

## Human Rights Defenders' Fact Sheet

### Environmental Hazards / Degradation

#### **Disclaimer**

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#### 1. Environmental Hazards and Human Rights

1.1 Many human rights defenders (“HRDs”) seek to defend human rights as they relate to the enjoyment of a safe, healthy and sustainable environment. This can be a challenging area for HRDs due to:

- (A) the acceleration of development and urbanisation;
- (B) the complexity of the interplay between environmental law and human rights law and the array of enforcement mechanisms;
- (C) the fact that businesses and state officials often lack awareness of their obligations under local laws, and/or international human rights and environmental laws (or intentionally flout those obligations); and
- (D) the heightened personal risk that HRDs and their clients often face, particularly if their actions affect plans for development of an area.<sup>1</sup> This is a specific risk that is faced by indigenous groups (and other rural communities), who have a special relationship with their land and resources, and who often have difficulty accessing adequate advice when their human rights are impacted by environmental hazards and/or degradation.

1.2 This Fact Sheet focusses on the interplay between international human rights law and international environmental law. Most states have relatively comprehensive domestic environmental laws in respect of which HRDs should seek local advice.

#### 2. The legal framework

2.1 Article 12 of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) guarantees the ‘right of everyone to the enjoyment of the highest attainable standard of physical and mental health’. More recently, the International Court of Justice has stated that “*the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn*”.<sup>2</sup> There is, therefore, a recognised link between international human rights law and international environmental law. However, interplay between the two is not straightforward.<sup>3</sup>

<sup>1</sup> For further details, see Global Witness Report “Defenders of the Earth”, 2016, available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/defenders-earth/>

<sup>2</sup> ICJ’s Opinion on the “Legality of the Threat or Use of Nuclear Weapons”, 1996, ICJ Rep. 242, para. 29

<sup>3</sup> In 2013, the Independent Expert on human rights and the environment (John Knox) undertook an extensive research project to map the statements made by important sources of human rights obligations relating to the environment. See the following link for further information: <http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/MappingReport.aspx>

2.2 The UN Environment Programme (“**UNEP**”) has identified three main dimensions of the interrelationship between human rights and environmental protection:<sup>4</sup>

- (A) the right to a safe, healthy and ecologically-balanced environment as a human right in itself;
- (B) certain human rights (particularly procedural rights, such as access to information, participation in decision-making, and access to justice) as essential to good environmental decision-making; and
- (C) the environment as a pre-requisite for the enjoyment of substantive human rights, including civil, political, cultural and social rights (such as the right to life, religion, property, health, water, food and culture).

### Is there a specific right to a healthy environment?

2.3 UNEP has published a guide setting out all the main international and regional instruments which link to the right to a health environment.<sup>5</sup> There was an initial effort at UN level to form a direct link between human rights and the environment. For example, the preamble to the 1972 Stockholm Declaration indicates that the environment is essential for the well-being of man and for the full enjoyment of his fundamental rights, including the right to life itself.<sup>6</sup> In a similar vein, Principle 1 of the 1992 Rio Declaration on Environment and Development refers to a right to “*a healthy and productive life in harmony with nature*”.<sup>7</sup>

2.4 Environmental treaties have made vague links between the environment and human rights rather than granting a specific right to a healthy environment.<sup>8</sup> Express recognition in treaties of such a right is rare. For example:

- (A) The Preamble to the EU Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the “**Aarhus Convention**”) declares the right of everyone to live in an environment adequate to his health and well-being.<sup>9</sup>
- (B) Article 24 of the African Charter on Human and Peoples’ Rights<sup>10</sup> states that all peoples have a right to a general satisfactory environment (echoed in decisions made by the African Commission on Human and Peoples’ Rights).<sup>11</sup>
- (C) Article 1 of the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (known as the “**Ezcazú Agreement**”) recognises “*the right of every person of present and future generations to live in a healthy environment and to sustainable development*”.<sup>12</sup>

<sup>4</sup> See the UNEP website: <http://web.unep.org/divisions/delc/human-rights-and-environment>

<sup>5</sup> Compendium on Human Rights and the Environment, UNEP, 2014: [https://wedocs.unep.org/bitstream/handle/20.500.11822/9943/UNEP\\_Compendium\\_HRE.pdf?sequence=1&isAllowed=https://wedocs.unep.org/bitstream/handle/20.500.11822/9943/UNEP\\_Compendium\\_HRE.pdf?sequence=1&isAllowed=y=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/9943/UNEP_Compendium_HRE.pdf?sequence=1&isAllowed=https://wedocs.unep.org/bitstream/handle/20.500.11822/9943/UNEP_Compendium_HRE.pdf?sequence=1&isAllowed=y=y)

<sup>6</sup> UN Declaration on the UN Conference on the Human Environment (known as the “Stockholm Declaration”): <http://www.un-documents.net/aconf48-14r1.pdf>. This is expounded, for example, in Principle 7, which prescribes that states shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

<sup>7</sup> [http://www.unesco.org/education/pdf/RIO\\_E.PDF](http://www.unesco.org/education/pdf/RIO_E.PDF).

<sup>8</sup> See, for example:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
- Rotterdam Convention (regarding hazardous chemicals and pesticides)
- Stockholm Convention (regarding persistent organic pollutants)

<sup>9</sup> Aarhus Convention: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

<sup>10</sup> Also known as the Banjul Charter.

<sup>11</sup> [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf). See, for example: Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria, Afr. Comm’n H. & Peoples’ R., No. 155/96, (May 27, 2002).

<sup>12</sup> Ezcazú Agreement: [https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf) Note: At least 11 countries must sign and ratify the Ezcazú Agreement by 27 September 2020 for it to come into force.

2.5 However, the tide appears to be turning as this issue is increasingly considered by the international judiciary in their interpretation of international law:

- (A) In February 2018, the Inter-American Court of Human Rights issued an opinion in response to a request made by Colombia seeking clarification on the scope of State responsibility for environmental harm under the American Convention on Human Rights.<sup>13</sup> The Court confirmed that human rights depend on the existence of a healthy environment. It stated that, in relation to transboundary damage, “*the exercise of jurisdiction arises when the state of origin exercises effective control over the activities carried out that caused the harm and consequent violation of human rights*”.<sup>14</sup> This means that states must take measures to prevent significant environmental harm to individuals inside and outside their territory. Given that international judicial bodies often echo each other’s decisions, it is possible that a similar approach will be adopted in other international or regional courts.
- (B) In February 2020, the Inter-American Court of Human Rights held that Argentina violated the rights indigenous people have to a healthy environment, to indigenous community property, cultural identity, food and water.<sup>15</sup> In making its decision, the court placed strong reliance on its interpretation of the right to a healthy environment in its Advisory Opinion 23/17 of 2018<sup>16</sup>.

2.6 Recent international initiatives also show that there is a desire to recognise more explicitly the link between human rights and the environment:

- (A) At the UN General Assembly in September 2017, France launched the Global Pact for the Environment initiative at the General Assembly, the goal of which was to codify and unite the guiding principles of environmental law into a single legally binding instrument (to include the right to a sound environment).<sup>17</sup> However, in 2019, it was decided that instead of a treaty, States should work towards agreeing a Declaration in 2022.
- (B) In 2018, the then UN Special Rapporteur on human rights and the environment, presented to the Human Rights Council the Frameworks Principles, which set out the obligations of all States in relation to the enjoyment of a safe, clean, healthy and sustainable environment (including States that have not yet recognised the right to a healthy and sustainable environment).<sup>18</sup> That has been followed up by the release in 2020 of a report describing the good practices of States in recognising the right to live in a safe, clean, healthy and sustainable environment (addressing both the procedural and substantive elements of the right).<sup>19</sup>

<sup>13</sup> 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) of the American Convention on Human Rights), Advisory Opinion OC-23/18, Inter-Am. Ct. H.R., (ser. A) No. 23 (Nov. 15, 2017), available at [http://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf)

Request for Advisory Opinion OC-23, Inter-Am. Ct. H.R. (Mar. 14, 2016), available at [http://www.corteidh.or.cr/solicitudoc/solicitud\\_14\\_03\\_16\\_ing.pdf](http://www.corteidh.or.cr/solicitudoc/solicitud_14_03_16_ing.pdf)

<sup>14</sup> <https://www.asil.org/insights/volume/22/issue/6/inter-american-court-human-rights-advisory-opinion-environment-and-human>; see also <http://www.ciel.org/news/inter-american-court-human-rights-solidifies-right-healthy-environment-decision-bolsters-access-rights-extraterritorial-obligations-precautionary-principle/> and <https://www.theguardian.com/commentisfree/2018/feb/21/international-law-cross-border-victims-environment-rulings>.

<sup>15</sup> <https://gnhre.org/2020/04/10/lhaka-honhat-association-vs-argentina-the-human-right-to-environment-in-the-inter-american-court/>

<sup>16</sup> <https://elaw.org/system/files/attachments/publicresource/English%20version%20of%20AdvOp%20OC-23.pdf>

<sup>17</sup> For further information, see <http://pactenvironment.org/>.

<sup>18</sup> A/HRC/37/59 <https://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/FrameworkPrinciplesReport.aspx>

<sup>19</sup> <http://wedocs.unep.org/bitstream/handle/20.500.11822/32450/RHE.pdf?sequence=1&isAllowed=y>

## Interplay between international environmental law and substantive and procedural human rights

2.7 The Paris climate agreement is the first international environmental treaty to specifically mention human rights in the context of environmental degradation. Its preamble states that:

*“Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity”*<sup>20</sup>

2.8 Links between the environment and human rights can be found in other treaties that generally relate to the protection of procedural rights. For example:

(A) Article 2 of the Aarhus Convention provides for rights of access to information, public participation and access to justice regarding the environment.<sup>21</sup> The Aarhus Compliance Committee operates a complaints mechanism and has interpreted these principles. The Ezcazú Agreement includes similar provisions.<sup>22</sup>

(B) Conventions, including the UN Convention on the Law of the Sea and the Convention on Biological Diversity, provide procedural protections unique to environmental law, such as environmental impact assessments.<sup>23</sup> These are linked to rights to information and public protection.

(C) The Convention on the Rights of the Child specifically refers to the environment in connection with a child’s right to health.<sup>24</sup>

(D) ILO Convention 169 on Indigenous and Tribal Peoples outlines the rights of indigenous groups and contains many references to their environment. For example, consultation with indigenous groups must take place in connection with the development of their land and the passing of any general legislation that may affect the way such developments are approved or carried out.<sup>25</sup>

2.9 Non-binding instruments and guidance have also made express links, such as:

(A) The UN Declaration on the Rights of Indigenous Peoples, which includes the requirement to seek free, prior and informed consent when planning any project on an indigenous group’s land, or when contemplating the storage and disposal of hazardous materials on such land.<sup>26</sup>

(B) The Voluntary Principles on Security and Human Rights provides guidance to companies on tangible steps that they can take to minimise the risk of human rights abuses on communities located near extraction sites.<sup>27</sup>

<sup>20</sup> <http://pactenvironment.org/>

<sup>21</sup> Aarhus Convention: <https://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

<sup>22</sup> Ezcazú Agreement: [https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428\\_en.pdf](https://repositorio.cepal.org/bitstream/handle/11362/43583/1/S1800428_en.pdf) Note: At least 11 countries must sign and ratify the Ezcazú Agreement by 27 September 2020 for it to come into force.

<sup>23</sup> See Article 206 of the UN Convention on the Law of the Sea

([http://www.un.org/depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf)) and Article 14 of the Convention on Biological Diversity (<https://www.cbd.int/doc/legal/cbd-en.pdf>).

<sup>24</sup> See Articles 24(2)(a) and 24(2)(e) among others: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

<sup>25</sup> See Articles 4, 6, 7 and 8 of ILO Convention 169:

[http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169).

Further information can be found in our Fact Sheet on Free, Prior and Informed Consent.

<sup>26</sup> See Articles 29 and 32 in particular: [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>27</sup> <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/>

Further information on this can be found in our Fact Sheet on Private/Military Security Companies

- 2.10 Governing bodies of conventions and international and regional courts are interpreting substantive and procedural human rights in light of environmental hazards. For example:
- (A) The ICJ has recognised that the quality of the environment in which humans live constitutes a condition for the effective enjoyment of the rights and freedoms of international human rights law, such as the right to health and the right to life itself.<sup>28</sup>
  - (B) The European Court of Human Rights has held that environmental degradation can affect rights set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms, including rights to life,<sup>29</sup> respect for private and family life,<sup>30</sup> fair trial,<sup>31</sup> and the peaceful enjoyment of property.<sup>32</sup>
  - (C) The Inter-American Commission and/or Court of Human Rights have interpreted the following rights, set out in the American Convention on Human Rights, to be relevant in cases regarding environmental degradation: rights to life,<sup>33</sup> humane treatment,<sup>34</sup> fair trial,<sup>35</sup> freedom of expression and access to information,<sup>36</sup> property,<sup>37</sup> the participation in government and judicial protection,<sup>38</sup> and the right of freedom from discrimination (in the context of indigenous people and racial minorities).<sup>39</sup>
  - (D) The African Commission on Human and Peoples' Rights has found that the failure to conduct an environmental impact assessment violated the right to property.<sup>40</sup> The ICJ has gone further and recognised that environmental impact assessments have become an obligation of general international law.<sup>41</sup>
  - (E) Regional human rights courts have also recognised the overlap between environmental law and collective human rights, particularly those held by indigenous groups, in cases such as *Mayagna (Sumo) Awas Tigni v Nicaragua*.<sup>42</sup>

<sup>28</sup> See the International Court of Justice Case, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* [1997] ICJ Rep 7, pp 91-92: <http://www.icj-cij.org/files/case-related/92/092-19970925-JUD-01-00-EN.pdf>

<sup>29</sup> *Öneryıldız v. Turkey*, Eur. Ct. H.R. App. No. 48939/99 (2004): <http://www.globalhealthrights.org/wp-content/uploads/2013/02/ECtHR-2004-Oneryildiz-v-Turkey.pdf>

<sup>30</sup> *Taşkın and Others v. Turkey*, Eur. Ct. H.R. App. No. 46117/99, (2004): <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-1185902-1231526&filename=003-1185902-1231526.pdf>

<sup>31</sup> For example: *Zimmerman and Steiner v. Switzerland*, Eur. Ct. H.R. App. No. 8737/79 (1983): <https://www.informea.org/sites/default/files/court-decisions/COU-157036.pdf>; *Zander v. Sweden*, Eur. Ct. H.R. App. No. 14282/88 (1993): <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-62419&filename=001-62419.pdf>; *Kyrtatos v. Greece*, Eur. Ct. H.R. App. No. 41666/98 (2003): <http://hudoc.echr.coe.int/ENG?i=001-61099>

<sup>32</sup> *Öneryıldız v. Turkey*, Eur. Ct. H.R. App. No. 48939/99 (2004).

<sup>33</sup> *Kichwa Peoples of the Sarayaku Community and its Members v. Ecuador*, Inter-Am. Comm'n H.R. Report No. 62/04 (2004): [https://iachr.ils.edu/sites/default/files/iachr/Cases/kelly\\_kichwa\\_indigenous\\_people\\_of\\_sarayaku\\_v\\_ecuador.pdf](https://iachr.ils.edu/sites/default/files/iachr/Cases/kelly_kichwa_indigenous_people_of_sarayaku_v_ecuador.pdf); *Community of La Oroya, Peru*, Inter-Am. Comm'n H.R. Report No. 76/09 (2009) (Admissibility): <http://www.globalhealthrights.org/wp-content/uploads/2013/02/IAComHR-2009-Community-of-La-Oroya-v-Peru.pdf>; Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of November 15, 2017 requested by the Republic of Colombia (rights to life and personal integrity): [http://www.corteidh.or.cr/docs/opiniones/seriea\\_23\\_esp.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_23_esp.pdf)

<sup>34</sup> *Moiwana Community v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 124 (2005): <http://www.globalhealthrights.org/wp-content/uploads/2013/08/Moiwana-IACtHR-Suriname-2005.pdf>

<sup>35</sup> *Sawhoyamaya Indigenous Community v. Paraguay*, Inter-Am. Ct. H.R. (ser. C) No. 146 (2006): [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_146\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf)

<sup>36</sup> Inter-Am. Comm'n H.R., Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, doc. 10, rev. 1 (1997): <http://www.cidh.org/countryrep/ecuador-eng/Index%20-%20Ecuador.htm>

<sup>37</sup> *Saramaka People v. Suriname*, Inter-Am. Ct. H.R. (ser. C) No. 172 (2007): [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_172\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf)

<sup>38</sup> Inter-Am. Comm'n H.R., Report on the Situation of Human Rights in Ecuador, OEA/Ser.L/V/II.96, doc. 10, rev. 1 (1997): <http://www.cidh.org/countryrep/ecuador-eng/Index%20-%20Ecuador.htm>

<sup>39</sup> *Maya Indigenous Communities of the Toledo District v. Belize*, Inter-Am. Comm'n H.R., Report No. 40/04, (2004): <http://hrlibrary.umn.edu/cases/40-04.html>

*Mossville Environmental Action Now v. United States*, Inter-Am. Comm'n H.R., Report No. 43/10, (Mar. 17, 2010) (admissibility decision): <http://www.cidh.org/annualrep/2010eng/usad242-05en.doc>

<sup>40</sup> *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, Afr. Comm'n H. & Peoples' R., No. 276/2003 (Feb. 4, 2010): [http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46\\_276\\_03\\_eng.pdf](http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf)

<sup>41</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* 2010 I.C.J. (20 April 2010): <http://www.icj-cij.org/files/case-related/135/15895.pdf>

<sup>42</sup> See, for example, *Mayagna (Sumo) Awas Tingni Community v Nicaragua*, Inter-Am. Ct. (ser. C) No. 79 (Aug 31 2001): [https://www.escr-net.org/sites/default/files/seriec\\_79\\_ing\\_0.pdf](https://www.escr-net.org/sites/default/files/seriec_79_ing_0.pdf)

- (F) The UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights have recognised the link between environmental degradation and certain rights set out in the International Covenant on Civil and Political Rights and the ICESCR.<sup>43</sup>

2.11 As highlighted in a report published by the London School of Economics' Grantham Research Institute on Climate Change and the Environment in July 2020,<sup>44</sup> courts are becoming more receptive to arguments based on human rights in the context of climate change litigation.<sup>45</sup> For example:

- (A) In 2015, the Urgenda Foundation, a Dutch environmental non-profit organisation, took action against the State of the Netherlands, arguing that the government was required to do more to prevent global climate change<sup>46</sup>. In upholding the District Court's ruling in favour of Urgenda, the Court of Appeal recognised Urgenda's claim under articles 2 and 8 of the European Convention on Human Rights ("ECHR") which respectively protect the right to life and the right to a private life, family life, home and correspondence. The Supreme Court upheld this approach finding that the ECHR gave the Netherlands a positive obligation to take measures to prevent climate change including taking steps to reduce its greenhouse gas emissions.<sup>47</sup> This obligation applied to all activities, public and non-public, that could endanger the rights thus protected, and certainly applied when industrial activities are involved that are dangerous by their nature. When a government knows that there is a real and imminent danger, the State must take measures to prevent the damage as much as possible.

- (B) In March 2020, a group of young people in South Korea instituted proceedings against South Korea alleging that South Korea's emission reduction target is insufficient to keep the rise in global average temperature to below 2°C, and consequently violates, *inter alia*, their constitutional rights to life, to human dignity, and to a healthy environment.<sup>48</sup>

2.12 An analysis of the relevant laws (including case law) indicates that the obligations of a state in the area of human rights and the environment can be (broadly) summarised as the duty to prevent an environmental risk and to regulate potentially dangerous industrial activities (to include licensing and monitoring).<sup>49</sup>

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See also Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya, Afr. Comm'n H. & Peoples' R., No. 276/2003 (Feb. 4, 2010): [http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46\\_276\\_03\\_eng.pdf](http://www.achpr.org/files/sessions/46th/comunications/276.03/achpr46_276_03_eng.pdf)

<sup>43</sup> See, for example,

- Human Rights Committee, General Comment 23, paragraph 7, U.N. Doc. CCPR/C/21/Rev.1/Add.5 (April 26, 1994) in respect of the rights of minorities to their own culture (Article 27 ICCPR): <http://indianlaw.org/sites/default/files/resources/UN%20OHCHR%20Comments%20on%20Article%2027.pdf>
- Committee on Economic, Social and Cultural Rights, 43rd Sess., General Comment 21, ¶ 16(a), U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009) in respect of the right to culture (Article 15 ICESCR): <http://www2.ohchr.org/english/bodies/cescr/docs/gc/E-C-12-GC-21.doc>

<sup>44</sup> [https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation\\_2020-snapshot.pdf](https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf)

<sup>45</sup> <https://www.lexology.com/library/detail.aspx?g=9b6564bd-6ca2-437c-bc64-03293ded2928&l=92ZDX08>

<sup>46</sup> [https://climate-laws.org/cclow/geographies/netherlands/litigation\\_cases/urgenda-foundation-v-state-of-the-netherlands](https://climate-laws.org/cclow/geographies/netherlands/litigation_cases/urgenda-foundation-v-state-of-the-netherlands)

<sup>47</sup> State of the Netherlands v Urgenda, Supreme Court of the Netherlands, 20 December 2019, ECLI:NL:HR:2019:2006, English translation ECLI:NL:HR:2019:2007 <https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2006>

<sup>48</sup> [https://climate-laws.org/cclow/geographies/south-korea/litigation\\_cases/kim-yujin-et-al-v-south-korea](https://climate-laws.org/cclow/geographies/south-korea/litigation_cases/kim-yujin-et-al-v-south-korea)

<sup>49</sup> See pages 15-16 of the UNEP Compendium on Human Rights and the Environment: [http://wedocs.unep.org/bitstream/handle/20.500.11822/9943/UNEP\\_Compndium\\_HRE.pdf?sequence=1&isAllowed=y](http://wedocs.unep.org/bitstream/handle/20.500.11822/9943/UNEP_Compndium_HRE.pdf?sequence=1&isAllowed=y) Note that the Compendium gives a detailed overview of the relevant legal materials to 2014.

### 3. Obligations of companies

- 3.1 It is generally understood that international human rights law and international environmental law is only binding on states, not on companies, and that states should translate their international obligations into domestic law and provide for their enforcement.<sup>50</sup>
- 3.2 There are some multilateral treaties that directly impose obligations on companies. For example, the 1969 Convention on Civil Liability for Oil Pollution Damage (as amended) provides that the owner of a ship (which may be a company) shall be liable for any pollution damage caused by it.<sup>51</sup> However, such direct obligations are rare.
- 3.3 Although not generally bound by environmental and human rights treaties, companies are under increasing pressure to consider their human rights obligations. The United Nations Guiding Principles on Business and Human Rights ("UNGP") is a set of international, non-binding standards for preventing and addressing the risk of adverse impacts on human rights linked to business activity.<sup>52</sup> Further information on the obligations of companies under the UNGPs can be found in other Fact Sheets in this series.<sup>53</sup>
- 3.4 The UNGPs refer to voluntary guidelines that companies should comply with and consult to understand what steps they should take to operate consistently with good practice and internationally-recognised standards. See, for example, the OECD Guidelines for Multinational Enterprises (particularly Chapter VI. Environment).<sup>54</sup> Some companies (and states) have signed up to specific guidelines within their industry, such as the Extractive Industries Transparency Initiative ("EITI").<sup>55</sup> Often, claimants wish to take legal action against a parent company in its "home" State in respect of a breach of domestic law by of one of its subsidiaries in another jurisdiction (the "host" State), particularly where the laws of the "host" State are not as developed as one might like. This is a complex, and developing, area of law. The Fact Sheet on Mass Tort Claims contains further information on this subject.

### 4. Practical steps for HRDs

- 4.1 As indicated above, the legal landscape regarding international human rights and international environmental law is complex and there remains no express global right to a healthy environment.
- 4.2 One needs to consider the relevant actors, the relevant legal instruments and the interpretation of these instruments to establish the degree of overlap between environmental obligations and international human rights law in a particular scenario.
- 4.3 There are several steps that HRDs could consider taking when faced with a situation where a state or a company appears to be breaching human rights linked to environmental degradation or hazards.

<sup>50</sup> That is not to say that efforts have not been made to establish liability: see the ongoing German case of *Luciano Lliuya v RWE* (a claim by a Peruvian farmer against Germany's largest electricity provider alleging that it knowingly contributed to climate change by emitting substantial volumes of greenhouse gases).

<sup>51</sup> Art. III, International Convention on Civil Liability for Oil Pollution Damage (1969): <https://treaties.un.org/doc/Publication/UNTS/Volume%201225/volume-1225-I-14097-English.pdf>

<sup>52</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>53</sup> Human Rights Policy Statements, Human Rights Due Diligence, Grievance Mechanisms and Remediation, Leverage, Operating in Conflict-Affected Areas and Free, Prior and Informed Consent: [https://www.international-alert.org/sites/default/files/Economy\\_HumanRightsDueDiligenceGuidance\\_EN\\_2018.pdf](https://www.international-alert.org/sites/default/files/Economy_HumanRightsDueDiligenceGuidance_EN_2018.pdf)

<sup>54</sup> <http://www.oecd.org/daf/inv/mne/48004323.pdf>

<sup>55</sup> <https://eiti.org/standard/overview> <https://eiti.org/standard/overview> (with French/Spanish translation)

#### 4.4 Breach by a state<sup>56</sup>

- (A) Check whether the state is a party to a relevant convention and whether that convention has entered into force. Consider whether there is any relevant “soft law” (non-legally binding instruments that have persuasive effect) that addresses the specific issue.
- (B) Remind the relevant government body of its obligations under international law.
- (C) Seek local advice as to whether there is a domestic dispute resolution mechanism that can be used to address a breach.
- (D) Consider alerting the governing body of the relevant treaty to the breach (which may, in turn, refer the case to a relevant international or regional court).
- (E) When drafting a complaint, bear in mind that many governing bodies and international/regional courts have: (i) made an express link between human rights and environmental hazards; and (ii) considered findings of other international bodies when making decisions on such issues.

#### 4.5 Breach by a company

- (A) Check whether the relevant state has issued laws or regulations regarding the relevant issue. If it appears that a company is violating local laws, seek local legal advice.
- (B) Investigate whether any relevant guidance or principles are applicable to, or have been adopted by, the company.
- (C) Check to see whether the company has complied with the UNGPs and, in particular, whether it has: (i) published any human rights policy statement; (ii) carried out any relevant human rights due diligence; and/or (iii) put in place any internal grievance mechanism.<sup>57</sup>
- (D) Check whether the company is a member of any applicable forum or organisation and, if so, follow the relevant grievance procedure.
- (E) Engage the relevant government or embassy to contact the business enterprise on the HRD’s behalf if necessary, or request that the embassy facilitate a safe forum for HRDs to meet with the company regarding the relevant issue.
- (F) Consider whether there might be scope to seek legal action against a parent company located in a different jurisdiction.<sup>58</sup>

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<sup>56</sup> See the following article on climate litigation, which walks through developing a case, human rights basis, and other relevant considerations. KlimaSeniorinnen: lessons from the Swiss senior women's case for future climate litigation <https://www.elgaronline.com/view/journals/jhre/9-2/jhre.2018.02.04.xml>

<sup>57</sup> As to which, see Fact Sheets on Human Rights Policy Statements, Human Rights Due Diligence and Grievance Mechanisms and Remediation.

<sup>58</sup> As to which, see Fact Sheet on Mass Tort Claims

- 4.6 When taking these practical steps, HRDs may also decide to copy in, as appropriate, the relevant government or embassy, UN Special Procedures,<sup>59</sup> Inter-American Commission on Human Rights Thematic Rapporteurships and Units,<sup>60</sup> African Commission on Human and Peoples' Rights Special Mechanisms,<sup>61</sup> the UN Environment Programme,<sup>62</sup> or the Business and Human Rights Resource Centre,<sup>63</sup> to help raise awareness of any concerns raised or request ongoing monitoring and support.

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<sup>59</sup> <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewAllCountryMandates.aspx?Type=TM>

<sup>60</sup> The Inter-American Commission on Human Rights Thematic Rapporteurships website can be found at <http://www.oas.org/en/iachr/mandate/rapporteurships.asp>

<sup>61</sup> The African Commission on Human and Peoples' Rights website can be found at <http://www.achpr.org/mechanisms/>

<sup>62</sup> The UN Environment Programme seeks to promote greater protection for individuals and groups who are defending their environmental rights. Their policy entitled "Promoting Greater Protection for Environmental Defenders" indicates that an email account has been set up to enable local communities whose environmental rights are or are in danger of being violated to contact the UN Environment directly. [Unenvironment-defenders@un.org](mailto:Unenvironment-defenders@un.org)  
[https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders\\_08.02.18Clean.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/22769/UN%20Environment%20Policy%20on%20Environmental%20Defenders_08.02.18Clean.pdf?sequence=1&isAllowed=y)

<sup>63</sup> The Business and Human Rights resource centre can be found online at <https://www.business-humanrights.org/>