



*Republic of the Philippines*  
**Department of Environment and Natural Resources**  
Visayas Avenue, Diliman, Quezon City  
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**MEMORANDUM**

TO : The Directors  
Climate Change Service  
Legal Affairs Service  
Biodiversity Management Bureau  
Environmental Management Bureau  
Forest Management Bureau  
Ecosystems Research and Development Bureau

FROM : The Undersecretary for Policy, Planning and International Affairs

SUBJECT : **SUB-ZERO DRAFT OF THE REGIONAL FRAMEWORK FOR ENVIRONMENTAL RIGHTS IN ASEAN**

DATE : **FEB 06 2023**

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This refers to the letter from the Office of the Philippine Representative to the ASEAN Intergovernmental Commission on Human Rights (AICHR), DFA dated 25 January 2023.

The AICHR is the overarching regional body of ASEAN with the mandate of protecting and promoting human rights in the Region. In 2022, the AICHR created the ASEAN Environmental Rights (AER) Working Group, chaired by Thailand and supported by the Philippines. The Philippines' objective is to push human rights towards more progressive steps within ASEAN.

A Stakeholders meeting was convened by DFA, together with other relevant agencies on 24 January 2023 via Videoconference to gather inputs on the sub-zero draft of the Regional Framework on Environmental Rights in ASEAN. There is no document for circulation yet, but the Philippine Representative to the AICHR, H.E. Aileen Mendiola Rau, aims to submit a preliminary PH position prior to the circulation of the Zero-Draft sometime in March 2023 in order to influence its contents.

Agencies were requested for inputs regarding structure, principles to be included, and substantive and procedural elements (see attached). She also requested inputs on how Transboundary Environmental Impact Assessment and Transboundary Haze could be incorporated. A second meeting shall also be convened on 24 February 2023 (Friday) to discuss inputs.

In line with this, may we kindly request you to submit inputs/talking points on this topic on or before **13 February 2023**. In addition, may we request you to send a representative to the

2<sup>nd</sup> Meeting on the Sub-Zero Draft for Environmental Rights in ASEAN on **24 February 2023**  
(Friday).

For your information and appropriate action.

  
ATTY. JONAS R. LEONES, *CESO I*



DEPARTMENT OF FOREIGN AFFAIRS  
KAGAWARAN NG UGNAYANG PANLABAS

OFFICE OF THE PHILIPPINE REPRESENTATIVE TO THE ASEAN  
INTERGOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR)

Our Ref. No. : DV4-035-ASEAN-2023  
Subject : 2nd Stakeholders Meeting on the Philippines' priorities  
for the ASEAN Framework on Environmental Rights  
Date : 25 January 2023

Dear Colleagues,

AICHR Philippines extends its gratitude for your active participation in the Stakeholders Meeting held last 24 January 2023 to discuss the Philippines' inputs to the sub-zero draft of the Regional Framework on Environmental Rights in ASEAN.

As discussed during the meeting, kindly take note of the following deadlines for inputs and the schedule of the 2nd Stakeholders' Meeting:

- **17 February 2023:** Submission of inputs to be consolidated by AICHR Team
- **23 February 2023:** Circulation of the consolidated inputs from various agencies
- **24 February 2023:** 2nd Stakeholders Meeting to discuss the consolidated inputs and other related matters

Attached herewith is the proposed format which you can use for the submission of inputs.

The next Stakeholders Meeting will be held on 24 February 2023 (Friday) at 1000H via videoconference. To confirm your attendance, you may contact AICHR Philippines through [aicrphilippines@dfa.gov.ph](mailto:aicrphilippines@dfa.gov.ph) or 8834-4431. Should you have any questions, please let us know.

Thank you very much and we look forward to your continuous participation.

Very truly yours,  
For the Secretary of Foreign Affairs:

  
**AILEEN S. MENDIOLA-RAU**  
Philippine Representative to the AICHR

DV4-035-ASEAN-2023

**DISTRIBUTION LIST ATTACHED**

**MS. AMIHAN ABUEVA**

Regional Executive Director  
Child Rights Coalition (CRC) Asia

**MR. MARCIAL C. AMARO, JR., CESO II**

Assistant Secretary for Policy, Planning, and Foreign Assisted and Special  
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**DR. THERESA MUNDITA S. LIM**

Executive Director  
ASEAN Centre for Biodiversity (ACB)

**MR. RICHARD P. PALPAL-LATOC**

Commissioner  
Commission on Human Rights (CHR)

# **Philippines' Priorities on the Declaration: FORMAT**

## **A. STRUCTURE**

- Framework
- Declaration
- Clustering
- Convention

## **B. PRINCIPLES**

- Principles to be included
- KNOX 16 POINT PRINCIPLES

## **C. ELEMENTS**

- Substantive elements to be included
- Procedural elements to be included



UNITED NATIONS  
HUMAN RIGHTS  
SPECIAL PROCEDURES

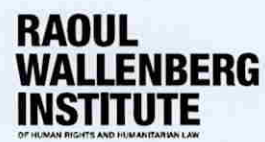
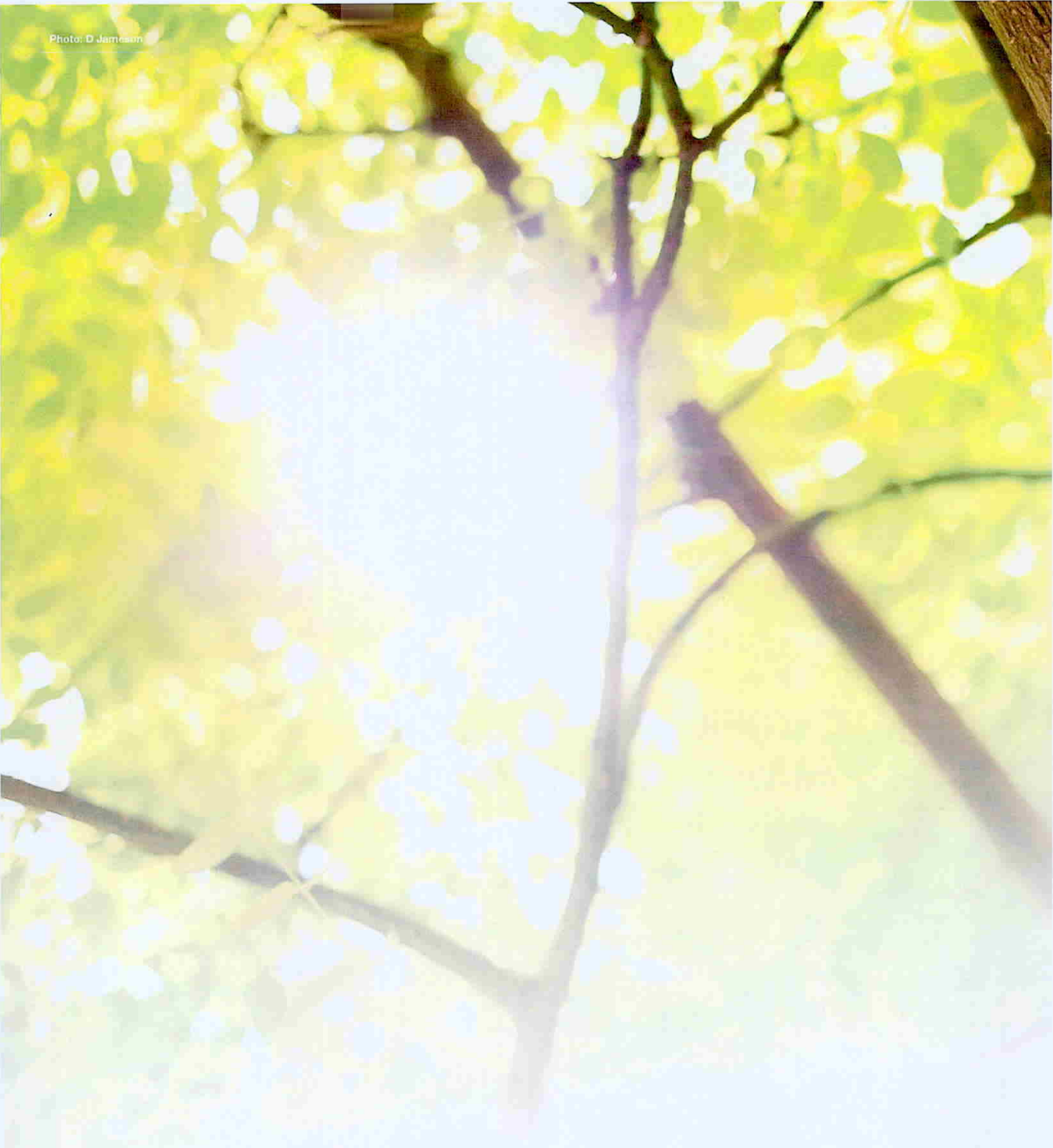
SPECIAL RAPPORTEURS, INDEPENDENT EXPERTS & WORKING GROUPS

# FRAMEWORK PRINCIPLES ON HUMAN RIGHTS AND THE ENVIRONMENT

2018

The main human rights obligations relating to the enjoyment  
of a safe, clean, healthy and sustainable environment.

Photo: D Jameson





## **JOHN H. KNOX**

UN Special Rapporteur on  
Human Rights and the Environment

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### **Introduction**

These Framework Principles on Human Rights and the Environment are the culmination of five years of work in my role as the first United Nations Special Rapporteur on human rights and the environment. They reflect the input of many dedicated people and organizations around the world.

I presented the Framework Principles to the UN Human Rights Council in March 2018, in my final report (UN Doc. A/HRC/37/59). The Principles set out the basic obligations of States under human rights law as they relate to the enjoyment of a safe, clean, healthy and sustainable environment. Each Principle has a commentary that elaborates on it and clarifies its meaning.

Many of the obligations described by the Framework Principles and commentary are based directly on treaties or binding decisions from human rights tribunals, while others draw on statements of human rights bodies that have the authority to interpret human rights law but not necessarily to issue binding decisions. While not all States have formally accepted all of these norms, the coherence of the interpretations of human rights bodies is strong evidence of the converging trends towards greater uniformity and certainty in the application of human rights law 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 Framework Principles should be accepted as a reflection of actual or emerging international human rights law.

I chose the name “Framework Principles” because the Principles 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 it will continue to develop and evolve for many years to come.

I encourage States, international organizations, business enterprises, civil society organizations, indigenous peoples and all others committed to safeguarding human rights and the environment to disseminate and publicize the Framework Principles, and to take them into account in their own activities.

### **JOHN H. KNOX**

UN Special Rapporteur on Human Rights and the Environment

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Photo by: UN Women/Joe Saade

# 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.

**1** States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.

**2** States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.

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, 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.

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1. 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.

2. See, for example, Human Rights Committee, general comment No. 6 (1982) on the right to life, para. 5.

3. 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.

# 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.

- 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 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).

4. 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.

5. See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 10.

6. *Ibid.*, para. 13.

7. *Ibid.*, para. 8.

# 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.

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>8</sup> See Model Law for the Recognition and Protection of Human Rights Defenders, at: [http://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)



Photo by: Min An

# 5

## States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.

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.

<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.

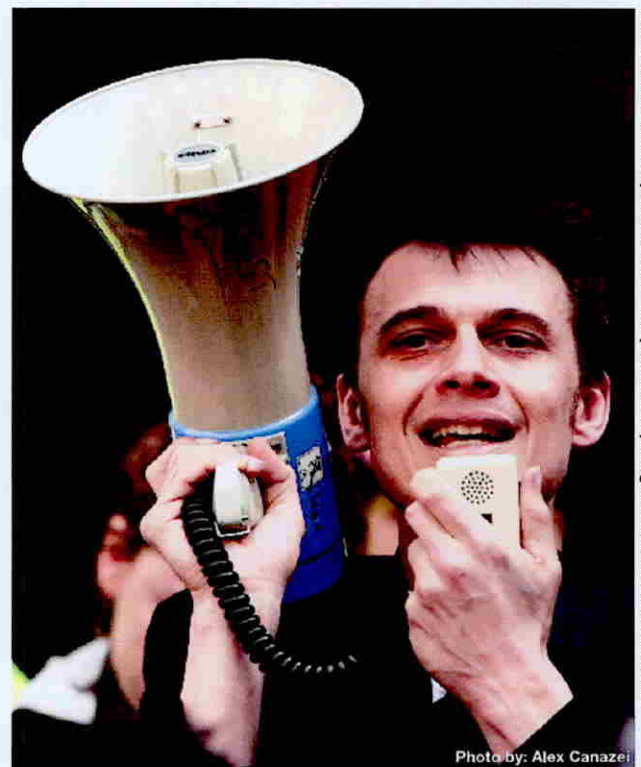


Photo by: Alex Canazei



Photo by: Alex Canazei

Pictures from the demonstration at the G20 meeting in London, 2009

Link to the material: <https://www.flickr.com/photos/alexportage/albums/72157816304774620>

# 6

States should provide for education and public awareness on environmental matters.



Photo by: UN Photo/Jean-Marc Ferré

Representative of Lycee Demba Diop Mbour of Senegal during FerMUN 2018, 10 January 2018.

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. 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.

<sup>11</sup> See Convention on the Rights of the Child, art. 29.

**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.**

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.

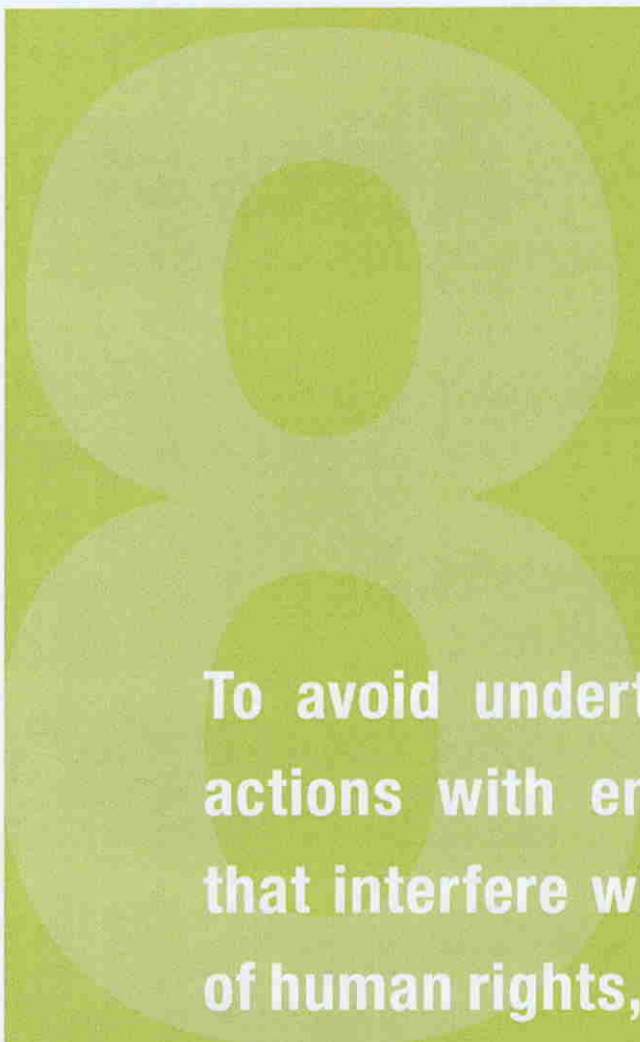
19 Second, States should provide affordable, effective and timely access to environmental information held by public authorities, upon the request of any person or association, without the need to show a legal or other interest. Grounds for refusal of a request should be set out clearly and construed 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.



World Environment Day, Place des Nations, 2010.

<sup>12</sup> See Universal Declaration of Human Rights, art. 19; International Covenant on Civil and Political Rights, art. 19.





**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.**

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# 8

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 environmental impacts, including trans-boundary 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).

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<sup>13</sup> United Nations Environment Programme, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach* (2004), p. 42.

# 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.

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 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.

<sup>14</sup> See Universal Declaration of Human Rights, art. 21; International Covenant on Civil and Political Rights, art. 25.



16th Session of the Human Rights Council, 2011.

# 10

## States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.

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).





States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.

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;
- 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>

16 See International Covenant on Economic, Social and Cultural Rights, art. 2 (1).

17 See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations.

18 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.

19 See Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 9.

20 See Rio Declaration on Environment and Development, principle 15.

21 See Convention on the Rights of the Child, art. 3 (1).

22 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).

# 12

States should ensure the effective enforcement of their environmental standards against public and private actors.



John Knox during a visit to the National High Court of Brazil (2017) where he delivered a key note address on environmental constitutionalism. He is pictured here with judges from the Latin American and Caribbean region.

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.

# 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.**

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 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.

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<sup>23</sup> See Charter of the United Nations, arts. 55–56; International Covenant on Economic, Social and Cultural Rights, art. 2 (1).



# 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.

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 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).



Photo by: Ryan Johnson

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>

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.

24 See Human Rights Council resolution 34/20.

25 United Nations Environment Programme, *Global Environment Outlook 3* (2002), p. 302.

26 Many persons are vulnerable and subject to discrimination along more than one dimension, such as children living in poverty or indigenous women.

27 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, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities.

28 See Convention on the Rights of the Child, art. 3 (1).

29 See, for example, Minamata Convention on Mercury, art. 16 (1) (a), annex C.

# 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.

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.

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).



Scene from the side event, "Peace Building and Well-Being Processes to Contribute to the Eradication of Violence Against Indigenous Women," held during the UN Permanent Forum on Indigenous Issues at UN Headquarters on 28 April 2017.

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 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>

30 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.

31 See United Nations Declaration on the Rights of Indigenous Peoples, art. 26 (3).

32 See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 18.

33 *Ibid.*, arts. 6, 15 and 17.

34 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).

35 See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 16; United Nations Declaration on the Rights of Indigenous Peoples, art. 10.

36 See Convention on Biological Diversity, arts. 8 (j) and 10 (c).

37 See United Nations Declaration on the Rights of Indigenous Peoples, art. 29 (1).

38 See ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 15 (1).

39 *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).

40 See United Nations Declaration on the Rights of Indigenous Peoples, art. 32 (3).

41 *Ibid.*, art. 28.

# 16

States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development.

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

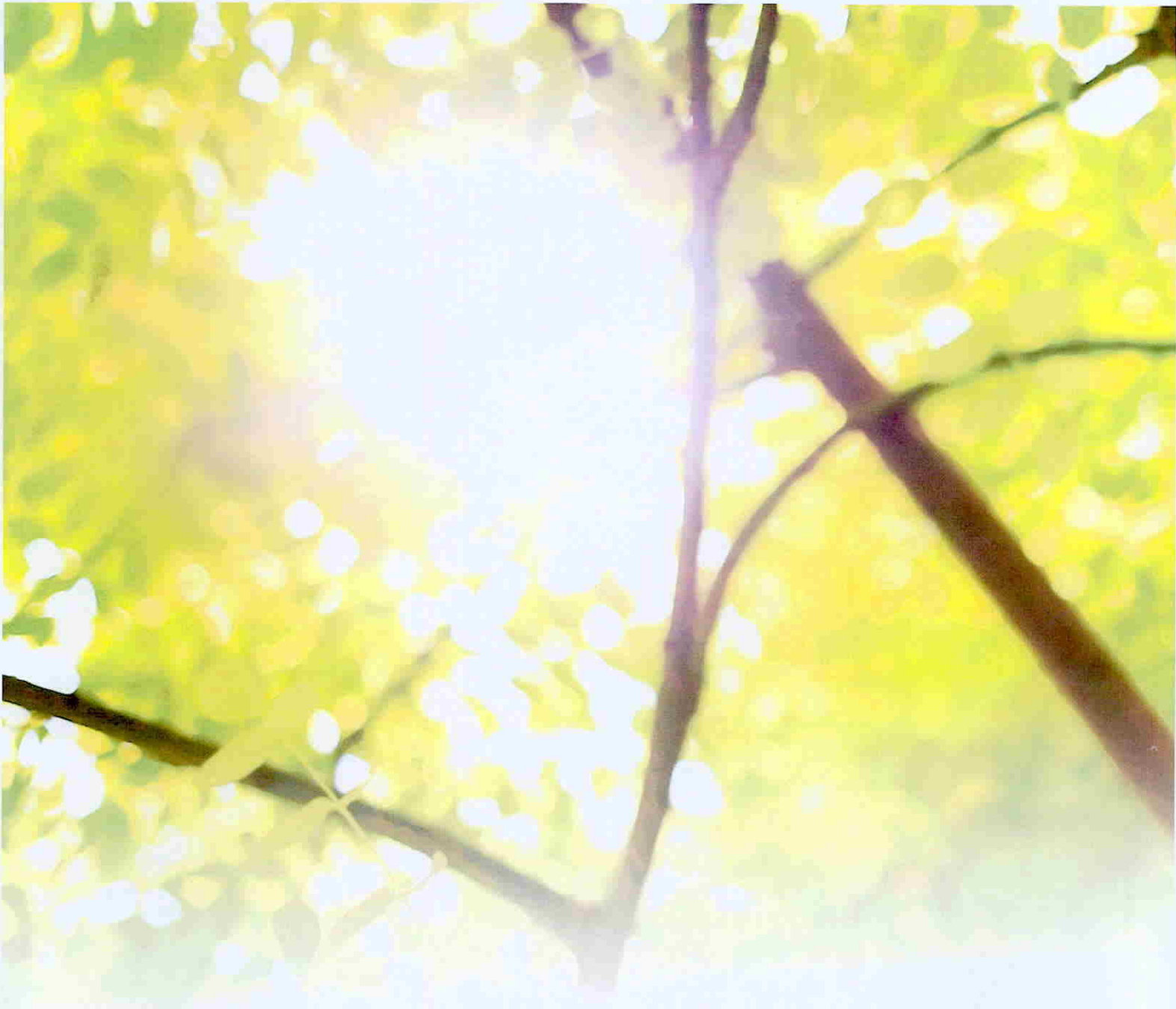
to inform and strengthen policymaking. Ensuring that those most affected can obtain information, freely express their views and participate in the decision-making process, for example, makes policies more legitimate, coherent, robust and sustainable. Most important, a human rights perspective helps to 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.

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<sup>42</sup> See Paris Agreement, eleventh preambular para.



Photo by: Adam Baker



**A list of sources for the Framework Principles and commentary is available at the website of the Office of the High Commissioner for Human Rights.**

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