

**Human Rights Council**

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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.



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. . . .

II. Mapping human rights obligations relating to the environment

4. 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.

5. 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 website¹ and the Independent Expert’s personal website.² . . .

¹ <http://www.ohchr.org/EN/Issues/Environment/IEEnvironment/Pages/IEenvironmentIndex.aspx>

² <http://ieenvironment.org>

III. Human rights threatened by environmental harm

6. 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.

7. 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.³ In addition, African tribunals have held that large-scale oil development infringed the right to a satisfactory environment as protected by the African Charter.⁴

8. 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.⁵ 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 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.⁶

9. 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.⁷

10. 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,⁸ 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

³ Individual report on the General Assembly and the Human Rights Council, including the universal periodic review process, sect. III.A.

⁴ 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).

⁵ International Covenant on Civil and Political Rights (ICCPR) report, sect. II.

⁶ European report, pp. 4–5; and Council of Europe, *Manual*, pp. 35–37.

⁷ European Committee of Social Rights, complaint No. 72/2011, *International Federation for Human Rights (FIDH) v. Greece* (2013).

⁸ ICESCR report, sect. II.

right to non-discrimination in this context has described how that right is threatened by climate change (A/64/255).

11. Indeed, special rapporteurs have explained how climate change threatens a wide range of rights, including the rights to health, water and food.⁹ 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).

12. 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.¹⁰ 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).

13. The rights of children, too, may be particularly affected by environmental degradation. The Convention on the Rights of the Child states that environmental pollution 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.¹¹ 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).

14. 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.¹²

IV. Human rights obligations relating to the environment

15. 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

⁹ 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>.

¹⁰ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) report, sect. II.

¹¹ Convention on the Rights of the Child (CRC) report, sect. II.

¹² 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.

and growing number of legal statements that together create a body of human rights norms relating to the environment.

16. 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.

17. 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

18. 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.

1. Duties to assess environmental impacts and make information public

19. 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).

20. 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.

21. 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.¹³ Similarly, the Special Rapporteur on the situation of human rights defenders has stated that information relating to large-scale development projects should be publicly

¹³ ICESCR report, sect. III.A.1.

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).¹⁴

22. Regional bodies have also concluded that States must provide environmental information and provide for assessments of environmental impacts on human rights. . . .

23. 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 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.”¹⁵ Many environmental treaties . . . require environmental information to be provided to the public. The Aarhus Convention includes particularly detailed obligations.¹⁶ . . .

24. 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”.¹⁷

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

25. 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.

26. . . . Regional human rights tribunals agree that individuals should have meaningful opportunities to participate in decisions concerning their environment.¹⁸

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

¹⁴ For other statements by special rapporteurs on access to information and assessment of environmental impacts, see Report on special procedures, sect. III.A.1.

¹⁵ 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.

¹⁶ For other examples, see the Multilateral environment agreements (MEA) report, sect. III.A.1.

¹⁷ 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).

¹⁸ Regional agreements report, sect. II.B.1; Inter-American report, sect. III.A.2.

fundamental for sustainable development” (A/CONF.216/16, para. 13). . . . The Aarhus Convention has particularly detailed requirements (arts. 6–8).¹⁹

28. 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).

29. 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.²⁰ There can be no doubt that these obligations apply to those exercising their rights in connection with environmental concerns. . . .

3. Duty to provide access to legal remedies

30. 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. . . . The Special Rapporteur on the situation of human rights defenders has stated that States must implement 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.²¹

31. 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.”²² 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.²³ 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.²⁴

32. 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.” . . .

¹⁹ MEA report, sect. III.A.2.

²⁰ 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.

²¹ Report on special procedures, sect. III.A.3.

²² *Taşkin v. Turkey*, para. 119.

²³ Inter-American report, sect. III.A.3.

²⁴ *SERAP v. Nigeria*, para. 97.

B. Substantive obligations

33. 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.

34. 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.

35. 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

36. 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.

37. 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.²⁵ 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.²⁶ . . .

²⁵ Council of Europe, *Manual*, pp. 18, 36–40. See, for example, *Öneriyıldız 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.

²⁶ See Inter-American report, sect. III.B.

38. 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). . . . 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.²⁷

39. 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.²⁸ 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.²⁹ 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 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.”³⁰ 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.³¹

40. 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.³² 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.³³

41. 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

²⁷ Individual report on the General Assembly and the Human Rights Council, including the universal periodic review process, sect. IV.B.1.

²⁸ *Ogoniland* case, para. 54.

²⁹ Council of Europe, *Manual*, p. 20. See, for example, *Hatton and others v. United Kingdom*, No. 360022/97, 8 July 2003, para. 98.

³⁰ *Ogoniland* case, para. 54.

³¹ See, for example, *López Ostra v. Spain*, No. 16798/90, 9 December 1994; *Tatar v. Romania*, No. 67021/01, 27 January 2009.

³² *International Federation for Human Rights (FIDH) v. Greece*, No. 72/2011, 23 January 2013, paras. 42–44, 148.

³³ 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).

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).³⁴

42. 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.”³⁵ 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.”³⁶ 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).

43. Again, special rapporteurs have taken equivalent positions with respect to rights within the scope of their mandates.³⁷ 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

44. 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).

45. 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

³⁴ See also the Committee’s general comment No. 15, para. 19.

³⁵ *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.

³⁶ *SERAP v. Nigeria*, para. 105.

³⁷ Report on special procedures, sect. III.B (citing statements relating to rights to health, water, food and housing).

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.

46. 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. . . .

47. 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", the State had "fallen short of the minimum conduct expected of governments."³⁸ 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."³⁹ 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."⁴⁰

3. Obligations relating to transboundary environmental harm

48. 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.

49. 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. . . .

50. 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. . . .

51. 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

³⁸ *Ogoniland* case, paras. 57, 58.

³⁹ 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.

⁴⁰ *Lopez Ostra v. Spain*, No. 16798/90, 9 December 1994, para. 51; *Hatton v. United Kingdom*, No. 36022/97, 8 July 2003, para. 98.

urged States to do more to prevent corporations from abusing human rights abroad (A/HRC/14/27).

52. 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.”

53. 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.⁴¹

C. Obligations relating to members of groups in vulnerable situations

54. 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.⁴² 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.⁴³

1. Women

55. 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.⁴⁴ 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).

56. 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

⁴¹ See MEA report, sect. IV.A; and Aarhus report.

⁴² 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).

⁴³ 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.

⁴⁴ CEDAW report, sect. III.A.1.

environmental contamination of women, and to provide sex-disaggregated data on the effects.⁴⁵ 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)).

57. 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).

2. Children

58. 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).

59. 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).

60. 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

⁴⁵ CEDAW report, sect. III.A.2 and III.B.

reports.⁴⁶ 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

61. 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).

62. 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 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.⁴⁷ This section therefore only outlines certain main points.⁴⁸

63. 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

64. 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.

65. The human rights obligations relating to the environment also include substantive obligations to adopt legal and institutional frameworks that protect

⁴⁶ 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.

⁴⁷ See Report on indigenous peoples.

⁴⁸ 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.

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.

66. 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.

67. 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.

68. 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.

69. 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.
