/LandRightsStd-1.pdf>.

including Germany, the United Kingdom and Sweden. Considering their share of total ODA, Norway supports IPLC tenure and forest management at a far greater rate relative to its peers in Germany and the United Kingdom.”<sup>91</sup>

## VI. Conclusions

74. **The shift to green finance is necessary and urgent, and if done using a human rights-based approach it can be a source of opportunity for Indigenous Peoples to obtain funding to preserve their lands, knowledge and distinct ways of life, and to create economic opportunities that may help them to maintain and strengthen their indigenous identity.<sup>92</sup> An indigenous rights-compliant form of green financing can infuse renewed hope for Indigenous Peoples’ physical and cultural survival, as well as the protection of their life-sustaining resources and the natural environment upon which they depend spiritually.**

75. **A just green transition will require that States and other financial actors break down the power asymmetries that continue to characterize aid and development financing and involve Indigenous Peoples, Indigenous women in particular, as equal stakeholders in the finance process and foster true cooperation and solidarity. As already observed by the previous Special Rapporteur in her report on international investment agreements, in spite of increasing human rights safeguards in host countries donors and investors continue to wield the most power and exclude from decision-making those most affected by their financial decisions.<sup>93</sup>**

76. **States, international financial institutions and the private sector play a critical role in shaping policy beyond their financial investments and must take steps to ensure that Indigenous Peoples are consulted on, consent to and meaningfully participate in the development and implementation of projects and programmes that may affect their rights and interests. By doing so, they will contribute to the promotion of a sustainable and inclusive economy that benefits all stakeholders and rights holders, including Indigenous Peoples. When investing in green projects, some funding should be targeted directly to Indigenous Peoples. This may require allocating resources to secure their land tenure and/or empowering them to directly access funding through training and other empowerment measures. At the same time, investors should make every effort, through continuing consultations, to adapt their financing approach to be culturally appropriate for Indigenous Peoples. A successful transition to direct funding is not guaranteed through training alone but instead needs meaningful intercultural engagement with Indigenous organizations to help them build technical capacity. As many organizations are more political than technical in nature, that implies long-term funding to support technical bodies to enable the continuation of political activities.**

## VII. Recommendations

77. **The Special Rapporteur recommends that States:**

(a) **Protect Indigenous Peoples from human rights abuses by business enterprises and financial actors within their territory or jurisdiction;**

(b) **Acknowledge and respect the rights of Indigenous Peoples, as enshrined in international human rights instruments, including the United Nations Declaration on the Rights of Indigenous Peoples. That includes the right to self-determination, lands, territories and resources, as well as the right to free, prior and informed consent in green finance decision-making processes that affect their lands and communities;**

<sup>91</sup> Rainforest Foundation Norway, “Falling short: donor funding for Indigenous Peoples and local communities to secure tenure rights and manage forests in tropical countries (2011–2020)”, p. 4.

<sup>92</sup> ILO, “La creación de empleos verdes para los jóvenes indígenas en Colombia” (2023) (in Spanish).

<sup>93</sup> See [A/HRC/33/42](#).

(c) **Guarantee the right of Indigenous Peoples to provide or withhold their free, prior and informed consent regarding green finance initiatives affecting their lands, territories and resources after a meaningful and gender-inclusive consultation process. States should ensure that Indigenous Peoples have access to relevant information, can freely express their views and make decisions without coercion or manipulation. States should recognize that free, prior and informed consent is an ongoing process, requiring ongoing consultation throughout the life cycle of a project;**

(d) **Ensure that Indigenous Peoples directly and equitably benefit from green financing projects. Indigenous Peoples should be provided with access to employment opportunities, training, capacity-building programmes and business development initiatives associated with green projects. States should ensure that funding proposals include provisions for benefit-sharing mutually agreed upon with Indigenous Peoples;**

(e) **Secure the land rights of Indigenous Peoples and demarcate their ancestral lands and territories to protect them from encroachment, land-grabbing and other forms of unauthorized exploitation;**

(f) **Establish effective, accessible, culturally appropriate and independent mechanisms for Indigenous Peoples to seek justice and remedy in cases of human rights violations or environmental harm resulting from green financing projects;**

(g) **Establish monitoring and reporting mechanisms to track the impacts of green financing projects on the rights of Indigenous Peoples, including regular consultations with the Indigenous communities affected. States should also hold project proponents accountable, in compliance with human rights standards, and require them to report periodically on the human rights and environmental impacts of green initiatives;**

(h) **Adopt, in consultation with Indigenous Peoples, domestic frameworks regulating the green economy including requirements for REDD-plus initiatives, carbon markets and nature-based markets to clearly recognize and protect the rights to land, territories and resources of Indigenous Peoples and their right to free, prior and informed consent;**

(i) **Allocate resources aimed at enhancing Indigenous Peoples' knowledge and understanding of green financing mechanisms, so that they can effectively participate in decision-making processes, including by giving or withholding their free, prior and informed consent in relation to green finance projects;**

(j) **Provide funding for Indigenous Peoples to hire external legal, financial and technical advisers. Provide financial and human resources to overcome infrastructure barriers that hinder access to financial mechanisms and processes for Indigenous Peoples living in remote areas;**

(k) **Provide access to information to Indigenous Peoples and ensure transparency at all levels of green finance projects.**

**78. The Special Rapporteur recommends that donors, investors and funders (including international development finance institutions and intergovernmental organizations):**

(a) **Adopt explicit policies and guidelines for the rights of Indigenous Peoples that are aligned with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Guiding Principles on Business and Human Rights. Such policies should recognize the contribution of Indigenous Peoples to protecting the planet and provide for the protection of their rights, particularly in green operations;**

(b) **Adopt a regulatory framework on human rights due diligence, requiring recipient Governments and/or implementing partners to identify, prevent, mitigate and account for any human rights risks. That includes assessing the potential social, environmental and cultural impacts of projects, as well as the human rights track record of project proponents and partners;**

(c) **Condition funding on the adoption and application of a solid Indigenous human rights-based approach by recipient Governments and/or implementing partners on the ground;**

(d) **Ensure that Indigenous Peoples that are or could be affected by a project they are funding are correctly identified and recognized, based on the principle of self-identification, and assess their security of tenure over their collective lands, which may be affected by the project. If land rights are not properly secured and Indigenous Peoples have provided their informed consent to the project, then donors should reserve a part of their budget to support the efforts of Indigenous Peoples to secure their land rights;**

(e) **Secure Indigenous Peoples' free, prior and informed consent before funding any projects that may affect their lands, territories, resources and livelihoods. Ensure free, prior and informed consent processes are ongoing and led by experts on the rights of Indigenous Peoples and on such processes;**

(f) **Require comprehensive and independent human rights and environmental impact assessments for projects involving Indigenous lands and resources. Such assessments should be conducted in consultation with Indigenous Peoples and take their knowledge, cultural heritage and ecosystem services into account. They should include expertise on Indigenous governance structures and decision-making, as well as an analysis of potential impacts on collective land rights, irrespective of the position of host States on the issue;**

(g) **Ensure the establishment of robust mechanisms to monitor and report on the rights of Indigenous Peoples throughout the chain of intermediaries and implementing partners. When abuses occur, ensure Indigenous Peoples can access independent grievance mechanisms that are in line with principle 31 of the Guiding Principles on Business and Human Rights;**

(h) **Ensure a direct financial flow to Indigenous Peoples by creating or redesigning flexible financing mechanisms that simplify application procedures and reporting requirements for Indigenous-led green finance initiatives and projects. Such financing mechanisms should:**

(i) **Respond to the needs and priorities for funding of Indigenous Peoples, including with regard to their self-determination, land tenure and their sense of responsibility for future generations;**

(ii) **Respect Indigenous Peoples' own decision-making processes and cooperate with their governance institutions;**

(iii) **Avoid unnecessary intermediaries, other than those requested by Indigenous Peoples themselves;**

(i) **Track all funds allocated directly to and for Indigenous Peoples in order to generate data on how much they benefit from green finance;**

(j) **Involve Indigenous Peoples in the design and implementation of funding opportunities from the outset to ensure that funding processes are responsive to their needs, priorities and aspirations, and align with their vision of sustainable development;**

(k) **Improve gender-inclusiveness by scaling up funding for Indigenous women leaders and their organizations. Foster the participation of Indigenous women and their organizations before funding decisions are made, continue their engagement throughout the project life cycle and ensure that it is led by experts on free, prior and informed consent processes;**

(l) **Increase the institutional, technical and financial capacity of Indigenous Peoples and their organizations to access and influence the financial market as it relates to conservation, clean energy transition and nature markets. Support the organizational development and project management of Indigenous Peoples and the promotion of sustainable livelihoods;**

---

(m) **Increase the representation of Indigenous Peoples within financial institutions, for example by adopting staff diversity and inclusion policies, establishing focal points for them, maintaining rosters of Indigenous experts, creating Indigenous advisory bodies and/or appointing social safeguard specialists. Include representatives of Indigenous Peoples in the governance of GEF and the Global Biodiversity Framework Fund to better design and administer grants;**

(n) **Provide targeted training to organizational staff and incentives for organizational learning to better integrate the rights of Indigenous Peoples;**

(o) **Improve the transparency of private foundations by publicly sharing their funding data to better align with the practice of bilateral and multilateral institutions;**

(p) **Adapt existing and future carbon crediting and certification schemes to explicitly require compliance with international human rights standards, including the United Nations Declaration on the Rights of Indigenous Peoples. Guarantee the full participation of Indigenous Peoples in multi-stakeholder governance organizations, including in the voluntary carbon market;**

(q) **Ensure there is Indigenous rights expertise in the validation and verification bodies and properly assess national laws, policies and practices in relation to the rights of Indigenous Peoples to be in line with international human rights law standards. Ensure that projects proceed in a manner that respects the rights of Indigenous Peoples and are agreed to by them;**

(r) **Recognize and respect the value of Indigenous Peoples' scientific and technical knowledge, practices and innovations in green finance projects. That includes incorporating Indigenous knowledge of biodiversity, the environment and sustainable resource management practices into project design and implementation.**

---



# General Assembly

Distr.: General  
1 April 2020

Original: English

---

## Human Rights Council

Forty-fourth session

15 June–3 July 2020

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## International solidarity and climate change

### Report of the Independent Expert on human rights and international solidarity\*

#### *Summary*

The present report is the third submitted to the Human Rights Council by the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor. In the report, submitted pursuant to Council resolution 35/3, the Independent Expert discusses the issue of human rights-based international solidarity in the context of climate change.

---

\* The Independent Expert is grateful to the Osgoode Hall Law School of York University, Toronto, Canada, and the Nathanson Centre on Transnational Human Rights, Crime and Security at the same university, for their assistance in the preparation of the present report.



## I. Introduction

1. After reporting to the Human Rights Council in June 2019, the Independent Expert on human rights and international solidarity, Obiora Chinedu Okafor, presented his second thematic report to the General Assembly, in which he discussed human rights-based international solidarity in the context of global refugee protection. The Independent Expert conducted one country visit in 2019, to Qatar from 2 to 10 September. The Independent Expert thanks Costa Rica and Bolivia for the positive replies received from his requests for visits and reminds other States about the need for positive replies to his requests to visit.

2. In the present report, the Independent Expert engages with one of the thematic priorities that he established for his mandate, namely the enjoyment, or lack thereof, of human rights-based international solidarity in the context of climate change. This subject is consistent with the promise made in his first report to the Human Rights Council (see A/HRC/38/40) to examine matters that lie at the intersection of international solidarity and climate change. An important goal of the report is to better illuminate the role of human rights-based international solidarity in responding to climate change, which is a common concern of humanity. A complementary objective is to strengthen the appreciation of the role that the lack of human rights-based international solidarity plays in exacerbating the challenges brought upon the world by climate change.

3. The Independent Expert considered it pressing to address the issues identified in the report, given the tragic impacts of climate change across the world, the fact that greenhouse gas emissions reached a record high in 2018,<sup>1</sup> and that diverse States, peoples and institutions are striving to contribute to the avoidance of further climate change-induced harm. It is hoped that the analysis, conclusions and recommendations offered here will – from a human rights perspective – support the implementation of the 2015 Paris Agreement and the 1992 United Nations Framework Convention on Climate Change; the programming of the International Labour Organization (ILO) on a just transition to sustainable economic systems; negotiations to regulate transnational corporations under international human rights law; the struggles of relevant social movements; and other relevant endeavours.

4. The report is divided into five sections. This first section introduces the report. In section II, a background on human rights-based international solidarity in the context of climate change is provided. Section III is devoted to a discussion and analysis of positive expressions of human rights-based international solidarity in the context of climate change (good practices). In section IV, key human rights-based international solidarity gaps in the context of climate change are identified and analysed (areas to be improved). Section V offers brief concluding remarks and recommendations.

5. It should be noted that the report does not deal with the topic of climate governance in and of itself, nor does it aim to reargue the case for a link between climate change and human rights. The international human rights community has documented the relationship between human rights and climate change for over a decade (see A/HRC/41/39). The present report focuses strictly on key issues that lie at the intersection of human rights-based international solidarity and climate change. Even so, given the vastness of the topic, the report does not consider every issue or problem that falls within this scope.

## II. Background on human rights-based international solidarity in the context of climate change

6. The experience of climate change has become part of the daily lives of peoples around the world. Countless individuals and groups are suffering in appalling ways from the effects of climate change, something long predicted by the scientific community.<sup>2</sup> In 2019, thousands fled their homes or were killed in Africa and the Caribbean due to Cyclone

---

<sup>1</sup> United Nations Environment Programme, *Emissions Gap Report* (Nairobi, 2019), p. xiv.

<sup>2</sup> See Intergovernmental Panel on Climate Change, *Climate Change 2014: Synthesis Report* (Geneva, 2014).

Idai and Hurricane Dorian. Raging wildfires devastated large parts of Australia, North America and Europe. In the Arctic, landscapes are being altered in ways that severely threaten indigenous cultures and health. These facts are all well known, and are examples of the negative human rights impacts of climate change that are occurring globally. Human rights-based international solidarity in the context of climate change arises partly due to the physical interdependence between humankind and nature, which has no political boundaries, and deeply interconnects disparate regions through ecological dynamics that tend to implicate all States and peoples. Protecting the global environment and addressing the local impacts of climate change through human rights-based international solidarity are, therefore, an objective necessity that can no longer be delayed.

7. Climate change results from globally interlocking economic systems that drive unsustainable modes of production and consumption, especially of fossil fuels and other extractive commodities.<sup>3</sup> The asymmetrical distribution of wealth through the global economy also reinforces the profoundly unfair reality that those who have contributed the least to the problem at issue tend to feel its greatest effects.<sup>4</sup> As temperatures rise, inequalities are compounded.<sup>5</sup> Climate change exacerbates social vulnerabilities based on gender, disability, poverty, age, place of birth, indigeneity, etc.<sup>6</sup> In the Independent Expert's view, the enjoyment of human rights-based international solidarity is critical to the successful transformation of these problematic economic structures, adaptation to a changing world and redress for any loss or damage resulting from climate change.

8. Expressions of international solidarity to meet these challenges are not new. For example, two long-standing concepts of the international law on climate change recognize a unity of interests, as well as respect for differing values, rights and needs in pursuing global environmental protection, and therefore express certain dimensions of international solidarity. First, the status of climate change as a "common concern of humankind" is universally accepted and implies the widest cooperation and positive action for the benefit of present and future generations.<sup>7</sup> Second, has been the recognition that States have "common but differentiated responsibilities and respective capabilities", which is key to international cooperation. At a minimum, this principle captures the shared responsibilities of States to address climate change and their differing capacities to act. For developing countries, the principle may also recognize the main responsibility of developed countries for historical and per capita emissions, the lesser capacity of developing countries to adapt, and their priorities of development and poverty eradication (FCCC/CP/1995/7/Add.1, para. 1).

9. The principle of common but differentiated responsibilities and respective capabilities underpins each State's pledge under the Paris Agreement – known in that treaty as a "nationally determined contribution".<sup>8</sup> The Paris Agreement grants parties some discretion in determining their nationally determined contributions because it does not stipulate internationally negotiated targets or domestic measures. However, of relevance to human rights-based international solidarity, the treaty requires that developed countries provide finance to developing countries for mitigation and adaptation, that developing countries receive technological support and that developed countries take the lead in

<sup>3</sup> Usha Natarajan, "Climate justice", in *Routledge Handbook of Law and Society*, Mariana Valverde and others, eds. (forthcoming, on file with the Independent Expert).

<sup>4</sup> Ibid.

<sup>5</sup> Intergovernmental Panel on Climate Change, *Global Warming of 1.5 °C: An IPCC Special Report on the Impacts of Global Warming of 1.5 °C Above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (2018).

<sup>6</sup> See the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, "Joint statement on 'human rights and climate change'" (16 September 2019); and A/HRC/41/39 and Corr.1.

<sup>7</sup> General Assembly resolution 43/53.

<sup>8</sup> Paris Agreement, art. 4 (1)–(3).

reducing emissions.<sup>9</sup> The Paris Agreement also commits States to pursue common efforts to limit the rise in the global temperature to 1.5°C to significantly reduce the risks posed to vulnerable States and peoples.<sup>10</sup>

10. However, there is a deep chasm between State behaviour thus far (including their pledges) and what is needed to prevent further climate change and to avoid the grave dangers that this portends. For one, as is well known, the second highest emitting State has submitted its formal notification of withdrawal from the Paris Agreement. Other States have laudably maintained their commitment to the accord, but their pledges are inadequate. Even if all States meet their conditional nationally determined contributions, we would still be on track to experience a catastrophic 3°C increase in the world’s temperature.<sup>11</sup> Companies continue to operate in a largely underregulated manner while profiting from greenhouse gas emissions. Yet, insofar as companies and international organizations contribute to the problem through emissions, project finance and other practices that give rise to similar and complementary responsibilities to the duties of States, they also have a duty to respect the human right to international solidarity in this context (A/HRC/35/35, p. 18).

11. Given the insufficiency of State and corporate action, indigenous peoples, civil societies, subnational jurisdictions and others have been pursuing “climate justice”, which emphasizes a human rights approach to the impacts of climate change on socially vulnerable peoples; the prevention of harm from mitigation activities; redress for loss and damage; and meaningful civic participation.<sup>12</sup> Similarly, acknowledging that high-emitting economic sectors will need to reform their operations in the coming years, some labour unions, Governments and employers are struggling to ensure that the international rights of workers dependent on those sectors are not compromised. They are doing so through planning for a so-called just transition that guarantees the right to decent work. Importantly, the Paris Agreement acknowledges a just transition, human rights and climate justice.<sup>13</sup> Drawing on these discourses, people who lack direct regulatory power are demanding that Governments and corporations do better. They are also realizing human rights-based international solidarity in their own right through their pursuit of justice for individuals and groups who are owed protection from the precarities of climate change.

### **III. Positive expressions of human rights-based international solidarity in the context of climate change**

#### **A. Civil society and non-State practices**

12. Civil society and non-State actors have consistently been at the forefront of addressing climate change through positive expressions of human rights-based international solidarity and of requesting those with direct authority do so as well.<sup>14</sup> Acknowledging the breadth of such positive expressions, the Independent Expert wishes to highlight some relevant practices of indigenous peoples, youth and environmental defenders. Their efforts described in this report reflect international solidarity because they aim to push forward needed political, social and economic transformations through human rights strategies that are proactive and collaborative, are often supported by allied States and international organizations, and are complementary to conventional endeavours in the same direction. Insofar as these groups suffer disproportionately from climate change, yet are excluded from direct policymaking, their efforts to be heard also realize a subtle quality of international solidarity: when marginalized peoples share their lived experience, it may

<sup>9</sup> Ibid., arts. 4 (4) and 9–10.

<sup>10</sup> Ibid., art. 2 (1) (a).

<sup>11</sup> United Nations Environment Programme, *Emissions Gap*, p. xix.

<sup>12</sup> E.g., [www.mrfcj.org/principles-of-climate-justice](http://www.mrfcj.org/principles-of-climate-justice).

<sup>13</sup> Paris Agreement, tenth, eleventh and thirteenth preambular paragraphs.

<sup>14</sup> See Sébastien Duyck, Sébastien Jodoin and Alyssa Johl, eds., *Routledge Handbook of Human Rights and Climate Governance* (New York, Routledge, 2018).

enrich understanding about the oppression that global climate change perpetuates and foster greater awareness of the need for solidarity with them and others.

13. Human rights-based international solidarity in the context of climate change has a bearing on pressing questions about the persistent negative repercussions of colonialism on the ability of indigenous peoples to make decisions that affect their own lives and to contribute to the lives of others. Indeed, the recognition that indigenous peoples have rights to self-determination,<sup>15</sup> and that indigenous knowledge advances environmental stewardship, means that there are entwined local and global imperatives for ensuring indigenous peoples can make decisions on climate change that can affect everyone else.<sup>16</sup> Indigenous peoples have fought to gain entry into, and to reshape, political forums on climate change, advancing “both a positive vision of social and economic systems, while also contesting and engaging with dominant understandings of climate change and their hegemonic and neocolonial causes”.<sup>17</sup> For example, they established a caucus in international negotiations that worked alongside allies to institutionalize the Local Communities and Indigenous Peoples Platform, which facilitates the integration into the international legal process of matters such as traditional knowledge. Priorities and strategies have also been adopted by global, national and local indigenous organizations, such as the group Indigenous Climate Action, which supports indigenous peoples to reclaim their “roles and responsibilities” as caretakers of the earth to achieve “a climate stable future for all”.<sup>18</sup> Such achievements, while ongoing, are positive steps towards the expansion of human rights-based international solidarity in the climate change field, understood as the engagement of indigenous peoples as partners in responding to the common, global problem of climate change.

14. Some youth coalitions provide other examples of non-State human rights-based international solidarity in the context of climate change because their leadership and collaborations facilitate the enjoyment of rights to well-being under the Convention on the Rights of the Child for children the world over. Youth are the people envisioned to be the “future generations” when climate change rose to the international agenda 30 years ago. Nevertheless, youth still have limited opportunities to participate in climate governance. To exercise their own agency, youth gained the status of a constituency in international climate negotiations and also participate as “youth delegates”.<sup>19</sup> Youth movements are pooling resources to organize transnationally through a global network.<sup>20</sup> Many youth marshalled demonstrations worldwide during the climate strikes, which involved approximately 7.6 million people acting in solidarity with each other, making them some of the largest protests in history.<sup>21</sup> Most recently, youth from 16 countries filed a communication with the Committee on the Rights of the Child alleging that five of the world’s largest polluters are endangering the lives and welfare of millions of children around the world.<sup>22</sup> Their advocacy on the petition may clarify rights protections in solidarity with all youth for whom the “climate crisis is not an abstract future threat”.<sup>23</sup>

15. For their part, environmental defenders<sup>24</sup> are struggling for climate justice, each in solidarity with the other, on the frontlines of carbon intensive projects, as well as projects

<sup>15</sup> See General Assembly resolution 61/295.

<sup>16</sup> See Ben Powless, “The indigenous rights framework and climate change”, in *Routledge Handbook of Human Rights and Climate Governance*, Duyck, Jodoin and Johl.

<sup>17</sup> Ibid., p. 213. See also Kyle Whyte, “Indigenous climate change studies: indigenizing futures, decolonizing the Anthropocene”, *English Language Notes*, vol. 55 (2017).

<sup>18</sup> See [www.indigenousclimateaction.com/who-we-are](http://www.indigenousclimateaction.com/who-we-are).

<sup>19</sup> See Harriet Thew, “Youth participation and agency in the United Nations Framework Convention on Climate Change”, *International Environmental Agreements*, vol. 18 (2018).

<sup>20</sup> See <https://youthclimatemovement.wordpress.com>.

<sup>21</sup> See <https://globalclimatestrike.net/7-million-people-demand-action-after-week-of-climate-strikes>.

<sup>22</sup> See <https://earthjustice.org/sites/default/files/files/CRC-communication-Sacchi-et-al-v.-Argentina-et-al.pdf>.

<sup>23</sup> Ibid., para. 3.

<sup>24</sup> Human Rights Council resolution 40/11.

that limit emissions but still have detrimental effects on local peoples and environments.<sup>25</sup> The Independent Expert sees defending lands, resources and waters against such projects as positive expressions of human rights-based international solidarity because this could curb global emissions and protect the applicable rights of indigenous and local peoples to self-determination, civic participation and security, to the benefit of all. Environmental defenders have mobilized against mining projects in Asia.<sup>26</sup> They protest the land grabs by, or for, extractive industries in Latin America.<sup>27</sup> They set up blockades and pursue judicial review to halt fossil fuel infrastructure across North America.<sup>28</sup> There is troubling evidence that environmental defenders face criminalization, which exacerbates oppression on the basis of race, given that many are racialized and indigenous peoples.<sup>29</sup> In the spirit of fellowship, however, “defenders” of these defenders are organizing to assist those on the frontlines.<sup>30</sup> Therefore, environmental defenders, and their defenders, are demonstrating the utmost solidarity with communities and everyone who faces the negative effects of climate change-related projects by upholding human rights through their direct actions.<sup>31</sup>

## B. Country-level laws and practices

16. Individual countries may express human rights-based international solidarity with each other and with all of the world’s peoples in the context of climate change partly by eliminating their own contributions to the problem. The Paris Agreement captures this point in affirming that nationally determined contributions will reflect each party’s highest possible ambition.<sup>32</sup> In the Independent Expert’s view, human rights-based international solidarity also demands that countries go further by tackling structural inequities connected to climate change: it requires that countries exchange financial and technological support reflecting common but differentiated responsibilities and respective capabilities, safeguard internationally protected groups and create avenues for genuine civic participation. The Paris Agreement and the United Nations Framework Convention on Climate Change have near to universal membership, which means that almost all States have international legal duties to cooperate in taking such separate and collective measures.

17. Although current State efforts to redress climate change are overwhelmingly inadequate, some countries are setting examples of positive expressions of human rights-based international solidarity in this area, demonstrating that not all States find a “race to the bottom” in the climate change field acceptable. For instance, in 2019, 73 States announced that they were working to achieve net-zero emissions by 2050.<sup>33</sup> Since the 1970s, many developing countries have consistently sought assistance to pursue a different and cleaner route to development than the historic path trod by the industrialized countries.<sup>34</sup> Furthermore, some domestic courts and tribunals are delivering a (limited) form of human rights-based international solidarity by granting procedural access to justice to

<sup>25</sup> See Global Witness, *Enemies of the State? How Governments and Businesses Silence Land and Environmental Defenders* (London, 2019).

<sup>26</sup> See Samina Luthfa, “Transnational ties and reciprocal tenacity: resisting mining in Bangladesh with transnational coalition”, *Sociology*, vol. 51, No. 1 (2017).

<sup>27</sup> See Global Witness, *Enemies of the State?*

<sup>28</sup> See Yellowhead Institute, *Land Back: A Yellowhead Institute Red Paper* (Toronto, 2019).

<sup>29</sup> See Global Witness, *Enemies of the State?* and Inter-American Commission on Human Rights, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation and Development Activities* (2015).

<sup>30</sup> See [www.environment-rights.org](http://www.environment-rights.org).

<sup>31</sup> There is also compelling evidence that environmental defenders are victims of the struggle to protect the environment: see [www.theguardian.com/environment/2018/feb/02/almost-four-environmental-defenders-a-week-killed-in-2017](http://www.theguardian.com/environment/2018/feb/02/almost-four-environmental-defenders-a-week-killed-in-2017).

<sup>32</sup> Paris Agreement, art. 4 (3).

<sup>33</sup> See <https://sdg.iisd.org/news/73-countries-commit-to-net-zero-co2-emissions-by-2050>.

<sup>34</sup> See Karin Mickelson, “South, North, international environmental law, and international environmental lawyers”, *Yearbook of International Environmental Law*, vol. 11 (2000).

transnational litigants seeking clarity on whether the behaviours of States and corporations interfere with the enjoyment of fundamental rights.<sup>35</sup>

18. Beyond these examples, the Independent Expert highlights two countries whose commitments and partnerships manifest human rights-based international solidarity because they reflect their responsibilities, capacities and social justice goals. One industrialized country in the Pacific is notable for legislating a net-zero target by 2050.<sup>36</sup> It is ending fossil fuel exploration permits and planting one billion trees.<sup>37</sup> This country has also pledged \$300 million to global climate finance, of which \$150 million will go to developing countries in the Pacific. It is committing to support the self-determination and environmental stewardship of indigenous peoples. The country has also focused on climate change adaptation for workers and communities by supporting water quality and the agricultural sector. Finally, this country is prioritizing well-being over economic growth, which carries great potential for human rights-based international solidarity as it promises to catalyse new thinking globally about the relationship between humanity, nature and development.<sup>38</sup> It will also mean that its contributions to the impact climate change has in other lands will be reduced significantly.

19. The other country, which is in Asia, is among the places most vulnerable to cyclones, storm surges and floods, which have already resulted in displacement and death.<sup>39</sup> Yet, the country produces as little as 0.3 per cent of global emissions.<sup>40</sup> The country has been responding to this challenge by participating in the international climate regime and collaborating with partners for climate change-related finance and capacity-building. For instance, the country has created a national action plan, established institutional arrangements, and devoted billions to disaster risk management.<sup>41</sup> It also devised a climate change and gender action plan to account for the risks to, and positive contributions of, women.<sup>42</sup> From this example, it should be clear that poorer and more vulnerable countries can express human rights-based international solidarity in the climate change field when they work towards adaptation, focus on gender and otherwise safeguard local peoples with the support of those who have both a greater responsibility for the creation of the climate change problem and a stronger capacity to act.

### C. Regional laws and practices

20. Some regional laws and practices have contributed significantly to enhancing human rights-based international solidarity in the context of climate change as they cultivate fellowship among States in this field, often to their mutual benefit and that of the international community at large. The Inter-American Human Rights System stands out in this connection, as it has produced manifold hearings, reports and other practices that address the development of international human rights law on climate change. Crucially, in 2018, the Inter-American Court of Human Rights released an Advisory Opinion confirming that States have duties to prevent activities within their territories that contravene the human rights of peoples in other States due to the environmental damage that such actions lead to, a ruling that has implications for dealing with the transboundary nature of climate change.<sup>43</sup> The Inter-American Commission on Human Rights has provided a forum for

<sup>35</sup> See Jacqueline Peel and Hari M. Osofsky, “A rights turn in climate change litigation?”, *Transnational Environmental Law*, vol. 7, No. 1 (2018).

<sup>36</sup> New Zealand, Climate Change Response (Zero Carbon) Amendment Bill (Royal Assent, November 2019).

<sup>37</sup> Government of New Zealand, “Framework for climate change policy and key upcoming decisions” (2018).

<sup>38</sup> Government of New Zealand, *The Wellbeing Budget* (2019).

<sup>39</sup> See Gardiner Harris, “Borrowed time on disappearing land”, *New York Times*, 28 March 2014.

<sup>40</sup> *Ibid.*

<sup>41</sup> Government of Bangladesh, Bangladesh Climate Change Strategy and Action Plan 2008.

<sup>42</sup> Government of Bangladesh, Bangladesh Climate Change and Gender Action Plan (2013).

<sup>43</sup> Sumudu Atapattu and Andrea Schapper, *Human Rights and the Environment: Key Issues* (New York, Routledge, 2019), pp. 97–98.

indigenous peoples and local communities to voice their experiences on the issue of extractivism and climate change, enabling civic participation regarding this question at the international level, which is a mode of solidarity.<sup>44</sup> Furthermore, countries in this region adopted the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), which aims to empower all persons to make decisions that affect their lives and the environment, and to access justice when those rights have been infringed. The Agreement specifically guarantees the rights to life, personal integrity and peaceful assembly in solidarity with environmental defenders.

21. Each of the world's other regions has similarly led important efforts that contribute in some measure to human rights-based international solidarity in the context of climate change. The African region has multiple climate initiatives that connect the African Union, subregions and other political layers within the continent to formulate common positions on climate change for national planning.<sup>45</sup> The region also has a governance structure that coordinates Heads of State, ministers and negotiators to advocate in the international climate regime on matters of importance to the human rights of peoples in the region – in particular, strengthening international support for adaptation guided by common but differentiated responsibilities and respective capabilities.<sup>46</sup> The European Union has an ambitious record of legal and financial endeavours to address climate change and has made progress in reducing emissions. Under the European New Green Deal,<sup>47</sup> the region has proposed to devote 25 per cent of its budget to climate action, to reach net-zero emissions by 2050 and to assist members vulnerable to these commitments with a just transition.<sup>48</sup> As for providing international support, a European Union flagship fund committed €750 million in climate finance, primarily to the least developed countries and small island developing States.<sup>49</sup> Likewise, the Asian Development Bank is committing \$80 billion to support action on climate change.<sup>50</sup> Another example of international solidarity in the Asia-Pacific region is that, in 2019, the Pacific Islands Forum issued a fervent statement committing to act as one family, with mutual responsibilities and respect, and calling for transformational change, for example by phasing out subsidies for fossil fuels.<sup>51</sup> Finally, human rights courts serving Africa, Europe and the Americas are expressing international solidarity across regions, having declared a commitment to dialogue at the intersection of climate change and human rights.<sup>52</sup>

#### D. The laws and practices of cities and other local governments

22. More than 70 per cent of the world's population is expected to live in urban areas by 2050, making cities crucial sites for reducing emissions and preparing for the negative impacts of climate change.<sup>53</sup> Indeed, global concerns about extreme weather and other

<sup>44</sup> See [www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=42](http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=42).

<sup>45</sup> See the press statement of the African Commission and the African Committee of Experts on the Rights and Welfare of the Child issued on the occasion of the 33rd Assembly of the Heads of State and Government of the African Union, calling on the African Union Assembly to declare 2021 a year for collective action for addressing the threat of climate crisis in Africa to human and peoples' rights. Available at [www.achpr.org/pressrelease/detail?id=476](http://www.achpr.org/pressrelease/detail?id=476).

<sup>46</sup> See <https://africangroupofnegotiators.org/about-the-agn>.

<sup>47</sup> The European Green Deal aims to make the European Union climate-neutral by 2050 by taking several collective measures at the regional level, see: [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en).

<sup>48</sup> See [www.europarl.europa.eu/news/en/headlines/society/20200109STO69927/europe-s-one-trillion-climate-finance-plan](http://www.europarl.europa.eu/news/en/headlines/society/20200109STO69927/europe-s-one-trillion-climate-finance-plan).

<sup>49</sup> See [www.gcca.eu/about-gcca](http://www.gcca.eu/about-gcca).

<sup>50</sup> Asian Development Bank, "Strategy 2030: achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific" (Manila, 2018), p. vi.

<sup>51</sup> Kainaki II Declaration for Urgent Climate Change Action Now (2019).

<sup>52</sup> See <http://en.african-court.org/index.php/news/press-releases/item/322-kampala-declaration>.

<sup>53</sup> See Organization for Economic Cooperation and Development, "Cities and climate change: national governments enabling local action: policy perspectives" (2014).

climate change effects that diminish human rights (for instance, to housing, water and sanitation) apply to urban areas (see A/64/255). A complicating factor in this regard is that cities are already sites of inequality.<sup>54</sup> As such, climate change may worsen inequalities between peoples living in urban areas.<sup>55</sup> In the context of these concerns, local governments are among the most proactive authorities pursuing climate change mitigation and adaptation. Their actions demonstrate a willingness to take responsibility for the welfare of both their own residents and peoples everywhere, often through transnational partnerships. This is a key way in which human rights-based international solidarity in the context of climate change is being advanced.

23. For example, these subnational governments express international solidarity when they voluntarily participate in the international climate regime, take on commitments and create “trans-local collaborations” for resilience within and across State borders.<sup>56</sup> Cities, especially, tend to set high ambitions to cut emissions, sometimes higher than their national governments.<sup>57</sup> Moreover, transnational city networks – such as Local Governments for Sustainability, Cities Climate Leadership Group and the Global Covenant of Mayors for Climate and Energy – facilitate learning and capacity-building in the climate change area; in some cases, they require targets and monitoring.<sup>58</sup> Participants in such networks are primarily located in Europe and North America, and could better engage less globally connected cities.<sup>59</sup> Nonetheless, subnational experimentation may eventually produce transformative effects across wide geographical areas around the world because it can disrupt our reliance on fossil fuels throughout interlocking energy systems that transcend political boundaries.<sup>60</sup> Urban governance thus has the potential to diminish the overall negative effects of climate change on the enjoyment of international human rights through both solidarity-driven partnerships and catalytic reforms.

24. In addition to cities, other local governments are seeking to demonstrate international solidarity by compensating for deficiencies in the ambitions of their respective States. One example is the We Are Still In coalition, whose signatories are committing to the Paris Agreement, despite their national government’s recalcitrance, and include indigenous leaders, mayors, governors, non-governmental organizations, businesses and university chancellors. Subnational jurisdictions that put a price on carbon are also linking their programmes, such as networked cap-and-trade schemes.<sup>61</sup> Turnover is a challenge for carbon pricing networks, as some jurisdictions have reneged on their commitments. Market mechanisms also experience volatility and gaming, encourage privatization and cannot alone yield the transformation needed to address climate change. Given these and other problems with market mechanisms, discussed throughout the report, carbon pricing networks are a limited form of human rights-based international solidarity.<sup>62</sup> Specifically, carbon pricing networks aim to reduce emissions (which in itself is an expression of human rights-based international solidarity) and generate public revenues to fund social programmes that foster goodwill towards climate action and enhance human rights in daily life, such as public transportation systems, resilient buildings and financial assistance to households.

<sup>54</sup> United Nations Human Settlements Programme, *World Cities Report: Urbanization and Development – Emerging Futures* (Nairobi, 2016), pp. 16–20.

<sup>55</sup> *Ibid.*

<sup>56</sup> See Jeroen van der Heijden, “Cities and subnational governance: high ambitions, innovative instruments and polycentric collaborations?”, in *Governing Climate Change: Polycentric Action?*, Andrew Jordan and others, eds. (Cambridge, United Kingdom, Cambridge University Press, 2018).

<sup>57</sup> *Ibid.*, p. 83; and Taedong Lee, “Global cities and transnational climate change networks”, *Global Environmental Politics*, vol. 13, No. 1 (2013).

<sup>58</sup> Jennifer S. Bansard, Philipp H. Pattberg and Oscar Widerberg, eds., “Cities to the rescue? Assessing the performance of transnational municipal networks in global climate governance”, *International Environmental Agreements*, vol. 17 (2017), pp. 238 and 241; and Lee, “Global cities”, pp. 110–111.

<sup>59</sup> Lee, “Global cities”, pp. 110–111.

<sup>60</sup> See Steven Bernstein and Matthew Hoffmann, “The politics of decarbonization and the catalytic impact of subnational climate experiments”, *Policy Science*, vol. 51, No. 2 (2018).

<sup>61</sup> *Ibid.*

<sup>62</sup> See the discussions in the present report on carbon markets at para. 49.

## E. Global laws and practices

25. There are extensive global laws and practices that manifest human rights-based international solidarity in the context of climate change. For example, there are regular global summits that generate momentum for cooperative actions among the diverse actors discussed in the present report: States, indigenous peoples, regions, cities, youth, civil societies and United Nations bodies, among others. There are, however, precious few accountability mechanisms in these summits to gauge the hundreds of commitments announced there about addressing climate change in one way or another, and this may obscure climate inaction. Nonetheless, efforts are ongoing to monitor such transnational commitments, for instance at the United Nations Environment Programme. These efforts express international solidarity because they foster and enhance bottom-up endeavours that diverse groups are making to meet common goals for all human beings.

26. One such common goal is the limitation on temperature rise that is contained in the Paris Agreement. Although the accord endorses two temperature goals of avoiding increases beyond 2°C and 1.5°C, the 2019 Climate Action Summit “reinforced the global understanding that 1.5°C is the socially, economically, politically and scientifically safe limit to global warming”.<sup>63</sup> The basis for this statement was a report of the Intergovernmental Panel on Climate Change.<sup>64</sup> The request to undertake the Panel’s report, and its uptake, are strong examples of human rights-based international solidarity because they assist those most susceptible to the negative impacts of climate change, including small island developing States and the least developed countries. These countries and their allies pushed for the more stringent threshold in the Paris Agreement due to evidence of the risks to vulnerable populations and ecosystems at a limit of 2°C.<sup>65</sup> States then invited the Panel to report on the implications of the lower threshold. In the report, the Panel confirmed it would be “markedly easier to achieve many aspects of sustainable development, with greater potential to eradicate poverty and reduce inequalities” at 1.5°C rather than 2°C.<sup>66</sup> Emblematic of human rights-based international solidarity, the report is now being widely referenced to identify concrete steps that would better protect the human rights of the poorest and most vulnerable peoples threatened by higher temperatures.

27. The Association of Small Island States was one of the negotiating blocs that advocated for a stringent temperature limit and has consistently exercised human rights-based international solidarity through other practices at the global level. The Association is a coalition of 44 small island and low-lying developing States in Africa, the Caribbean, the South China Sea and the Indian, Pacific and Atlantic Oceans. Because members are highly susceptible to climate change, the association has made efforts to obtain strong mitigation pledges, support for adaptation and redress for loss and damage. Beyond these efforts, the Association’s members led a powerful campaign to articulate the link between human rights and climate change in the 2007 Malé Declaration on the Human Dimension of Global Climate Change. The Association’s successes, of which there are many, can be partly explained by its unwavering commitment to global justice and alliances with industrialized States, public interest organizations, and human rights bodies and mandate holders.<sup>67</sup> The Association’s struggles exemplify the pursuit of international human rights through a deep solidarity-driven vision and path.

28. Finally, the positive collaborations among trade unions, employers, Governments and international organizations to achieve a just transition towards sustainable work systems are also worthy of note. The necessity to transform polluting sectors, underscored

<sup>63</sup> Secretary-General, “Report of the Secretary-General on the 2019 Climate Action Summit and the way forward in 2020” (2019), p. 5.

<sup>64</sup> See Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C*.

<sup>65</sup> See Lavanya Rajamani and Jacob Werksman, “The legal character and operational relevance of the Paris Agreement’s temperature goal”, *Philosophical Transactions of the Royal Society A*, vol. 376, No. 2119 (2018).

<sup>66</sup> See Intergovernmental Panel on Climate Change, *Global Warming of 1.5°C*, p. 447.

<sup>67</sup> See, e.g., Carola Betzold, “‘Borrowing’ power to influence international negotiations: AOSIS in the climate change regime, 1990–1997”, *Politics*, vol. 30, No. 3 (2010).

by the Panel's special report, will have reverberating effects across economies that pose the risk of compromising the social and economic rights of workers. The global labour movement began conceptualizing what a just transition towards a sustainable economy ought to include in the 1990s to account for distributive outcomes and to promote a unified voice.<sup>68</sup> ILO has since become a leading site for (tripartite) dialogue on the requirements of a just transition. Among other contributions, in 2019, the Secretary-General announced an initiative with ILO, the International Trade Union Confederation, the International Organization of Employers and others that supports national planning for a just transition.<sup>69</sup> The Independent Expert sees the leadership of global organizations and movements to secure decent work for all in the context of climate change as a laudable expression of human rights-based international solidarity that has the potential to yield meaningful benefits for humanity.

## IV. Key human rights-based international solidarity gaps in the context of climate change

### A. Transforming the fossil fuel economy

29. There is a growing consensus that fossil fuel exploitation must be radically transformed to avoid further dangerous climate change.<sup>70</sup> The burning of fossil fuels and biomass produces the vast majority of global emissions (70 per cent) (A/74/161, para. 12). The burning of coal alone is responsible for nearly a third of temperature rise since the Industrial Revolution.<sup>71</sup> Clearly, from the point of investment until use, fossil fuels are entrenched in our lives and the global economy. Overcoming our reliance on fossil fuels is therefore an imperative and a tremendous collective action problem. In the Independent Expert's view, this situation poses a dual challenge to human rights-based international solidarity. States and corporations that persist in exploiting fossil fuels produce a major gap in international solidarity as their behaviour does not reflect the highest possible ambition, nor cooperation, and it compromises the human rights of peoples around the world. On the other hand, there may be unfair outcomes of restructuring the fossil fuel economy on the rights to an adequate standard of living in the poorest of the States that produce fossil fuels.<sup>72</sup> This dual problem threatens the willingness of differently situated fossil fuel producers to take collective action. At the same time, it perpetuates global asymmetries between those who profit the most from, and people who suffer the greatest from the consequences of, climate change.

30. Based on existing and proposed fossil fuel operations, the world is already on a path to not meeting the stated common goal of keeping the global temperature increase below 1.5°C.<sup>73</sup> One consequence of this finding is that, if this critical target is to be met, an enormous amount of fossil fuels must be kept in the ground.<sup>74</sup> There is thus a dwindling carbon budget for the planet as a whole. Human rights-based international solidarity thus demands that, bearing in mind the common but differentiated responsibilities principle, States and corporations (especially in the global North) that invest in, subsidize and exploit

<sup>68</sup> See David J. Doorey, "A transnational law of just transitions for climate change and labour", in *Research Handbook on Transnational Labour Law*, Adelle Blackett and Anne Trebilcock, eds. (Cheltenham, Edward Elgar, 2015).

<sup>69</sup> See <https://sdg.iisd.org/news/un-secretary-general-launches-climate-action-summit-jobs-initiative>.

<sup>70</sup> See, e.g., Georgia Piggot and others, "Addressing fossil fuel production under the UNFCCC: Paris and beyond", Stockholm Environment Institute Working Paper 2017-09 (Seattle, 2017); A/HRC/41/39; A/74/161.

<sup>71</sup> See International Energy Agency, *Global Energy and CO<sub>2</sub> Status Report* (Paris, 2019).

<sup>72</sup> See Sivian Kartha and others, "Whose carbon is burnable? Equity considerations in the allocation of a 'right to extract'", *Climatic Change*, vol. 150 (2018).

<sup>73</sup> See Dan Trong and others, "Committed emissions from existing energy infrastructure jeopardize 1.5°C climate target", *Nature*, vol. 572 (2019).

<sup>74</sup> See Christophe McGlade and Paul Ekins, "The geographical distribution of fossil fuels unused when limiting global warming to 2°C", *Nature*, vol. 517 (2015) (based on the temperature limit of 2°C).

fossil fuels must cooperate to eliminate much fossil fuel production because climate change is a global ecological process and, while they profit from continued emissions, they imperil the fundamental human rights of everyone around the world.

31. Recognizing this need to move away from fossil fuels, some financial regulators have been ahead of the curve in warning that investments in fossil fuels pose a risk of “stranded assets”.<sup>75</sup> However, beyond the investor perspective, there has been little engagement with poorer developing countries that produce oil, gas and coal about the ramifications of tackling fossil fuels on their rights to development, including important social and economic rights that are bound up with their energy production systems.<sup>76</sup> The assumption underlying current approaches to restricting fossil fuels is that the market will decide which countries better endure the transition away from their exploitation.<sup>77</sup> Recent proposals in this regard are selective, and are not organized and internationally negotiated.<sup>78</sup> They include divestment, moratoriums and the elimination of international finance for fossil fuels in developing countries. An international solidarity concern here is that such measures, which rightly help to curb fossil fuels, raise questions about both distributive outcomes and the possibilities for collective action.

32. Indeed, piecemeal market approaches to constrain the exploitation of fossil fuels may exacerbate disparities in the global economy by disproportionately affecting poorer fossil fuel producing countries – especially if they depend on this sector for revenues, livelihoods and access to electricity and heat, while having less capacity than wealthier States to diversify their economies and switch to renewable energy.<sup>79</sup> Current approaches may also incentivize attempts to profit from expanded fossil fuel production in the near term, which aggravates climate change and makes it more difficult to adjust to renewable energy systems. Despite our climate crisis, in 2018, investments in coal rose by 2 per cent and investments in oil and gas rose by 4 per cent.<sup>80</sup>

33. Apart from discussions about climate change, there are rich debates in the international human rights community about the mixed record that fossil fuels and other extractive operations have in yielding socioeconomic gains, as well as about widespread local experiences with displacement and violence arising from systems of extraction (see, e.g., A/HRC/41/54). While these debates are extremely important, they tend not to grapple sufficiently with the reality that climate change leaves us with no choice but to drastically restructure current modes of production and consumption tied to high-emitting extractives, most notably fossil fuels, and that a badly managed transition may itself perpetuate structural injustices.

34. From the perspective of human rights-based international solidarity, what is missing is genuine global cooperation on a managed transition away from unsustainable fossil fuels that prioritizes the achievement of justice for the most vulnerable peoples, especially in the global South (see A/74/161). Support, rather than market competition, should drive the allocation of our global carbon budget in line with the principle of common but differentiated responsibilities and respective capabilities.<sup>81</sup> Sharing burdens under this principle in the context of fossil fuels relates to the inability of poorer States to act while also fulfilling human rights; the main responsibility of high-emitting States for creating the problem; and the sheer necessity of solidarity and cooperation. Consistent with common but differentiated responsibilities and respective capabilities, wealthy developed and developing States could take the lead in reforming their fossil fuel sectors and provide

<sup>75</sup> See, e.g., Pilita Clark, “Mark Carney warns investors face ‘huge’ climate change losses”, *Financial Times*, 29 September 2015.

<sup>76</sup> Siân Bradley, Glada Lahn and Steve Pye, *Carbon Risk and Resilience: How Energy Transition is Changing the Prospects for Developing Countries with Fossil Fuels* (London, Chatham House, 2018), p. 45.

<sup>77</sup> Kartha and others, “Whose carbon is burnable?”, p. 119.

<sup>78</sup> See Piggot and others, “Addressing fossil fuel production”; Bretton Woods Project, “EIB rules out most fossil fuel funding from 2021, setting new benchmark for MDBs”, 12 December 2019.

<sup>79</sup> See Kartha and others, “Whose carbon is burnable?”.

<sup>80</sup> See International Energy Agency, *World Energy Investment 2019* (Paris, 2019).

<sup>81</sup> See Kartha and others, “Whose carbon is burnable?”.

poorer and less adaptable countries with adequate finance and technological substitutes. Human rights-based international solidarity would be at the core of these processes: it underscores the need for planning among differently situated actors in the fossil fuel economy with ambition, justice and the utmost haste.

## B. Reforming corporate law and practices

35. An overwhelming share of emissions from fossil fuels and other sectors is traceable to corporations that either directly emit or define the choices that consumers have or do not have to reduce their emissions across supply chains.<sup>82</sup> States have duties to regulate corporations to protect the international human rights of people living at home and abroad, including environmental rights.<sup>83</sup> The Supreme Court of Canada has recently found that it is not plain and obvious that corporations enjoy a blanket exclusion under customary international law from liability for violating the human rights of individuals in another State.<sup>84</sup> The Commission on Human Rights of the Philippines is also anticipated to release findings that corporations headquartered abroad can be held liable for harms to individuals in another country, specifically arising from climate change.<sup>85</sup> In spite of the positive tenor of these developments, legal measures to regulate corporate emissions are direly lacking.<sup>86</sup> At a general level, the absence of stringent requirements on corporations is a gap in international solidarity because it underscores inadequate State efforts to meet the Paris Agreement's collective goal and thereby protect human rights. More fundamentally, this report identifies the profit-seeking and transnational organization of corporate governance as a profound structural impediment to human rights-based international solidarity in the climate change field – one that calls for mutual assistance among States to re-envision the basic rules of corporate governance.

36. Currently, the profit incentive of corporate boards does not typically require them to take decisions that benefit the broader societies in which they are headquartered, let alone the peoples of other countries.<sup>87</sup> This poses a grave structural problem for international solidarity in the context of climate change, since corporate governance tends to elevate the profits of shareholders over environmental protection with little regard for the impacts of climate change on human rights.<sup>88</sup> In practice, directors make decisions relating to climate change for compliance with regulatory standards (which are largely wanting), based on the business case for the company and investors.<sup>89</sup> This militates against protecting human rights through the most robust global climate action.

37. There are now a proliferating number of guidelines that promote corporate reporting on climate-related financial risks, which are a limited expression of cooperation across States and financial actors.<sup>90</sup> However, disclosures about “stranded assets” and other such financial risks (with no greater substantive regulation of corporate behaviour) accomplish relatively little from a solidarity viewpoint, as they mainly enable lenders, insurers and investors to make self-interested choices about their stakes in a corporation, based on the presumption that this will lead to good environmental decisions. Thus, financial disclosures

<sup>82</sup> See, e.g., Carbon Disclosure Project, “CDP carbon majors report 2017” (London, 2017).

<sup>83</sup> Olivier de Schutter, “Towards a new treaty on business and human rights”, *Business and Human Rights Journal*, vol. 1, No. 1 (2016), pp. 44–45; Atapattu and Schapper, *Human Rights and the Environment*, pp. 85–107.

<sup>84</sup> Whether the customary international law norms pleaded in that case do apply to corporations, as a matter of law and fact, has been left for a trial judge to determine. *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 (Canada).

<sup>85</sup> See [www.ciel.org/news/groundbreaking-inquiry-in-philippines-links-carbon-majors-to-human-rights-impacts-of-climate-change-calls-for-greater-accountability](http://www.ciel.org/news/groundbreaking-inquiry-in-philippines-links-carbon-majors-to-human-rights-impacts-of-climate-change-calls-for-greater-accountability).

<sup>86</sup> See, e.g., Lisa Benjamin, “The responsibilities of carbon major companies: are they (and is the law) doing enough?”, *Transnational Environmental Law*, vol. 5, No. 2 (2016).

<sup>87</sup> See Beate Sjøfjell, “Redefining the corporation for a sustainable new economy”, *Journal of Law and Society*, vol. 45, No. 1 (2018).

<sup>88</sup> *Ibid.*, pp. 38–40.

<sup>89</sup> *Ibid.*, pp. 36–38.

<sup>90</sup> E.g., Recommendations of the Task Force on Climate-Related Financial Disclosures (2017).

may reinforce profit-driven corporate governance and cannot by themselves match the direct solidarity action required in the climate change field. In brief, these market approaches may supplement, but ought not replace, deeper reforms to corporate governance.

38. Finally, there are major gaps in international solidarity in this area arising from the transnational nature of corporations. As in other areas of human rights, in the case of climate change, the presumption that State jurisdiction to regulate corporations is territorially defined is incongruent with de facto corporate practices that are transnational.<sup>91</sup> For example, in jurisdictions where fossil fuel producers are required to disclose and reduce emissions, companies may not be required to account for the higher emissions of end-users who will burn exported fossil fuels. Corporations registered in a home State may not be required to disclose and limit emissions produced by a subsidiary in a host State with less stringent regulations. Furthermore, corporations may not be held to account for carbon embedded in their products from supply chain partners.

39. There are developments under way that might begin to address many of the gaps identified in this section. For example, some jurisdictions may put a price on carbon embedded in imported goods.<sup>92</sup> Countries are working towards the elaboration of a binding treaty to regulate the activities of transnational corporations and other business enterprises under international human rights law.<sup>93</sup> In 2019, the Business Roundtable acknowledged deficits in corporate governance with members declaring that they would move from shareholder primacy to a commitment to all stakeholders, including protecting the environment.<sup>94</sup> New requirements for corporate governance are also being tested; one country has mandated a social and ethics committee for designated companies.<sup>95</sup> These measures are promising either because they may improve international cooperation or recognize binding corporate duties.

### C. The equity and adequacy of climate finance and technologies

40. Financial and technological support for the poorest and most vulnerable States and peoples is necessary to stay within the global carbon budget, in part because it tackles the incapacity of those who cannot act, despite their best efforts. It also reflects a commitment to justice across international borders, given that many of the poorest countries have contributed shockingly little to the globe's cumulative emissions, not to mention the people living in extreme poverty within these countries. Furthermore, international finance and technology transfers are a primary means of assisting developing countries with adaptation. These forms of support thus draw on longstanding debates about the legacies of colonialism in the climate change field, and can contribute to securing an equitable future through international solidarity.<sup>96</sup> Past efforts to establish a new international economic order similarly proposed to redistribute finance and technologies between industrialized and postcolonial nations aligned with international solidarity.<sup>97</sup> When climate change rose to international attention, these proposals were reinterpreted to enable cooperation on this new global issue and were enshrined as duties to support developing countries in implementing

<sup>91</sup> See Karen Morrow and Holly Cullen, "Defragmenting transnational business responsibility", in *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainably*, Beate Sjøfjell and Christopher M. Bruner, eds. (2019).

<sup>92</sup> See Michael Mehling and others, "Designing border carbon adjustments for enhanced climate action", *American Journal of International Law*, vol. 113, No. 3 (2019).

<sup>93</sup> Human Rights Council resolution 26/9.

<sup>94</sup> See [www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans](http://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans).

<sup>95</sup> South Africa, Companies Act (2008), sect. 72.

<sup>96</sup> See Lavanya Rajamani, *Differential Treatment in International Environmental Law* (Oxford, Oxford University Press, 2006).

<sup>97</sup> See the Charter of Economic Rights and Duties of States.

the United Nations Framework Convention on Climate Change, according to the principle of common but differentiated responsibilities and respective capabilities.<sup>98</sup>

41. Still today, the provision of such climate finance and technologies expresses human rights-based international solidarity. It is indispensable to reorient economies towards a sustainable future and to strive for dignity, poverty alleviation, equality, economic/social rights, and the right to development. Under the Paris Agreement, developed countries have obligations to assist developing countries financially and other parties are encouraged to provide support.<sup>99</sup> To that end, developed countries pledged to mobilize funds of \$100 billion annually until 2025. States have also affirmed that climate finance should be balanced between mitigation and adaptation.

42. However, when it comes to putting these promises to work, climate finance is woefully deficient. The total amount of funding contributed thus far by the developed countries falls short of the above pledge to developing countries.<sup>100</sup> The institutions charged with delivering such funding (and hence the application procedures that countries must navigate) are sprawled across various mechanisms of the United Nations climate regime, bilateral agreements, donor funds, development banks, carbon markets and foreign direct investment.<sup>101</sup> Additionally, only between 21 and 29 per cent of public flows of such funds have gone to adaptation, widening the gap in finance needed to help developing countries prevent the worst effects of climate change and alleviate poverty.<sup>102</sup> It is no wonder then that adequate climate finance is not reaching the poorest and most vulnerable countries, including the small island developing States and the least developed countries.<sup>103</sup> What is more, the majority of public climate finance has taken the form of loans,<sup>104</sup> which exacerbates the indebtedness of developing countries.

43. The Green Climate Fund was established to centralize finance in a new mechanism that could improve concerns about access and fairness. However, only a fraction of climate finance has, thus far, been committed to this Fund.<sup>105</sup> Despite its mandate for direct access and country ownership, almost three quarters of finance from the Fund has gone to five large international organizations, including the European Bank for Reconstruction and Development, the World Bank and the United Nations Development Programme.<sup>106</sup> These and other difficulties jeopardize the Fund's purpose to improve equitable access to significant climate finance, which could strengthen cooperation on clean energy, resilient food systems and other instantiations of the right to development.

44. Like climate finance, technology transfers to developing countries needing such support are a vital part of achieving human rights-based international solidarity in the climate change context. Accordingly, the international climate regime, donors and multilateral financial institutions have programming for technology transfers. However, in a similar manner to finance, these technology transfer channels are fragmented, not

<sup>98</sup> *Ibid.*, arts. 4 and 11.

<sup>99</sup> Paris Agreement, art. 9.

<sup>100</sup> Charlene Watson and Liane Schalatek, "The global climate finance architecture", Climate Funds Update, February 2019, p. 1.

<sup>101</sup> *Ibid.*, p. 2; United Nations Framework Convention on Climate Change Secretariat, "Summary and recommendations by the Standing Committee on Finance on the 2018 biennial assessment and overview of climate finance flows" (Bonn, 2018).

<sup>102</sup> See United Nations Framework Convention on Climate Change Secretariat, "Summary and recommendations by the Standing Committee", para. 39; United Nations Environment Programme, *Adaptation Gap Report* (Nairobi, 2018), pp. 21–28.

<sup>103</sup> See Oxfam, "Climate finance shadow report" (2018), pp. 18–19; United Nations Framework Convention on Climate Change Secretariat, "Summary and recommendations by the Standing Committee", para. 42.

<sup>104</sup> United Nations Framework Convention on Climate Change Secretariat, "Summary and recommendations by the Standing Committee", figure 2, p. 8; Oxfam, "Climate finance shadow report", p. 4.

<sup>105</sup> Watson and Schalatek, "The global climate finance architecture", p. 3.

<sup>106</sup> Friends of the Earth United States and the Institute for Policy Studies, "Green Climate Fund: a performance check" (2017), p. 3.

transparent and ambiguous in outcome.<sup>107</sup> The Clean Development Mechanism was the primary means of transferring technologies for some time, however, 74 per cent of its registered projects were hosted by only three rapidly developing economies.<sup>108</sup> Since 2010, when the parties to the United Nations Framework Convention on Climate Change established a dedicated technology mechanism, “meagre steps” have been taken to implement transfers.<sup>109</sup> For example, the Paris Agreement does not stipulate the obligations of developed countries. Research suggests that countries with already established capacity to produce, absorb and deploy technologies are gaining the most from transfers, leaving gaps in Africa and the least developed countries.<sup>110</sup>

45. Also troubling for international solidarity in the climate change field is the fact that States are divided on the question of alleviating the burdens imposed by intellectual property rights attached to climate technologies that may mostly benefit private companies in developed countries, to the detriment of most developing countries.<sup>111</sup> Many States and advocates argue that climate technologies are public goods requiring open access or adequate financial support to eliminate barriers for everyone’s benefit. There has been no progress on these issues in either the international climate regime or the trade regime.<sup>112</sup> Rather, technology transfer is occurring in an ad hoc manner.

46. Overall, it remains unclear how this model of financial and technology transfers, which prioritizes institutional complexity, privatization, loans and ambiguity, will meet the world’s common need for climate change-related structural transformation. This poses an existential and common concern and is an important human rights-based international solidarity issue.

## D. Access to justice for vulnerable countries, individuals and groups

### 1. Redress for loss and damage

47. Although the rectification of loss and damage from climate change, which can happen in various ways,<sup>113</sup> is a legal and moral approach to addressing the fact that climate change is caused and experienced unequally, it still faces resistance from certain States, contrary to human rights-based international solidarity.<sup>114</sup> The concept of rectifying loss and damage supports international cooperation in remedying the “residual” impacts of climate change that cannot, or will not, be avoided, such as displacement, loss of culture and loss of life, which occur especially in the least developed countries and small island developing States.<sup>115</sup> Rising sea levels, hurricanes and other extreme events are decimating

<sup>107</sup> See, e.g., Liliana B. Andonova, Paula Castro and Kathryn Chelminski, “Transferring technologies: the polycentric governance of clean energy technology”, in *Governing Climate Change: Polycentricity in Action?*, Andrew Jordan and others, eds. (Cambridge, United Kingdom, Cambridge University Press, 2018); and advocacy on article 6 of the Paris Agreement (replacing the Clean Development Mechanism) by civil society organizations, available at [www.ciel.org/getting-article-6-right-with-human-rights](http://www.ciel.org/getting-article-6-right-with-human-rights).

<sup>108</sup> Andonova, Castro and Chelminski, “Transferring technologies”, pp. 267–271.

<sup>109</sup> Margaretha Wewerinke-Singh and Curtis Doebbler, “The Paris Agreement: some critical reflections on process and substance”, *University of New South Wales Law Journal*, vol. 39, No. 4, pp. 1509–1510.

<sup>110</sup> See Andonova, Castro and Chelminski, “Transferring technologies”; Damilola S. Olawuyi, “From technology transfer to technology absorption: addressing climate technology gaps in Africa”, *Journal of Energy and Natural Resources Law*, vol. 36, No. 1 (2018).

<sup>111</sup> See Matthew Rimmer, “The Paris Agreement: intellectual property, technology transfer and climate change”, in *Intellectual Property and Clean Energy: The Paris Agreement and Climate Justice*, Matthew Rimmer, ed. (Singapore, Springer, 2018).

<sup>112</sup> *Ibid.*

<sup>113</sup> See, for instance, the proposal of an adaptation levy on international air travel at [www.iied.org/pubs/display.php?o=17045IIED](http://www.iied.org/pubs/display.php?o=17045IIED).

<sup>114</sup> See Reinhard Mechler and others, eds., *Loss and Damage from Climate Change: Concepts, Methods and Policy Options* (Cham, Switzerland, Springer, 2018).

<sup>115</sup> See Maxine Burkett, “Climate reparations”, *Melbourne Journal of International Law*, vol. 10, No. 2 (2009).

the territories of all too many small island developing States and, by extension, negatively affecting human rights, including their dignity and self-determination.<sup>116</sup> Therefore, they and other vulnerable developing countries invoke the need for international solidarity in redressing the climate-induced harms that they disproportionately experience.<sup>117</sup>

48. This loss and damage agenda aims to rectify such global injustice and human suffering to the degree possible, given the destruction emanating from climate change. International finance, in particular, is a core means to achieve human rights-based international solidarity on this issue. The international climate regime's institutional mechanism on loss and damage is examining some possibilities for extending financial support in this direction (FCCC/PA/CMA/2019/L.7). Moreover, a human rights claim in the Philippines may soon elucidate corporate duties to rectify loss and damage.<sup>118</sup> However, progress on this agenda has not adequately reflected its importance. Loss and damage is a "third pillar" of international law on climate change and should be granted the same level of priority as mitigation and adaptation.<sup>119</sup> After all, States gave it an independent provision in the Paris Agreement.<sup>120</sup> The Independent Expert sees the unwillingness of some to develop this agenda in the most robust way, notably through extending strong financial support, as an acute gap in human rights-based international solidarity, demanding a substantive enhancement thereto.

## 2. Protecting indigenous peoples, local communities and workers against the negative consequences of mitigation actions

49. Ensuring access to justice for indigenous peoples and local communities affected by climate change mitigation projects is yet another key gap in human rights-based international solidarity. Not unlike international development projects, climate mitigation may involve infrastructure and land use projects that displace local communities and indigenous peoples, cause environmental damage and contravene rights to free, prior and informed consent. For example, significant human rights risks are understood to arise from hydroelectric dams and biofuel projects.<sup>121</sup> The Clean Development Mechanism provided few avenues to object to such projects and no rights of appeal or to compensation.<sup>122</sup> For its part, the Paris Agreement acknowledges that parties should respect, promote and consider human rights, the rights of indigenous peoples, and local communities, among others, in taking actions to mitigate climate change.<sup>123</sup> However, States have continued to resist the inclusion of human rights safeguards in the rules they are negotiating for projects that will feed into carbon markets.<sup>124</sup> Setting aside other drawbacks of relying heavily on carbon markets, the absence of procedural and substantive rights for groups affected by mitigation measures clashes with the requirements of human rights-based international solidarity in this area.

50. On a different register, the international community has by now accepted that the systemic ramifications of moving to sustainable economies will require international solidarity to achieve a just transition that protects workers' rights. In the present report, the Independent Expert has also drawn attention to the reverberating effects that economic

<sup>116</sup> In this regard, see the International Law Commission's ongoing project on sea-level rise in relation to international law (A/73/10, chap. X).

<sup>117</sup> See Elisa Calliari, Swenja Surminski and Jaroslav Mysiak, "The politics of (and behind) the UNFCCC's Loss and Damage Mechanism", in Mechler and others, *Loss and Damage*.

<sup>118</sup> See [www.ciel.org/news/groundbreaking-inquiry-in-philippines-links-carbon-majors-to-human-rights-impacts-of-climate-change-calls-for-greater-accountability](http://www.ciel.org/news/groundbreaking-inquiry-in-philippines-links-carbon-majors-to-human-rights-impacts-of-climate-change-calls-for-greater-accountability).

<sup>119</sup> Julia Kreienkamp and Lisa Vanhala, "Climate change loss and damage: policy brief" (2017), pp. 2 and 7.

<sup>120</sup> Paris Agreement, art. 8.

<sup>121</sup> See the conference room paper by Tessa Khan, "Promoting rights-based climate finance for people and planet". Available at [www.ohchr.org/EN/Issues/Development/Pages/19thSession.aspx](http://www.ohchr.org/EN/Issues/Development/Pages/19thSession.aspx).

<sup>122</sup> See Sébastien Duyck, "The Paris Agreement and the protection of human rights in a changing climate", *Yearbook of International Environmental Law*, vol. 26 (2017).

<sup>123</sup> Paris Agreement, eleventh preambular paragraph.

<sup>124</sup> International Institute for Sustainable Development, *Earth Negotiations Bulletin*, vol. 12, No. 775 (2019), p. 16.

transformations to avoid further climate change may indeed have on jobs in the fossil fuel sector. Given the necessity of change, ILO explains that our transition must “be well managed and contribute to the goals of decent work for all, social inclusion and the eradication of poverty”.<sup>125</sup> But work towards a just transition has taken over two decades to gain speed. States and international institutions have confirmed multiple programmes to address the issue. However, the agenda continues to suffer, not least because some countries use it as a “bargaining chip” to obstruct the climate negotiations.<sup>126</sup> There has been ample evidence for years that sustainable industries can generate quality jobs with the right government and employer supports.<sup>127</sup> Effectively, international solidarity to transform local, national, regional and global economies means acting in good faith to protect workers and work systems through diversification, training and other forms of mutual assistance. Meaningful tripartite engagement at ILO on these steps is also important and is another dimension of human rights-based international solidarity. Quite simply, the current scale and quality of planning is not proportionate to the challenge ahead.

### 3. Differential impacts on transnational rights holders in marginalized groups

51. The international community is only beginning to grapple with the inequities that climate change perpetuates for marginalized groups who have otherwise made important gains as transnational rights holders under core international human rights instruments. Special procedure mandate holders and treaty bodies have begun to acknowledge the impacts of climate change on indigenous peoples, children, persons with disabilities, older persons, persons living in poverty, workers and women.<sup>128</sup> Novel studies are also being produced on this lived experience. For example, researchers are shedding light on the “ecological grief” that Inuit peoples and Australian farmers experience from the loss of natural surroundings.<sup>129</sup> Others examine how people living in Dhaka respond to climate change in their homes and workplaces.<sup>130</sup> ILO has released a study on heat stress for labourers in Qatar.<sup>131</sup> In addition, one researcher has explored how Arctic indigenous representatives vernacularize understandings of climate change as a “form of life”.<sup>132</sup> These studies capture how encounters with climate change redefine what it means to be socially vulnerable. Still, from the perspective of international solidarity, there is negligible evidence of the concrete steps that Governments, employers, building owners and service providers are taking to implement international human rights commitments that would respond to these emerging issues.

52. In 2019, the Human Rights Council adopted a resolution urging States to formulate a comprehensive, integrated, gender-inclusive and disability-inclusive approach to climate change adaptation and mitigation policies.<sup>133</sup> This provides a starting point for thinking about how marginalized groups ought to be protected through concerted global action to be operationalized at the local level. More information is required, however, to integrate peoples’ lived experience into the laws and policies that jurisdictions use to fulfil their existing international human rights obligations. Therefore, in the Independent Expert’s view, there remains a serious gap in the expression of human rights-based international

<sup>125</sup> ILO, “Guidelines for a just transition towards environmentally sustainable economies and societies for all” (Geneva, 2015), p. 4.

<sup>126</sup> See Carbon Brief, “COP25: key outcomes agreed at the UN climate talks in Madrid” (15 December 2019).

<sup>127</sup> See, e.g., ILO, *Greening with Jobs: World Employment Social Outlook 2018* (Geneva, 2018).

<sup>128</sup> For example, the “Joint statement on ‘human rights and climate change’”, the Special Rapporteur on extreme poverty and human rights and the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

<sup>129</sup> See Neville Ellis and Ashlee Cunsolo, “Hope and mourning in the Anthropocene: understanding ecological grief”, *The Conversation*, 4 April 2018.

<sup>130</sup> See [www.gdi.manchester.ac.uk/research/impact/the-lived-experience-of-climate-change](http://www.gdi.manchester.ac.uk/research/impact/the-lived-experience-of-climate-change).

<sup>131</sup> See [www.ilo.org/beirut/projects/qatar-office/WCMS\\_723539/lang--en/index.htm](http://www.ilo.org/beirut/projects/qatar-office/WCMS_723539/lang--en/index.htm).

<sup>132</sup> Candis Callison, *How Climate Change Comes to Matter: the Communal Life of Facts* (Durham, North Carolina, Duke University Press, 2014), p. 1.

<sup>133</sup> Human Rights Council resolution 41/21.

solidarity towards marginalized groups who are connected transnationally by experiences of disenfranchisement that climate change compounds.

## V. Conclusions and recommendations for human rights-based reform

53. Given the existential threat posed by climate change and the negative human rights implications of the deficient progress made thus far to address many facets of the problem through cooperation, common but differentiated responsibilities and respective capabilities and the highest possible ambition for direct action (i.e., human rights-based international solidarity), it is imperative that States and other actors vastly strengthen their efforts to address the concerns raised in the present report. The Human Rights Council is very well positioned to facilitate that process.

54. In light of the topics discussed in the report, the Independent Expert makes the following recommendations:

(a) All States, corporations and international organizations should take all necessary separate and joint steps towards achieving net-zero emissions by 2050, consistent with their highest possible ambitions to reduce emissions and the common objective of keeping the global temperature rise below 1.5°C under the Paris Agreement;

(b) To that end, States, corporations and financial institutions, particularly the highest emitting States, in historical and contemporary terms, should consider ceasing to pursue the exploration of and new investments in fossil fuels as a matter of human rights-based international solidarity, since the shared carbon budget will be exceeded if already existing and proposed fossil fuel developments proceed;

(c) States, corporations and financial institutions should cooperate to ensure that any transformation of the fossil fuel economy (which is imperative) does not perpetuate asymmetries between richer and poorer States and peoples. As countries phase down or even phase out their fossil fuel operations, wealthier countries should provide poorer countries that are less adaptable to the transition with support based on the right to development of the poorer States, and the social and economic rights of their people that are tied to energy systems;

(d) States and corporations should cooperate to reform basic transnational norms of corporate governance to ensure that corporate decision-making prioritizes the protection of international human rights threatened by climate change over profits and other financial interests;

(e) States should cooperate in good faith towards elaborating a treaty to regulate the activities of transnational corporations and other business enterprises under international human rights law to – in part – help correct the inability, or unwillingness, of States to regulate the contributions that such entities make to climate change as a result of their transnational organization and operations;

(f) States should meet their obligations to provide financial and technological support to other States under the international climate regime, scale up these obligations as much as possible, and stipulate precise obligations where this level of precision is lacking, consistent with the principle of common but differentiated responsibilities and respective capabilities. In doing so, they should eliminate barriers that prevent developing countries, especially the poorest and most vulnerable among them, from accessing international climate finance and technologies, including barriers created by intellectual property rights regimes;

(g) States should cooperate through the international climate regime and international human rights community, including through ILO, to guarantee access to justice in the context of climate change with respect to the following:

(i) Rectifying loss and damage associated with the inequalities perpetuated by climate change, including by giving this agenda the same priority as

**mitigation and adaptation and providing meaningful financial support to affected countries and peoples;**

**(ii) Safeguarding the enjoyment of international human rights among indigenous peoples and local communities affected by climate change-related projects, including protecting environmental defenders from criminalization;**

**(iii) Formulating and implementing concrete plans from the global to the local levels for a just transition towards sustainable economies that ensures the right to decent work for all;**

**(iv) Cooperating to realize international human rights obligations as they apply to marginalized groups uniquely affected by climate change, including indigenous peoples, the elderly, children, persons with disabilities, persons living in poverty and women.**

---

**Human Rights Council****Fifty-fourth session**

11 September–6 October 2023

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****The toxic impacts of some proposed climate change solutions****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***Summary*

Pursuant to Human Rights Council resolution 45/17, the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, Marcos Orellana, presents to the Council his annual thematic report, in which he examines the toxic impacts of some proposed climate change solutions. Deep reductions of greenhouse gas emissions are urgent to tackle the global climate crisis. Decarbonization of the energy matrix and polluting sectors of the economy are indispensable to realizing the goals set out in the Paris Agreement. Yet, some climate technologies proposed in recent years may aggravate the toxic burden on people and planet. The Special Rapporteur puts forward recommendations aimed at accelerating decarbonization and detoxification strategies that are integrated and guided by human rights principles.



## I. Introduction

1. Climate change poses an existential threat to humanity and the effective enjoyment of human rights. Addressing the climate emergency requires decisive action to decarbonize national economies and bring about reductions in greenhouse gas emissions. Acknowledging the risks posed by such climate action, the Paris Agreement reaffirms State obligations to respect, promote and consider human rights.
2. Pursuing the necessary decarbonization, States and companies are rallying to build new technologies and innovations to reduce greenhouse gas emissions and remove carbon from the atmosphere. Yet proposals for, and applications of, climate mitigation technologies are emerging that can exacerbate toxic pollution. This is particularly problematic given the human rights infringements resulting from intolerable levels of pollution around the world. Humanity cannot afford to aggravate the toxic burden of the planet.
3. The rapid mining of materials such as lithium, cobalt and rare earth elements to decarbonize the energy matrix, including for solar and wind energy sources and energy storage technologies, can cause water shortages and produce toxic mining wastes. These impacts are exacerbated where Governments waive environmental and social safeguards.
4. The transition towards the electrification of the transport sector is being undertaken without an adequate life-cycle assessment and often fails to account for the adverse impacts of extraction, use and generation of hazardous substances. For example, capacities for the sound environmental management of spent lithium-ion batteries in electric vehicles are yet to be designed and installed at scale.
5. Disinformation campaigns are downplaying the adverse human rights and climate impacts of certain climate mitigation technologies. Not only the fossil fuel and chemical industries,<sup>1</sup> but also the mining,<sup>2</sup> nuclear,<sup>3</sup> plastic and waste<sup>4</sup> industries, among others, are advancing false or misleading climate solutions.
6. The climate emergency does not justify action imposing toxic burdens on people and the environment that infringe on human rights. Decarbonization and detoxification strategies should be integrated and guided by human rights principles.
7. In the present report, the Special Rapporteur examines the interface between decarbonization and detoxification. It is informed by a broad consultative process in which he invited input from States Members of the United Nations, international organizations, non-governmental organizations, Indigenous Peoples, national human rights institutions and academics. He widely disseminated a call for input, in response to which he received numerous valuable submissions.<sup>5</sup> The Special Rapporteur also organized two online consultations in February 2023.<sup>6</sup>
8. The Special Rapporteur is grateful to those who shared their expertise, insights and perspectives in their written submissions and at online meetings; they have been incorporated into the findings of the report.

---

<sup>1</sup> A/HRC/48/61, para. 4.

<sup>2</sup> Submission by Transparency International.

<sup>3</sup> Derechos Humanos y Medio Ambiente and EarthRights International, *El rostro del litio y uranio en Puno: La cultura, salud, derechos de las comunidades y medio ambiente en riesgo* (Lima and Puno, 2022) (in Spanish), p. 37.

<sup>4</sup> A/76/207, para. 22; and submission by Global Alliance for Incinerator Alternatives.

<sup>5</sup> The submissions shared with the Special Rapporteur are available at [www.ohchr.org/en/calls-for-input/2023/call-inputs-toxic-impacts-some-climate-change-solutions](http://www.ohchr.org/en/calls-for-input/2023/call-inputs-toxic-impacts-some-climate-change-solutions).

<sup>6</sup> On 27 February 2023 for Africa, Europe, Latin America and the Caribbean, and North America; and on 28 February 2023 for Asia and the Pacific.

## II. Greenhouse gases and the toxification of the planet

### A. Greenhouse gas emissions impair human health and the climate system

9. Greenhouse gas emissions from fossil fuel combustion, totalling 59.1 gigatonnes of carbon dioxide equivalent in 2019, have been categorically identified as the single main cause of climate change.<sup>7</sup> In 2023, the Intergovernmental Panel on Climate Change stated with “high confidence” that greenhouse gas emissions had “unequivocally” caused a 1.1°C temperature rise from preindustrial levels over the past decade.<sup>8</sup> Carbon dioxide, methane and nitrous oxide are the most prevalent,<sup>9</sup> while hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride are very powerful owing to their effectiveness in absorbing heat.<sup>10</sup>

10. Greenhouse gas emissions from the energy sector, the chemical industry and unsustainable consumption and production are fuelling the global climate emergency. This crisis exacerbates the intensity and frequency of extreme climatic events, such as hurricanes, droughts and heatwaves, causing loss and damage to people and nature. The injustice of the fact that the harm weighs most heavily on particularly vulnerable communities, which are also the lowest emitters, calls for redress.<sup>11</sup>

11. The climate emergency is in turn causing increasingly irreversible losses in natural ecosystems and biodiversity. Half of the species assessed to date have shifted towards colder areas, but such shifts have been insufficient, driving hundreds of other species towards extinction owing to glacier retreat, permafrost thaw, ocean acidification, sea-level rise, decreases in precipitation, desertification and land degradation. Half of all coastal wetlands have been lost over the past century.<sup>12</sup>

12. Greenhouse gas emissions causing climate change are also among the most serious air pollutants, severely impairing human health.<sup>13</sup> Ambient air pollution, including from greenhouse gases, caused between 4 and 5 million premature deaths in 2019,<sup>14</sup> while malnutrition, malaria, diarrhoea and heat stress resulting from climate-change related impacts on food, water and sanitation are expected to cause some 250,000 additional deaths per year between 2030 and 2050. This is estimated to impose costs of between \$2 billion and \$4 billion per year in direct health damages by 2030, mostly in developing countries.<sup>15</sup>

13. The United Nations Environment Programme (UNEP) has consistently warned that “the world is in a climate emergency” – “a code red for humanity” according to the Secretary-General. Keeping below the maximum temperature rise goal of 1.5° to 2°C above pre-industrial levels, set by the Paris Agreement, depends on reducing greenhouse gas emissions drastically, by 30 gigatonnes of carbon dioxide equivalent per year from 2021 to 2030. As the world’s wealthiest 1 per cent of countries emit more than twice the amount of greenhouse gases as the poorest half combined, the responsibility for a rapid carbon transition lies with developed countries.<sup>16</sup>

<sup>7</sup> See [www.unep.org/facts-about-climate-emergency](http://www.unep.org/facts-about-climate-emergency).

<sup>8</sup> See [https://report.ipcc.ch/ar6syr/pdf/IPCC\\_AR6\\_SYR\\_LongerReport.pdf](https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_LongerReport.pdf), p. 6.

<sup>9</sup> UNEP, *Emissions Gap Report 2022: The Closing Window – Climate Crisis Calls for Rapid Transformation of Societies* (Nairobi, 2022), p. xii.

<sup>10</sup> Intergovernmental Panel on Climate Change, *Climate Change 2007: The Physical Science Basis* (Cambridge University Press, 2007), p. 144.

<sup>11</sup> Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report*, pp. 6–17.

<sup>12</sup> *Ibid.*, p. 15.

<sup>13</sup> World Health Organization (WHO), “Ambient (outdoor) air pollution: key facts”, 19 December 2022. See also [A/HRC/49/53](#) and [A/HRC/33/41](#).

<sup>14</sup> See [www.thelancet.com/action/showPdf?pii=S2542-5196%2822%2900090-0](http://www.thelancet.com/action/showPdf?pii=S2542-5196%2822%2900090-0).

<sup>15</sup> See [www.who.int/health-topics/climate-change#tab=tab\\_1](http://www.who.int/health-topics/climate-change#tab=tab_1).

<sup>16</sup> See [www.unep.org/explore-topics/climate-action/what-we-do/climate-action-note/state-of-climate.html](http://www.unep.org/explore-topics/climate-action/what-we-do/climate-action-note/state-of-climate.html).

## B. The chemicals industry contributes significantly to greenhouse gas emissions

14. The chemical sector is the largest industrial energy consumer and the third largest industrial carbon dioxide emitter.<sup>17</sup> It accounts for 10 per cent of the global energy demand and 30 per cent of industrial energy demand; it emits 7 per cent of global greenhouse gases and 20 per cent of industrial greenhouse gases.<sup>18</sup> Production of chemicals doubled between 2000 and 2017 and is expected to double again by 2030 and to triple by 2050, mostly in States that are not members of the Organisation for Economic Co-operation and Development (OECD).

15. Five chemical product groups are among the highest greenhouse gas emitters: olefins (ethylene and propylene), which form when petroleum oils are transformed into gasoline; ammonia, used as a fertilizer and in food processing; mixtures of benzene, toluene and three xylene isomers, which are aromatics and are by-products of oil refining; methanol, which is used to make other chemicals and as biofuel;<sup>19</sup> and adipic acid, a key component in the manufacturing of nylon (a kind of plastic), owing to its by-product, nitrous oxide emissions.<sup>20</sup>

16. Hundreds of millions of tons of toxic substances are released into air, water and soil annually,<sup>21</sup> which leads to the proliferation of “sacrifice zones” around the world, where contamination is severe and causes devastating health and environmental effects.<sup>22</sup> Pollution and toxic substances already cause at least 9 million premature deaths per year,<sup>23</sup> including those of 750,000 workers from exposure to toxic substances on the job.<sup>24</sup>

17. UNEP has concluded that the global goal to minimize the adverse impacts of chemicals and waste was not achieved by 2020.<sup>25</sup> In addition, a recent study has found that the safe planetary boundary for chemicals and pollutants, including plastics, has now been exceeded.<sup>26</sup>

18. Pollution and exposure to toxic chemicals have an adverse impact on various human rights. Environmental degradation threatens individuals and communities, poses health challenges and erodes opportunities to maintain bodily integrity.<sup>27</sup> The toxification of the planet is resulting in a massive, widespread and systematic denial of human rights for countless individuals and groups.

## III. Some proposed decarbonization technologies

19. States have an obligation to mitigate climate change and prevent its negative impacts on human rights, including by taking action to reduce emissions in a “rapid, deep and in most cases immediate” manner.<sup>28</sup>

20. In recent years, several climate change mitigation technologies have been proposed. Many of them can improve air quality, reduce health impacts and even be cheaper than non-renewable energy sources, as well as creating jobs. Renewable energy, including from solar, wind, waste and geothermal sources, could potentially generate 90 per cent of the world’s

<sup>17</sup> See [www.iea.org/fuels-and-technologies/chemicals](http://www.iea.org/fuels-and-technologies/chemicals).

<sup>18</sup> See <https://icca-chem.org/wp-content/uploads/2020/05/Technology-Roadmap.pdf>, p. 6.

<sup>19</sup> *Ibid.*, p. 12.

<sup>20</sup> See [www.climateactionreserve.org/blog/2020/09/30/adipic-acid-production-protocol-adopted-by-reserve-board/](http://www.climateactionreserve.org/blog/2020/09/30/adipic-acid-production-protocol-adopted-by-reserve-board/).

<sup>21</sup> [A/HRC/49/53](#), para. 6.

<sup>22</sup> *Ibid.*, paras. 26–29.

<sup>23</sup> See [www.thelancet.com/action/showPdf?pii=S2542-5196%2822%2900090-0](http://www.thelancet.com/action/showPdf?pii=S2542-5196%2822%2900090-0).

<sup>24</sup> [A/HRC/49/53](#), para. 5.

<sup>25</sup> UNEP, *Global Chemicals Outlook II: From Legacies to Innovative Solutions* (2019).

<sup>26</sup> See [www.stockholmresilience.org/research/research-news/2022-01-18-safe-planetary-boundary-for-pollutants-including-plastics-exceeded-say-researchers.html](http://www.stockholmresilience.org/research/research-news/2022-01-18-safe-planetary-boundary-for-pollutants-including-plastics-exceeded-say-researchers.html).

<sup>27</sup> [A/74/480](#).

<sup>28</sup> Intergovernmental Panel on Climate Change, *Synthesis Report of the IPCC Sixth Assessment Report*, p. 46.

energy by 2050.<sup>29</sup> Green hydrogen produced from renewable energy sources could save up to 830 million tons of carbon dioxide annually.<sup>30</sup> Modern bioenergy, which includes liquid biofuels from bagasse (the dry pulpy residue left after the extraction of juice from sugar cane) and other plants, biogas produced through anaerobic digestion of residues, and wood pellet heating systems, has the potential to complement non-carbon sources of energy. Bioenergy accounted for 10 per cent of global final energy consumption in 2015.<sup>31</sup>

21. Nevertheless, some greenhouse gas emissions reduction technologies can increase exposure to hazardous substances and wastes. Such climate technologies cannot be justified on account of their emissions reduction potential. Decarbonization strategies must also pursue detoxification pathways. Ultimately, a just transition towards a safe climate system requires integrated solutions that do not attempt to solve one environmental and human rights crisis by creating or aggravating another.

## A. Mineral and metal extraction

22. Mining practices, including open pits, mine tailings and waste piles are some of the largest sources of mining-generated pollutants, which can contaminate soil, air and water.<sup>32</sup> The respiratory, neurological and systemic health impacts of exposure to heavy metals and mining-related dusts, fumes and waste tailings are well-documented.<sup>33</sup> Some types of contamination, such as radioactive contamination or acid mine drainage, can last long after mining operations have ceased.<sup>34</sup>

23. Many decarbonization technologies rely on mining to acquire transition minerals such as lithium, cobalt, nickel, graphite, manganese, copper, zinc, aluminium and rare earth elements.<sup>35</sup> Large quantities of these materials are needed in the production of some climate technologies, including electric vehicles, batteries, solar panels and wind turbines. Global demand for green transition minerals and metals is expected to rise significantly over the next two decades: 90 per cent for lithium, 60–70 per cent for cobalt and nickel, and 40 per cent for copper and rare earth elements.<sup>36</sup> These materials are often extracted without adequate environmental and social protections, with serious consequences for human rights.<sup>37</sup>

### 1. Lithium

24. Lithium is an alkali metal used in heat and electricity conduction. It is essential for the manufacturing of lithium-ion batteries for electric vehicles.<sup>38</sup>

25. Lithium extraction often demands huge quantities of energy or water and can generate large amounts of wastewater.<sup>39</sup> Lithium mining can lead to water loss, ground destabilization, biodiversity loss, increased salinity of rivers, contaminated soil and toxic waste.<sup>40</sup> Lithium mining is also associated with health issues such as increased respiratory problems and nervous system disorders.<sup>41</sup>

26. Australia is the main supplier of lithium, 55 per cent of which has been acquired by China through early investment. Approximately 58 per cent of the world's lithium reserves

<sup>29</sup> United Nations, “Renewable energy – powering a safer future”.

<sup>30</sup> Iberdrola, “Green hydrogen: an alternative that reduces emissions and cares for our planet”.

<sup>31</sup> International Renewable Energy Agency, “Bioenergy and biofuels”.

<sup>32</sup> [A/77/183](#).

<sup>33</sup> Occupational Knowledge International, “Environmental impacts of mining and smelting”.

<sup>34</sup> Submission by Earthworks.

<sup>35</sup> Konstantin Born, “Energy transition minerals: what are they and where will they come from?”, Economics Observatory, 9 November 2022. See also Business and Human Rights Resource Centre, “Transition minerals tracker”.

<sup>36</sup> International Energy Agency, *The Role of Critical Minerals in Clean Energy Transitions* (2022).

<sup>37</sup> Business and Human Rights Resource Centre, “Transition minerals tracker”.

<sup>38</sup> SAMCO Technologies, “What is lithium extraction and how does it work?”.

<sup>39</sup> *Ibid.*

<sup>40</sup> See [www.foeeurope.org/sites/default/files/publications/13\\_factsheet-lithium-gb.pdf](http://www.foeeurope.org/sites/default/files/publications/13_factsheet-lithium-gb.pdf).

<sup>41</sup> See <https://wellcomecollection.org/articles/YTdnPhIAACIAGuF3>.

lie beneath the salt flats of the so-called Lithium Triangle in South America, formed by Argentina, Bolivia (Plurinational State of) and Chile.<sup>42</sup>

## 2. Cobalt

27. Cobalt is a high melting point metal.<sup>43</sup> This property makes it useful in the manufacturing of lithium-ion batteries for electric vehicles, where it can prevent overheating and help to extend battery life.<sup>44</sup> Cobalt is scarce, rarely found independently, and most often associated with copper, nickel, arsenic, pyrite and uranium. It is extracted through open-pit mining, underground mining or a combination of the two. In addition, initiatives to explore deep-sea cobalt mining in manganese nodules are already under way.<sup>45</sup>

28. Cobalt extraction is energy-intensive and, depending on the method of extraction, can be water-intensive. Cobalt mining is often a subsistence livelihood based on hard labour in difficult conditions with many health hazards such as accidents, heat, overexertion, dust inhalation and exposure to toxic chemicals and gases.<sup>46</sup> There are multiple reports documenting the use of child labour in cobalt supply chains in the Democratic Republic of the Congo.<sup>47</sup> Cobalt mining associated with uranium can expose workers and communities to radiation, and can release it into the environment. Cobalt mining also destroys vast areas of jungle, forests and riverbanks, leaving wastelands of tailings and mining pits.<sup>48</sup>

29. The Democratic Republic of the Congo is the largest supplier of cobalt, producing 15 per cent of global demand as a by-product of copper through small-scale artisanal mining, followed by the Russian Federation.<sup>49</sup>

## 3. Nickel

30. Nickel has a high melting point and is key in manufacturing lithium-ion batteries for electric vehicles, allowing them to travel further by delivering high density energy. Nickel is the fifth most common element on earth,<sup>50</sup> and 70 per cent of its global demand is used for stainless steels. It is found naturally in laterite (soil rich in iron and aluminium) and sulphide deposits,<sup>51</sup> and extracted through open-pit or underground mining.<sup>52</sup>

31. Nickel extraction is energy-intensive and can result in air pollution, water contamination and habitat destruction.<sup>53</sup> Nickel exposure causes health issues such as allergies, cardiovascular and kidney diseases, lung fibrosis, lung and nasal cancer and even genetic alterations.<sup>54</sup> In Indonesia, nickel mining is expected to increase as a result of a 2019 approval of increased deep-sea tailings disposal, where waste is dumped directly into the

<sup>42</sup> See [www.csis.org/analysis/south-americas-lithium-triangle-opportunities-biden-administration](http://www.csis.org/analysis/south-americas-lithium-triangle-opportunities-biden-administration).

<sup>43</sup> Stanford Advanced Materials, "What is cobalt used in everyday life".

<sup>44</sup> See <https://earth.org/cobalt-mining/>.

<sup>45</sup> See [www.isa.org.jm/exploration-contracts/cobalt-rich-ferromanganese-crusts/](http://www.isa.org.jm/exploration-contracts/cobalt-rich-ferromanganese-crusts/).

<sup>46</sup> Franklin W. Schwartz, Sangsuk Lee and Thomas H. Darrah, "A review of the scope of artisanal and small-scale mining worldwide, poverty, and the associated health impacts", *GeoHealth*, vol. 5, No. 1 (January 2021).

<sup>47</sup> See [www.cbsnews.com/news/the-toll-of-the-cobalt-mining-industry-congo/](http://www.cbsnews.com/news/the-toll-of-the-cobalt-mining-industry-congo/); and [www.amnesty.org/en/latest/press-release/2017/11/industry-giants-fail-to-tackle-child-labour-allegations-in-cobalt-battery-supply-chains/](http://www.amnesty.org/en/latest/press-release/2017/11/industry-giants-fail-to-tackle-child-labour-allegations-in-cobalt-battery-supply-chains/).

<sup>48</sup> [A/HRC/51/35](https://www.unhcr.org/refugees/article/2021/03/16/a-hrc-51-35).

<sup>49</sup> See <https://earth.org/cobalt-mining/>.

<sup>50</sup> See <https://nickelinstitute.org/en/about-nickel-and-its-applications/>.

<sup>51</sup> IFP Energies Nouvelles, "Nickel in the energy transition: why is it called the devil's metal?", 29 March 2021.

<sup>52</sup> See [www.agiboo.com/nickel/](http://www.agiboo.com/nickel/).

<sup>53</sup> CBC Radio, "Nickel is a key element of electric vehicles – but mining it takes an environmental toll", 25 June 2022.

<sup>54</sup> Giuseppe Genchi and others, "Nickel: human health and environmental toxicology", *International Journal of Environmental Research and Public Health*, vol. 17 (February 2020).

ocean.<sup>55</sup> Environmental and human rights abuses relating to nickel mining have been reported in Papua New Guinea.<sup>56</sup>

32. Indonesia is the largest supplier of nickel, followed at a distant second by the Philippines. Together, they account for about 44 per cent of global production. Eighty-three per cent of global reserves are distributed between Indonesia, Australia, Brazil, the Russian Federation, Cuba, the Philippines and South Africa.<sup>57</sup>

#### 4. Graphite

33. Graphite is a crystalline form of the element carbon. It has strong heat and electrical conductivity, high energy density and a high melting point.<sup>58</sup> These properties make it a key element for the manufacturing of lithium-ion batteries for electric vehicles.<sup>59</sup> It is found naturally in metamorphic and igneous rocks, and can be synthetically manufactured from petroleum coke.<sup>60</sup> Natural graphite is extracted through open-pit or underground mining.<sup>61</sup>

34. Some methods of graphite extraction, such as hard rock extraction, are highly water-intensive. Other methods, such as volatilization and synthetic production, are energy-intensive. In some regions, graphite processing is associated with drinking water contamination.<sup>62</sup> Exposure to natural graphite causes health issues such as decreased pulmonary function and also affects the cardiovascular system. Exposure to synthetic graphite can have similar effects.<sup>63</sup> Dust emissions and chemicals used to purify battery-grade anode graphite can be harmful to both health and the environment.<sup>64</sup>

35. In 2022, China was the largest supplier of graphite at 65 per cent, followed by Madagascar, Mozambique, Brazil and the Republic of Korea.<sup>65</sup> Thirty-four per cent of this supply is used for electrodes, 4 per cent for batteries and 24 per cent for other uses,<sup>66</sup> such as solar panels and rotor blades for wind turbines.<sup>67</sup>

#### 5. Manganese

36. Manganese is the fifth most abundant metal on earth. It has good heat and electrical conductivity, high energy density and a high melting point. It is used primarily in the production of steel. Several low-carbon technologies, including wind turbines and electric vehicles, rely heavily on steel and thus also on manganese.<sup>68</sup>

37. Manganese can be extracted from ore using pyrometallurgical, hydrometallurgical or electrometallurgical processes that can threaten both water quality and human rights. Manganese mining is sometimes undertaken without community compensation or consent

<sup>55</sup> Rabul Sawal, “Red seas and no fish: nickel mining takes its toll on Indonesia’s spice islands”, Mongabay, 16 February 2022.

<sup>56</sup> Joint submission by Jubilee Australia Research Centre and Bismarck Ramu Group.

<sup>57</sup> IFP Energies Nouvelles, “Nickel in the energy transition”.

<sup>58</sup> See [www.imerys.com/minerals/graphite](http://www.imerys.com/minerals/graphite).

<sup>59</sup> SGL Carbon, “High-quality graphite material for lithium-ion battery anodes”.

<sup>60</sup> See [www.imerys.com/minerals/graphite](http://www.imerys.com/minerals/graphite).

<sup>61</sup> Abhinna Investments, “A comprehensive guide about graphite extraction process”, 17 May 2022.

<sup>62</sup> See [www.washingtonpost.com/graphics/business/batteries/graphite-mining-pollution-in-china/](http://www.washingtonpost.com/graphics/business/batteries/graphite-mining-pollution-in-china/).

<sup>63</sup> See [www.ncbi.nlm.nih.gov/books/NBK224564/](http://www.ncbi.nlm.nih.gov/books/NBK224564/).

<sup>64</sup> Robert Pell, Phoebe Whattoff and Jordan Lindsay, “Climate impact of graphite production”, *Minviro*, 1 July 2021.

<sup>65</sup> See <https://pubs.usgs.gov/periodicals/mcs2023/mcs2023-graphite.pdf>, p. 1, and <https://investingnews.com/daily/resource-investing/battery-metals-investing/graphite-investing/top-graphite-producing-countries/>.

<sup>66</sup> Allah D. Jara and others, “Purification, application and current market trend of natural graphite: a review”, *International Journal of Mining Science and Technology*, vol. 29, No. 5 (2019), pp. 671–689.

<sup>67</sup> Hebestreit, “Why the renewable energy industry requires carbon and graphite”.

<sup>68</sup> United States Geological Survey, “Manganese”, *Mineral Commodity Summaries*, January 2022; and Alejandro González, “Manganese matters”, *Centre for Research on Multinational Corporations*, 16 June 2021.

and has been repeatedly linked with toxic contamination.<sup>69</sup> In South Africa, communities near manganese mines reported respiratory illnesses, panic attacks, heart problems, vision problems and hearing loss. In Ukraine, manganese mining is associated with impaired growth and skeletal deformities in children.<sup>70</sup> Exposure to manganese can also have undesirable neurobehavioral effects.<sup>71</sup>

38. Manganese ore is mined mainly in China (35 per cent), South Africa (16 per cent), Australia (13 per cent) and Gabon (9 per cent). South Africa hosts about 75 per cent of the world's identified manganese resources and about 24 per cent of the world's reserves.<sup>72</sup>

## 6. Copper

39. Copper is a versatile metal known for its high melting point and excellent electrical conductivity, second only to silver. It is highly ductile and malleable and can therefore be shaped easily into materials such as foil or electrical wiring. These properties make copper a cornerstone of electricity-related technologies, including electric vehicles.<sup>73</sup> It is key in the production of lithium-ion batteries for electric vehicles, which contain more copper than traditional vehicle combustion engines.<sup>74</sup>

40. Copper ore mining is energy-intensive and sometimes water-intensive. Some copper processing methods, such as pyrometallurgy, can emit volatile organic compounds, tar and ash.<sup>75</sup> These processes are associated with sulfur dioxide emissions, which can pollute the air and threaten human health. They can also emit acids, metals and other pollutants into the environment, contaminating land and drinking water.<sup>76</sup> Some methods of copper recycling can also be dangerous to human and environmental health. In Ghana, for example, electronic cables are burned for copper extraction at Agbogbloshie, one of the largest e-waste dumps in the world.<sup>77</sup>

41. Chile is the largest supplier of copper in the world, accounting for 27 per cent of global production, followed by Peru with 10 per cent. The world's two largest copper mines, Escondida and Collahuasi, are located in Chile.<sup>78</sup>

## 7. Aluminium

42. Aluminium is the most abundant metal in the Earth's crust. It has high thermal conductivity, strong corrosion resistance and can be easily machined and formed. It is also lightweight, non-magnetic and non-sparking.<sup>79</sup> These properties make it a strong candidate for automotive manufacturing, where it is used in casting. In electric vehicles in particular, it is used to produce sheet battery enclosures that can increase a vehicle's driving range.<sup>80</sup> Pure

<sup>69</sup> Charlie Hoff's, "Challenges and opportunities in mining materials for energy storage lithium-ion batteries", Union of Concerned Scientists, 22 December 2022.

<sup>70</sup> Ykateryna D. Duka, "Impact of open manganese mines on the health of children dwelling in the surrounding area", *Emerging Health Threats Journal*, vol. 4 (2011).

<sup>71</sup> See [www.atsdr.cdc.gov/toxprofiles/tp151.pdf](http://www.atsdr.cdc.gov/toxprofiles/tp151.pdf).

<sup>72</sup> South Africa, Department of Mineral Resources, "South Africa's manganese industry developments, 2004–2011" (Pretoria, 2013).

<sup>73</sup> International Energy Agency, *The Role of Critical Minerals in Clean Energy Transitions*.

<sup>74</sup> International Copper Association, "The electric vehicle market and copper demand", June 2017.

<sup>75</sup> See [www.ncbi.nlm.nih.gov/pmc/articles/PMC8953818/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC8953818/).

<sup>76</sup> Mike Holland, "Reducing the health risks of the copper, rare earth and cobalt industries", issue paper prepared for the Green Growth and Sustainable Development Forum, Paris, OECD, 26 and 27 November 2019.

<sup>77</sup> Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, statement at end of visit to Ghana, 13 December 2022, available at [www.ohchr.org/sites/default/files/documents/issues/toxicwaste/statements/2022-12-12/20221213-eom-ghana-sr-toxics-en.pdf](http://www.ohchr.org/sites/default/files/documents/issues/toxicwaste/statements/2022-12-12/20221213-eom-ghana-sr-toxics-en.pdf).

<sup>78</sup> Bruno Venditti, "Which countries produce the most copper?" World Economic Forum, 12 December 2022.

<sup>79</sup> See [www.rsc.org/periodic-table/element/13/aluminium#:~:text=It%20has%20low%20density%2C%20is,and%20the%20sixth%20most%20ductile](http://www.rsc.org/periodic-table/element/13/aluminium#:~:text=It%20has%20low%20density%2C%20is,and%20the%20sixth%20most%20ductile) (Uses and properties).

<sup>80</sup> See [www.mdpi.com/1996-1944/14/21/6631](http://www.mdpi.com/1996-1944/14/21/6631).

aluminium does not occur naturally and must be refined through complex production processes.

43. Aluminium production is energy-intensive and produces a significant amount of greenhouse gas emissions, as the industry is currently dominated by coal power. The process of refining alumina into aluminium also produces large quantities of caustic mud. These processes can contaminate both water and air and threaten human health. In Guinea, for example, bauxite mining could lead to widespread destruction and loss of agricultural land within 20 years. In Pará State in Brazil, several legal complaints regarding alleged contamination of waterways in the Amazon basin as a result of bauxite mining are ongoing.<sup>81</sup> Exposure to high levels of aluminium may result in respiratory and neurological problems.<sup>82</sup>

44. Guinea has the world's largest bauxite deposits and produces roughly 22 per cent of the global market share of aluminium. Guinea is also the biggest exporter of bauxite to China, which produces the majority of the world's aluminium. Bauxite is also mined in Australia, Brazil, India and several other countries.<sup>83</sup>

## 8. Zinc

45. Zinc is a naturally abundant and versatile metal. It is primarily used to protect other metals from rusting through a process called galvanization.<sup>84</sup> This can play a key role in transportation, infrastructure and renewable energy. For example, zinc can be used to extend the life of both solar panels and wind turbines.<sup>85</sup> Zinc can also be used to produce non-flammable batteries. These batteries are particularly promising for application in electric vehicles due to their energy density, low cost and inherent safety.<sup>86</sup> Zinc is 100 per cent recyclable, meaning it can be recovered and reused without a loss in quality. Currently, 30 per cent of all zinc produced worldwide originates from recycled or secondary zinc.<sup>87</sup>

46. Mining of zinc ore produces pollutants and consumes high amounts of energy.<sup>88</sup> Most zinc enters the environment as the result of mining, steel production, coal burning and purifying of zinc, lead and cadmium ores. These activities can increase zinc levels in the atmosphere. Industrial waste streams can also contaminate water sources by discharging zinc into local waterways.<sup>89</sup> Moreover, zinc ores are usually found in combination with lead. Exposure to lead is dangerous, particularly for children, and can cause damage to the brain and the nervous system.<sup>90</sup>

47. Zinc is mined in over 50 countries worldwide.<sup>91</sup> China is the largest producer of zinc, accounting for 33 per cent of the global market share, followed by Peru (12 per cent), Australia (10 per cent), India (6 per cent) and the United States of America (6 per cent).

<sup>81</sup> Human Rights Watch and Inclusive Development International, *Aluminium: The Car Industry's Blind Spot – Why Car Companies Should Address the Human Rights Impact of Aluminium Production* (2021).

<sup>82</sup> United States of America, Agency for Toxic Substances and Disease Registry, "Aluminium ToxFAQs" (September 2008).

<sup>83</sup> Human Rights Watch and Inclusive Development International, *Aluminium: The Car Industry's Blind Spot*.

<sup>84</sup> Natural Resources Canada, "Zinc facts", 17 April 2023.

<sup>85</sup> Bruno Venditti, "Zinc is critical for the low-carbon economy. Here's why", World Economic Forum, 13 April 2022.

<sup>86</sup> Jie Zhang and others, "Zinc-air batteries: are they ready for prime time?", *Chemical Science*, vol. 10, No. 39 (October 2019).

<sup>87</sup> Venditti, "Zinc is critical".

<sup>88</sup> Yuke Jia and others, "Exploring the potential health and ecological damage of lead-zinc production activities in China: a life cycle assessment perspective", *Journal of Cleaner Production*, vol. 381, No. 1 (December 2022).

<sup>89</sup> United States Agency for Toxic Substances and Disease Registry, "Public health statement for zinc" (August 2005).

<sup>90</sup> See [www.cdc.gov/nceh/lead/prevention/health-effects.htm](http://www.cdc.gov/nceh/lead/prevention/health-effects.htm).

<sup>91</sup> Peter Russell and Tharsika Tharmanathan, "Zinc", University of Waterloo Earth Sciences Museum.

Australia, China, the Russian Federation, Mexico and Peru are among the nations with the largest zinc reserves.<sup>92</sup>

## 9. Rare earth elements

48. The rare earth elements are a set of 17 metallic elements or specialty metals: scandium, yttrium and the 15 lanthanides.<sup>93</sup> Contrary to what their name suggests, these elements are relatively abundant in the Earth's crust, but are often found in low concentrations and are difficult to separate from other elements. Rare earth elements have many applications in advanced technologies, including as magnets, batteries, phosphors and catalysts, making them essential components of many decarbonization technologies such as wind turbines, solar panels, electric vehicles and storage batteries.<sup>94</sup>

49. The separation of rare earth elements requires the use of leaching pools laden with chemicals that risk contaminating groundwater, eroding soil and polluting the air. These methods produce high levels of waste (some 2,000 tons of waste per ton of rare earth element produced) – including dust, waste gas, wastewater and radioactive residue – with a high risk of environmental and health hazards.<sup>95</sup>

50. China currently accounts for 63 per cent of the world's rare earth mining, 85 per cent of rare earth processing and 92 per cent of rare earth magnet production. The largest rare earth element mine in the world is Bayan Obo, located in Inner Mongolia Autonomous Region; it accounted for 45 per cent of global production in 2019. There is talk of expansion of rare earth elements mining by and in countries such as Australia, Canada, India, Malawi, the Russian Federation, South Africa, the United States of America, Viet Nam and Zimbabwe in coming years.

## B. Electrification and battery production

51. Electrification of energy demand presents significant potential in mitigating emissions and decarbonizing energy supply chains. This is because the efficiency of electric technologies is generally much higher than fossil-fuel based alternatives with similar energy services.<sup>96</sup> Global electricity demand is expected to more than double between 2020 and 2050 and is projected to account for around 20 per cent of total emissions reductions achieved by mid-century.<sup>97</sup> Still, at present, most electricity is generated by burning fossil fuels. The emissions reduction benefits from electrification will depend on the growth of renewables used for electricity supply.<sup>98</sup>

52. Manufacturing of electric batteries for electric vehicles or as storage for solar or wind energy sources requires minerals, metals and rare earth elements. Techniques and substances employed to extract them generate toxic wastes. Scrap produced at the end of their life cycle also contains harmful and toxic elements for human health and the environment.<sup>99</sup>

53. Widespread electrification will require an increase in battery production, power and usage. Efforts to meet quickly rising demands do not come without risks, particularly those associated with the rapid extraction of battery materials. Battery recycling also poses toxic challenges. The absence of standards regarding battery recycling across jurisdictions presents a barrier to reuse. This includes standards for the performance and durability of electric

<sup>92</sup> See <https://natural-resources.canada.ca/our-natural-resources/minerals-mining/minerals-metals-facts/zinc-facts/20534>.

<sup>93</sup> American Geosciences Institute, "What are the rare earth elements, and why are they important?"

<sup>94</sup> Renee Cho, "The energy transition will need more rare earth elements. Can we secure them sustainably?," State of the Planet, Columbia Climate School, 5 April 2023.

<sup>95</sup> Submission by AidWatch; and Jaya Nayar, "Not so 'green' technology: the complicated legacy of rare earth mining", *Harvard International Review*, 12 August 2021.

<sup>96</sup> International Energy Agency, "Electrification: analysis", September 2022.

<sup>97</sup> See [https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZero2050-ARoadmapfortheGlobalEnergySector\\_CORR.pdf](https://iea.blob.core.windows.net/assets/deebef5d-0c34-4539-9d0c-10b13d840027/NetZero2050-ARoadmapfortheGlobalEnergySector_CORR.pdf), p. 70.

<sup>98</sup> International Energy Agency, "Electrification: analysis".

<sup>99</sup> Submission by Comisión de Derechos Humanos de la Ciudad de México (in Spanish).

vehicle batteries, criteria for what constitutes end-of-life, standards for handling used batteries and labelling of battery composition.<sup>100</sup>

### C. Nuclear power generation

54. Nuclear energy is the energy in the core, or nucleus, of an atom. Modern technology primarily harnesses nuclear energy through nuclear fission, in which atomic nuclei are split and energy is released.<sup>101</sup> This energy can be used to create zero-carbon electricity. However, claims by the European Union that such energy is “green” have been denounced as greenwashing.<sup>102</sup>

55. The production of nuclear energy presents both environmental and health risks. Nuclear power plants are most often powered by a rare type of uranium, uranium-235.<sup>103</sup> A typical nuclear reactor uses about 200 tons of uranium every year.<sup>104</sup> Uranium mining can expose workers to high levels of radon gas, which has been associated with an increased risk of lung cancer, as well as producing radioactive and toxic by-products and contaminating groundwater. These risks weigh particularly heavily on Indigenous Peoples, as 70 per cent of global uranium mining occurs on Indigenous lands.<sup>105</sup>

56. Nuclear energy production poses further risks in the form of radioactive by-products. These by-products can be extremely toxic and can cause burns and increase the risk of cancers, blood diseases and bone decay. Materials that come into contact with these by-products are considered radioactive waste and can remain radioactive for thousands of years.<sup>106</sup> One clear illustration of the potentially catastrophic impacts of nuclear power is the 2011 disaster in Fukushima, Japan.<sup>107</sup>

57. Nuclear power currently produces roughly 10 per cent of the global electricity supply, and this number is declining.<sup>108</sup> According to scenarios from nuclear lobby associations, doubling the capacity of nuclear power worldwide by 2050 would only decrease greenhouse gas emissions by around 4 per cent. Nevertheless, reaching this 4 per cent reduction would require bringing 37 new nuclear reactors to the grid every year from now until 2050.<sup>109</sup>

### D. Biofuels and bioenergy

58. Bioenergy is a form of renewable energy derived from organic materials, including plants and algae, known as biomass.<sup>110</sup> It is the largest source of renewable energy globally, accounting for 55 per cent of total renewable energy use and over 6 per cent of the global energy supply. Bioenergy is considered a near zero-emission fuel source because the plants that are used to make biofuels – such as corn, sugar cane and soy beans – absorb carbon dioxide as they grow and may offset upstream carbon dioxide emissions released during

<sup>100</sup> Elsa Dominish, Nick Florin and Rachael Wakefield-Rann, “Reducing new mining for electric vehicle battery metals: responsible sourcing through demand reduction strategies and recycling”, report prepared for Earthworks by the Institute for Sustainable Futures, University of Technology Sydney, April 2021.

<sup>101</sup> Andrea Galindo, “What is nuclear energy? The science of nuclear power”, International Atomic Energy Agency, 15 November 2022.

<sup>102</sup> See [www.dw.com/en/austria-files-case-over-eus-green-gas-and-nuclear-label/a-63395083](http://www.dw.com/en/austria-files-case-over-eus-green-gas-and-nuclear-label/a-63395083).

<sup>103</sup> Union of Concerned Scientists, “How nuclear power works”, 29 January 2014.

<sup>104</sup> *National Geographic*, “Nuclear energy”.

<sup>105</sup> [A/77/183](#), paras. 21 and 22.

<sup>106</sup> *National Geographic*, “Nuclear energy”.

<sup>107</sup> Office of the United Nations High Commissioner for Human Rights, “Japan: UN experts say deeply disappointed by decision to discharge Fukushima water”, 15 April 2021.

<sup>108</sup> International Energy Agency, *Nuclear Power in a Clean Energy System* (Paris, 2019).

<sup>109</sup> Mehdi Leman, “6 reasons why nuclear energy is not the way to a green and peaceful world”, Greenpeace International, 18 March 2022.

<sup>110</sup> See [www.energy.gov/eere/bioenergy/bioenergy-basics](http://www.energy.gov/eere/bioenergy/bioenergy-basics).

production and use.<sup>111</sup> Global demand for biofuel is expected to grow by 20 per cent between 2022 and 2027.<sup>112</sup>

59. Biofuel production can be resource intensive, requiring large amounts of water and land.<sup>113</sup> Globally, this could contribute to significant biodiversity loss. Biofuels also often rely on raw materials that require fertilizers for their production, the overuse of which may risk water contamination, although ethanol by-products may be used in place of traditional mineral fertilizers.<sup>114</sup> The production and use of biofuel can also generate airborne pollutants, including particulate matter, carbon monoxide, nitrogen oxides, hydrocarbons and volatile organic compounds, some of which are associated with increased morbidity and mortality from cardiovascular and respiratory diseases and some cancers.<sup>115</sup> Moreover, any reductions in greenhouse gas emissions achieved from use of biofuels may come at the expense of other environmental impacts, such as acidification, as seen with ethanol production in Brazil, or eutrophication, as seen with biodiesel production in Europe.<sup>116</sup>

60. Ultimately, the environmental consequences of biofuel production will depend on what crops or materials are used, where and how these feedstocks are grown, how the biofuel is produced and used, and how much is produced and consumed.<sup>117</sup> More efforts are needed to ensure bioenergy production does not incur negative social and environmental consequences, including through good agricultural management practices, such as ensuring no expansion of cropland or conversion of existing forested land for biofuel crop production.<sup>118</sup>

## E. Non-hydro renewables

61. Non-hydro renewables – including solar,<sup>119</sup> wind<sup>120</sup> and geothermal energy (energy produced and stored within the Earth’s crust)<sup>121</sup> – will play a critical role in the clean energy transition. Nevertheless, the production and management of renewable energy technologies present several risks if not managed appropriately.

62. Non-hydro renewable technologies are incredibly resource-intensive and can have toxic impacts. Solar panels, for example, rely on heavy metals (silver, cadmium, chromium, manganese, lead, indium, tellurium and zinc)<sup>122</sup> and batteries (lithium, cobalt, nickel, manganese, iron, chromium and copper)<sup>123</sup> that can leach into soils and waterways, leading to heavy metal contamination of the environment and surrounding communities. Incineration of these materials releases harmful dioxins and heavy metals, which have been associated

<sup>111</sup> International Energy Agency, “Bioenergy: analysis”, September 2022.

<sup>112</sup> See [www.iea.org/fuels-and-technologies/bioenergy#](http://www.iea.org/fuels-and-technologies/bioenergy#).

<sup>113</sup> Food & Water Watch, “The case against carbon capture: false claims and new pollution”, Issue Brief (March 2020).

<sup>114</sup> Submission by Brazil.

<sup>115</sup> Joint submission by iCure Health International and Citizen Outreach Coalition; Christopher W. Tessum, Julian D. Marshall and Jason D. Hill, “A spatially and temporally explicit life cycle inventory of air pollutants from gasoline and ethanol in the United States”, *Environmental Science & Technology*, vol. 46, No. 20 (October 2012); and Harish K. Jeswani, Andrew Chilvers and Adisa Azapagic, “Environmental sustainability of biofuels: a review”, *Proceedings of the Royal Society A: Mathematical, Physical and Engineering Sciences*, vol. 476, No. 2243 (November 2020).

<sup>116</sup> Jeswani, Chilvers and Azapagic, “Environmental sustainability of biofuels”; and Jikke van Wijnen and others, “Coastal eutrophication in Europe caused by production of energy crops”, *Science of the Total Environment*, vol. 511, 1 April 2015, pp. 101–111.

<sup>117</sup> United Nations Educational, Scientific and Cultural Organization, Scientific Committee on Problems of the Environment and UNEP, “Biofuels and environmental impacts: scientific analysis and implications for sustainability”, Policy Brief, No. 9 (June 2009).

<sup>118</sup> International Energy Agency, “Biofuels: fuels and technologies”.

<sup>119</sup> Union of Concerned Scientists, “Environmental impacts of solar power”, 5 March 2013.

<sup>120</sup> Union of Concerned Scientists, “Environmental impacts of wind power”, 5 March 2013.

<sup>121</sup> Union of Concerned Scientists, “Environmental impacts of geothermal energy”, 5 March 2013.

<sup>122</sup> Guiomar Calvo and Alicia Valero, “Strategic mineral resources: availability and future estimations for the renewable energy sector”, *Environmental Development*, vol. 41 (March 2022).

<sup>123</sup> Wojciech Mrozik et al., “Environmental impacts, pollution sources and pathways of spent lithium-ion batteries”, *Energy & Environmental Science*, vol. 14, No 12 (December 2021), pp. 6099–6121.

with higher cancer burdens in surrounding communities.<sup>124</sup> Inappropriate handling and landfilling of lithium-ion batteries is also a common cause of toxic fires.<sup>125</sup> Like solar power, wind power is resource intensive, requiring 8,000 components that rely on rare earth elements, with the associated risks.<sup>126</sup> For geothermal energy extraction, air and water pollution are major risks. Most geothermal power plants require a large amount of water for cooling or other purposes and steam released at the surface may contain hydrogen sulfide, ammonia, methane and carbon dioxide. Moreover, dissolved solids discharged from geothermal systems include sulfur, chlorides, silica compounds, vanadium, arsenic, mercury, nickel and other toxic heavy metals.<sup>127</sup>

63. Some of these risks have manifested themselves in Ceará, Brazil, for example, where local communities complain that energy transition projects, such as wind and solar farms, have had severe environmental impacts,<sup>128</sup> including as a result of the hazardous substances contained in wind turbines and solar panels.<sup>129</sup> In French Guiana, the Centrale Electrique de l'Ouest Guyanais project – which combines photovoltaic solar power and a storage unit in the form of hydrogen – is having an impact on the Kali'na people.<sup>130</sup>

## F. Shipping industry

64. Maritime shipping accounts for between 80 and 90 per cent of international trade by volume.<sup>131</sup> The large majority of this activity – well over 90 per cent – is fuelled by oil, rendering the industry a significant source of greenhouse gas emissions, approximately 2.8–3 per cent of global emissions.<sup>132</sup>

65. Decarbonizing international shipping will require scaling up low-carbon fuels.<sup>133</sup> While the use of liquified natural gas has been presented as a temporary solution, there are concerns over related methane emissions and energy-intensity of liquid natural gas transport.<sup>134</sup> Furthermore, natural gas-based fuels are expected to be inadequate to meet stringent decarbonization goals in the long term.<sup>135</sup> Possible alternatives include electrification, liquid biofuels, hydrogen, methanol and ammonia. Alternative fuels, though, can present a number of toxic challenges. Hydrogen, for example, is easily ignitable and poses a flammability risk.<sup>136</sup> Ammonia is corrosive and highly toxic if inhaled in high concentrations.

66. The phasing out of energy-intensive ships may increase stress on shipbreaking yards that are already notorious for the risks they pose and harm they do to human rights and the environment. During dismantling through “beaching”, which refers to grounding a ship on a

<sup>124</sup> Javier García-Pérez and others, “Cancer mortality in towns in the vicinity of incinerators and installations for the recovery or disposal of hazardous waste”, *Environment International*, vol. 51, January 2013, pp. 31–44.

<sup>125</sup> Submission by Earthjustice.

<sup>126</sup> Institute for Energy Research, “Big wind’s dirty little secret: toxic lakes and radioactive waste”, 23 October 2013.

<sup>127</sup> United States Fish & Wildlife Service, “Geothermal energy”, available at [www.fws.gov/node/265252#:~:text=Air%20and%20water%20pollution%20are,waste%2C%20siting%20and%20land%20subsidence](http://www.fws.gov/node/265252#:~:text=Air%20and%20water%20pollution%20are,waste%2C%20siting%20and%20land%20subsidence).

<sup>128</sup> Camilla Lima, “Projeto de parques eólicos no mar do Ceará ameaça o sustento de pescadores”, Brasil de Fato, 17 November 2022 (in Portuguese).

<sup>129</sup> Submission by Conectas Direitos Humanos and Latin American Climate Lawyers Initiative for Mobilizing Action.

<sup>130</sup> Submission by Association “Village Prospérité” and others.

<sup>131</sup> International Renewable Energy Agency, *A Pathway to Decarbonise the Shipping Sector by 2050* (Abu Dhabi, 2021).

<sup>132</sup> Ibid. and Estela Morante, “Roadmap to decarbonize the shipping sector: technology development, consistent policies and investment in research, development and innovation”, Transport and Trade Facilitation Newsletter, No. 96 (United Nations Conference on Trade and Development, 2022).

<sup>133</sup> International Energy Agency, “International shipping: analysis”.

<sup>134</sup> Submission by Friends of the Earth, Ghana.

<sup>135</sup> Intergovernmental Panel on Climate Change, *Climate Change 2022: Mitigation of Climate Change*.

<sup>136</sup> Richard B. Kuprewicz, “Safety of hydrogen transportation by gas pipelines”, report prepared for Pipeline Safety Trust by Accufacts, 28 November 2022.

tidal mudflat, substances are washed away, thus polluting waters and harming birds, fish and mammals.<sup>137</sup> Once persistent chemicals are in the ocean, they can travel to different regions, making beaching a global issue. Ships often contain toxic antifouling paints, asbestos, polychlorinated biphenyls and other toxic materials that threaten the lives and health of workers and local communities.<sup>138</sup>

## G. Carbon capture and storage

67. Carbon capture, utilization and storage refers to technologies that either enable the mitigation of carbon dioxide emissions from large point sources such as refineries, power plants and other industrial facilities, or remove existing carbon dioxide from the atmosphere.<sup>139</sup> Demand for these technologies is expected to rise significantly over the coming decades.

68. Carbon capture and storage is comprised of three phases: capture, transport and storage (or usage) of carbon dioxide. Carbon can be captured by post-combustion, pre-combustion and oxy-fuel combustion. Once captured, carbon dioxide is compressed into a liquid and transported by pipeline, ship, rail or road to depleted oil and gas reservoirs, unmineable coal seams or deep saline reservoirs, where it is then injected and permanently stored, usually at depths of 1km or more.<sup>140</sup> These processes can be highly energy-intensive.<sup>141</sup>

69. These technologies present health and safety risks. Amine-based solvents<sup>142</sup> are often used to capture carbon dioxide from industrial facilities. This process relies on large amounts of chemicals and can release significant quantities of highly toxic ammonia into surrounding communities.<sup>143</sup> At high concentrations, carbon dioxide is a toxic gas and an asphyxiant, which can cause circulatory insufficiency, coma and death.<sup>144</sup> There are also risks relating to leakage during transport, injection and long-term storage.<sup>145</sup> Leakage to adjacent geological formations may cause geochemical reactions, including stimulation of seismic activity, and mobilization of potentially polluting elements, such as heavy metals, which can contaminate drinking water.<sup>146</sup> Underground storage also involves the risk of pipeline rupture, during which highly hazardous compressed carbon dioxide could be released.<sup>147</sup>

70. The inseparable link between carbon capture and storage and the use of fossil fuels underlines the risks posed by this technology to human rights. Carbon capture technology risks locking in place fossil fuel-reliance and the associated environmental injustices.<sup>148</sup>

<sup>137</sup> A/HRC/12/26, para. 8.

<sup>138</sup> A/HRC/54/25/Add.2.

<sup>139</sup> Grantham Research Institute on Climate Change and the Environment, “What is carbon capture, usage and storage (CCUS) and what role can it play in tackling climate change?”, 3 March 2023.

<sup>140</sup> Ibid.

<sup>141</sup> International Energy Agency, “Carbon capture, utilisation and storage: fuels and technologies”.

<sup>142</sup> Louise B. Hamdy and others, “The application of amine-based materials for carbon capture and utilisation: an overarching view”, *Materials Advances*, vol. 2, No. 18 (2021), pp. 5843–5880.

<sup>143</sup> A/HRC/5/5, para. 14; and European Environment Agency, *Air pollution impacts from carbon capture and storage (CCS)* (Copenhagen, 2011), p. 10.

<sup>144</sup> See [www.everycrsreport.com/reports/RL33971.html](http://www.everycrsreport.com/reports/RL33971.html), pp. 16 and 17.

<sup>145</sup> Food & Water Watch, “The case against carbon capture”.

<sup>146</sup> International Resource Panel, *Green Energy Choices: The Benefits, Risks and Trade-Offs of Low-Carbon Technologies for Electricity Production* (UNEP, 2016), p. 103; and Center for International Environmental Law, “Carbon capture and storage”, available at [www.ciel.org/issue/carbon-capture-and-storage/](http://www.ciel.org/issue/carbon-capture-and-storage/).

<sup>147</sup> Richard B. Kuprewicz, “Accufacts’ perspectives on the state of federal carbon dioxide transmission pipeline safety regulations as it relates to carbon capture, utilization, and sequestration within the U.S.”, report prepared for Pipeline Safety Trust by Accufacts, 23 March 2022.

<sup>148</sup> Submission by Center for International Environmental Law.

## H. Climate-altering engineering

71. Climate engineering is “large-scale, deliberate intervention in the Earth system to counteract climate change”.<sup>149</sup> Such interventions are primarily considered as options to compensate for lagging international efforts to mitigate climate change. There is a lack of scientific certainty about the efficiency of climate-altering engineering technologies, such as solar radiation modification, and they can have a wide range of potential impacts on the effective enjoyment of human rights. Pinning humanity’s hopes on future technologies should not be used to justify insufficient action to reduce greenhouse gas emissions and phase out fossil fuels.

## IV. Human rights affected by some proposed climate change solutions

72. Some proposed technologies to mitigate climate change aggravate the toxic burden on people and planet, and they may adversely affect the effective enjoyment of human rights. The adverse impacts weigh heavily on persons and groups in vulnerable situations.<sup>150</sup> This situation undermines progress towards the Sustainable Development Goals to end poverty and hunger, to ensure healthy lives, clean water, decent work and sustainable consumption, and to protect and conserve lands and waters.<sup>151</sup>

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

73. After five decades of debate, starting at the United Nations Conference on the Human Environment, held in 1972, the right to a clean, healthy and sustainable environment has been recognized by the Human Rights Council<sup>152</sup> and the General Assembly.<sup>153</sup> This right is intimately related to the rights to life and personal integrity, among others, and to international environmental principles such as prevention of environmental damage, the precautionary principle and the duty to cooperate, among others.<sup>154</sup>

74. The fulfilment of the right to a healthy environment can be undermined by some proposed technologies to mitigate climate change. Technologies that increase pressure to extract metals and minerals, where adequate social and environmental safeguards are lacking or inadequate, can exacerbate human rights infringements. Unsound management of hazardous substances relating to decarbonization, such as inadequate electric vehicle battery recycling, plastic-to-fuel generation, nuclear energy, and carbon capture and storage, among others, can also compromise the effective enjoyment of the right to a clean, healthy and sustainable environment.

75. Some proposed climate technologies may generate air and water pollutants, such as fine particles and dust, heavy metals, toxic chemicals, hazardous materials and ionizing radiation, among others. These hazardous substances may bioaccumulate through the food chain and contribute to the proliferation of sacrifice zones. Exposure may cause birth defects, neurological, respiratory, heart, gynaecological, nephrological, immune, skin and other chronic illnesses and even cancer, as has been the case in sacrifice zones located in Argentina, Australia, Bolivia (Plurinational State of), Canada, Chile, China, the Democratic Republic of the Congo, Guatemala, Guinea, Indonesia, Mexico, Papua New Guinea, Peru, the

<sup>149</sup> Oxford Geoengineering Programme, “What is geoengineering?”.

<sup>150</sup> [A/77/183](#).

<sup>151</sup> Sustainable Development Goals 1–3, 6, 8, 12, 14 and 15.

<sup>152</sup> Human Rights Council resolution 48/13.

<sup>153</sup> General Assembly resolution 76/300.

<sup>154</sup> Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017.

Philippines, the Russian Federation, South Africa, Tonga, the United States of America, Viet Nam and Zambia, and in New Caledonia, among other countries and areas.<sup>155</sup>

76. Some climate technologies may negatively, and often irreversibly, affect critical ecosystems such as tropical forests, wetlands and their extraordinary biodiversity. This exacerbates the very climate crisis which such proposed solutions are supposed to alleviate.<sup>156</sup>

## **B. Right to life, in conjunction with the rights to clean air, safe water and nutritious food**

77. The right to life has been recognized in universal<sup>157</sup> and regional<sup>158</sup> human rights treaties. The right to life includes the right to a dignified life.<sup>159</sup> The conditions that enable people to live a dignified life include clean air, safe water and nutritious food, among others. The Inter-American Court of Human Rights has reasoned that failure to uphold international standards regarding clean water, food and health amounts to a violation of the right to a dignified life.<sup>160</sup> This reasoning is also applicable to the physical components of the right to a clean, healthy and sustainable environment, underlining the intimate connections between that right and the right to life.

78. For Indigenous Peoples in particular, the right to a dignified life, in conjunction with the rights to clean air, safe water and nutritious food, is undermined by the toxic impacts of some of the technologies to mitigate climate change that have been proposed in recent years. This is due to the direct relationship between the physical environment in which Indigenous Peoples live and the rights to life, security and physical integrity, which are directly affected by pollution.<sup>161</sup> For example, mineral and metal extraction often generates intolerable toxic pollution and biofuels use large amounts of fertilizers, pesticides and other chemicals. The increased carbonization and toxification seriously affects livelihoods and daily lives<sup>162</sup> by threatening food safety, polluting soil, surface and ground water, and generating wastewater.<sup>163</sup> Their cumulative effects also reduce the contributions of climate change adaptation measures.<sup>164</sup>

<sup>155</sup> Submissions by AidWatch, Catherine Murupaenga-Ikenn, Center for International Environmental Law, Comisión de Derechos Humanos de la Ciudad de México, Earthjustice, Earthworks, Global Alliance for Incinerator Alternatives, and Oxfam International; and joint submissions by iCure Health International and Citizen Outreach Coalition, and Jubilee Australia Research Centre and Bismarck Ramu Group.

<sup>156</sup> Submissions by Association “Village Prospérité” and others, AidWatch, Association of Reintegration of Crimea, Azerbaijan and Earthworks; joint submissions by iCure Health International and Citizen Outreach Coalition and WALHI South Sulawesi and Southeast Sulawesi and Friends of the Earth Japan; and Jan Morrill and others *Safety First: Guidelines for Responsible Mine Tailings Management* (Earthworks, MiningWatch Canada and London Mining Network, 2022).

<sup>157</sup> International Covenant on Civil and Political Rights, art. 6 (1).

<sup>158</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), art. 2 (1); American Convention on Human Rights, art. 4 (1); African Charter on Human and Peoples’ Rights, art. 4; Arab Charter on Human Rights, art. 5; and Association of Southeast Asian Nations Human Rights Declaration, art. 11.

<sup>159</sup> Inter-American Court of Human Rights, “*Street Children*” (*Villagrán Morales et al.*) v. *Guatemala*, Judgment, 19 November 1999, para. 144.

<sup>160</sup> *Yakye Axa Indigenous Community v. Paraguay*, Judgment, 17 June 2005, paras. 160–176. See also submission by Friends of the Earth Ghana; and Committee on Economic, Social and Cultural Rights, general comments No. 26 (2022), No. 24 (2017), No. 15 (2002), No. 14 (2000) and No. 12 (1999).

<sup>161</sup> Inter-American Court of Human Rights, *Kuna Indigenous People of Madungandi and Embera Indigenous People of Bayano and Their Members v. Panama*, Report No. 125/12, Case No. 12.354, para. 233.

<sup>162</sup> Submission by Oxfam International.

<sup>163</sup> [A/HRC/40/55](#); [A/HRC/46/28](#); [A/76/179](#); submissions by Earthworks, Interamerican Association for Environmental Defense (in Spanish), Catherine Murupaenga-Ikenn, World Nuclear Association and Global Alliance for Incinerator Alternatives; and joint submissions by Jubilee Australia Research Centre and Bismarck Ramu Group, WALHI South Sulawesi and Southeast Sulawesi and Friends of the Earth Japan, and iCure Health International and Citizen Outreach Coalition.

<sup>164</sup> Submission by Transparency International.

## V. Human rights should guide the integration of decarbonization and detoxification pathways

79. Human-rights principles should guide the integration of decarbonization and detoxification pathways. These principles inform a human rights-based approach and are centred on non-discrimination, transparency, participation and accountability. This approach places particular emphasis on protecting groups in vulnerable situations. With regard to the sound management of hazardous substances and wastes, the human rights-based approach also encompasses key environmental principles, such as the principle of prevention of harm, a chemically safe circular economy and the polluter-pays principle.

### A. Rights of access to information, participation and justice in environmental matters

80. The fulfilment of the right of access to information in environmental matters is key to empower members of the public, particularly local communities and groups in vulnerable situations.<sup>165</sup> Adequate and timely information is indispensable to enable people to exercise their right to meaningfully participate in decision-making.<sup>166</sup> Access to independent technical experts is important for the realization of the rights to information and participation.<sup>167</sup> No less important is the right of access to remedies, which allows members of the public to seek legal and other redress in cases of human rights infringements, including with respect to environmental damage.<sup>168</sup>

81. The human rights to information and participation encompass the right to access independent technical expertise,<sup>169</sup> as the public attempts to assess the enhanced toxic impacts of some climate change mitigation technologies. These rights correlate with the State's obligation to protect the public against disinformation campaigns and misleading information disseminated by the promoters of such technologies.<sup>170</sup>

### B. Right to science in climate action

82. The International Covenant on Economic, Social and Cultural Rights, among other human rights instruments, recognizes the right of everyone to enjoy the benefits of scientific progress and its applications (art. 15 (b)). Respect for this right requires alignment between regulatory policies and the best available scientific evidence.<sup>171</sup>

83. The right to science is essential to face and overcome the climate emergency. It requires States to take action to reduce greenhouse gas emissions in a manner that avoids toxic impacts. The right to science is also an indispensable antidote against disinformation campaigns and misleading information spread for political or ideological interests, or economic interests, including those employing mercenary or conflicted scientists, that stand to profit from polluting energy and industrial production and consumption patterns. Science provides the necessary facts, knowledge and evidence for the design of integrated decarbonization and detoxification policies. This right also requires States to protect climate activists and scientists as human rights defenders.

<sup>165</sup> [A/HRC/49/53](#); and submissions by AidWatch, Catherine Murupaenga-Ikenn, and Pipeline Safety Trust.

<sup>166</sup> [A/HRC/49/53](#).

<sup>167</sup> Submission by Earthworks.

<sup>168</sup> [A/HRC/49/53](#), para. 25; and submissions by AidWatch, Catherine Murupaenga-Ikenn, and Pipeline Safety Trust.

<sup>169</sup> Submission by Earthworks.

<sup>170</sup> [A/HRC/48/61](#).

<sup>171</sup> *Ibid.*

## C. Protecting particularly vulnerable groups

### 1. Indigenous Peoples

84. International human rights instruments and jurisprudence recognize human rights that are specific to Indigenous Peoples, such as the right to free, prior and informed consent, and to culture, land and natural resources.<sup>172</sup> Protecting these rights is critical to avoid perpetuating the structural injustices and unsustainable economic development patterns that have resulted in the contamination of Indigenous Peoples' lands, waters, food, wildlife and plants, and the climate crisis.<sup>173</sup>

85. The toxic impacts of some climate mitigation technologies could cause irreversible harm to ancestral sites, water, medicines and culturally important wildlife,<sup>174</sup> as well as deforestation,<sup>175</sup> soil degradation, limited crop production for years to come, water shortages, biodiversity loss and acid-mine drainage, contaminating downstream water sources and depleting ecosystem health, while worsening global warming.<sup>176</sup> The lack of respect for free, prior and informed consent and inadequate environmental impact assessments<sup>177</sup> are examples of the systemic and systematic barriers<sup>178</sup> that need to be urgently addressed to ensure Indigenous Peoples' rights.

86. These structural barriers also affect ethnic minorities and persons of African descent.<sup>179</sup> The Inter-American Court of Human Rights has recognized that tribal communities of African descent have the same rights as Indigenous Peoples.<sup>180</sup> Such decisions are consistent with some recent national judicial decisions concerning mining, environmental, social and climate justice, and persons of African descent.<sup>181</sup>

### 2. Human rights defenders

87. Climate activists are raising public awareness about the climate crisis and spurring Governments and business enterprises to take ambitious climate action. In doing so, they seek to protect communities around the globe and the ecosystems on which humans depend to thrive. In the light of the adverse human rights impacts of the climate emergency, activists mobilizing to protect the climate system should be regarded and protected as authentic human rights defenders.

88. As a result of their activism, climate human rights defenders, including those participating in the sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change, have been harassed or persecuted.<sup>182</sup> In some cases, climate human rights defenders have been killed.<sup>183</sup> In others, police repression has quashed their opposition against carbonization and toxification.<sup>184</sup> In other situations, they have been prevented from pursuing their activism owing to the lack of safety for them, their families and their communities.<sup>185</sup>

<sup>172</sup> A/77/183, paras. 51–80.

<sup>173</sup> Ibid.; and submissions by Plastic Pollution Coalition and Global Alliance for Incinerator Alternatives.

<sup>174</sup> Submission by Earthworks.

<sup>175</sup> Submission by Association “Village Prospérité” and others.

<sup>176</sup> Joint submission by iCure Health International and Citizen Outreach Coalition.

<sup>177</sup> Ibid.; and joint submission by Jubilee Australia Research Centre and Bismarck Ramu Group.

<sup>178</sup> Submission by Catherine Murupaenga-Ikenn.

<sup>179</sup> Submission by the Center for International Environmental Law.

<sup>180</sup> *Saramaka People v. Suriname*, Judgment, 28 November 2007; and *Punta Piedra Garifuna Community and Its Members v. Honduras*, Judgment, 5 October 2015.

<sup>181</sup> See, e.g., Colombia Constitutional Court, *Center for Social Justice Studies et al. v. Presidency of the Republic et al.*, Judgment T-622/16, 10 November 2016.

<sup>182</sup> See, e.g., A/76/222.

<sup>183</sup> See [www.climateandcommunity.org/\\_files/ugd/d6378b\\_b03de6e6b0e14eb0a2f6b608abe9f93d.pdf](http://www.climateandcommunity.org/_files/ugd/d6378b_b03de6e6b0e14eb0a2f6b608abe9f93d.pdf).

<sup>184</sup> Submission by Association “Village Prospérité” and others.

<sup>185</sup> Joint submission by WALHI South Sulawesi and Southeast Sulawesi and Friends of the Earth Japan.

89. State obligations regarding human rights defenders have been recognized in international human rights instruments.<sup>186</sup> The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement) is the first international treaty to specifically protect environmental human rights defenders (art. 9), which include climate activists.<sup>187</sup> According to the Inter-American Court of Human Rights, State obligations regarding human rights defenders include protection from threats to their life and personal integrity, as well as from persecution and repression.<sup>188</sup>

## **D. Integrating decarbonization and detoxification**

### **1. Accelerating decarbonization and detoxification of the economy**

90. Decarbonization will require slashing greenhouse gas emissions, while detoxification means slashing pollution and waste. Realizing these two goals will require a new sense of urgency in implementing policies that aim to decouple economic growth from resource use.<sup>189</sup> Such policies should aim to achieve the targets of phasing out fossil fuel energy sources, replacing them with clean energy sources, in what is called the energy transition. Accelerating this transition will require sustainably managing and efficiently using natural resources, preventing the release of toxics to avoid adverse impacts on human health and the environment, and ensuring the sound management of waste, including reduction at source.<sup>190</sup>

91. Decarbonization and detoxification policies are key to attaining Sustainable Development Goal 12, to ensure sustainable consumption and production patterns. This goal can be achieved fully only if Governments and businesses focus on solutions that effectively integrate decarbonization and detoxification strategies. This includes avoiding hazardous chemicals that are touted as solutions to the climate emergency, such as the case of per- and polyfluoroalkyl substances, also known as forever chemicals because of their persistence in the environment. Instead, strategies should address the root causes of the serious adverse impacts on human health and the environment. This is key to preventing further and continued human rights infringements and abuses.

#### **(a) Creating a circular economy for climate mitigation technologies**

92. Countries need to redouble their concerted efforts to modernize and diversify critical industrial sectors. This could be achieved by establishing “green zones”, such as industrial parks, in settings with logistical and infrastructural advantages. In these zones, some proposed climate change mitigation technologies could be developed based on the latest science and innovation, using responsibly sourced materials, renewable energy sources and sustainable means of transportation, and not relying on the intensive use of natural resources. These good practices would minimize greenhouse gas emissions and waste generation throughout the entire supply chain.<sup>191</sup>

#### **(b) Reducing the need for material sourcing and increasing material recovery**

93. Technological change alone will not be sufficient to decarbonize and detoxify the economy. It will need to be coupled with reductions in material resource extraction and use. This includes designing more efficient products, extending product lifetime and establishing mandatory recovery rates through disassembling and recycling product components.

94. Some examples of these decisive cuts would be making smaller electric vehicle batteries and extending their lifetime. Another example would be recovering transition minerals and metals from end-of-life electric vehicle batteries and housing materials.

<sup>186</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, arts. 10, 11 and 18.

<sup>187</sup> *Baraona Bray v. Chile*, Judgment, 24 November 2022, para. 76 (in Spanish).

<sup>188</sup> *Ibid.*; and *Kawas-Fernández v. Honduras*, Judgment, 3 April 2009, para. 145.

<sup>189</sup> See [www.resourcepanel.org/file/400/download?token=E0TEjf3z](http://www.resourcepanel.org/file/400/download?token=E0TEjf3z).

<sup>190</sup> Sustainable Development Goal 12, targets 12.2, 12.4, 12.5 and 12.8.

<sup>191</sup> Submission by Azerbaijan.

Integrated policies, such as on sustainable public transport systems, would also reduce the need for manufacturing new electric vehicles and electric vehicle batteries.<sup>192</sup>

## 2. **Mandatory environmental and human rights due diligence and supply chain transparency**

95. Governments should require businesses to conduct adequate environmental and human rights due diligence through the entire upstream and downstream chains of all transition materials, based on the Guiding Principles on Business and Human Rights.<sup>193</sup> This means ensuring that the four elements of a due diligence process are present in every proposed climate change mitigation technology, namely, assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed.<sup>194</sup>

96. Conducting such environmental and human rights due diligence on some proposed technologies to mitigate climate change should focus on potential human rights infringements concerning supply and value chains. Due diligence should make sure that members of the public have access to adequate and timely information and meaningful opportunities to participate in decision-making regarding proposed climate change technologies. Due diligence should also be geared to ensuring that groups in vulnerable situations, such as climate activists, are not subjected to any form of retaliation.<sup>195</sup>

## 3. **Preventing toxic impacts from the unsound management of chemicals and waste**

97. The design and implementation of technologies to mitigate climate change should avoid replicating the polluting pathways of the fossil fuel industry. States and businesses must vigorously pursue zero pollution and the elimination of toxic substances, rather than merely trying to minimize, reduce and mitigate exposure to these hazards.<sup>196</sup>

98. Specifically with regard to transition minerals and metals, the feasibility of proposed new mines should be considered only after programmes are put in place that require recovery or recycling of such materials from end-of-life products. No new mineral extractions should proceed without effective prevention measures against the toxic risks of exposure to chemicals, waste and pollution generated by such mining.<sup>197</sup>

# VI. **Conclusions and recommendations**

99. **Deep reductions of greenhouse gas emissions and carbon removals from the atmosphere are urgent to tackle the global climate crisis. Decarbonization of the energy matrix and polluting sectors of the economy are indispensable to realizing the goals established in the Paris Agreement. Some climate actions, such as replacing coal-fired power plants by solar or wind energy facilities, will contribute to such decarbonization.**

100. **Yet, some climate technologies proposed in recent years may aggravate the toxic burden befalling people and planet, exacerbating the human rights infringements caused by exposure to hazardous substances. The extraction of so-called transition minerals and metals can aggravate the toxic impacts of mining. Solar panels and wind turbines to generate electricity can impose considerable waste management challenges. Mislabelling nuclear energy generation as “green” downplays the acute challenges of radioactive waste disposal.**

101. **Disinformation campaigns have pushed misleading and false solutions for the energy transition. For example, tapping natural gas to replace other fossil fuels does not**

<sup>192</sup> Submission by Earthworks.

<sup>193</sup> [A/HRC/42/41](#), paras. 37 and 38; and [A/HRC/48/61](#), paras. 95 and 96.

<sup>194</sup> Guiding Principles on Business and Human Rights, principles 18–21.

<sup>195</sup> See [www.climateandcommunity.org/\\_files/ugd/d6378b\\_b03de6e6b0e14eb0a2f6b608abe9f93d.pdf](http://www.climateandcommunity.org/_files/ugd/d6378b_b03de6e6b0e14eb0a2f6b608abe9f93d.pdf), p. 10.

<sup>196</sup> [A/HRC/49/53](#).

<sup>197</sup> See, inter alia, Public Health Association of Australia, “Rare earth elements”, Policy Position Statement, 23 September 2021.

account for emissions of methane and ultimately delays the necessary investments in decarbonization. Blue and grey hydrogen may actually increase greenhouse gas emissions given the amounts of energy their production requires. Also, unsound waste management technologies, such as incineration of plastics, add to the growing greenhouse gas emissions of the chemical industry.

102. Decarbonization and detoxification strategies should not be pitted against each other. Climate action will not be legitimate or sustainable if it exacerbates toxic pollution and the concomitant human rights infringements. The climate change threat should not be used as an excuse or pretext by certain Governments or businesses to further aggravate the toxic burden on humanity.

103. In order to reach the 1.5°C global climate goal and protect communities adversely affected by toxics, decarbonization technologies should be integrated with detoxification strategies. Policies based on the best available climate and chemical science will allow governments to favour climate mitigation technologies that integrate decarbonization and detoxification strategies.

104. This integration, and the transition towards a circular economy that is both chemically and climate-safe, should be guided by human rights principles. Product and technology life cycles should be assessed to ensure actual decarbonization. Capacities for sound, circular management of chemicals and wastes generated by the climate transition should be installed to ensure detoxification. Human rights due diligence standards along the supply chain for climate change mitigation technologies should be mandatory. Environmental and human rights safeguards should be strengthened and enforced, instead of dismantled to purportedly favour the energy transition.

105. The Special Rapporteur recommends that States:

- (a) Integrate decarbonization and detoxification strategies, guided by a human rights-based approach;
- (b) Adopt mandatory standards on environmental and human rights due diligence and supply chain transparency to address the impacts of proposed climate action;
- (c) Enforce and strengthen environmental and social safeguards, instead of exempting some proposed climate change mitigation technologies;
- (d) Establish climate change mitigation technology clusters to modernize and diversify industrial sectors that are critical for the energy transition;
- (e) Establish mandatory recycling and recovery rates for materials that are critical for the energy transition, as a prerequisite for considering the feasibility of new mines;
- (f) Assess not only the greenhouse gas reduction potential of climate action, including energy sources, fuels, products and technologies, but also a full life-cycle assessment, including the impacts of materials extraction, pollution released during manufacturing, chemical exposure from use, and waste management and disposal;
- (g) Install science-based capacity to enable circular management of chemicals and waste;
- (h) Respect the right to and obtain free, prior and informed consent from Indigenous Peoples in regard to climate change mitigation technologies that directly or indirectly affect them;
- (i) Ensure the protection of environmental human rights defenders, including climate and chemicals activists;
- (j) Implement carbon pricing policies such as taxes and levies on greenhouse gas emissions to incentivize sectors and companies to reduce their carbon emissions;
- (k) Protect and restore natural habitats, such as forests, mangroves and wetlands, to conserve and enhance biodiversity and reduce carbon emissions;

(l) **Promote sustainable agriculture practices that reduce greenhouse gas emissions, avoid hazardous chemicals and sequester carbon in the soil;**

(m) **Promote the use of public transportation and active transportation, such as walking and cycling, to reduce carbon emissions;**

(n) **Implement waste reduction strategies, such as composting, to reduce the amount of waste sent to landfills and promote the use of biodegradable materials;**

(o) **Educate individuals and raise awareness about the importance of environmental protection and the impact of human activities on the planet.**

106. **The Special Rapporteur recommends that business enterprises, including financial institutions:**

(a) **Invest in innovation and uptake of climate mitigation technologies that also reduce toxic impacts;**

(b) **Implement environmental and human rights due diligence and supply chain transparency;**

(c) **Invest in climate change mitigation technology clusters to modernize and diversify industrial sectors that are critical for the energy transition;**

(d) **Invest in recycling facilities for materials that are critical for the energy transition;**

(e) **Divest from fossil fuel extraction or combustion projects;**

(f) **Refrain from conducting disinformation campaigns regarding misleading or false climate solutions;**

(g) **Conduct continuous monitoring and evaluation of climate technologies;**

(h) **Decrease the toxic burdens on communities that have long suffered from them;**

(i) **Retain and do not weaken environmental impact assessment and public participation requirements, to facilitate climate response.**

---