

NOTICE OF FILING

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Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59
Rule 29.02(1)

Affidavit

No. VID1400 of 2025

Federal Court of Australia
District Registry: Victoria
Division: General

AUSTRALIAN CONSERVATION FOUNDATION INC

Applicant

MINISTER FOR THE ENVIRONMENT AND WATER AND ANOTHER

Respondents

Affidavit of: **David Burke**
Address: Level 15, 477 Collins Street, Melbourne VIC 3000
Occupation: Lawyer
Date: 13 November 2025

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4	Annexure "DB-3", being copy of report 'Overview of the implementation of the human right to a clean, healthy and sustainable environment', A/79/270, prepared by Ms Puentes Riaño.	12	21

Filed on behalf of (name & role of party) Astrid Puentes Riaño, *amicus curiae*
 Prepared by (name of person/lawyer) David Burke
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[Version 3 form approved 02/05/2019]

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5	Annexure "DB-4", being copy of report 'The ocean and human rights', A/HRC/58/59, prepared by Ms Puentes Riaño.	12	49
6	Annexure "DB-5", being copy of report 'Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment', A/80/187, prepared by Ms Puentes Riaño.	12	72

I David Burke say on oath:

1. I am a partner at Lander & Rogers, lawyers for Astrid Puentes Riaño, in her capacity as United Nations Special Rapporteur on the human right to a clean, healthy and sustainable environment (**Special Rapporteur on the right to a healthy environment**). I am authorised to make this affidavit on Ms Puentes Riaño's behalf.
2. I make this affidavit based on my own knowledge and belief in support of Ms Puentes Riaño's interlocutory application dated 13 November 2025.

Ms Puentes Riaño's official capacity and her relevant experience

Disclaimer

3. As a Special Rapporteur, Ms Puentes Riaño is part of the system of Special Procedures that is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social. As identified in Human Rights Council resolution A/HRC/DEC/43/117, Special Rapporteurs serve as independent human rights experts selected for their "(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity". Pursuant to the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, A/HRC/RES/5/2, Ms Puentes Riaño has undertaken to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith and not receive financial remuneration.
4. In the performance of her mandate, Ms Puentes Riaño has the legal status of an expert on mission for the United Nations, within the meaning of Articles VI and VII of the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946, to which Australia is a party since 2 March 1949. In accordance with Article VI, Section 22, as expert on mission for the United Nations, Ms Puentes Riaño enjoys such privileges and immunities as are necessary for the independent exercise of her functions, including in respect of words spoken or written




and acts done by her in the course of the performance of her mission, immunity from legal process of every kind.

5. This application is submitted voluntarily without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on mission, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.
6. Ms Puentes Riaño clarifies that authorisation for the position and views expressed by her in the present application or, should leave be granted, in the eventual submission, in full accordance with the independence afforded to her mandate, was neither sought nor given by the United Nations, the United Nations Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, or any of the officials associated with those bodies.
7. Based on my review of previous applications by Ms Puentes Riaño and her predecessors to be heard in court proceedings, I understand that it is the practice of the United Nations and its constituent bodies not to require, and the practice of Special Rapporteurs not to seek, authorisation for the position or views of a Special Rapporteur, whether in court proceedings or otherwise.

Mandate of Special Rapporteur on the right to a healthy environment

8. The United Nations **Human Rights Council** established the mandate for the Independent Expert on human rights and the environment in 2012 by resolution 19/10. Mr John Knox was appointed the first Independent Expert on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment for a three year term. In March 2015, by resolution 28/11, the Human Rights Council extended Mr Knox's mandate for another three years in the new capacity as a Special Rapporteur.
9. In March 2018, by resolution 37/8 the Human Rights Council extended the mandate and appointed Mr David R Boyd as the Special Rapporteur for three years. In March 2021, by resolution 46/7, the Human Rights Council extended Mr Boyd's mandate for another three years.
10. On 3 April 2024, by resolution A/HRC/RES/55/2, the Human Rights Council extended the mandate, and the title changed to Special Rapporteur on the human right to a clean, healthy and sustainable environment. A copy of that resolution is annexed to this affidavit and marked **DB-1**. (Copies of the earlier resolutions can be provided to the Court and the parties if requested. I have not annexed them to this affidavit to avoid the filing of unnecessarily voluminous material.) As is identified in that resolution, the mandate of the Special Rapporteur on the right to a healthy environment includes to:

- (a) Continue to study the human rights obligations relating to the enjoyment of the human right to a clean, healthy and sustainable environment in consultation with various entities;
 - (b) Continue to identify, promote and exchange views on good practices relating to human rights obligations and commitments that inform, support and strengthen environmental policy making, especially in the area of environmental protection;
 - (c) Work on identifying challenges and obstacles to the full realization of human rights obligations relating to the enjoyment of the human right to a clean, healthy and sustainable environment and protection gaps thereto, including in the context of sustainable development;
 - (d) Develop a dialogue, liaise and collaborate with all relevant stakeholders with a view to enhancing public awareness of the human rights obligations relating to the enjoyment of the human right to a clean, healthy and sustainable environment;
 - (e) Conduct country visits and to respond promptly to invitations from States.
11. On 5 April 2024, after a process of consultation, the Human Rights Council appointed Ms Puentes Riaño as the Special Rapporteur on the right to a healthy environment. A copy of the letter of recommendation from the President of the Human Rights Council is annexed to this affidavit and marked **DB-2**.
- Ms Puentes Riaño's work to date as Special Rapporteur on the right to a healthy environment
12. In her official capacity, Ms Puentes Riaño has prepared the following reports which have been transmitted to the General Assembly of the United Nations (with identifying United Nations document number):
- (a) A/79/270: Overview of the implementation of the human right to a clean, healthy and sustainable environment, a copy of which is annexed to this affidavit and marked **DB-3**;
 - (b) A/HRC/58/59: The ocean and human rights, a copy of which is annexed to this affidavit and marked **DB-4**;
 - (c) A/80/187: Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment. In Annexure I of this report, Ms Puentes Riaño sets out guidelines that implement States' and businesses' obligation stemming from international human rights law, public international law, and international environmental law to integrate climate change into environmental impact assessments of projects or activities. A copy of that report and its annexes is annexed to this affidavit and marked **DB-5**.




13. Report A/79/270 and an article prepared by Ms Puentes Riaño in her official capacity on the right to a healthy environment in customary international law have recently been cited by the International Court of Justice in *Advisory Opinion AO-32/25: Climate Emergency and Human Rights* (May 29, 2025), in the separate opinions of Judge Charlesworth, note 7, and Judge Aurescu, at note 69.
14. In her official capacity, Ms Puentes Riaño has sought leave to be heard in the following proceedings:
 - (a) *Waliss v Burkina Faso and Others* (Advisory Opinion No. 001/2025) in the African Court on Human and Peoples' Rights. The proceeding relates to alleged human rights violations, in particular those set out in the *African Charter on Human and Peoples' Rights* and the *Universal Declaration of Human Rights*. In that proceeding, Ms Puentes Riaño submitted a request to make written submissions, for an extension of time to make written submissions and to make oral submissions if the Court decides to hold a public hearing. That request has not yet been determined;
 - (b) Constitutional Court of Ecuador, Case No. 1296-19-JP, 2020. The proceeding concerns Indigenous rights, environmental protection, climate change and consultation procedures in the context of oil extraction in the Amazon. In that proceeding, Ms Puentes Riaño and Elisa Morgera, Special Rapporteur on the promotion and protection of human rights in the context of climate change, jointly submitted an amicus curiae brief. That application has not yet been determined;
 - (c) *Müllner v Austria* no. 18859/21, ECHR decision of 1 July 2024 in the European Court of Human Rights, Fourth Section. The proceeding relates to Austria's alleged failure to mitigate the impacts of climate change. In that proceeding, Ms Puentes Riaño and Ms Morgera jointly submitted an amicus curiae brief and were granted leave to file written submissions as third-party interveners by the Vice-President of Section Fourth, as per communication ECHR-LE14.8PE, and under Rule 44 § 3 of the rules of the work.
15. Copies of Ms Puentes Riaño's submissions in those matters can be provided to the Court and the parties if requested. I have not annexed them to this affidavit to avoid the filing of unnecessarily voluminous material.
16. In her official capacity, Ms Puentes Riaño has made her first country visit to Singapore from 14-23 May 2025 to examine the implementation of the right to a clean, healthy and sustainable environment, identifying good practices and investigating environmental challenges. She met with various Government Ministries, Justice Philip Jeyaretnam of the Singaporean judiciary, and made site visits to TuasOne Waste-to-Energy Incineration




Plant, the Marina Barrage, the Sisters' Islands Marine National Park and Jurong Island and its petrochemical complex. Ms Puentes Riaño also plans to make a country visit to Ireland in early 2026.

Institutional output of the Special Rapporteur on the right to a healthy environment

17. Ms Puentes Riaño's predecessors in the role of Special Rapporteur on the right to a healthy environment (howsoever called, and including the position of Independent Expert) have published a number of reports in their official capacity, including (with identifying United Nations document number and year):
 - (a) A/HRC/22/43: Preliminary report (2013);
 - (b) A/HRC/25/53: Mapping report (2014);
 - (c) A/HRC/28/61: Good practices report (2015);
 - (d) A/HRC/31/53: Implementation report (2016);
 - (e) A/HRC/31/52: Climate change (2016);
 - (f) A/HRC/34/49: Biodiversity (2017);
 - (g) A/HRC/37/59: Framework Principles (2018);
 - (h) A/HRC/37/58: Children's rights and the environment (2018);
 - (i) A/73/188: Global recognition of the right to a safe, clean, healthy and sustainable environment (2018);
 - (j) A/HRC/40/55: Clean air and the right to a healthy and sustainable environment (2019);
 - (k) A/74/161: Safe climate (2019);
 - (l) A/HRC/43/54: Summary of report of meeting on the right to a healthy environment (2020);
 - (m) A/HRC/43/53: Good practices on the right to a safe, clean, healthy and sustainable environment (2020);
 - (n) A/75/161: A healthy biosphere and the right to a healthy environment (2020);
 - (o) A/HRC/46/28: Human rights and the global water crisis: water pollution, water scarcity and water-related disasters (2021);
 - (p) A/76/179: Healthy and sustainable food: reducing the environmental impacts of food systems on human rights (2021);
 - (q) A/HRC/49/53: Non toxic environment to live, work, study and play (2022);




- (r) A/77/284: The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals (2022);
 - (s) A/HRC/52/44: Summary of Expert Seminar on the role of human rights and environmental conservation in the prevention of future pandemics (2023);
 - (t) A/HRC/52/33: Women, girls and the right to a clean, healthy and sustainable environment (2023);
 - (u) A/78/168: Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights (2023);
 - (v) A/HRC/55/41: Expert seminar on the responsibility of business enterprises to respect the human right to a clean, healthy and sustainable environment Special Rapporteur on human rights and the environment (2024);
 - (w) A/HRC/55/43: Business, planetary boundaries, and the right to a clean, healthy and sustainable environment (2024).
18. The above-mentioned reports are publicly available and for that reason, and to avoid the filing of unnecessarily voluminous material, are not annexed to this affidavit. Copies can be provided to the Court and the parties if requested.
19. I note that some of these reports and other submissions made by Ms Puentes Riaño's predecessors in the role of Special Rapporteur on the right to a healthy environment have been cited by courts in the course of ascertaining international law in respect of the environment. For example:
- (a) in the International Court of Justice's *Advisory Opinion on the Obligations of States in Respect of Climate Change* (23 July 2025) the Court at paragraph 391 cited the report listed above at paragraph 17(m).
 - (b) in the Inter-American Court of Human Rights' *Advisory Opinion OC-23/17: The Environment and Human Rights* (15 November 2017), the Court cited:
 - i. at paragraph 51, the Human Rights Council, Preliminary report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 24 December 2012, UN Doc. A/HRC/22/43;
 - ii. at footnotes 82, 119, 120 and 198 the Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 1 February 1 2016, UN Doc. A/HRC/31/52;




- iii. at footnote 198, the Human Rights Council, Mapping 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, of December 30, 2013, UN Doc. A/HRC/25/53;
 - (c) in *Verein Klimaseniorinnen Schweiz v. Switzerland* [2024] ECHR 304 (April 9, 2024), the European Court of Human Rights at paragraphs 161-167 cited several reports including Report A/HRC/37/59, distr. 24 January 2018, the Report to the Human Rights Council of 8 January 2019 (A/HRC/40/55), the Report to the General Assembly (A/74/161), the Report to the Human Rights Council, entitled “Right to a healthy environment: good practices” (A/HRC/43/53), reports on “Human rights and the global water crisis: water pollution, water scarcity and water-related disasters” (A/HRC/46/28, 2021); Healthy and sustainable food: reducing the environmental impacts of food systems on human rights (A/76/179, 2021); “The right to a clean, healthy and sustainable environment: non-toxic environment” (A/HRC/49/53, 2022), and the report entitled “The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals” (A/77/284, 2022); and
 - (d) in *Greenpeace Nordic v. Norway*, App. No. 34068/21 (ECHR Second Section, Oct. 28, 2025), the European Court of Human Rights considered the submissions of the United Nations Special Rapporteur on human rights and the environment and the Special Rapporteur on toxic substances and human rights as third party interveners at paragraphs 244-249.
20. Predecessors to Ms Puentes Riaño have in their official capacity been permitted to make submissions to domestic and international courts, including as *amicus curiae*. For example:
- (a) In *Minister of Environmental Affairs v The Trustees for the time being of Groundwork Trust and Others* [2025] ZASCA 43, the High Court of South Africa admitted the Special Rapporteur on the right to a healthy environment in the proceedings as an *amicus curiae*. That is recorded at paragraph 10 of the judgment.
 - (b) In *Greenpeace Nordic Ass’n v Ministry of Petroleum and Energy (People v. Arctic Oil)*, Supreme Court of Norway, HR-2020-2472-P, the Supreme Court of Norway received submissions from the Special Rapporteur on the right to a healthy environment which formed part of the basis for the decision, as recorded at paragraph 17 of the judgment.
 - (c) In *Verein Klimaseniorinnen Schweiz v. Switzerland* [2024] ECHR 304 (April 9, 2024), the European Court of Human Rights, Third Section, granted leave for the Special

Rapporteurs on Toxics and Human Rights, and on Human Rights and the Environment to provide comments, as recorded at paragraph 7 of the judgment.

21. The above-mentioned judgments are publicly available and for that reason, and to avoid the filing of unnecessary voluminous material, are not annexed to this affidavit. Copies can be provided to the Court and the parties if requested.

Ms Puentes Riaño's relevant experience in addition to role as Special Rapporteur on the right to a healthy environment

22. In addition to being the Special Rapporteur on the right to a healthy environment, Ms Puentes Riaño is a Professor at the Universidad Iberoamericana in Mexico City (where she leads the Laboratory for Environmental and Climate Justice, part of the Berta Cáceres Clinic).
23. Prior to her appointment as Special Rapporteur on the right to a healthy environment, Ms Puentes Riaño served as the co-executive director of the Interamerican Association for Environmental Defense, one of the leading environmental organizations in the Americas, from 2003-2021.
24. Ms Puentes Riaño has published several articles and lectured at the Human Rights Academy of the American University, Washington, D.C., and at the Diploma on Strategic Litigation and Tools for the Defense of Economic, Social, Cultural and Environmental Rights of the National Autonomous University of Mexico in Mexico, among others. She was selected as a Climate Parents Fellowship Fellow from July 2022 to June 2023 and is one of the founders of Moms for Climate in Mexico City.
25. Ms Puentes Riaño holds LL.M. degrees from the University of Florida (United States) and University of the Basque Country (Spain) and received her first degree in law from the Universidad de Los Andes in Bogota (Colombia).

Limited scope of proposed submissions

26. If the Court grants the interlocutory application, Ms Puentes Riaño proposes to make submissions limited to Australia's international law obligations with respect to the environment and their relevance to the text, context and purpose of the provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) under consideration in these proceedings.

Lawyers retained on Ms Puentes Riaño's behalf

27. My firm acts for Ms Puentes Riaño on a pro bono basis.




28. Counsel retained for Ms Puentes Riaño's interlocutory application are Kathleen Foley SC, Alofipo So'oalo Fleur Ramsay and Julian R Murphy. They are retained on a pro bono basis.
29. Whether or not the Court grants the interlocutory application, Ms Puentes Riaño will not seek any order for costs of her involvement in the proceeding.

Sworn / Affirmed by the deponent
at Melbourne
in Victoria
on 13 November 2025
Before me:



Signature of witness

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)
)
)
)



Signature of deponent

David Burke
Lawyer for Ms Puentes Riaño

Simon David Ellis

477 Collins Street Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform Law
(Victoria)

A person authorised under section 19(1) of the **Oaths and Affirmations Act 2018** (Vic) to take an affidavit.

In accordance with section 27(1A) of the Oaths and Affirmations Act 2018, this affidavit was signed and affirmed by the deponent by audio visual link and the authorised affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements.

Certificate of Annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID1400 of 2025

AUSTRALIAN CONSERVATION FOUNDATION INC

Applicant

MINISTER FOR THE ENVIRONMENT AND WATER & ANOTHER

Respondents

This is the annexure marked **DB-1** produced and shown to David Burke at the time of affirming his affidavit of 13 November 2025.



Simon David Ellis

477 Collins Street Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform
Law (Victoria)

Filed on behalf of	Astrid Puentes Riaño, <i>amicus curiae</i>		
Prepared by	David Burke		
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[Form Approved 1 August 2011]



General Assembly

Distr.: General

4 April 2024

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Human Rights Council

Fifty-fifth session

26 February–5 April 2024

Agenda item 3

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

Resolution adopted by the Human Rights Council on 3 April 2024

55/2. Mandate of Special Rapporteur on the human right to a clean, healthy and sustainable environment

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Reaffirming the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, and recalling relevant international human rights treaties and other relevant regional human rights instruments, and recalling States' obligations and commitments under multilateral environmental instruments and agreements,

Reaffirming also that all human rights are universal, indivisible, interdependent and interrelated,

Reaffirming further all Human Rights Council resolutions on human rights and the environment, the most recent of which are resolutions 46/7 of 23 March 2021, on human rights and the environment, and 52/23 of 4 April 2023, on the human right to a clean, healthy and sustainable environment, and relevant resolutions of the General Assembly and the Commission on Human Rights,

Welcoming the adoption of Human Rights Council resolution 48/13 on 8 October 2021 and General Assembly resolution 76/300 on 28 July 2022, recognizing the human right to a clean, healthy and sustainable environment,

Recalling all of the reports of the Special Rapporteur (formerly the Independent Expert) on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,¹

Reaffirming General Assembly resolution 70/1 of 25 September 2015, entitled "Transforming our world: the 2030 Agenda for Sustainable Development", in which the Assembly adopted a comprehensive, far-reaching and people-centred set of universal and transformative Sustainable Development Goals and targets,

¹ A/73/188, A/74/161, A/75/161, A/76/179, A/77/284, A/HRC/22/43, A/HRC/25/53, A/HRC/28/61, A/HRC/31/52, A/HRC/31/53, A/HRC/34/49, A/HRC/37/58, A/HRC/37/59, A/HRC/40/55, A/HRC/43/53, A/HRC/43/54, A/HRC/46/28, A/HRC/49/53, A/HRC/52/33, A/HRC/52/44 and A/HRC/55/43.



Recalling the outcome of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil in June 2012, and its outcome document entitled “The future we want”, which reaffirmed the principles of the Rio Declaration on Environment and Development,

Emphasizing that States have the obligation to respect, protect and fulfil human rights, including in all actions taken to address environmental harm, loss of biodiversity, climate change, ocean degradation, pollution and exposure to hazardous substances and wastes, and to take measures to protect the human rights of all, and that additional measures for those who are particularly vulnerable to the effects of environmental harm should be taken,

1. *Welcomes* the work undertaken by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, including in the implementation of his mandate, the comprehensive, transparent and inclusive consultations conducted with relevant stakeholders, his thematic reports and the undertaking of country visits;

2. *Also welcomes* the work undertaken by the Office of the United Nations High Commissioner for Human Rights, the United Nations Environment Programme, the United Nations Development Programme, the United Nations Children’s Fund and the United Nations Entity for Gender Equality and the Empowerment of Women in support of the mandate of the Special Rapporteur and in helping to clarify the relationship between human rights and the environment;

3. *Decides* to renew the mandate of Special Rapporteur as Special Rapporteur on the human right to a clean, healthy and sustainable environment, for a period of three years;

4. *Requests* the Special Rapporteur, in fulfilling the mandate:

(a) To continue to study the human rights obligations relating to the enjoyment of the human right to a clean, healthy and sustainable environment, in consultation with Governments, relevant international organizations and intergovernmental bodies, including the World Health Organization, the United Nations Environment Programme and the United Nations Development Programme, and relevant multilateral environmental agreements, human rights mechanisms, local authorities, national human rights institutions, Indigenous Peoples, environmental human rights defenders and civil society organizations, including those representing local communities and other persons in vulnerable situations, women, children and youth, persons with disabilities, the private sector and academic institutions;

(b) To continue to identify, promote and exchange views on good practices relating to human rights obligations and commitments that inform, support and strengthen environmental policymaking, especially in the area of environmental protection, and in that regard to disseminate and consider updating documents prepared by the previous mandate holder, as appropriate;

(c) To work on identifying challenges and obstacles to the full realization of human rights obligations relating to the enjoyment of the human right to a clean, healthy and sustainable environment and protection gaps thereto, including in the context of sustainable development and the Sustainable Development Goals;

(d) To continue to contribute to and participate in, where appropriate, intergovernmental conferences and meetings relevant to the mandate;

(e) To develop a dialogue, liaise and collaborate with all relevant stakeholders with a view to enhancing public awareness of the human rights obligations relating to the enjoyment of the human right to a clean, healthy and sustainable environment;

(f) To conduct country visits and to respond promptly to invitations from States;

(g) To apply an age-sensitive and disability-inclusive approach and a gender perspective by, inter alia, considering the particular situation of women and girls and identifying gender-specific discrimination and vulnerabilities when addressing climate change and environmental degradation, strengthening and promoting women’s and girls’ leadership, decision-making and their full, equal and meaningful participation, and

addressing good practices where women and girls act as agents of change in safeguarding and managing the environment sustainably;

(h) To work in close coordination, while avoiding unnecessary duplication, with other special procedures and mechanisms of the Human Rights Council, relevant United Nations bodies, agencies, funds and programmes, including the World Health Organization, the United Nations Environment Programme and the United Nations Development Programme, the treaty bodies and international and regional organizations, and multilateral environmental agreements, taking into account the views of other stakeholders, including relevant regional human rights mechanisms, national human rights institutions, civil society organizations and academic institutions;

(i) To submit an annual report, including conclusions and recommendations, to the Human Rights Council and to the General Assembly;

5. *Calls upon* all States, United Nations agencies, funds and programmes, other international organizations and non-governmental organizations, the private sector and national human rights institutions to cooperate fully with the Special Rapporteur, including by providing all necessary information relating to the mandate to enable him or her to fulfil the mandate;

6. *Requests* the United Nations High Commissioner for Human Rights to ensure that the Special Rapporteur receives the resources necessary to enable him or her to discharge the mandate fully;

7. *Decides* to remain seized of the matter, in accordance with its annual programme of work.

*53rd meeting
3 April 2024*

[Adopted without a vote.]

Certificate of Annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID1400 of 2025

AUSTRALIAN CONSERVATION FOUNDATION INC

Applicant

MINISTER FOR THE ENVIRONMENT AND WATER & ANOTHER

Respondents

This is the annexure marked **DB-2** produced and shown to David Burke at the time of affirming his affidavit of 13 November 2025.



Simon David Ellis

477 Collins Street Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform
Law (Victoria)

Filed on behalf of	Astrid Puentes Riaño, <i>amicus curiae</i>		
Prepared by	David Burke		
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[Form Approved 1 August 2011]



BUREAU DU PRÉSIDENT

OFFICE OF THE PRESIDENT

29 February 2024

29 February 2024

Excellencies,

In my capacity as President of the Human Rights Council, I have the honour to submit for your attention the candidates proposed for the unforeseen vacancies of **Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment¹** and of **Special Rapporteur on the promotion and protection of human rights in the context of climate change**, two of the 14 vacancies of mandate holders that are to be filled at the fifty-fifth session of the Human Rights Council.

In follow-up to my letter of 16 February 2024, and in accordance with paragraphs 52 and 53 of the annex to Council resolution 5/1, upon receipt of the Consultative Group's addendum dated 16 February 2024, to its report dated 29 January 2024, I have held broad consultations in particular through the regional coordinators and based on the recommendations of the Consultative Group, to ensure the endorsement of my proposed candidates

Following my consultations with States and other relevant stakeholders, I have decided to follow the recommendation of the Consultative Group for the two vacancies.

With respect to the mandate of **Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**, I propose for appointment **Ms. Astrid PUENTES RIAÑO (Mexico)**.

For the mandate of **Special Rapporteur on the promotion and protection of human rights in the context of climate change**, I propose for appointment **Ms. Elisa MORGERA (Italy)**.

For the sake of completeness, allow me to recall that I also followed the recommendations of the Consultative Group, included in its report of 29 January 2024, for the following 12 vacancies of mandate holders. The complete list of candidates proposed for appointment as mandate holders at the 55th session of the Human Rights Council is enclosed.

With regard to the **Expert Mechanism on the Rights of Indigenous Peoples, member from Africa**, I proposed for appointment **Mr. Ojot Miru OJULU (Ethiopia)**.

Concerning the **Expert Mechanism on the Rights of Indigenous Peoples, member from North America**, I proposed for appointment **Ms. Sheryl LIGHTFOOT (Canada)**.

Enclosed

To all Permanent Representatives to the United Nations Office at Geneva

¹ The appointment of this mandate holder will be made provided that the mandate itself is extended by the Human Rights Council.



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For the mandate of **Independent Expert on the promotion of a democratic and equitable international order**, I proposed for appointment **Mr. George KATROUGALOS (Greece)**.

With regard to the mandate of **Independent Expert on the situation of human rights in Mali**,² I proposed for appointment **Mr. Eduardo GONZALEZ (Peru)**.

As to the mandate of **Special Rapporteur on the promotion of truth, justice, reparation and guarantees of nonrecurrence**, I proposed for appointment **Mr. Bernard DUHAIME (Canada)**.

For the mandate of **Special Rapporteur on the rights to freedom of peaceful assembly and of association**, I proposed for appointment **Ms. Gina Paola ROMERO RODRIGUEZ (Colombia)**.

For the **Working Group on the rights of peasants and other people working in rural areas, member from African States**, I proposed for appointment **Ms. Uche Ewelukwa OFODILE (Nigeria)**.

Concerning the **Working Group on the rights of peasants and other people working in rural areas, member from Asia-Pacific States**, I proposed for appointment **Ms. Shalmali GUTTAL (India)**.

In relation to **Working Group on the rights of peasants and other people working in rural areas, member from Eastern European States**, I proposed for appointment **Mr. Davit HAKOBYAN (Armenia)**.

Regarding the **Working Group on the rights of peasants and other people working in rural areas, member from Latin American and Caribbean States**, I proposed for appointment **Mr. Carlos DUARTE (Colombia)**.

With regard to the **Working Group on the rights of peasants and other people working in rural areas, member from Western European and other States**, I proposed for appointment **Ms. Geneviève SAVIGNY (France)**.

For the **Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, member from African States**, I proposed for appointment **Ms. Michelle René SMALL (South Africa)**.

² The appointment of this mandate holder will be made provided that the mandate itself is extended by the Human Rights Council.

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HUMAN RIGHTS COUNCIL

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I would like to take this opportunity to once again thank the members of the Consultative Group for their hard work, which has facilitated my efforts to identify an appropriate candidate for each vacancy.

Please accept, Excellencies, the assurances of my highest consideration.

Omar ZNIBER
President of the Human Rights Council

A blue ink signature of Omar ZNIBER, consisting of a stylized 'Z' followed by a horizontal line.



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Mandate holders

to be appointed at the fifty-fifth session of the Human Rights Council
(mandates listed in alphabetical order)

1. **Expert Mechanism on the Rights of Indigenous Peoples, member from Africa**
Mr. Ojot Miru OJULU (Ethiopia)
2. **Expert Mechanism on the Rights of Indigenous Peoples, member from North America**
Ms. Sheryl LIGHTFOOT (Canada)
3. **Independent Expert on the promotion of a democratic and equitable international order**
Mr. George KATROUGALOS (Greece)
4. **Independent Expert on the situation of human rights in Mali³**
Mr. Eduardo GONZALEZ (Peru)
5. **Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment³**
Ms. Astrid PUENTES RIAÑO (Mexico)
6. **Special Rapporteur on the promotion and protection of human rights in the context of climate change**
Ms. Elisa MORGERA (Italy)
7. **Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence**
Mr. Bernard DUHAIME (Canada)
8. **Special Rapporteur on the rights to freedom of peaceful assembly and of association**
Ms. Gina Paola ROMERO RODRIGUEZ (Colombia)
9. **Working Group on the rights of peasants and other people working in rural areas, member from African States**
Ms. Uche Ewelukwa OFODILE (Nigeria)
10. **Working Group on the rights of peasants and other people working in rural areas, member from Asia-Pacific States**
Ms. Shalmali GUTTAL (India)

³ The appointment of this mandate holder will be made provided that the mandate itself is extended by the Human Rights Council.



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11. Working Group on the rights of peasants and other people working in rural areas, member from Eastern European States

Mr. Davit HAKOBYAN (Armenia)

12. Working Group on the rights of peasants and other people working in rural areas, member from Latin American and Caribbean States

Mr. Carlos DUARTE (Colombia)

13. Working Group on the rights of peasants and other people working in rural areas, member from Western European and other States

Ms. Geneviève SAVIGNY (France)

14. Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, member from African States

Ms. Michelle René SMALL (South Africa)

Certificate of Annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID1400 of 2025

AUSTRALIAN CONSERVATION FOUNDATION INC

Applicant

MINISTER FOR THE ENVIRONMENT AND WATER & ANOTHER

Respondents

This is the annexure marked **DB-3** produced and shown to David Burke at the time of affirming his affidavit of 13 November 2025.



Simon David Ellis

477 Collins Street Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Uniform
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Item 71 (b) of the provisional agenda**

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Overview of the implementation of the human right to a clean, healthy and sustainable environment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño, in accordance with Human Rights Council resolution [55/2](#).

* Reissued for technical reasons on 12 September 2024.

** [A/79/150](#).



Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment**Overview of the implementation of the human right to a clean, healthy and sustainable environment***Summary*

In the present report, the Special Rapporteur on the human right to a clean, healthy and sustainable environment seeks to give an overview of the state of global implementation of the human right to a clean, healthy and sustainable environment, identifying key progress as well as the most pressing challenges and opportunities. The Special Rapporteur aims to advance the understanding of differentiated impacts, considering situations of vulnerability, and through an intersectional lens. She identifies conclusions and provides recommendations to States on how to fulfil their human rights obligations.

I. Introduction

1. The recognition by the United Nations of the human right to a clean, healthy and sustainable environment, in Human Rights Council resolution 48/13 in 2021 and General Assembly resolution 76/300 in 2022, is the most important recent advancement for the effective protection of the environment and human rights. Achieved with historic support from States,¹ and after decades of efforts from United Nations entities, special procedure mandate holders, civil society, Indigenous Peoples and social movements, it highlights what coordinated collaboration can achieve.²

2. Reality also shows us the unprecedented challenge humanity faces with the triple planetary crises of climate change, biodiversity loss and environmental pollution, aggravated by systemic and increasing inequalities, humanitarian needs, increasing conflict³ and planetary boundaries being irreversibly crossed.⁴ Evidence shows that, despite current efforts to address these crises, positive results have yet to be seen, while negative impacts continue to increase dramatically.

3. It is undisputable that the way most of humanity relates with nature must change. Fully implementing the right to a clean, healthy and sustainable environment can greatly help in achieving much-needed transformations. Thus, it must be prioritized by States, international bodies, businesses and other stakeholders.

4. Respecting, protecting and implementing the right to a healthy environment can have a positively impact on millions of lives, particularly the most marginalized.⁵ Effective implementation can further help States to respect, protect and fulfil this human right and others, while improving the sustainable management of natural resources; advancing effective control and monitoring of public and private businesses; improving coordination among entities and States; and catalysing effective solutions to address the triple planetary crises. Considering the human and economic costs the crises are causing, guaranteeing that right can benefit national economies, while helping to create economic systems centred on protecting human rights and nature, for current and future generations.

5. The implementation of the right to a healthy environment faces several challenges as its content is broad, interrelated and transversal to multiple areas. Fortunately, the five-decade-long process of recognizing and defining its content⁶ contributes important lessons towards its effective and material implementation. Moreover, numerous decisions from international and regional human rights bodies, jurisprudence and soft law complement the solid body of law by which we understand the content of the right, its relationship with other rights and States' and non-States' obligations.

6. The process of clarifying the content of the right to a healthy environment continues to evolve, like other human rights. While its application varies in different regions and States, the richness of current and ongoing legal development constitutes

¹ The General Assembly resolution was adopted by 161 votes in favour, zero against and 8 abstentions.

² In 2021 over 1,350 Indigenous Peoples, civil society, local communities and social movements called upon States to recognize the right to a healthy environment.

³ See United Nations Environment Programme (UNEP) and International Science Council, *Navigating New Horizons: A Global Foresight Report on Planetary Health and Human Wellbeing* (Nairobi, 2024).

⁴ Katherine Richardson and others, "Earth beyond six of nine planetary boundaries", *Sciences Advances*, vol. 9, No. 37 (September 2023).

⁵ See UNEP, *Environmental Rule of Law: Tracking Progress and Charting Future Directions* (Nairobi, 2023).

⁶ Human Rights Council resolution 37/59.

an important source for States, international institutions, Indigenous Peoples, civil society, Afrodescendent communities, peasants, social movements, women, young people, children and others to understand this right and advance policies, laws and decisions to implement it.

7. Building on this development, and in line with the Human Rights Council resolution 55/2, in the present report, the Special Rapporteur on the human right to a clean, healthy and sustainable environment presents an overview of the implementation of the human right to a clean, healthy and sustainable environment. First, she describes the universal recognition and implementation of the right, recalling key developments. Second, she summarizes its content, describing how its procedural and substantive elements are being recognized and understood, including the main premises for further clarification work. Third, she describes major challenges to implementing the right to a healthy environment, concluding with opportunities to advance that right, which the Special Rapporteur will be focusing on in the future. Recognizing existing inconsistencies between reality in territories, especially for people and groups in vulnerable situations, and what international law and State and business commitments prescribe, the mandate will prioritize understanding and closing these gaps.

8. The Special Rapporteur issued a call for input to inform her report in May of 2024. She thanks the Governments of Argentina, Australia, Austria, Azerbaijan, Brazil, Colombia, Cuba, Czechia, El Salvador, Honduras, Italy, Iraq, Mexico, Peru, Poland, Qatar, Senegal, Saudi Arabia and Spain, as well as over 60 subnational authorities and organizations representing women, Indigenous Peoples, young people, civil society and academia, for their responses and thoughtful inputs.⁷

9. The Special Rapporteur extends her appreciation to everyone who participated in a consultation in Manaus, Brazil, in May 2024 at the end of hearings of the Inter-American Court of Human Rights. Participants shared their experiences and insights on challenges related to the implementation of the right to a healthy environment and opportunities for improvement.

II. Recognition in universal and regional processes

A. Historic development of the right to healthy environment at the United Nations

10. The historical recognition by the United Nations of the right to a clean, healthy and sustainable environment was a result of a long process dating back more than 50 years. In 1972, at the United Nations Conference on the Environment, held in Stockholm, States declared that: “Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”.⁸

11. States have since adopted a range of resolutions on the interlinkages between the environment and the enjoyment of human rights. In 1992, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights nominated Fatma Zohra Ksentini as Special Rapporteur on human rights and the environment to conduct a three-year study, adopted in 1994.

⁷ Submissions are available at www.ohchr.org/en/calls-for-input/2024/call-input-overview-implementation-right-clean-healthy-and-sustainable.

⁸ See Declaration of the United Nations Conference on the Human Environment (A/CONF.48/14/Rev.1, part one, chap. I, principle 1).

12. In 2002, the World Summit on Sustainable Development adopted the Plan of Implementation of the World Summit on Sustainable Development, acknowledging the consideration of the possible relationship between the environment and human rights, including the right to development.⁹ The Commission followed with resolutions 2003/71 and 2005/60 on human rights and the environment as part of sustainable development.

13. In 2008, the Human Rights Council adopted its resolution 7/23, its first on human rights and climate change, followed in 2011 by its resolution 16/11, its first on human rights and the environment. Later, in its resolution 19/10, it appointed an independent expert to articulate the links between human rights and the environment. The mandate has since been renewed as the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment. On 3 April 2024, in resolution 55/2, the mandate was extended, and its title changed to the Special Rapporteur on the human right to a clean, healthy and sustainable environment. The current Special Rapporteur, Astrid Puentes Riaño, took office on 1 May 2024.¹⁰

14. On the basis of decades of developments, the first Special Rapporteur, John Knox, described procedural aspects of the right, which include access to environmental information, participation and access to justice and effective remedy. His successor, David Boyd, clarified in his reports that, legally, the right to a healthy environment also includes clean air, a safe climate, safe and sufficient water, healthy and sustainable food, a toxic-free environment and healthy ecosystems and biodiversity.¹¹ The right to a healthy environment is an integral part of the effective enjoyment of all human rights, as they are interdependent, inalienable and indivisible.

15. In 2018, the mandate published a set of framework principles on human rights and the environment that summarized three categories of State obligations: procedural, substantive and special obligations towards those in vulnerable situations.¹² The 16 framework principles clarified the basic obligations of States under human rights law related to the enjoyment of a safe, clean, healthy and sustainable environment, including precautionary and preventive principles.

16. In parallel, United Nations declarations advanced the recognition of the right to a healthy environment for some groups. The United Nations Declaration on the Rights of Indigenous Peoples includes the right to conservation and protection of the environment and Indigenous Peoples' lands, territories and resources. Furthermore, the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas recognizes the special relationship and interaction between peasants and other people working in rural areas and the land, water and nature that they depend on for their livelihoods.

17. United Nations treaty bodies have also contributed significantly to clarifying States' obligations regarding the human right to a healthy environment and the interlinkages with other rights. In its general comment No. 26 (2023) on children's rights and the environment with a special focus on climate change, the Committee on the Rights of the Child confirmed that children have a right to a healthy environment. In its general recommendation No. 39 (2022) on the rights of Indigenous women and

⁹ A/CONF.199/20, para. 169.

¹⁰ See www.ohchr.org/en/special-procedures/sr-environment.

¹¹ A/HRC/37/59, A/HRC/40/55, A/HRC/46/28, A/HRC/49/53, A/75/161 and A/76/179. See full list of the mandate's reports available at www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports.

¹² A/HRC/37/59, annex.

girls, the Committee on the Elimination of Discrimination against Women also recognizes this right.

B. Right to a healthy environment in multilateral negotiations

18. The right to a healthy environment has been incorporated in international agreements since it was recognized, including in the outcomes from the twenty-seventh Conference of the Parties to the United Nations Framework Convention on Climate Change, in 2022,¹³ and the fifteenth Conference of the Parties to the Convention on Biological Diversity.¹⁴

19. In 2023, the fifth session of the International Conference on Chemicals Management adopted the Global Framework on Chemicals – For a Planet Free of Harm from Chemicals and Waste, referencing General Assembly resolution [76/300](#) on the human right to a healthy environment. The conference also adopted the Bonn Declaration for a Planet Free of Harm from Chemicals and Waste, noting Assembly resolution [76/300](#) and its importance for the promotion of human well-being and the full enjoyment of all human rights.

C. Regional recognition of the right to a healthy environment

20. The right to a healthy environment is expressly recognized and protected in several regional instruments.

21. The African Charter was the first regional instrument to recognize the right to a healthy environment. Article 24 of the African Charter on Human and Peoples' Rights states that "all peoples shall have the right to a general satisfactory environment favourable to their development." Article 18 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the African Union, further states that women shall have "the right to live in a healthy and sustainable environment".

22. Since 2001, the African Commission on Human and Peoples' Rights has protected the right to a healthy environment, for example, in the case of the Ogoni people versus Nigeria, where massive pollution by the oil industry was found to have violated this right under the African Charter.¹⁵

23. Article 38 of the Arab Charter on Human Rights includes the right to a healthy environment, stating: "Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment." The Charter has no institution for its implementation nor for its enforcement.

24. The Association of Southeast Asian Nations (ASEAN) Declaration on Human Rights (2012) includes the right to a healthy environment, noting it constitutes an unenforceable political declaration. South-East Asia is developing a regional treaty regarding the right to a safe, clean, healthy and sustainable environment, access to information, public participation and access to justice in environmental matters. The Special Rapporteur sent a communication to inform the process and intervened at the

¹³ See www.un.org/en/climatechange/cop27.

¹⁴ See www.cbd.int/gbf.

¹⁵ See African Commission on Human and People's Rights, Decisions on communications, "Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR): Nigeria", decision No. 115/96, para. 52. Available at <https://achpr.au.int/>.

fifth meeting of the ASEAN Environmental Rights Working Group, to be held in June 2024.¹⁶

25. The Convention for the Protection of Human Rights and Fundamental Freedoms does not include the right to a healthy environment. However, the European Court of Human Rights has given a ruling in over 300 environment-related cases recognizing human rights violations. The Court's progressive jurisprudence has concluded that pollution, whether human-made or as a result of natural disasters, and the denying of access to information or participation, can have an impact on recognized human rights, including on the right to private and family life, free speech and access to information.

26. On 9 April 2024, in the *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* case, the European Court of Human Rights found that article 8 of the Convention encompasses a right of individuals to effective protection by State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.¹⁷

27. European jurisprudence strictly protects the implementation of the rights recognized in the Convention. This restrictive approach limits the protection provided in environmental matters. Therefore, the ongoing process towards expressing recognition of the right to a healthy environment will hopefully soon result in a more complete and coherent recognition.

28. In 2021, the Parliamentary Assembly of the Council of Europe proposed a new protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms establishing the right to a healthy environment.¹⁸ In the Reykjavik Declaration: United around Our Values, the Council of Europe further commits to strengthening its work on the human rights aspects of the environment, on the basis of the recognition of the human right to a healthy environment.

29. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) of the Economic Commission for Europe (ECE), to which the European Union is a party, recognizes the right to a healthy environment. It also calls for parties to guarantee access to information, public participation in decision-making and access to justice in environmental matters. This instrument is not limited to the ECE region, as Guinea Bissau has been welcomed as a party in 2021.

30. In the inter-American system, article 11 (1) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights recognizes everyone's right to "live in a healthy environment." In 2017, the Inter-American Court of Human Rights ruled that the right to a healthy environment is an autonomous right with an individual and collective perspective, also protecting future generations. The Court stated that: "Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind".¹⁹

31. In the case *Community of La Oroya v. Peru*, published in March 2024, the Inter-American Court of Human Rights held Peru responsible for its failure to protect the inhabitants of the city and for violating their right to a healthy environment, and the rights to information, participation and access to justice.²⁰ The population had

¹⁶ Reference No. OL OTH 111/2024.

¹⁷ See European Court of Human Rights, *Verein Klimaseniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, Judgment, 9 April 2024.

¹⁸ See <https://pace.coe.int/en/news/8452/the-right-to-a-healthy-environment-pace-proposes-draft-of-a-new-protocol-to-the-european-convention-on-human-rights->.

¹⁹ See Inter-American Court of Human Rights, Advisory Opinion, OC-23-17, 15 November 2017.

²⁰ See www.corteidh.or.cr/docs/casos/articulos/seriec_511_esp.pdf, available in Spanish only.

been exposed to toxic pollution from a smelter complex that had operated without adequate controls for a century in what the Court recognized as a “sacrifice zone”.²¹ The decision constitutes the strongest and most comprehensive ruling of any regional human rights court on the right to a healthy environment so far.

32. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (the Escazú Agreement) aims to contribute “to the protection of the right of every person of present and future generations to live in a healthy environment and to sustainable development” (art. 1). It also requires that “each Party shall guarantee the right of every person to live in a healthy environment” (art. 4).

D. Relevant international law developments

33. Jurisprudence from the International Court of Justice provides an important interpretation regarding States’ obligations in relation to the environment, including regarding environmental damages affecting other States in a transboundary context. Jurisprudence includes the obligation to conduct environmental impact assessments prior to the development of projects or activities that may risk causing a significant harm, and to notify and consult with potentially affected States regarding the potential harm.²² Also relevant is the principle of international law establishing “that the breach of an engagement involves the obligation to make a reparation in an adequate form”.²³

34. Three advisory opinions have recently been requested in order to clarify international obligations related to climate change and that are of great significance to environmental matters and human rights: to the International Tribunal for the Law of the Sea; the International Court of Justice; and the Inter-American Court of Human Rights. These are opportunities to further clarify the scope and content of the right to a healthy environment.

35. On 21 May 2024, the International Tribunal for the Law of the Sea delivered its first climate-related advisory opinion, clarifying States’ obligations to protect oceans from drivers and impacts of climate change.²⁴ The Tribunal underscored that States have obligations under the law of the sea, which are additional to those contained in the 2015 Paris Agreement. The Tribunal emphasized the precautionary and ecosystem approaches in the context of States’ obligations to conduct environmental and socioeconomic assessments of any activity that may cause climate change-related marine pollution. Considering the implications of ocean pollution to human rights, the decision by the Tribunal should be interpreted in line with and complementing international human rights law.²⁵

36. A request for an advisory opinion on human rights and the climate emergency was submitted to the Inter-American Court of Human Rights, asking for clarification of the grounds and scope of human rights affected by the climate emergency,

²¹ See [A/HRC/49/53](#).

²² See *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14 and *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 665.

²³ See *Case concerning the factory at Chorzów (Germany v. Poland)*, Judgment No. 8, P.C.I.J. Series A. No. 9, 26 July 1927.

²⁴ See International Tribunal for the Law of the Sea, *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law*, No. 31, 21 May 2024.

²⁵ [A/HRC/56/46](#).

considering the right to a healthy environment.²⁶ The request encompassed a wide range of legal issues related to climate mitigation, adaptation and loss and damage, placing significant attention on the benefits of human rights' obligations in advancing just, equitable and sustainable responses to climate change. The hearings have concluded, and a final decision is expected in 2025.

37. The United Nations has adopted a landmark resolution asking the International Court of Justice to deliver an opinion on climate change and the legal consequences countries face for harming the environment.²⁷ The request specifically referenced the global recognition of the right to a healthy environment. The decision is expected to be rendered in 2025.

III. Substantive and procedural elements of the right to a clean, healthy and sustainable environment

38. As the human right to a clean, healthy and sustainable environment is a compound right, substantive and procedural elements have been identified by previous mandate holders. These elements are interconnected; therefore, the implementation of programmes, policies and projects must be done with a holistic approach. A summary of this right is presented below, acknowledging that some of these elements are fully understood in international and human rights law, while others require further clarification and development. This is an effort with which the Special Rapporteur will be assisting States.

A. Procedural elements

39. Access to information, participation and access to justice are essential elements of the right to a clean, healthy and sustainable environment, as established by principle 10 of the Rio Declaration on Environment and Development,²⁸ and are also recognized human rights. Several States include some or all the elements in their constitutional recognition of the right to a healthy environment.²⁹ Recommendations to understand these elements have been developed, including the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines).

1. Access to information

40. Adequate, effective and reliable information is essential in order to protect the environment and other human rights, including the rights to life, health and integrity. International human rights law recognizes that everyone has the right to seek, receive and impart information.³⁰ Information is fundamental not only to understanding how environmental harms have differentiated impacts on individuals and groups of people, depending on their situation of vulnerability, but also to implementing effective protective measures.

²⁶ See Inter-American Court of Human Rights, *Request for an advisory opinion on the Climate Emergency and Human Rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile*, 9 January 2023.

²⁷ See United Nations, "General Assembly adopts resolution requesting International Court of Justice provide advisory opinion on States' obligations concerning climate change", press release, 29 March 2023.

²⁸ [A/CONF.151/26](#) (Vol. I).

²⁹ [A/HRC/43/53](#).

³⁰ See Universal Declaration of Human Rights, art. 19 and International Covenant on Civil and Political Rights, art. 19.

41. States have the obligation to provide access to environmental information that should be affordable, effective, timely, accessible to everyone,³¹ accurate and reliable,³² including information related to the causes and consequences of climate change and the environmental crises.³³ States must make environmental information available to children and their parents and caregivers, making it accessible for different ages and capacities.

42. Regionally, the Inter-American Court of Human Rights has reiterated that the American Convention on Human Rights protects the right of every person to request information under the control of the State,³⁴ stating that the principle of maximum disclosure is indispensable in democratic societies, thus authorities should be governed by the presumption that all information is made accessible, and only restricted in legally established exceptions. Active transparency is vital for the enjoyment of other rights, especially regarding matters of public interest, such as information related to the exploration and exploitation of natural resources. The European Court of Human Rights has also concluded that States have the obligation to establish accessible procedures guaranteeing the availability of relevant information when engaged in hazardous activities,³⁵ and that, furthermore, failure to guarantee access to information to journalists on environmental degradation, when not prescribed by law, violates article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.³⁶

2. Public participation

43. Everyone has the human right to effectively and meaningfully participate in their Government and public affairs.³⁷ States should proactively 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.³⁸

44. Adequate participation requires equal and effective protection against discrimination, as well as meaningful, informed, inclusive and equitable processes regarding environmental and climate decisions. Therefore, people and groups in potentially vulnerable situations must effectively be part of the decision-making process.³⁹ Effective and well-timed public participation can provide States and other actors with valuable information regarding decisions affecting the environment and climate, thereby contributing to avoiding and solving conflicts.⁴⁰

45. Participation also includes respecting and protecting the rights to freedom of expression, association and peaceful assembly related to environmental and climate

³¹ [A/HRC/37/59](#).

³² See Committee on the Rights of the Child, general comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change.

³³ See David R. Boyd, Special Rapporteur on the human right to a clean, healthy and sustainable environment, *The Right to a Healthy Environment: A User's Guide* (Geneva, OHCHR, 2024).

³⁴ See Inter-American Court of Human Rights, *Claude Reyes et al. v. Chile*, paras. 77 and 92, and *La Oroya v. Peru*, para. 146.

³⁵ See European Court of Human Rights, *McGinley and Egan v. the United Kingdom*, Applications Nos. 21825/93 and 23414/93, Judgment, 9 June 1998 and *Roche v. the United Kingdom*, Application No. 32555/96, Judgment, 19 October 2005.

³⁶ See European Court of Human Rights, *Rovshan Hajiye v. Azerbaijan*, Applications Nos. 19925/12 and 47532/13, Judgment, 9 December 2021.

³⁷ Universal Declaration of Human Rights, art. 21; and International Covenant on Civil and Political Rights, art. 25.

³⁸ [A/HRC/37/59](#), annex, framework principle 9.

³⁹ See Boyd, *The Right to a Healthy Environment*.

⁴⁰ See Inter-American Court of Human Rights, *La Oroya v. Peru*.

matters,⁴¹ and avoiding restrictions not aligned with international law.⁴² States have the obligation to guarantee safe civic spaces for all environmental, climate and human rights defenders, who must be free from any stigmatization, intimidation, criminalization and violence. Furthermore, States must diligently investigate, prosecute and punish perpetrators of such acts, while addressing the root causes of environmental and climate-related conflicts. This includes those at high risk as a result of their efforts in protecting their lands, the environment and climate, such as Indigenous Peoples, young people, children, women, journalists and scientists.⁴³

46. States must ensure age-appropriate, safe and accessible spaces and adequate time and resources for children to be involved at the local, national and international levels in matters related to human rights and environmental issues.⁴⁴ Children's participation is crucial as they represent present and future generations.⁴⁵

3. Access to justice

47. Access to justice and effective remedy are independently recognized human rights,⁴⁶ and crucial elements to guarantee the right to a healthy environment. As an Indigenous People's organization mentioned in its contribution, access to courts has been a last resort in order to advance the protection of their rights on environmental issues, when efforts at the legislative or executive powers have not been useful. Even when compliance with court decisions is challenging, it has helped in advancing policy and legislation, thereby benefiting the public interest.

48. In relation to the environment, States should provide for access to effective remedies for violations of human rights and domestic laws.⁴⁷ Effective justice includes simple, affordable, accessible and timely processes, and the accountability of States and businesses, and those responsible for lack of compliance with environmental, human rights or climate laws.⁴⁸

49. States have been held internationally responsible for not granting effective access to justice and remedies in situations related to the environment or climate,⁴⁹ including regarding climate disasters.⁵⁰ The lack of enforcement of laws or judgments can also result in international responsibility of States.

⁴¹ A/HRC/37/59, annex, framework principle 5.

⁴² See Committee on the Rights of the Child, general comment No. 26 (2023); see also A/HRC/56/46 and A/HRC/56/50.

⁴³ See OHCHR, Special Rapporteur on human rights defenders, "The Declaration on human rights defenders in different languages", available at www.ohchr.org/; see also A/71/281 and A/HRC/56/46.

⁴⁴ See Committee on the Rights of the Child, general comment No. 26 (2023).

⁴⁵ See Maastricht Principles on The Human Rights of Future Generations, adopted in Maastricht, the Kingdom of the Netherlands, in 2003.

⁴⁶ See Universal Declaration of Human Rights, arts. 8 and 10.

⁴⁷ A/HRC/37/59, annex, framework principle 10.

⁴⁸ See Inter-American Court of Human Rights, *Claude Reyes et al. v. Chile* and *Boyd, The Right to a Healthy Environment*.

⁴⁹ See European Court of Human Rights, *Verein Klimasenioren Schweiz and Others v. Switzerland*; Inter-American Court of Human Rights, *Claude Reyes et al. v. Chile* and *La Oroya v. Peru*.

⁵⁰ See European Court of Human Rights, *Öneyildiz v. Turkey*, Application No. 48939/99, Judgment, 30 November 2004; *Budayeva and others v. Russia*, Applications Nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02; and Inter-American Court of Human Rights, *La Oroya v. Peru*.

B. Substantive elements

1. Clean air

50. Breathing clean air is indispensable for everyone. Mr. Boyd previously provided an overview on clean air and recommendations for States to protect it.⁵¹ These included the effective control and monitoring of air pollution sources and improving and enforcing legislation, while attending to the most affected areas and communities.

51. Despite the importance of clean air, measures rendering substantial positive impacts have yet to be implemented. In 2021, 8.1 million lives were lost to air pollution, making it the second leading risk factor for death.⁵² Moreover, air pollution is directly related to global inequalities, as 89 per cent of all deaths caused by it happen in low- and middle-income countries.⁵³ Women's and girls' health and lives are significantly more affected by household air pollution,⁵⁴ while today around 2 billion children live in areas exceeding World Health Organization (WHO) limits for clean air.⁵⁵

52. Important efforts are ongoing to address this situation, including from WHO and other United Nations agencies, States and civil society. The mandate has received inputs from States on the positive effects of legislation targeting clean air.⁵⁶ Increasing these efforts should be prioritized, including addressing the root causes of air pollution with a human rights-based approach, reducing fossil fuel use, advancing energy transition and renewable energies, and better planning, among others.

2. Safe climate

53. Climate change threatens the well-being of humans and planetary health, evidencing the importance of guaranteeing a safe climate. Impacts have been recognized for years and are increasingly affecting human rights, including all elements of the right to a healthy environment. Rising temperatures and sea level, extreme weather events and changes in rain patterns are causing more intense fires, droughts and heat waves, among others.⁵⁷ While 2023 was the warmest year ever registered, high temperatures continue to break historic records.⁵⁸ Information received described impacts that are threatening lives and increasing poverty, such as severe water shortages, increases in water pollution and declining potable water and agricultural produce.⁵⁹

⁵¹ [A/HRC/40/55](#).

⁵² See Health Effects Institute, *State of Global Air 2024: A Special Report on Global Exposure to Air Pollution and its Health Impacts, with a Focus on Children's Health* (Boston, Massachusetts, United States, 2024).

⁵³ See World Health Organization (WHO), "Ambient (outdoor) air pollution", fact sheet, 19 December 2022.

⁵⁴ See WHO, "Household air pollution", fact sheet, 15 December 2023.

⁵⁵ See Nicolas Rees, *Clear the Air for Children: The impact of Air Pollution on Children* (New York, UNICEF, 2016).

⁵⁶ Submission from Czechia and Poland.

⁵⁷ See Sonia I. Seneviratne and others, "Weather and climate extreme events in a changing climate", in *Climate Change 2021: The Physical Science Basis – Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Valérie Masson-Delmotte and others, eds. (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press and New York).

⁵⁸ See World Meteorological Organization (WMO), *State of the Global Climate 2023*, WMO Series, No. 1347 (Geneva, 2024). and WMO, "Global temperature record streak continues, as climate change makes heatwaves more extreme", 15 May 2024.

⁵⁹ Submissions from Iraq and Qatar.

54. Climate impacts affect everyone. However, systemic inequalities cause those who have contributed the least to suffer significantly higher disproportional impacts, including small island States.⁶⁰ Globally, the 10 per cent of the population with the highest income and consumption is responsible for half of all emissions, while the 50 per cent of the population with the lowest income accounts for 12 per cent of emissions.⁶¹ Over 3 billion people live in highly vulnerable climate change regions, where mortality rates from floods, droughts and storms were 15 times higher between 2010 and 2020,⁶² and millions are or will be forcibly displaced owing to climate impacts.⁶³ It is well documented that gender-based violence tends to rise with climate impacts, including climate-related disasters.⁶⁴

55. There are ongoing efforts from States and businesses to reduce climate change, including by increasing commitments, policies and net zero targets. Despite that, scientific evidence shows that current objectives and commitments are well below what is needed, while emissions, ecosystem degradation and fossil fuels dependency continue to increase.⁶⁵ Litigation by civil society, social movements and cities to hold Governments and companies accountable, in some cases referencing the right to a healthy environment, has been used to advance accountability, climate action and better policies and laws.⁶⁶

56. The urgency to implement actions aligned with the best available science, respecting the human right to a healthy environment and other human rights, is undeniable.⁶⁷ This is particularly true as some climate actions, including maladaptation, greenwashing and geoengineering, are worsening the situation, threatening climate safety and thus a healthy environment.⁶⁸

57. Climate impacts stand in contrast to the opportunities available to stop, mitigate, reduce or remediate them. As stated by Special Rapporteurs, the scientific community and many others, a window of opportunity still exists to secure a sustainable future for all, although it is rapidly closing.⁶⁹ Deep, rapid and sustained reductions in greenhouse gas emissions are urgently needed and will lead to a substantial slowdown in global warming within two decades, and to noticeable changes within a few years.⁷⁰

⁶⁰ See Intergovernmental Panel on Climate Change, “Summary for policymakers”, in *Climate Change 2023: Synthesis Report*, Core Writing Team, Hoesung Lee and José Romero, eds. (Geneva, 2023).

⁶¹ See UNEP, *Emissions Gap Report 2023: Broken Record – Temperatures Hit New Highs, Yet World fails to cut Emissions (again)* (Nairobi, 2023).

⁶² See Intergovernmental Panel on Climate Change, “Summary for policymakers”, in *Climate Change 2023*.

⁶³ See Migration Data Portal, Types of migration, “Environmental migration”. Available at www.migrationdataportal.org/themes/environmental_migration_and_statistics (last updated on 5 June 2024).

⁶⁴ See [FCCC/SBI/2022/7](#), [A/77/136](#) and [A/77/170](#).

⁶⁵ See UNEP, *Emissions Gap Report 2023*.

⁶⁶ See Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation: 2024 Snapshot*, Policy report (London, Grantham Research Institute on Climate Change and the Environment, and London School of Economics and Political Science, 2024).

⁶⁷ [A/HRC/48/61](#).

⁶⁸ See United Nations, “Greenwashing: the deceptive tactics behind environmental claims”. Available at www.un.org/en/climatechange/science/climate-issues/greenwashing.

⁶⁹ [A/74/161](#) and [A/HRC/56/46](#).

⁷⁰ See Intergovernmental Panel on Climate Change, “Summary for policymakers”, in *Climate Change 2023*.

3. Safe and sufficient water

58. Access to safe and sufficient water is also vital for a healthy environment. Mr. Boyd assessed this element, recommending actions to securing it for all.⁷¹ This complements the human right to water and sanitation⁷² and work done by the Special Rapporteur on the human right to safe drinking water and sanitation.⁷³

59. Today, half of the world's population lacks adequate access to safe drinking water, sanitation and hygiene,⁷⁴ and 1.7 billion people do not have an alternative to drinking contaminated water.⁷⁵ In 2021, the number of people living in water-stressed countries increased to 2 billion owing to climate change.⁷⁶ People and communities in Africa, Asia, Central and South America, the least developed countries, small islands and the Arctic are particularly affected.⁷⁷

60. The situation is worse for those in vulnerable situations. Over 75 per cent of all water-related deaths have occurred in African and South-East Asian regions.⁷⁸ Increasing inequalities have also resulted in more people without safe drinking water in high-income countries.⁷⁹ Women and girls are often expected to gather water for their households in inaccessible and unsafe areas, leading to greater risks in terms of their rights, and even school dropouts.⁸⁰ Many Indigenous Peoples are also highly limited in their access to safe and sufficient water.⁸¹

61. Extractive industries, including mining, energy and the agribusiness sectors, along with inadequate planning and privatization of water sources, were among the main drivers of water scarcity and pollution, according to contributions received. Actions to address this situation include programmes, incorporation in national planning, legislation and adaptation plans.⁸²

4. Healthy and sustainable food

62. Healthy and sustainable food implies the production of food avoiding environmental and human health harms, and the protection of food systems. In 2022, 30 per cent of the global population suffered from moderate or severe food insecurity.⁸³ The largest drivers of this, as also highlighted by the Special Rapporteur on the right to food, include climate change, the coronavirus disease (COVID-19) pandemic and conflict.⁸⁴ Women and girls are particularly at risk, and make up 60 per

⁷¹ [A/HRC/46/28](#).

⁷² General Assembly resolution [64/292](#).

⁷³ See www.ohchr.org/en/special-procedures/sr-water-and-sanitation.

⁷⁴ See WHO, "Improving access to water, sanitation and hygiene can save 1.4 million lives per year, says new WHO report", 28 June 2023.

⁷⁵ See UN-Water, *Summary Progress Update 2021: SDG 6 – Water and Sanitation for All* (Geneva, 2016).

⁷⁶ Ibid.

⁷⁷ See Intergovernmental Panel on Climate Change, "Summary for policymakers", in *Climate Change 2023*.

⁷⁸ See WHO, "Improving access to water, sanitation and hygiene".

⁷⁹ See Joe Brown and others, "The effects of racism, social exclusion, and discrimination on achieving universal safe water and sanitation in high-income countries", *The Lancet Global Health*, vol. 11, No. 4 (April 2023).

⁸⁰ See UN-Water, Water facts, "Water and gender". Available at www.unwater.org/water-facts/water-and-gender.

⁸¹ [A/HRC/51/24](#).

⁸² Submissions from Austria, Brazil, Colombia, Czechia, Ecuador and Iraq.

⁸³ See Food and Agriculture Organization of the United Nations (FAO) and others, *The State of Food Security and Nutrition in the World: Financing to End Hunger, Food Insecurity and Malnutrition in All its Forms* (Rome, 2024).

⁸⁴ See [A/HRC/52/40](#), [A/77/177](#), [A/76/237](#).

cent of the people globally who suffer from extreme hunger.⁸⁵ Lack of formal land and tenure rights jeopardize the right to food for millions of Indigenous Peoples,⁸⁶ who are also affected by high contamination from mining on their lands.⁸⁷

63. States are increasingly aware that food security is an integral part of environmental and climate actions. Recognizing that pesticides used in food production can be harmful to the environment and health, the regulation, control and minimizing of their use can lead to more sustainable food production.⁸⁸ Implementing agroecology systems in a participatory and inclusive way, including organic farming, climate-smart agriculture, decreasing the use of pesticides and restoring soil health, will increase sustainable food and biodiversity while reducing pollution and greenhouse gas emissions.⁸⁹ Addressing climate change-related impacts on food security requires all types of knowledge, including from Indigenous Peoples, women and young people, in formal and informal ways.⁹⁰

5. Non-toxic environments

64. A healthy environment includes the right for everyone to enjoy non-toxic environments in which to live, study, work and play, as the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes has highlighted.⁹¹ However, today, one in six premature deaths is caused by pollution and toxic substances, which is 15 times higher than the number of premature deaths caused by all wars, murders and violence. A staggering 92 per cent of all pollution-related deaths occur in low- and middle-income countries,⁹² while exposure within high-income countries is also unequally distributed, often linked to different types of structural discrimination.⁹³ Annually, 750,000 workers die from causes related to occupational exposure to toxic substances.⁹⁴

65. States and regions are working on phasing out and banning the most toxic substances. Nevertheless, due to uncontrolled production demands, the overall production, use and disposal of hazardous chemicals continue to increase rapidly, with production doubling in the period 2000–2017 and projected to double again by 2030.⁹⁵

66. Global treaties related to a non-toxic environment include the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, the Stockholm Convention on Persistent Organic Pollutants, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, and the Minamata Convention on Mercury. Other relevant treaties are the Bamako Convention on the Ban of the Import into Africa and

⁸⁵ See www.wfpusa.org/drivers-of-hunger/gender-inequality/.

⁸⁶ See Janis Alcorn, “Tenure and Indigenous Peoples: the importance of self-determination, territory, and rights to land and other natural resources”, *Landlinks*, 1 July 2013.

⁸⁷ [A/77/183](#).

⁸⁸ See WHO, “Pesticide residues in food”, 15 September 2022.

⁸⁹ See [A/76/179](#).

⁹⁰ See Cheikh Mbow and others, “Food security”, in *Climate Change and Land: An IPCC Special Report on Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, and Greenhouse Gas Fluxes in Terrestrial Ecosystems*, Valérie Masson-Delmotte and others, eds. (Cambridge, United Kingdom, Cambridge University Press and New York).

⁹¹ [A/HRC/49/53](#).

⁹² See Richard Fuller and others, “Pollution and health: a progress update”, *The Lancet Planetary Health*, vol. 6, No. 6 (June 2022).

⁹³ Dorceta E. Taylor, *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility* (New York, New York University Press, 2014).

⁹⁴ See WHO and International Labour Organization, *Global Monitoring Report: WHO/ILO Joint Estimates of the Work-related Burden of Disease and Injury, 2000–2016* (Geneva, 2021).

⁹⁵ UNEP, *Global Chemicals Outlook II: From Legacies to Innovative Solutions – Implementing the 2030 Agenda for Sustainable Development* (Nairobi, 2019).

the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, the Protocol on Pollutants Release and Transfer Registers and the Escazú Agreement. Existing international commitments require substantial implementation to achieve actual needed improvements. Examples of compliance include legislations from 60 States prohibiting all types of toxic asbestos, which led to a 30 per cent decrease in worldwide consumption of asbestos from 2010 to 2016.⁹⁶

6. Healthy ecosystems and biodiversity

67. Healthy ecosystems and biodiversity are vital for all beings and essential to human food, medicine, cultural practices and shelter, among others. However, one million of the world's species of plants and animals are threatened with extinction,⁹⁷ and close to 90 per cent of global marine fish stocks are exploited or depleted.⁹⁸ The decline in biodiversity is caused primarily by habitat loss, the unsustainable use of natural resources, climate change, desertification and pollution.⁹⁹

68. Biodiversity loss is having a significant impact on human rights, especially of those more directly dependent on it, including Indigenous Peoples, Afrodescendent communities, peasants and other rural communities. Therefore, it is vital to recognize and ensure Indigenous Peoples' land rights and the rights of others, as mandated under international law,¹⁰⁰ recalling also that forests legally owned by Indigenous Peoples have lower rates of deforestation and improved biodiversity.¹⁰¹

69. The Convention on Biological Diversity, with its 196 States parties,¹⁰² was established to protect biodiversity and compliance with the Convention, respecting all human rights, and is essential for a healthy environment. The Kunming-Montreal Global Biodiversity Framework, adopted by 190 States, aims to protect 30 per cent of the planet by 2030.¹⁰³ Already, 39 States are protecting 30 per cent of their land,¹⁰⁴ while 13 States are doing the same for their maritime territory.¹⁰⁵

70. Actions towards healthy biodiversity and ecosystems include systemic transitions, such as a clean energy, a shift to a circular economy, a decrease in material consumption and production by wealthy individuals and nations, accountability and remediation actions.¹⁰⁶

⁹⁶ See Boyd, *The Rights to a Healthy Environment*.

⁹⁷ See Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, "Media release: nature's dangerous decline 'unprecedented'; species extinction rates 'accelerating'", 5 May 2019.

⁹⁸ See <https://datatopics.worldbank.org/sdgatlas/archive/2017/SDG-14-life-below-water.html>.

⁹⁹ See Switzerland, Federal Office for the Environment, "Global biodiversity". Available at www.bafu.admin.ch/.

¹⁰⁰ See Human Rights Council resolution 39/12.

¹⁰¹ See Boyd, *The Rights to a Healthy Environment* and UNEP, "Global diversity loss", Sustainable Development Goal Policy Brief, No. 3 (May 2018).

¹⁰² Available at www.cbd.int/information/parties.shtml.

¹⁰³ See UNEP, "COP15 ends with landmark biodiversity agreement", 20 December 2022 and, Kunming-Montreal Global Biodiversity Framework, available at www.cbd.int/gbf.

¹⁰⁴ See <https://data.worldbank.org/indicator/ER.LND.PTLD.ZS>, and Boyd, *The Rights to a Healthy Environment*.

¹⁰⁵ See <https://data.worldbank.org/indicator/ER.MRN.PTMR.ZS> and Boyd, *The Rights to a Healthy Environment*.

¹⁰⁶ A/75/161.

IV. Main challenges of the implementation of the right to a clean, healthy and sustainable environment

A. Economic model and unsustainable development

71. The tension between the current economic model and the systemic transformative solutions needed to protect people and the planet remains a fundamental challenge for the right to a healthy environment.¹⁰⁷ Unlimited growth and demands from institutions such as the International Monetary Fund, the World Bank and others, as well as the need to pay debt, ensure national financial stability and increase activities without considerations of the right to a clean, healthy and sustainable environment, are obstructing States from taking the required actions to protect it. This is mostly affecting low- and middle-income countries, which are highly dependent on extractive industries, and is increasing systemic inequalities.¹⁰⁸

72. International trade frameworks seem to protect the current economic system without considerations of the triple planetary crises. The World Trade Organization refers to environmental and human rights protections as reasons for potentially limiting international trade.¹⁰⁹ However, when protecting the environment and human rights is needed, for example, when applying the precautionary principle, the burden of proof on States remains too high, making such protections unviable under international trade law.¹¹⁰

73. The undue influence of some businesses at the national and the international levels constitutes another challenge to effectively protecting the right to a healthy environment.¹¹¹ Investor–State dispute settlement mechanisms are used to protect investors' interests when affected by State decisions, even when those decisions aim to protect humanity and the planet. As Mr. Boyd concluded, such agreements have a chilling effect regarding measures to protect the environment and climate action.¹¹²

74. False solutions are delaying effective climate action and environmental protection. The inadequate control and monitoring of business efforts to address climate change and biodiversity protection increase the risk of greenwashing,¹¹³ maladaptation, manipulation or misinformation.¹¹⁴

B. Current and worsening consequences of the triple planetary crises

75. Impacts from climate change, biodiversity loss and environmental pollution are causing loss and damage, increased poverty and conflict, with serious effects on human rights.¹¹⁵ A significant increase in the intensity of these crises has occurred in the past decade. Millions of people have lost their lives or been seriously affected, and the increasing and compounding impacts are challenging States' ability to prevent, attend to and recover from disasters.¹¹⁶

¹⁰⁷ [A/HRC/55/41](#).

¹⁰⁸ Submission from Department of Geography, University of British Columbia.

¹⁰⁹ Submission from Dr Alessandra Guida, Queen's University Belfast.

¹¹⁰ [A/78/168](#).

¹¹¹ [A/HRC/55/41](#).

¹¹² [A/78/168](#).

¹¹³ [A/HRC/56/55](#).

¹¹⁴ See Intergovernmental Panel on Climate Change, "Summary for policymakers", in *Climate Change 2023*.

¹¹⁵ See UNEP and International Science Council, *Navigating New Horizons*.

¹¹⁶ Submission from Iraq.

C. Weak rule of law

76. Environmental rule of law implies a governance system in which all persons, including public and private individuals and institutions, are accountable to laws that are public, equally enforced, independently adjudicated and consistent with human rights.¹¹⁷ The creation of more legal frameworks is in contrast to substantive effectiveness, which remains to be seen.¹¹⁸ Current environmental frameworks aim mostly at managing natural resources, without considering planetary boundaries and existing recognized human rights. Effective and comprehensive control and monitoring of the drivers of the crises, including corporate accountability mechanisms, tend to be absent. The increasing demand for critical minerals, including for clean energy technologies, is set to increase rapidly;¹¹⁹ without strong rule of law, this could cause further impacts on biodiversity, nature, food and water systems and culture.

77. Critical government tools for the adequate implementation of environmental rule of law, such as strategic environmental assessments and environmental impact assessments, are not adequately regulated and enforced. In some jurisdictions, such assessments are not binding, while in others there is no independent evaluation and such measures do not comprehensively include environmental and climate impacts. The lack of effective information and participation in these processes reduces the possibility of rights-holders to defend their rights and, as such, for States to prevent further impacts.¹²⁰

78. The right to a healthy environment has yet to be mainstreamed in all planning processes.¹²¹ This also applies to international institutions whose decisions can have negative environmental and climate consequences. For example, the International Seabed Authority, in charge of regulating deep seabed mining in areas with resources that are the common heritage of humankind,¹²² must effectively regulate these activities, guaranteeing effective access to information and participation, especially considering the human rights impacts on Indigenous Peoples, children and future generations. Information received in preparation of the present report raises concerns about the effectiveness of regulations protecting the seabed.¹²³

79. The lack of recognition of the right to a healthy environment remains a challenge in some regions and countries. In others, difficulties remain regarding unfamiliarity with the right; lack of legislation and better understanding of its content, and when and how it is violated;¹²⁴ apprehension of its implementation;¹²⁵ and complexity of coordinating authorities.¹²⁶ Ratification and effective implementation of international treaties relating to a healthy environment is incomplete, including the Escazú Agreement and the Aarhus Convention.

80. The reasons behind weak environmental rule of law vary between regions and countries, but commonly include lack of political will; the prioritization of private

¹¹⁷ See UNEP, *Environmental Rule of Law*.

¹¹⁸ Ibid.

¹¹⁹ See UNEP and International Science Council, *Navigating New Horizons*.

¹²⁰ Submission from the British Institute of International and Comparative Law, Acción Ecológica (Ecuador) and EnLAWTHAI Foundation (Thailand).

¹²¹ Submission from Colombia.

¹²² See www.isa.org.jm/about-isa/.

¹²³ Submission from The Pew Charitable Trusts, The Ocean Foundation, Deep Sea Conservation Coalition, and independent experts in relation to the International Seabed Authority.

¹²⁴ Submission from Defensoría del Pueblo del Estado Plurinacional de Bolivia.

¹²⁵ Submission from the Australian Capital Territory (ACT) Human Rights Commission.

¹²⁶ Submission from El Salvador.

interests over the public interest of protecting human rights, the environment and climate;¹²⁷ insufficient institutional capacities;¹²⁸ and corruption.

D. Weakening of existent policies, legal frameworks and institutions

81. Arguing for the need to attract foreign investment, reduce public spending or motivate economic growth, some countries are weakening institutions and modifying frameworks, including reducing the controls over and monitoring of extractive industries and/or deregulating important sectors, and significantly reducing budgets for the protection of the environment.¹²⁹ All of the above can have significant impacts on the protection of the human right to a healthy environment and of other rights.

E. Limitations to access to information, participation and justice

82. Obligations of States and businesses to provide access to information, participation and justice are developed and incorporated in legal frameworks; however, implementation in practice remains problematic. Obstacles remain, including elevated costs; systemic inequalities; language barriers; long, complicated and strict processes;¹³⁰ requests to provide complicated scientific evidence and prove damages; and the prescription of legal actions.¹³¹

83. Access to information in national and international jurisdictions¹³² is particularly difficult when it relates to strategic projects,¹³³ as restrictions due to commercial and security protections prevent crucial information from being made public, even when it affects the public interest and human rights. Protection of private interests and inadequate business influence is limiting the possibility of people, especially in vulnerable situations, to gain access to vital information and effectively protect their rights. Finding an adequate balance between rights and implementing restrictions to access to information that remains in line with human rights law is vital to protecting the environment and safe climate, and should be prioritized.

F. War, conflict and illegal activities

84. War, conflict and illegal activities contribute to increases in deforestation, ecosystem and biodiversity loss, pollution and climate emissions, and violations of the right to a healthy environment and other human rights, including life, health and food.¹³⁴ It is vital to further understand environmental and climate impacts from conflict and its complexities, to develop effective measures to prevent and reduce them while advancing actions to remediate its impacts.

85. Conflict situations and other illegal activities exacerbate environmental and climate impacts and situations of vulnerability. Uncontrolled extractive activities, such as mining, deforestation and large-scale agricultural activities, tend to increase

¹²⁷ Submission from Project on Organizing, Development, Education, and Research (PODER), and Keepers of the Water Society.

¹²⁸ Submission from Guatemala and Procuraduría de los Derechos Humanos.

¹²⁹ Submission from Centro de Estudios Legales y Sociales (Argentina), FIAN Indonesia, Yayasan Lembaga Bantuan Hukum Indonesia and Nuestro Futuro (Mexico).

¹³⁰ Submission from the British Institute of International and Comparative Law.

¹³¹ Submission from Clínica Jurídica Carlos Gaviria Díaz of Universidad Industrial de Santander (Colombia).

¹³² Submission from independent experts in relation to the International Seabed Authority.

¹³³ Submission from Asian Forum for Human Rights and Development.

¹³⁴ Information from several participants at consultation.

in the presence of conflict. The rights of women, girls, Indigenous Peoples, Afrodescendent communities and forest communities are particularly at risk.

G. Increased risks for environmental human rights defenders and closing of civil spaces

86. Environmental human rights defenders face different risks linked to their work in protecting the environment and climate, including stigmatization, criminalization, threats and assassinations.¹³⁵ Other increasing risks mentioned in the contributions received include the excessive use of force and closing of civic spaces. Women and girls, Indigenous Peoples,¹³⁶ young people,¹³⁷ land rights defenders and journalists are at a greater risk.¹³⁸ These risks are exacerbated by intersectional factors. Situations of conflict, war and illegal activities increase risks further for environmental human rights defenders when defending their territories.

87. The use of strategic lawsuits against public participation, targeting environmental and climate defenders with the intention to silence and intimidate them, pose a concerning challenge. To prevent manifestly unfounded claims, the abuse of judicial systems and limitations to the protection of public interest in these situations, important measures have been developed, such as the European Directive on protecting persons who engage in public participation against strategic lawsuits against public participation.¹³⁹

V. Challenges faced by people and groups in situations of vulnerability

88. Climate and environmental impacts affect everyone, although more greatly those in more situations of vulnerability. Systemic inequalities, discrimination and historic exclusion from decision-making processes have resulted in differentiated impacts from environmental degradation, climate change and biodiversity loss on marginalized people and groups. For those groups, many other rights are also affected, such as protection against the loss of livelihood, and the rights to life, health and culture.

89. Information received by the Special Rapporteur mentioned laws granting special measures to marginalized groups, such as women, Indigenous Peoples, Afrodescendent communities, children and young people.¹⁴⁰ While such measures are important,

¹³⁵ Submissions from FIAN Indonesia, Yayasan Lembaga Bantuan Hukum Indonesia and Minority Rights Group International.

¹³⁶ See United Nations, “Guidance note for United Nations resident coordinators and country teams: supporting Governments to better respect, promote and protect environmental human rights defenders” (November 2023) and [A/71/281](#).

¹³⁷ [A/HRC/55/50](#).

¹³⁸ Submission from Keepers of the Water Society and Asian Forum for Human Rights and Development.

¹³⁹ See Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (“Strategic lawsuits against public participation”) (*Official Journal of the European Union*, L 2024/1069, 16 April 2024).

¹⁴⁰ Submissions from Argentina, Colombia, El Salvador, Honduras, Mexico, Qatar, Saudi Arabia and Spain; submissions from Agora International Human Rights Group, Hungarian Civil Liberties Union, Legal Resources Centre (South Africa), Clínica Jurídica Carlos Gaviria Díaz of Universidad Industrial de Santander, Youth for Human Rights International and CARE Perú.

considering existing evidence and the situation on the ground, a greater systemic transformation in all regions towards substantive inclusion has yet to be achieved.¹⁴¹

90. Despite the fact that persons with disabilities face particular challenges regarding environmental and climate impacts, there is little documentation and fewer targeted measures and participation opportunities that take their needs into account. Challenges range from physical obstacles for effective participation to inadequate means and formats of communications to allow the direct participation of persons with disabilities.

91. Persons in situations of poverty also encounter special challenges related to access to information, participation and access to justice, and to guaranteeing their right to a healthy environment. Dire violations, such as “sacrifice zones”, mostly occur in impoverished areas.¹⁴² Even if participation spaces exist, lack of time and resources prevents their adequate involvement and the exercise of their rights, making participation a luxury many do not have.

92. Inadequate education, linked with situations of poverty, exacerbate these circumstances. Persons living in poverty face numerous daunting barriers to gaining access to justice, without the possibility to challenge crimes, abuses or human rights violations committed against them. Such obstacles include financial costs, socioeconomic exclusion, the location of courts and police stations, lack of information and unnecessarily complex and formal requirements of judicial processes.¹⁴³

93. Marginalized groups affected by environmental and climate impacts also include the LGBTQ+ community,¹⁴⁴ internally displaced people and migrants.¹⁴⁵ Compound exclusion and vulnerabilities intersect, increasing the risks to their human rights.

94. Decisions from international and regional human rights treaty bodies developing recommendations for States on how to advance an intersectional approach and implement measures to address systemic discrimination should be considered. Examples include decisions relating to the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the United Nations Declaration on the Rights of Indigenous Peoples. The Office of the United Nations High Commissioner for Human Rights and special procedure mandate holders have also developed extensive information regarding adequate measures to increase environmental protection and guarantee the human rights of people and groups in vulnerable situations, including an intersectional approach in the context of climate change and climate actions.¹⁴⁶

¹⁴¹ Submission from COCOMASUR and Earth Rights International.

¹⁴² [A/HRC/49/53](#).

¹⁴³ Submission from Geneva Centre for Human Rights Advancement and Global Dialogue.

¹⁴⁴ See OHCHR, Independent Expert on sexual orientation and gender identity, “LGBTI and gender-diverse persons in forced displacement”. Available at www.ohchr.org/.

¹⁴⁵ [A/77/189](#).

¹⁴⁶ [A/HRC/56/46](#).

A. Women and girls

95. While women's leadership has been vital for adequate environmental management and sustainability, their knowledge is often invisible and hardly used in the formulation and implementation of environmental policies.¹⁴⁷

96. Women and girls suffer differentiated environmental and climate impacts, especially if they are in vulnerable situations, although disaggregated data is still limited, restricting the possibility to understand their particular context and needs, and thereby to implement gender-sensitive measures. Gender stereotypes and systemic discrimination still limit the effective participation of women and people of other marginalized genders, and their involvement in decision-making, along with difficulties in gaining access to information and justice.¹⁴⁸

97. Examples include water scarcity and climate change, affecting farmers, fishers and marsh dwellers, who are also affected by environmental pollution, forcing millions of people to be displaced. Women in rural areas are particularly affected by the decrease in cultivated lands, as desertification may affect 75 per cent of lands in some countries, and at least 40 per cent of cultivable lands. This has financial impacts, increasing poverty and inequalities.

98. Indigenous women and gender-diverse people are particularly affected by the consequences of climate disasters and environmental degradation, as pre-existing social, political, economic and gendered inequalities are embedded in patriarchal structures.¹⁴⁹ Women and girls are more likely to be exposed to disaster-induced risks and losses relating to their livelihoods and less able to adapt to changes in climatic conditions.¹⁵⁰ In situations of disasters, women and girls are also under higher risk of sexual violence.¹⁵¹

B. Young people and children

99. Young people and children also suffer specific impacts that need to be well understood and addressed. Widespread psychological distress linked to climate change and governmental inaction was highlighted among the most important impacts.¹⁵² Diverse restrictions in civic spaces limiting their right to have access to information and participation are also a challenge linked with inadequate considerations of the needs of children and young people, and urban-centred processes.¹⁵³ Furthermore, as outlined previously, children's health is more exposed to environmental pollution.

C. Indigenous Peoples

100. Indigenous Peoples have contributed greatly to environmental and biodiversity conservation. Indigenous and ancestral knowledge is vital for transformational

¹⁴⁷ Submission from the Ismail Mahomed Centre for Human and Peoples' Rights of the University of Venda (South Africa).

¹⁴⁸ [A/HRC/52/33](#).

¹⁴⁹ Submission from International Work Group for Indigenous Affairs.

¹⁵⁰ Submission from Geneva Centre for Human Rights Advancement and Global Dialogue.

¹⁵¹ Submission from Center for Gender and Refugee Studies of the University of California. See [A/77/136](#).

¹⁵² Submission from Avaaz.

¹⁵³ Submission from Red Latinoamericana y Caribeña de Niños, Niñas y Adolescentes, Movimiento Latinoamericano y del Caribe de Niñas, Niños y Adolescentes Trabajadores, Sociedad Peruana de Derecho Ambiental and Save the Children.

systems towards climate and environmental justice, including knowledge from elders and women. Despite this, Indigenous Peoples' rights still face serious challenges, including stigmatization and discrimination.

101. The information received included descriptions of situations such as Indigenous Peoples being “racialized as primitive and unintelligent”, and the rights of self-recognized Indigenous Peoples, such as pastoralists and forest dependent communities, still yet to be fully recognized in too many countries. Protection has yet to be secured for Indigenous lands, and there is a risk of legal modifications that could increase dispossession and degradation of these lands.

102. Despite the obligation of free, prior and informed consent, this is not fully respected, owing to weak rule of law, non-binding processes and inadequate controls over business activities. Examples received by the Special Rapporteur include cases related to mining activities in several regions, including lithium mines in South America.

103. Moreover, climate change is having a severe impact on Indigenous Peoples' lands, rights and culture, including as a result of fossil fuel extraction; the energy, agribusiness, tourism and renewable energy sectors; melting permafrost; the mining of transitional minerals; and carbon markets projects.¹⁵⁴

104. Conservation efforts, like establishing natural protected areas, sometimes with militarization and forcible relocation, are affecting Indigenous Peoples' rights, evidenced in contributions received. Lack of inclusion of traditional Indigenous knowledge in these efforts, and implementing REDD-plus and carbon market projects without adequate free, prior and informed consent and benefits-sharing, might be a source of conflicts and in some cases subject to litigation.¹⁵⁵

105. Access to information, participation and access to justice for Indigenous Peoples is also challenging in these situations regarding projects and activities that affect their territories, as well as environment and climate. Language is still one of the main barriers; when information is made public, it tends to be in official languages, with little or no interpretation in Indigenous languages.¹⁵⁶ Digital and geographic isolation exacerbates the situation.

VI. Conclusions

A. Transform the economy

106. As the present report demonstrates, the current economic system – focused on unlimited growth, profit maximization and development, and ignoring planetary boundaries – constitutes one of the main drivers for the current planetary crises, limiting also the effective fulfilment of the right to a clean, healthy and sustainable environment. The urgent transformational and systemic changes identified by multiple entities to revert the current crises have yet to be implemented.

¹⁵⁴ Submissions from Procuraduría de los Derechos Humanos de Guatemala, Articulação dos Povos Indígenas do Brasil, Articulación de los Pueblos y Organizaciones Indígenas del Nordeste, Minas Gerais y Espírito Santo, Fundação Gaia Amazonas and Permafrost Pathways.

¹⁵⁵ See Colombian Constitutional Court, Judgment T-248, 25 June 2024.

¹⁵⁶ Submission from Amlanika Bora and Aravindan Anandan of the Vidyashilp University (India).

B. Advance the legal recognition of the right to a healthy environment

107. Recognizing and mainstreaming the right to a healthy environment in multilateral agreements and national jurisdictions should be prioritized. The Special Rapporteur supports ongoing regional negotiations, such as in ASEAN and Europe, highlighting the importance of ensuring fully transparent and participatory processes.

108. New global instruments are vital opportunities to incorporate the right to a healthy environment. These instruments can also help in the developing and further understanding of the obligations of States and businesses, while contributing to consistent harmonization of legal frameworks.

109. Best practices and lessons learned from collaborative processes, such as developments on access to information, participation and access to justice, including the Aarhus Convention and Escazú Agreement, can help to deepen the understanding of State obligations, improve capacity-building and review legislation. Ongoing discussions about other agreements in Africa and Asia should be comparable to these and should be aligned with international law.

C. Implementing existing frameworks and strengthening the rule of law

110. Owing to the current gaps between reality and the environmental rule of law, effective practical enforcement and implementation of existing frameworks are crucial. Enforcement includes compliance with court decisions and the corresponding improvement of policies and laws, to also avoid further litigation and conflicts. This is especially the case regarding effective control and monitoring of public and private business activities – and illegal activities – as these are among the most important challenges to prevent further environmental degradation.

111. As described, standards from treaty bodies and other human rights entities regarding the right to a healthy environment constitute a solid base from which to understand the content and application of obligations. These are crucial for States to decide how to improve the monitoring and control of public and private efforts that are causing or might cause significant environmental damages, thereby affecting the enjoyment of the right to a healthy environment in any of its elements. This is especially relevant in relation to children, women, Indigenous Peoples, migrants, people with disabilities and other marginalized groups. New international law developments, such as the recent advisory opinion of the International Tribunal for the Law of the Sea and pending advisory opinions of the International Court of Justice and Inter-American Court of Human Rights regarding climate change, will provide important guidance on the content and scope of State obligations in relation to a healthy environment and other rights.

112. Such standards can also be used to evaluate economic interests, including regarding effective access to information, participation and access to justice, while recognizing that these advances will not be completely effective while the remaining obstacles of the current economic and trade systems are in place.

D. Reviewing and updating frameworks with the human right to a healthy environment at the centre

113. Current legal frameworks related to environmental protection and climate action have not been updated considering the reality of planetary boundaries and the triple

planetary crises. Reviewing and updating policies and laws, with the human right to a healthy environment at the centre, therefore remains a priority. States should also strengthen capacity-building at all levels, increase budgets and monitoring systems and mainstream the right to a healthy environment in national policies.

114. Conversely, regressive decisions and the weakening of legal frameworks can increase litigation and generate international responsibility for States that worsen the environmental crises and human rights impacts. Continued isolated actions and measures prevent transformational changes, aggravating the current situation.

115. Reviewing and updating legislation on the basis of best available science is essential to clarify the existing gaps and strengthen the impact of States' efforts. A holistic and diverse understanding of science, considering also traditional and ancestral science, can provide important missing knowledge. Ancestral knowledge from Indigenous Peoples, Afrodescendent communities, women and others can contribute important scientific information that, together with adequate transparent and participatory processes, could advance effective measures under development.

E. Intersectional approach

116. As described, intersecting forms of discrimination based on race, gender, sexual orientation, age and socioeconomic status, among others, generate differentiated impacts on the right to a healthy environment and the triple planetary crises. Therefore, an intersectional approach, based on effective practical implementation of the human right to substantive equality and non-discrimination, is vital in fulfilling a healthy environment and advancing transformational changes. This refers to both the substantive and procedural elements that make up a clean, healthy and sustainable environment, which should be incorporated at multiple levels, in all climate-related, environmental and biodiversity efforts. Targeted attention and creating tailored policy responses can also contribute to identifying important scientific knowledge and ongoing effective alternative solutions for the triple planetary crises.

F. Way forward for the mandate

117. Given the pressing challenges and the mandate given by the Human Rights Council, the Special Rapporteur envisions working on further clarifying standards regarding the right to a clean, healthy and sustainable environment and on developing tools for States and businesses to enable the full implementation of that right. The Special Rapporteur will work to advance effective protective measures, with an intersectional approach, in coordination with other special procedure mandate holders, States, environmental defenders, Indigenous Peoples, women, young people, children, people with disabilities, LGTBQI+ people, civil society and others, prioritizing on-the-ground expertise.

118. Advancing the recognition of the right to a healthy environment is a priority, including in ongoing processes in ASEAN and Europe. The Special Rapporteur emphasizes her willingness to support these processes, contributing to strengthening the recognition and implementation of the right in those regions.

119. The Special Rapporteur has identified the need to further clarify and develop standards for assessment and evaluation tools, such as strategic environmental assessments and environmental impact assessments. She will also be working to develop adequate and comprehensive standards for planning, including in relation to land use, coastal and marine areas and urban areas.

120. Clarifying and advancing the understanding of standards and best practices regarding access to information, participation and access to justice on environmental matters will be another area of work for the mandate. The Special Rapporteur will promote the exchange of experiences from regions, perspectives and stakeholders, to identify, learn and apply lessons learned.

121. The Special Rapporteur will also contribute to further understanding the drivers behind the threats and increasing risks to environmental defenders, developing protective measures, considering the increasing worsening situation in different regions and the closing of civic spaces, and with an intersectional approach.

VII. Recommendations

122. On the basis of the overview presented above, the Special Rapporteur recommends that States:

(a) **Effectively implement legal frameworks and policies in line with international law and the internationally recognized right to a clean, healthy and sustainable environment;**

(b) **Review, update and harmonize international, national and subnational legal frameworks, mainstreaming the human right to a healthy environment and reflecting the interconnectedness between systems, humans and nature. Such processes should include all sectors, addressing the root causes of the triple planetary crises and reducing systemic inequalities and conflict;**

(c) **Recognize the right to a healthy environment in national jurisdictions where this is not yet the case, and support regional processes to recognize and strengthen the right;**

(d) **Support the mainstreaming of the right to a healthy environment in upcoming multilateral negotiations and agreements, including in relation to climate and biodiversity, and in new instruments, such as the instrument to tackle plastic pollution, the outcomes of the Summit of the Future and the binding treaty on business and human rights;**

(e) **Expand agreements on access to information, participation and access to justice in relation to the right to a healthy environment, including its codification and enforcement;**

(f) **Promote intersectionality while eliminating systemic exclusion and discrimination by incorporating the rights and needs of people and groups in more vulnerable situations when implementing the right to a clean, healthy and sustainable environment;**

(g) **Improve the protection of environmental defenders, implementing participatory measures with an intersectional and inclusive approach, guaranteeing safe civic spaces, avoiding criminalization and advancing the investigation and prosecution of those responsible for violating their human rights.**

123. The Special Rapporteur recommends that States, international organizations and businesses:

(a) **Improve the monitoring of the status of implementation of the right to a healthy environment, including during the universal periodic review process;**

(b) **Implement transformational changes, on the basis of the interconnection of natural and human systems and planetary boundaries, avoiding consideration of linear systems;**

(c) **Avoid false solutions, including greenwashing, maladaptation and environmental and conservation measures that violate human rights;**

(d) **Expand effective monitoring and control to businesses, eliminating subsidies and other incentives inconsistent with the right to a healthy environment, while advancing transformative systemic actions;**

124. Implement the precautionary principle and other international law obligations to effectively protect the environment and avoid degradation, while introducing and complying with strong regulations.

Certificate of Annexure

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID1400 of 2025

AUSTRALIAN CONSERVATION FOUNDATION INC

Applicant

MINISTER FOR THE ENVIRONMENT AND WATER & ANOTHER

Respondents

This is the annexure marked **DB-4** produced and shown to David Burke at the time of affirming his affidavit of 13 November 2025.



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

The ocean and human rights

Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño

Summary

In the present report the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño, considers the relationship between the ocean and human rights and why ocean issues are human rights issues. The report will constitute a contribution to understanding the ocean as a single biome and its significance within the framework of human rights, particularly in relation to marginalized people, communities and groups. Also addressed is the importance of a holistic, comprehensive, integrated, gender-responsive and human rights- and ecosystem-based approach to the ocean, with the human right to a clean, healthy and sustainable environment at the centre. The report is aimed at advancing adaptive, inclusive and evidence-based management measures to reduce the vulnerability of the ocean to harms from the triple planetary crisis and their cumulative impact on human rights. The Special Rapporteur also identifies challenges to and opportunities for achieving a healthy ocean and sets out priority recommendations for States, United Nations entities and businesses.

* Reissued for technical reasons on 13 February 2025.



I. Introduction

1. Life on Earth evolved from the ocean about 3.5 billion years ago. The ocean is the largest biome on the planet, covering 70 per cent of its surface. While human understanding of the ocean has advanced significantly, much has yet to be learned. One thing is certain, however: the balance of life on Earth depends on the ocean, which provides food, regulates temperatures and currents, absorbs heat and carbon from the atmosphere, produces oxygen, even in the deep sea, and provides habitat for millions of species.
2. The ocean also connects land, air and coastal and freshwater ecosystems, evidencing that planetary ecosystems are interconnected and interdependent. While there are diverse ocean basins, the ocean is a single global biome. In the report, therefore, it is referred to as “the ocean”.
3. For millennia, human civilizations have thrived on the ocean. Known in various Indigenous languages as *kai* and *moana* (Māori), *wardan* (Nyungar) and *maritorio* (Indigenous Peoples of Chile), the ocean has long been fundamental to many cultures’ identities and core values. Billions of people’s lives depend directly on the ocean and coastal areas, including for food, housing, work, culture, spirituality, medicine, transport, education and physical and mental health.¹
4. Despite the importance of the ocean, the current magnitude of its degradation and the threat to it is unprecedented. The triple planetary crisis of climate change, biodiversity loss and pollution has resulted in the crossing of six out of nine planetary boundaries and a seventh, ocean acidification, will be crossed if trends are not reversed.² The evidence is everywhere, including the increasing occurrence of dead zones, extreme weather events, marine heat waves, deoxygenation, alarming levels of biodiversity loss and millions of people dying, losing their livelihoods or being forcibly displaced.
5. The ocean’s degradation is affecting the enjoyment of human rights, including the rights to a clean, healthy and sustainable environment, life, health, culture and education. The socioeconomic losses due to ocean mismanagement are also significant, estimated at nearly \$1 trillion annually.³
6. The drivers of that degradation are human related and have increased exponentially over the past half century with the expansion of industrialization and extractive industries, while disproportionately affecting women, communities, Indigenous Peoples, people of African descendant and States marginalized by colonialism, slavery and unjust economic and trade policies.⁴
7. It is urgent to protect and restore the ocean.⁵ While important initiatives are under way internationally, regionally and nationally, they do not necessarily reflect the interconnectedness of the ocean and human rights. An ecosystem-based approach offers a path for implementing them in a holistic, coordinated and collaborative way that takes account of that relationship.
8. States, United Nations institutions, Indigenous Peoples, the scientific community and other stakeholders agree that the main challenge is the complexity and difficulty of coordinating and implementing current ocean management regulations and initiatives. The current efforts embody different perspectives, including various geographic, scientific,

¹ See <https://press.un.org/en/2021/sgsm20754.doc.htm>; <https://www.cbd.int/article/food-2018-11-21-09-29-49>; <https://www.un-ilibrary.org/content/journals/15643913/54/2>; and submission from Cynthia C. Umezulike. All submissions referred to in the present document are available at <https://www.ohchr.org/en/calls-for-input/2024/call-inputs-oceans-and-human-rights>.

² See https://www.planetaryhealthcheck.org/storyblok-cdn/f/301438/x/a4efc3f6d5/planetaryhealthcheck2024_report.pdf.

³ See https://www.undp.org/sites/g/files/zskgke326/files/2022-07/UNDP-Ocean-Promise_0.pdf.

⁴ See [A/HRC/55/37](https://www.un.org/sg/en/content/sg/statement/2022-02-11/secretary-generals-video-message-the-one-ocean-summit).

⁵ See <https://www.un.org/sg/en/content/sg/statement/2022-02-11/secretary-generals-video-message-the-one-ocean-summit>; <https://thecommonwealth.org/news/cop29/sids-leaders-say-apia-commonwealth-ocean-declaration-key-accelerating-climate-action>; and submission from Council of Europe.

economic and geopolitical frameworks, resulting in siloed views and the lack of an integrated and ecosystem-based approach. While international human rights processes have increasingly incorporated a human rights-based approach to ocean governance,⁶ as reflected in some international agreements and initiatives,⁷ the approach is not yet systematic. At the same time, there is little understanding of what a human rights-based approach entails and how to incorporate it into ocean-related efforts.

9. To address that challenge and contribute towards more effective ocean management and protection while respecting human rights, the Special Rapporteur urges the mainstreaming of the human right to a clean, healthy and sustainable environment into ocean management efforts. That approach would equip States, the United Nations system, Indigenous Peoples, civil society, businesses and others with the tools to adopt an ecosystem-based and integrated perspective. It would also build on existing standards and processes to guarantee an effective human rights-based approach.

10. The human right to a clean, healthy and sustainable environment has been recognized by the Human Rights Council and the General Assembly, as well as regionally.⁸ It has also been recognized by 85 per cent of States Members of the United Nations (164 out of 193) in constitutions, legislation and regional treaties.⁹

11. A healthy ocean is a fundamental part of healthy biodiversity and ecosystems, one of the substantive elements of the right to a healthy environment. The ocean also is vital to all other substantive elements of that right, including a safe climate, healthy and sustainable food and water, a non-toxic environment and clean air.¹⁰

12. Protecting the human right to a healthy environment also requires guaranteeing the procedural elements of effective access to information, public participation and access to justice and remedy, for everyone, everywhere. Those procedural elements must be prioritized to improve ocean protection and governance. By enhancing the human rights principles of universality, indivisibility, interdependence, transparency, inclusivity and accountability, legal frameworks can strengthen efforts to protect the ocean, while addressing inequalities through the principles of equity and non-discrimination. Safeguarding the ocean, therefore, supports broader human rights, including the rights to life, food, housing, work and culture, within an intersectional governance framework.

13. A holistic approach centred in human rights would enable comprehensive, participatory and intersectional governance, while incorporating decades of progress in human rights law. Through such a framework, States, the United Nations, businesses and other stakeholders could address gaps in ocean governance, catalyse systemic change and ensure the ocean's ability to sustain life, human rights and communities globally.

14. A human rights approach, including the right to a healthy environment, can also facilitate the implementation of such relevant treaties as the United Nations Convention on the Law of the Sea, which recognizes the ocean as a common heritage of humankind and the obligation of States to protect it. Because of the links between a healthy ocean and human rights, the obligation of ocean protection should be interpreted in relation to human rights.¹¹

⁶ See <https://www.nature.com/articles/s44183-024-00057-7>.

⁷ Kunming-Montreal Global Biodiversity Framework; Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication; and Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction.

⁸ See [A/79/270](#).

⁹ See [A/HRC/43/53](#), annex II. Since the report was published, in 2019, Antigua and Barbuda, Belize, Canada, Dominica, Grenada, Micronesia (Federated States of), Oman and Saint Lucia have recognized the right, as have the Australian Capital Territory and some states in the United States of America. See also https://www5.austlii.edu.au/au/legis/act/bill_es/; <https://dos.ny.gov/system/files/documents/2024/09/constitution-january-1-2024.pdf>; <https://meic.org/our-work/protecting-air-water/>; and <https://www.paconstitution.org/historical-research/legislative-histories/article-i-section-27-added-by-amendment-of-may-18-1971>.

¹⁰ See [A/79/270](#).

¹¹ See [A/HRC/56/46](#); and <https://www.ohchr.org/en/press-releases/2024/05/law-sea-tribunals-judgment-marine-environment-and-climate-change-underscores>.

15. That approach can also contribute to: achieving the Sustainable Development Goals, including Goal 14, to conserve and sustainably use the oceans, seas and marine resources for sustainable development; advancing the immediate need to stop or reduce plastic pollution, including the ongoing negotiation of a binding multilateral treaty;¹² and complying with the Convention on Biological Diversity commitments, including to protect 30 per cent of land and ocean by 2030, and the scientific criteria under the Convention for identifying ecologically or biologically significant marine areas in need of protection in open-ocean waters and deep-sea habitats¹³ and related agreements, including on protecting and respecting the rights of Indigenous Peoples and people of African descent. The ocean and climate change dialogue to consider how to strengthen adaptation and mitigation action of the Conference of the Parties to the United Nations Framework Convention on Climate Change will also benefit from the inclusion and strengthening of a human rights-based approach, including the right to a healthy environment. The dialogue's findings should be included systematically in workstreams relating to the Convention.

16. In September 2024, the Special Rapporteur issued a call for inputs to inform the present report. She thanks the Governments of Brazil, Chile, Colombia, Germany, Ireland, Italy, Lebanon, Malaysia, Mexico, Poland, Qatar, Serbia, Slovenia, South Africa and Uzbekistan and the Council of Europe, United Nations entities and over 60 Indigenous Peoples' and civil society organizations, academics and individuals for their thoughtful contributions.

17. The Special Rapporteur is also deeply grateful for the engaged participation of over 100 persons in consultations in Cali, Colombia, online consultations and a hybrid informal consultation in Geneva. Their diverse knowledge and backgrounds contributed significantly to the report.¹⁴

II. Interlinkages between the ocean, the right to a healthy environment and human rights for present and future generations

18. One third of the human population, nearly 2.4 billion people, live within 100 km of an oceanic coast.¹⁵ Fisher peoples, whether Indigenous or living near the coast, depend on fisheries for community practices and economic survival. Fishing is not merely their occupation; it is fundamental to their belief system, culture and identity and to realizing their human rights.¹⁶

19. Addressing the ocean's health is not only a matter of managing natural resources. It also requires understanding the interdependence and interconnectedness of humans and the ocean and that any impact on the ocean affects human rights, even for those living inland. Mainstreaming a human rights-based approach to ocean governance enables the incorporation of ancestral knowledge¹⁷ and the rights of present and future generations, integrating a long-term vision, which is currently missing and which is crucial to solving the current planetary crises.

¹² United Nations Environment Assembly of the United Nations Environment Programme (UNEP) resolution 5/14.

¹³ See <https://www.cbd.int/decision/cop?id=11663>, annex I.

¹⁴ For additional information on initiatives and best practices, see annexes at <https://www.ohchr.org/en/special-procedures/sr-environment/annual-thematic-reports>.

¹⁵ See <https://www.unep.org/news-and-stories/story/5-reasons-why-healthy-ocean-linked-human-rights>.

¹⁶ See submissions from World Forum of Fisher Peoples, Natural Justice South Africa, Bismarck Ramu Group and Currie Country Social Change.

¹⁷ See submission from Earth Law Center.

A. Sustainable food systems

1. Fisheries and the right to food

20. Fisheries contribute to food security by providing an important source of high-quality dietary protein and micronutrients for millions of people, improving food availability, especially for those living in poverty, and generating income for fisherfolk communities.

21. The seasonal availability of fish in rural communities is often different from that of crops, meaning that fish can help to reduce seasonal vulnerability to hunger.¹⁸

2. Small-scale fisherfolk

22. Globally, around 492 million people depend at least partially on small-scale fishing.¹⁹ For those populations, the interdependence between human rights and ocean health is a lived reality. The right to a clean, healthy and sustainable environment is essential for fisherfolk, as it protects their historical connection with coastal landscapes and seas, which are foundational to their identity and existence, including their livelihood, culture, education and even transportation.²⁰ Members of coastal communities and coastal Indigenous Peoples, especially in the Arctic and small island developing States, require particular protection, being among the first to experience the impacts of climate change, biodiversity loss and pollution.²¹

23. Women account for almost half of the global fishing workforce.²² Their traditional knowledge and rights are often overlooked. Women's agency should be valued for the important roles that women play in living with the ocean sustainably and as marine guardians.

B. Healthy ecosystems

24. The ocean encompasses multiple ecosystems, providing interconnected habitats for marine life, some of which are described below. A healthy ocean also provides vital services to human and animal communities. Scientists estimate that 50–80 per cent of oxygen produced on Earth comes from the ocean,²³ the majority deriving from plankton and algae. One species, *Prochlorococcus*, produces up to 20 per cent of the oxygen in the biosphere, a higher percentage than all of the tropical rainforests on land combined.²⁴

25. The ocean is also home to marine microbes, which make up 98 per cent of the ocean's biomass and are essential to the food chain, the production of nutrients for land and sea and the health of all animals and humans.²⁵

26. Coral reef ecosystems are essential to the fulfilment of several human rights, including to a healthy environment and food. At least 500 million people rely on coral reefs for food and livelihoods. In developing countries, coral reefs contribute approximately 25 per cent of the total fish catch.

27. Coral reef ecosystems contain the highest biodiversity of any ecosystem globally, occupying less than 1 per cent of the ocean floor and harbouring 25 per cent of marine life. Healthy coral reefs are the first line of protection for millions living in coastal areas, acting as barriers against erosion and flooding from storms. They are an increasingly important source of medicines, which are vital for the right to health.²⁶ Healthy coral reefs support

¹⁸ See [A/67/268](#).

¹⁹ See <https://openknowledge.fao.org/items/bbc2093d-69d9-4f1b-ae51-cfaa2969b52f>.

²⁰ See submissions from World Forum of Fisher Peoples and Opportunity Green.

²¹ See <https://openknowledge.fao.org/server/api/core/bitstreams/9aeb8ade-a623-4954-8adf-204daae3b5de/content>.

²² See <https://www.unep.org/resources/report/global-gender-and-environment-outlook-ggeo>, p. 132.

²³ See <https://earthsky.org/earth/how-much-oxygen-comes-from-ocean>.

²⁴ See <https://oceanservice.noaa.gov/facts/ocean-oxygen.html>.

²⁵ See <https://oceanexplorer.noaa.gov/facts/marinemicrobes.html>.

²⁶ See https://issues.org/p_bruckner-coral-reefs-importance.

fisheries and related economic activities through tourism and recreational activities; restoring corals could unlock tens of billions of dollars in economic value.²⁷

28. Indigenous Peoples are highly effective stewards of 80 per cent of the planet's remaining biodiversity, including its coral reefs,²⁸ yet their traditional knowledge systems for the sustainable use and management of coral reef ecosystems are underrepresented in global literature.²⁹

29. Mangrove forests, found along coasts in 123 countries, are ecosystems that thrive in the interface between land and sea. Although mangroves account for less than 1 per cent of global tropical forest cover, they provide critical ecosystem benefits to the estimated 2.4 billion people living within 100 km of the coast.³⁰ Mangroves provide livelihood opportunities for local communities and serve as storm-surge protection for extreme weather events.³¹

30. Seagrass meadows are among the most common coastal habitats on Earth, covering more than 300,000 km² in at least 159 countries.³² They nurture fish populations, weaken storm surges and provide food and livelihoods for people living in coastal areas. Seagrasses play a significant role in the health of the world's ecosystems and the rights of coastal communities. They can improve water quality by filtering and storing nutrients and reduce coral diseases and contamination in seafood, protecting human health. Seagrass ecosystems also play a huge role in mitigating climate change. Highly efficient carbon sinks, they cover only 1 per cent of the ocean floor but store up to 18 per cent of the world's oceanic carbon.³³

31. Deep-sea habitats host most of the approximately 1 million ocean species.³⁴ Their abundant biodiversity underpins the carbon cycle and provides provisioning, supporting, regulating and cultural ecosystem services.³⁵ The deep sea is also the planet's largest carbon sink. Parts of the dark seabed of the Pacific Ocean are covered with polymetallic nodules, containing such metals as manganese and cobalt, that are potential sources of critical minerals. Researchers have recently discovered that such nodules produce oxygen without sunlight, known as dark oxygen.³⁶

C. A safe climate

32. The ocean regulates the Earth's climate, filters air and water, recycles nutrients and mitigates the impact of natural disasters. It is the largest active carbon reservoir on the planet, storing about 38,000 billion tons of carbon – over 28 times more than carbon stored by land vegetation and the atmosphere combined. The ocean has stored more than 90 per cent of the heat from human-caused climate change and one third of the world's carbon emissions.³⁷ Protected and restored ocean ecosystems, such as mangroves and seagrasses, could help to store more than 1.4 billion tons of carbon emissions per year by 2050.³⁸

²⁷ See <https://www.unep.org/resources/report/coral-reef-economy>.

²⁸ See submission from Azul.

²⁹ See submission from UNEP.

³⁰ See <https://www.unep.org/topics/ocean-seas-and-coasts/blue-ecosystems/mangrove-forests>.

³¹ See <https://www.worldwildlife.org/stories/mangroves-as-a-solution-to-the-climate-crisis>; and submission from Centro de Litigo Estratégico Nacional e Internacional.

³² See <https://www.unep.org/resources/report/out-blue-value-seagrasses-environment-and-people>.

³³ See <https://www.unep.org/news-and-stories/press-release/protection-seagrasses-key-building-resilience-climate-change>.

³⁴ See submission from The Pew Charitable Trusts.

³⁵ See <https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2021.667048/full>.

³⁶ See <https://www.nature.com/articles/s41561-024-01480-8>.

³⁷ See <https://www.lse.ac.uk/granthaminstitute/explainers/what-role-do-the-oceans-play-in-regulating-the-climate-and-supporting-life-on-earth>.

³⁸ See <https://www.wri.org/insights/turning-tide-ocean-based-solutions-could-close-emission-gap-21>.

D. Ocean defenders

33. Human rights violations against ocean defenders are increasing with the expansion of harmful activities in marine and coastal environments, with inadequate protective measures from States and businesses. Indigenous Peoples and coastal communities, particularly women and girls, children and young people, are at the forefront of advocacy efforts to safeguard their livelihoods and cultures against the extractive industrialization of the ocean.³⁹ Ocean defenders are also human rights defenders and their work is critical to protecting the rights to food, water, health, culture, livelihoods and a healthy environment. Ocean defenders suffer from harassment, intimidation, marginalization, criminalization, attacks and assassination. Instead, they should be recognized, rewarded and supported.⁴⁰ Protecting them is a prerequisite for effectively and equitably protecting the ocean and the rights of current and future generations.

III. Main challenges for the ocean and human rights

34. The ocean is fast approaching the brink of collapse in its ability to regulate ocean balance and sustain marine biodiversity. The interconnected crises of climate change, biodiversity loss and pollution are intensifying pressure on a distressed ocean, further jeopardizing the rights of Indigenous Peoples, fisher communities, peasants, women, children, people with pre-existing health conditions, older persons, persons with disabilities and those facing marginalization.

35. Valuing the ocean as a common heritage rather than its natural resources only as commodities is critical for protecting all human rights, including the right to a clean, healthy and sustainable environment. Competing economic, trade and industrial interests and the exclusion of ocean-dependent front-line communities from meaningful participation in ocean governance reinforce colonial, patriarchal and unsustainable development. Such development processes do not prioritize the protection of the ocean and human rights and are at the core of the threat of irreversible damage to the ocean.⁴¹

36. Most of the global South is vulnerable to the exploitation of their ocean resources without benefiting equitably. Financial constraints limit developing States from implementing and enforcing protections and adapting to the challenges of ocean degradation. Adequate, long-term funding for ocean conservation efforts should be prioritized.

A. Weak governance

37. Over 600 legal and institutional frameworks address the complex interdependence of human rights, economic activities and marine ecosystems. Their fragmentation, marked by multiple levels of intervention and an absence of coordination, has prevented enforcement and resulted in ineffective ocean governance, which is exacerbated by weak political ambition, corruption and a lack of transparency and extraterritorial enforcement.⁴² Obtaining information and reliable data can be extremely difficult because they are usually owned by private companies or because of the prolonged legal procedures for access to information from States.⁴³ The lack of information compromises the accountability of States and businesses and jeopardizes the realization of human rights as they relate to marine protection.

38. Siloed mandates in ocean-related organizations are also challenging. For example, the International Seabed Authority lacks clear measures for stakeholder engagement and the formal public participation of Indigenous Peoples, coastal communities and other

³⁹ See <https://www.nature.com/articles/s44183-022-00002-6>; and submission from Gender and Climate Justice Circle.

⁴⁰ See submission from Belize Barrier Reef Watch.

⁴¹ See submission from Pacific Network on Globalization.

⁴² See submissions from Lebanon, World Benchmarking Alliance and Oceana Mexico.

⁴³ See submission from Earthjustice.

marginalized groups. Its processes for including independent scientific advice also require transparency.⁴⁴

B. Industrial fisheries

39. Industrial fishing prioritizes profits over sustainability, operating largely with unsustainable, destructive fishing practices.⁴⁵ Most seafood is consumed in the developed world, which relies mainly on industrial fishing to meet its demand for cheap products such as canned tuna, incentivizing overfishing and exploitation, exacerbating environmental degradation and reducing local fish stocks.⁴⁶

40. Overfishing has a severe impact on marine ecosystems, coastal communities and the climate globally, depleting fish stocks and undermining food security and livelihoods for billions, particularly in low-income countries dependent on small-scale fisheries. Annual economic losses from overfishing reach \$83 billion.⁴⁷ Small-scale fishers are forced to rely on overexploited areas, leading to poverty, malnutrition and cultural erosion.⁴⁸

41. The global fishing sector, including through overfishing, is a major source of emissions that contribute to climate change, accounting for 1.2 per cent of world oil consumption. Overfishing also reduces the ocean's ability to act as a carbon sink. By the century's end, 45 per cent of fish stocks are expected to have shifted habitat due to climate change, with tropical and coastal areas losing access to traditionally fished species.⁴⁹

42. Illegal, unregulated and uncontrolled fishing, responsible for around 20 per cent of global catches, is prevalent in areas with inadequate regulations.⁵⁰ It employs such destructive methods as bottom trawling and is linked to human rights abuses, including forced labour and trafficking, especially affecting migrant workers.⁵¹ At least 128,000 fishers are trapped in forced labour aboard fishing vessels, while over 100,000 people die in fishing-related accidents annually. These are the consequences of a business model that prioritizes minimizing labour and fishing costs to meet consumer demand for low-cost seafood, resulting in unsustainable practices and human rights violations.⁵²

43. The production of fish oil, fishmeal and farmed fish target vast amounts of fish critical to the food security and livelihoods of coastal communities, particularly in the global South. Fishmeal to feed industrial aquaculture and fish oil used in the food supplement and cosmetics industries are largely consumed in industrialized countries, threatening the food security of people in developing countries.⁵³

44. Responding to the expansion of salmon farming, coastal communities in Chilean Patagonia have sought to protect their rights through the law on the marine coastal space of Indigenous Peoples (*Espacios Costero Marino de Los Pueblos Originarios*), also known as the Lafkenche Law. The legislation acknowledges the ancestral presence and traditional practices of Indigenous coastal communities, particularly the Mapuche Lafkenche people. It grants those communities rights to manage and use coastal marine areas for such activities as

⁴⁴ See submission from The Pew Charitable Trusts and World Wildlife Fund.

⁴⁵ See [A/HRC/55/49](#).

⁴⁶ See <https://doi.org/10.1057/s41301-024-00412-8>.

⁴⁷ See submission from Earthjustice.

⁴⁸ Ibid.

⁴⁹ See submission from Earthjustice.

⁵⁰ Ibid.

⁵¹ See submissions from United States Illegal, Unreported and Unregulated Fishing and Labor Rights Coalition, World Wildlife Fund and Greenpeace International.

⁵² See <https://researchrepository.ilo.org/esploro/outputs/report/Caught-at-sea-forced-labour-and/995372390102676>; and submission from United States Illegal, Unreported and Unregulated Fishing and Labor Rights Coalition.

⁵³ See <https://www.greenpeace.org/international/publication/22489/waste-of-fish-report-west-africa>.

fishing, religious ceremonies and recreation, thereby recognizing and protecting their cultural and economic connections to the sea.⁵⁴

C. Lack of support for small-scale fishers

45. Asia, Africa and Latin America employ 98 per cent of the world's fishers and produce over half of the global marine fish supply. Rising ocean temperatures, acidification and the loss of coral reefs are contributing to declines in fisheries, compromising livelihoods for small-scale fishers.

46. Women, who make up 47 per cent of the global workforce (around 56 million jobs), engage primarily in such post-harvest activities as fish processing and trading. Women face systemic inequities, including undervalued and underpaid work and a lack of access to decent working conditions, fishing rights and secure land. Their traditional knowledge and rights are often overlooked. The exclusion of women is exacerbated by the absence of sex-disaggregated data, rendering their contributions invisible in official statistics and decision-making. Indigenous women and women in vulnerable situations are particularly marginalized, limiting equitable and sustainable fisheries management and undermining both gender equity and effective resource management.⁵⁵

47. Small-scale fishers often face competition with industrial fisheries and large-scale operators, who may receive preferential treatment for fishing rights licences or subsidies or the approval of development programmes. Conflicts and resource-grabbing linked to large-scale development projects, including aquaculture, mining, fishing and tourism, often lead to a loss of access to traditional fishing grounds and the displacement of small-scale fishing communities without adequate compensation or consultation. Many small-scale fishers, in particular women, face poverty and a lack of social protections and access to healthcare and education. They often lack secure tenure rights over coastal and marine resources and exclusion from decision-making, resulting in unequal market systems, including exploitative pricing and trade barriers.⁵⁶

48. The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, developed in 2014 by the Food and Agriculture Organization of the United Nations, are crucial for promoting the human rights of small-scale fishers.⁵⁷ The guidelines can also help States to fulfil their human rights obligations and obligations under the Convention on Biological Biodiversity.

D. Disordered coastal urbanization

49. Urbanization and inadequate planning for infrastructure and tourism are affecting coastlines, including mangrove forests, coral reefs and seagrass beds. Coastal development often lacks adequate planning and an integrated approach that takes account of the complex interdependency between economic development activities and marine ecosystems, driving unsustainable resource extraction, such as sand mining, rather than investments in ecological preservation and sustainable waste management.⁵⁸

E. Marine pollution

50. Plastic pollution in the ocean poses significant threats to marine ecosystems, economies and human health and exacerbates climate change. Approximately 14 million tons of plastic enter the ocean annually, constituting 80 per cent of all marine debris, an amount

⁵⁴ See submissions from Asociación Interamericana para la Defensa del Ambiente and Observatorio Ciudadana, Red de Mujeres Originarias por la Defensa del Mar and Fiscalía de Medio Ambiente.

⁵⁵ See submission from Uta Schuchmann.

⁵⁶ Ibid.

⁵⁷ See <https://doi.org/10.4060/cc3251en>.

⁵⁸ See submissions from Brazil, Lebanon, Qatar, Fundación Ojos de Mar, Azul, University of Toronto, Vedant Pathak, Seas at Risk and Jubilee Australia.

projected to triple by 2040. Marine species often ingest or become entangled in plastic debris, leading to severe injuries and fatalities.⁵⁹

51. Plastic pollution disproportionately affects coastal fishing communities, remote and island communities and marginalized urban populations, worsening poverty and threatening livelihoods. Informal waste pickers, including women and children, play an important yet often overlooked role in managing plastic waste. They are on the front lines of waste collection and recycling but are vulnerable due to unsafe working conditions, exploitation and negative health impacts.⁶⁰

52. The presence of microplastic pollution undermines the environmental conditions necessary for sustainable living and hinders progress towards the achievement of the Sustainable Development Goals, particularly Goal 14 (life below water) and Goal 6 (clean water and sanitation). Developing nations with inadequate waste management infrastructure are disproportionately burdened.⁶¹

53. The ocean dumping of chemical waste, including a recent unprecedented discharge of radioactive contaminated water into the Pacific Ocean, is contributing to highly toxic marine pollution affecting ecosystems, marine life and human health.⁶² Abandoned offshore infrastructure, such as decommissioned oil rigs and pipelines, also contributes.⁶³

F. Land pollution

54. Land-based pollution harms ocean environments, with approximately 80 per cent of marine pollution originating from terrestrial sources. Sewage, heavy metals and plastics enter marine ecosystems through rivers and direct discharge, leading to habitat degradation, biodiversity loss and human health risks.⁶⁴ The contamination by heavy metals of soil, water and marine ecosystems should be prevented as should the agricultural runoff of agrochemicals, such as fertilizers and herbicides, which causes algal blooms, eutrophication and dead zones.⁶⁵ Such contamination pollutes drinking water and seafood and compromises food safety, with a disproportionate impact on low-income and Indigenous Peoples, threatening their access to clean water, food security and traditional ways of life.

G. Climate change

55. Climate change is driving irreversible impacts on the ocean, including warming, acidification, sea level rise and intensifying marine heat waves.⁶⁶ Arctic temperatures are warming two to four times faster than the global average, triggering permafrost thaw that is releasing emissions far exceeding projections. The rising temperatures are nearing tipping points for such critical systems as the polar ice sheets, land glaciers and the Atlantic Meridional Overturning Circulation, with potentially catastrophic global consequences.⁶⁷ Coral bleaching events, projected to become annual by 2034, threaten marine biodiversity and impede ecosystem recovery, devastating fisheries and coastal livelihoods.⁶⁸ Coastal

⁵⁹ See https://iucn.org/sites/default/files/2024-04/marine-plastic-pollution-issues-brief_nov21-april-2024-small-update_0.pdf?utm_source=chatgpt.com.

⁶⁰ See submission from UNEP.

⁶¹ See <https://www.unep.org/resources/report/neglected-environmental-justice-impacts-marine-litter-and-plastic-pollution>.

⁶² See submission from Pacific Network on Globalization and Center for International Environmental Law.

⁶³ See submission from Center for International Environmental Law.

⁶⁴ See submission from Vedant Pathak.

⁶⁵ See https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf.

⁶⁶ See submissions from Brazil, Lebanon, Malaysia, Poland, Qatar, Oceans North and World Forum of Fisher Peoples.

⁶⁷ See <https://iccinet.org/statecryo24>.

⁶⁸ See <https://www.unep.org/resources/report/projections-future-coral-bleaching-conditions-using-ipcc-cmip6-models>.

communities are increasingly being displaced due to saltwater intrusion, storm surges, erosion, flooding, sea level rise and the loss of fishing grounds.⁶⁹

56. The continued reliance on fossil fuels, including offshore oil and gas, exacerbates these crises. Offshore oil and gas operations contribute significant emissions, with processing plants, shipping terminals and liquefied natural gas infrastructure polluting fragile marine ecosystems.⁷⁰ Global shipping, which supports 80 per cent of merchandise trade, accounts for nearly 3 per cent of global greenhouse gas emissions, while harming marine environments through toxic scrubber discharges and underwater noise pollution.⁷¹

57. Despite the urgency to phase out fossil fuels, the offshore oil and gas industry is projected to grow by 60 per cent by 2030, adding infrastructure and expanding shipping routes.⁷² Leaking and abandoned offshore wells worsen the crisis. In the Gulf of Mexico alone, over 32,000 abandoned wells are releasing toxins and greenhouse gases. Gas, often falsely marketed as a clean energy transition fuel, is expected to drive a 55 per cent increase in global offshore production by 2050, particularly in Africa and Latin America.⁷³

58. The environmental harm of such activities is immense and the increase is incompatible with global climate obligations, threatening marine biodiversity, ecosystems and the livelihoods of millions.⁷⁴ Immediate action is essential to phase out fossil fuel reliance, protect vulnerable habitats and align ocean activities with sustainable climate and biodiversity targets.

H. Deep-sea mining-related risks

59. The proposed extraction of deep-sea critical minerals poses serious environmental, climate and human rights concerns.⁷⁵ Scientific research increasingly suggests that deep-sea mining could have harmful and unknown consequences for fragile deep-sea marine biodiversity and ocean ecosystems.⁷⁶ Deep-sea ecosystems, which are poorly understood, are especially vulnerable to mining activities, which destroy the seafloor, potentially releasing stored carbon and disrupting the ocean's carbon sequestration processes. The energy-intensive nature of mining operations contributes to significant greenhouse gas emissions.⁷⁷

60. Considering the potential for severe and irreversible damage, 32 countries have agreed to a moratorium on deep-seabed mining.⁷⁸

61. Indigenous Peoples, subsistence fishers and small island developing States are heavily reliant on marine resources for food and livelihoods. They are thus particularly vulnerable to the impacts of deep-sea mining, which threatens fisheries, a vital revenue source for island nations, contributing up to 84 per cent of government revenue in the Pacific.

⁶⁹ See <https://www.ipcc.ch/srocc>.

⁷⁰ See submission from Center for International Environmental Law.

⁷¹ A/78/169.

⁷² See <https://www.woodmac.com/news/opinion/global-deepwater-production-to-increase-60>.

⁷³ See https://www.gecf.org/_resources/files/pages/global-gas-outlook-2050/gecf-global-gas-outlook-20231.pdf.

⁷⁴ See submission from Franciscans International, Anglican Communion and Center for Energy, Ecology and Development.

⁷⁵ See <https://www.isa.org.jm/wp-content/uploads/2024/05/Letter-SPB-ISA.pdf>; and <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/ohchr-seabed-mining-10-july.pdf>.

⁷⁶ See submissions from The Pew Charitable Trusts, Pacific Network on Globalization and Deep Sea Conservation Coalition.

⁷⁷ See submission from Deep Sea Conservation Coalition.

⁷⁸ See submission from The Pew Charitable Trusts. See also <https://deep-sea-conservation.org/solutions/no-deep-sea-mining/momentum-for-a-moratorium>.

I. Marine geoengineering

62. Carbon dioxide removal technologies using marine geoengineering, such as solar geoengineering, seaweed farming and ocean fertilization, pose significant risks to marine ecosystems, including precipitation changes, extreme temperatures, oxygen depletion, nutrient disruption and marine food system instability, affecting communities dependent on those ecosystems.⁷⁹ The large-scale infrastructure required for geoengineering intensifies pollution, damage from mining and the effects of the climate crisis.

63. The disproportionate impacts of geoengineering projects on Indigenous Peoples' rights include the risk of land-grabbing, increased violence and violations of human rights.⁸⁰ Seaweed farming and ice-based geoengineering target vast Indigenous territories, exacerbating displacement and endangering the rights to life and security.⁸¹

64. Because of such risks and in accordance with the precautionary principle, the Conference of the Parties to the Convention on Biological Diversity reaffirmed the moratorium on geoengineering at its sixteenth meeting, highlighting the urgency of global caution with regard to risky technology with serious potential to harm future generations and biodiversity.⁸²

J. Blue economy

65. The blue economy involves balancing economic growth, improved livelihoods and marine ecosystem conservation through such industries as fishing, aquaculture, tourism and renewable energy. Case studies reveal, however, that it often prioritizes corporate profits over environmental protection and human rights.⁸³

66. Fisher communities face dispossession and the erosion of customary rights under State-backed economic policies that favour private entities. Such policies lead to so-called ocean-grabbing, often resulting in communities' loss of traditional territories, with fisherfolk reduced to mere workers in fisheries, energy or port infrastructure and petrochemical, tourism or other industry. This marks a significant shift in their identity, intensifying their exploitation and marginalization.⁸⁴

67. Blue finance includes loans and bonds that fund such marine-focused initiatives as ecosystem restoration, carbon credits, sustainable shipping and renewable energy. Such arrangements raise human rights concerns, however, including increasing debt burdens, where developing nations face repayment risks, often exacerbated by conditionalities, for example, expanding protected marine areas.⁸⁵ High interest rates and a lack of concessional terms conflict with State obligations for common but differentiated responsibility, equity and international cooperation. Debt obligations can hinder resource allocation for environmental and social rights.

IV. State obligations to respect, protect and fulfil human rights related to the ocean

68. The Special Rapporteur notes that States have certain overarching obligations regarding respecting, protecting and fulfilling the human right to a clean, healthy and sustainable environment and other human rights in the face of environmental harm, including as they relate to the ocean. Those obligations include the following: (a) to prevent, control and reduce harm to the marine environment; (b) to ensure access to information, public

⁷⁹ See submission from Seas at Risk.

⁸⁰ See [A/HRC/54/47](#) and [A/HRC/56/46](#).

⁸¹ See www.etcgroup.org/content/seaweed-delusion.

⁸² Conference of the Parties to the Convention on Biological Diversity, decision 16/22 (2024).

⁸³ See submission from Masifundise Development Trust.

⁸⁴ See submission from World Forum of Fisher Peoples.

⁸⁵ See submission from World Forum of Fisher Peoples, Koalisi Rakyat untuk Keadilan Perikanan, Ekologi Maritim Indonesia and FIAN Indonesia.

participation and access to justice in ocean governance; (c) to restore the marine environment; and (d) to cooperate meaningfully with other States.

69. To protect the ocean, States must implement their international obligations with an ecosystem- and human rights-based approach grounded in the best available science, including Indigenous and ancestral knowledge, and focused on the levels of biological organization and the essential structures, processes and functions of and interactions among organisms and their environments. An ecosystem-based approach recognizes that humans, with their cultural diversity, are an integral component of many ecosystems.⁸⁶ Hence, the Special Rapporteur underscores the recently adopted Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, which incorporates an ecosystem-based approach and provisions relevant for ensuring Indigenous Peoples' rights in the context of ocean and marine governance.

A. Obligation to prevent, control and reduce harm to the marine environment

70. Customary international law dictates that States must ensure that activities under their jurisdiction or control do not cause harm, including to the environment of other States⁸⁷ and the marine environment. Human rights obligations are complementary and parallel to broader inter-State duties to prevent transboundary environmental harm, and their interpretation and articulation in the context of marine protection must therefore be informed by principles flowing from both sets of legal obligations.⁸⁸ Under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, States must take positive measures to ensure environmental protection to prevent the negative impacts of environmental harm on human rights. That linkage has been reaffirmed by United Nations treaty bodies and regional human rights mechanisms and requires States urgently to take all appropriate measures to address foreseeable threats to human rights due to environmental pollution,⁸⁹ which include, but are not limited to, the adoption of reasonable measures to protect people from foreseeable threats to their right to life and adequately controlling polluting activities.⁹⁰

71. In an inter-State context, States must act with due diligence to prevent significant transboundary environmental harm.⁹¹ That standard of due diligence varies depending on the severity of the risk of harm involved,⁹² a State's contribution to it⁹³ and its capacities to properly address it.⁹⁴ With regard to the ocean, due diligence is more stringent when preventing ocean pollution⁹⁵ and human rights breaches from environmental harm caused by greenhouse gas emissions. The Special Rapporteur underscores that human rights violations

⁸⁶ See <https://www.cbd.int/doc/publications/ea-text-en.pdf>.

⁸⁷ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, para. 29.

⁸⁸ Vienna Convention on the Law of Treaties, art. 31.

⁸⁹ Human Rights Committee, general comment No. 36 (2018), para. 26; and *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), para. 7.5.

⁹⁰ *Portillo Cáceres et al. v. Paraguay*, paras. 7.5 and 7.8.

⁹¹ *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, *I.C.J. Reports 2015*, p. 665, para. 118.

⁹² International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024 on Climate Change and International Law, paras. 239, 256, 257 and 441 (3) (d).

⁹³ *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10* and corrigendum (A/56/10 and A/56/10/Corr.1), para. 98, art. 10, commentary 9. Further supported by the principle of common but differentiated responsibilities and respective capabilities in the climate treaty regime and the Rio Declaration on Environment and Development, principle 16. See also Organisation for Economic Co-operation and Development (OECD), Recommendation of the Council on Principles concerning Transfrontier Pollution, document C(74)224.

⁹⁴ International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, paras. 207, 219 ff., 225 ff. and 243.

⁹⁵ *Ibid.*, paras. 241, 242 and 441 (3) (c).

resulting from breaching that duty give rise to the application of human rights obligations beyond a State's territory when the source of harm is under its control.⁹⁶

72. Protecting the marine environment under the United Nations Convention on the Law of the Sea requires States to especially preserve rare or fragile ecosystems and the habitats of depleted, threatened or endangered species and other forms of marine life.⁹⁷ Considered in the context of the Convention on Biological Diversity and the Kunming-Montreal Global Biodiversity Framework, that duty also entails conserving and managing at least 30 per cent of the ocean as protected areas by 2030.⁹⁸

73. States must also maintain the ocean's integrity for present and future generations,⁹⁹ ensuring non-regression in environmental standards and protections. Conservation and management measures must take account of technical requirements imposed by international standards, the best available science, including the ancestral knowledge of Indigenous Peoples, and relevant environmental and economic factors.¹⁰⁰

74. The obligation of States to prevent environmental harm and the resulting human rights violations includes regulating, controlling and monitoring pollution, undertaking environmental impact assessments and upholding the precautionary principle.

1. Regulating, controlling and monitoring polluting activities

75. States must regulate activities that contribute to ocean pollution from both land-based and atmospheric sources, including dumping, shipping and activities involving the seabed.¹⁰¹ Regulations must be based on the best available science, including the ancestral knowledge of Indigenous Peoples, and reflect at least generally accepted international rules and standards.¹⁰² States must also ensure that regulations protect human rights from harm to the marine environment¹⁰³ by addressing hazardous marine activities on the basis of their potential risk to human rights, including through permitting provisions, operational standards, safety measures and oversight.¹⁰⁴ States must mandate practical measures to protect individuals exposed to inherent risks, establish adequate procedures to identify deficiencies and errors and mitigate threats to human rights, ensuring that activities with the potential for significant environmental harm are appropriately controlled.¹⁰⁵

76. States must enforce such regulations,¹⁰⁶ ensuring compliance by public authorities and overseeing their effective implementation in the private sector.¹⁰⁷ States must put in place well resourced, independent monitoring and oversight mechanisms¹⁰⁸ able to investigate,

⁹⁶ See *Sacchi et al. v. Argentina* (CRC/C/88/D/104/2019); and Inter-American Court of Human Rights, advisory opinion OC-23/17, 15 November 2017.

⁹⁷ United Nations Convention on the Law of the Sea, art. 194 (5). See also International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024.

⁹⁸ Kunming-Montreal Global Biodiversity Framework, target 3. See also Convention on Biological Diversity, art. 8.

⁹⁹ See Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, preamble; and Maastricht Principles on the Human Rights of Future Generations.

¹⁰⁰ International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, para. 414.

¹⁰¹ United Nations Convention on the Law of the Sea, arts. 207–212.

¹⁰² International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, para. 279.

¹⁰³ Inter-American Court of Human Rights, advisory opinion OC-23/17, para. 141.

¹⁰⁴ European Court of Human Rights, *Öneryıldız v. Turkey*, Application No. 48939/99, Judgment, 30 November 2004, paras. 89 and 90; and *Budayeva and Others v. Russia*, Applications No. 15339/02, No. 21166/02, No. 20058/02, No. 11673/02 and No. 15343/02, Judgment, 20 March 2008, para. 132.

¹⁰⁵ European Court of Human Rights, *Öneryıldız v. Turkey*, paras. 89 and 90; and *Budayeva and Others v. Russia*, para. 132.

¹⁰⁶ United Nations Convention on the Law of the Sea, arts. 213–219.

¹⁰⁷ Inter-American Court of Human Rights, *Rama and Kriol Peoples, the Black Creole Indigenous Community of Bluefields et al. v. Nicaragua*, Judgment, 1 April 2024, para. 420.

¹⁰⁸ African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Center and Center for Economic and Social Rights v. Nigeria*, communication No. 155/96 (2001), para. 53; and Inter-American Court of Human Rights, advisory opinion OC-23/17, para. 141.

punish and redress possible abuse through effective policies, regulations and adjudication.¹⁰⁹ Enforcement may comprise inter-institutional collaboration, monitoring and inspection, administrative guidance, investigation and prosecution and judicial or quasi-judicial proceedings.¹¹⁰

77. Considering the urgent threats to human rights from ocean pollution, States must adopt and enforce regulations that ensure a rapid, deep phase-out of greenhouse gas emissions,¹¹¹ ban or implement existing bans on destructive fishing practices, including bottom trawling,¹¹² prevent the increase in large-scale offshore drilling and other harmful forms of offshore exploration and resource exploitation and adequately regulate and control those activities, end the dumping of nuclear and chemical waste and single-use plastics and urgently adopt a moratorium on deep-seabed mining.¹¹³

2. Undertaking environmental impact assessments

78. To prevent pollution to the marine environment¹¹⁴ and protect and fulfil human rights,¹¹⁵ States must undertake environmental impact assessments for any planned activity, public or private, that may cause substantial pollution or significant and harmful changes to the marine environment through the specific or cumulative effects of the activity.¹¹⁶ Assessing the potential environmental impact of activities is therefore not a politically discretionary measure and cannot be disregarded for projects of national importance. That duty extends to the strategic planning of public policy.¹¹⁷

79. Comprehensive environmental impact assessments must: (a) be undertaken as early as possible, prior to a decision to authorize or commence a proposed activity likely to cause significant adverse impacts; (b) provide effective participation in all decision-making processes; (c) follow the best available science;¹¹⁸ (d) incorporate detailed documentation, with explicit methods and assumptions, ensuring transparency and reliability in evaluating environmental impacts;¹¹⁹ and (e) consider the potential socioeconomic, spiritual, cultural and environmental impacts, including the transboundary and cumulative effects of existing or related projects.¹²⁰ For activities with potential transboundary effects, States must notify and consult affected States, assess potential harm and cooperate to minimize impacts on shared resources. In line with the Convention on Biological Diversity, environmental impact assessments should explicitly address biodiversity considerations at all stages, ensuring their

¹⁰⁹ Inter-American Court of Human Rights, advisory opinion OC-23/17, paras. 142 and 154.

¹¹⁰ International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, para. 284.

¹¹¹ Ibid.; and European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application No. 53600/20, Judgment, 9 April 2024.

¹¹² General Assembly resolution 59/25, para. 66.

¹¹³ See <https://www.ohchr.org/sites/default/files/documents/issues/climatechange/information-materials/ohchr-seabed-mining-10-july.pdf>.

¹¹⁴ United Nations Convention on the Law of the Sea, arts. 204–206; and International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, para. 441 (3) (l). See, inter alia, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14; and *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, I.C.J. Reports 2015, p. 665.

¹¹⁵ See, for example, Human Rights Committee, general comment No. 36 (2018), para. 62;

Inter-American Court of Human Rights, advisory opinion OC-23/17, para. 127; and *Rama and Kriol Peoples, the Black Creole Indigenous Community of Bluefields et al. v. Nicaragua*.

¹¹⁶ International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, paras. 352 ff.; Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), art. 2 (2) and (3); Convention on Biological Diversity, art. 14; and United Nations Convention on the Law of the Sea, arts. 204–206.

¹¹⁷ See https://environment.ec.europa.eu/law-and-governance/environmental-assessments/strategic-environmental-assessment_en.

¹¹⁸ Kunming-Montreal Global biodiversity framework, targets 14 and 21.

¹¹⁹ See Espoo Convention, appendix II.

¹²⁰ Inter-American Court of Human Rights, advisory opinion OC-23/17, para. 165. Specifically with regard to projects affecting Indigenous communities, see *Rama and Kriol Peoples, the Black Creole Indigenous Community of Bluefields et al. v. Nicaragua*.

integration into decision-making processes and compliance with ecosystem-based approaches to conservation and sustainable use.¹²¹ Human rights and environmental impact assessments must also consider the impact from and to climate change that the activity would cause.

3. Precautionary principle

80. The precautionary principle is an established rule of international environmental law, and is enshrined in multiple treaties,¹²² including the United Nations Convention on the Law of the Sea,¹²³ the United Nations Framework Convention on Climate Change,¹²⁴ the Convention on Biological Diversity¹²⁵ and, most recently, the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction.¹²⁶ In accordance with the precautionary principle, States must adopt adequate measures to prevent severe or irreversible harm, even in the absence of definitive scientific evidence about the occurrence or the risk of harm.¹²⁷

B. Obligation to ensure access to information, participation and justice in ocean governance

81. States must ensure that all relevant stakeholders, prioritizing women, Indigenous Peoples, coastal and island communities, ocean defenders and small-scale fishers, children and young people, can fully and meaningfully participate in marine environmental governance at all levels, which requires equitable access to information, participation and justice.¹²⁸ States must also mandate the appropriate inclusion of Indigenous Peoples' traditional knowledge in marine resource management, ensuring free, prior and informed consent for decisions affecting their ancestral seas.¹²⁹ States must also ensure protections for individuals and organizations advocating for marine conservation, ensuring that they can operate without fear of persecution or harm. States must take appropriate measures to promote and protect the rights and traditional knowledge, innovation and practices of small-scale fishers, which are relevant to the conservation and sustainable use of biological diversity.¹³⁰

C. Obligation to restore the marine environment

82. States must implement measures to restore marine habitats and ecosystems.¹³¹ That duty stems from the protection of the right to a clean, healthy and sustainable environment,

¹²¹ See UNEP, document UNEP/CBD/COP/8/27/Add.2.

¹²² See, for example, Convention on the Conservation of Antarctic Marine Living Resources; United Nations Framework Convention on Climate Change; Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish, art. 6; 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, art. 3 (1); Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, preamble; and Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

¹²³ International Tribunal for the Law of the Sea, advisory opinion of 1 February 2011, paras. 131–135.

¹²⁴ Art. 3.

¹²⁵ Preamble.

¹²⁶ Arts. 19 (3) and 26 (5).

¹²⁷ Rio Declaration, principle 15.

¹²⁸ [A/79/270](#), para. 39.

¹²⁹ United Nations Declaration on the Rights of Indigenous Peoples, art. 32 (2); Convention on Biological Diversity, art. 8 (j); and Indigenous and Tribal Peoples Convention, 1989 (No. 169), art. 6.

¹³⁰ United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, art. 20 (2).

¹³¹ Convention on Biological Diversity, art. 8; and International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, para. 441 (4) (b).

and also arises as a legal consequence of State responsibility for the breaching of that right and the obligation to prevent transboundary environmental harm.¹³² Accordingly, States must consider suitable means to restore, as far as possible, the situation existing prior to the occurrence of harm¹³³ and thus return the environment to its prior condition.¹³⁴ This may include identifying, analysing and addressing causes of ecosystem degradation, with the full and effective participation of Indigenous Peoples and other rights holders and the use of relevant traditional knowledge, to prevent or reduce activities that cause further degradation.¹³⁵ In the context of marine pollution, reversing degraded ecosystems is necessary.¹³⁶

83. In cases of transboundary environmental harm, compensation may be an appropriate form of reparation for damage if restitution is impossible.¹³⁷ Compensation may be awarded for the impairment or loss of ecosystem services and may include payment for the restoration of the damaged environment.¹³⁸ The Special Rapporteur underscores that States must also ensure that recourse is available, in accordance with their legal systems, for prompt and adequate compensation or other relief in respect of damage caused by pollution of the marine environment by anyone under their jurisdiction.¹³⁹

84. Victims of human rights violations originating from harm to the marine environment must receive adequate, full and comprehensive reparation, which includes compensation, restitution, satisfaction, rehabilitation and guarantees of non-repetition. Regarding the latter, States should adopt the necessary policy and structural reforms to ensure that the rights of people and communities disproportionately affected by pollution of the marine environment are at the core of ocean governance.

D. Obligation to cooperate

85. States must cooperate to prevent, reduce and control marine pollution, protect, preserve and restore the marine environment and ensure a human rights-based approach to ocean conservation.¹⁴⁰ State cooperation is particularly relevant to: (a) formulating and developing rules, standards, recommended practices and procedures, based on the best available scientific knowledge, to counter marine pollution;¹⁴¹ (b) promoting studies, conducting scientific research and fostering the exchange of information and data on marine pollution, including its pathways, risks and remedies;¹⁴² and (c) establishing appropriate scientific criteria upon which rules, standards, recommended practices and procedures to counter marine pollution will be formulated and developed,¹⁴³ integrating the traditional knowledge of Indigenous Peoples, small-scale fishers and local communities.¹⁴⁴

¹³² Draft articles on responsibility of States for internationally wrongful acts (A/56/10 and A/56/10/Corr.1), para. 76; and *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua), *Compensation, Judgment*, I.C.J. Reports 2018, p. 15, para. 29.

¹³³ A/56/10 and A/56/10/Corr.1.

¹³⁴ *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua), para. 43.

¹³⁵ Conference of the Parties to the Convention on Biological Diversity, decision XI/16 (2012).

¹³⁶ International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, para. 386; and International Union for the Conservation of Nature, World Declaration on the Environmental Rule of Law (2016), principle 4.

¹³⁷ *Certain Activities Carried Out by Nicaragua in the Border Area* (Costa Rica v. Nicaragua), para. 31.

¹³⁸ Ibid., paras. 42 and 53.

¹³⁹ International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, para. 284; and United Nations Convention on the Law of the Sea, art. 235 (2).

¹⁴⁰ See A/HRC/37/59; Convention on Biological Diversity, art. 5; and Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, arts. 8 and 17.

¹⁴¹ United Nations Convention on the Law of the Sea, art. 197.

¹⁴² Ibid., arts. 200 and 201.

¹⁴³ Ibid., art. 201; and Convention on Biological Diversity, art. 8 (j).

¹⁴⁴ Indigenous and Tribal Peoples Convention, 1989 (No. 169); United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas; and Inter-American Court of Human Rights, *Case of the Rama and Kriol Peoples, the Black Creole Indigenous Community of Bluefields et al. v. Nicaragua*.

Furthermore, States must assist developing countries, particularly large ocean States, in their efforts to address marine pollution, providing scientific, technical, educational and other assistance to developing States that are particularly vulnerable to pollution of the marine environment.¹⁴⁵

V. Business responsibilities relating to a clean, healthy and sustainable ocean

86. A coherent, robust and comprehensive operationalization of human rights and environmental due diligence in business activities demands greater accountability to protect the human right to a clean, healthy and sustainable ocean environment. Often, transnational corporations operating on the ocean are not properly regulated or monitored and, therefore, can be responsible for large-scale environmental harm and human rights abuses from shipping, overfishing, pollution and offshore oil and gas extraction.

87. The Guiding Principles on Business and Human Rights require businesses to fully respect human rights irrespective of States' regulation of businesses, including the right to a healthy environment.¹⁴⁶ The Special Rapporteur highlights the need for stronger human rights obligations for businesses under international law to prevent and mitigate environmental harms and remediate related human rights violations. These include investing in community development, supporting access to education and healthcare and promoting decent work conditions to counter, for example, structural poverty in small-scale fisher communities that cannot fairly compete against corporate operations.¹⁴⁷

88. Businesses must implement human rights and environmental due diligence, including assessing the actual and potential environmental and human rights impacts of their activities or those directly linked to their operations, products or services and disclosing that information publicly.¹⁴⁸ Businesses must also provide adequate redress when their actions affect human rights and cause environmental harm.¹⁴⁹

89. National courts have concluded that companies can be held accountable for actions that negatively impact human rights and the environment, specifically the marine environments and coastal communities. In *Sustaining the Wild Coast NPC and Others v. Minister of Mineral Resources and Energy and Others*,¹⁵⁰ the High Court of South Africa underscored critical human rights obligations for businesses, noting that Shell did not adequately assess the environmental impacts of its proposed activities, which could have had significant consequences for marine life and the livelihoods of coastal communities. The judgment highlighted the importance of respecting the cultural and heritage rights of Indigenous Peoples and coastal communities. The proposed seismic surveys threatened areas of cultural significance to the affected communities and the lack of proper consultation had violated those rights. The legal challenges and subsequent court rulings against Shell demonstrate that businesses may face significant legal and reputational risks if they fail to uphold their human rights obligations.

90. Businesses have a responsibility to address and disclose their climate impacts transparently while ensuring compliance with human rights standards. They are also required to evaluate and report emissions (Scope 1, Scope 2 and Scope 3) across their operations and assess the sustainability of their land and marine activities.¹⁵¹ This is particularly necessary for negative carbon removal marine technology, deep-sea mining and blue economy projects

¹⁴⁵ United Nations Convention on the Law of the Sea, arts. 202 and 203; and International Tribunal for the Law of the Sea, advisory opinion of 21 May 2024, paras. 327 and 339.

¹⁴⁶ A/79/270, para. 123 (b); A/HRC/55/43; and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023).

¹⁴⁷ See <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf>, art. 4.

¹⁴⁸ See A/HRC/55/41.

¹⁴⁹ Guiding Principles on Business and Human Rights, principles 17 and 21.

¹⁵⁰ See <https://www.saflii.org/za/cases/ZAECMKHC/2022/55.html>.

¹⁵¹ See A/79/176.

to avoid greenwashing and foster accountability to the front-line communities that suffer the greatest impact.

91. *Milieudefensie et al. v. Royal Dutch Shell plc* in the Kingdom of the Netherlands has been pivotal in defining corporate responsibility regarding human rights and climate change.¹⁵² The court recognized that Shell's contributions to climate change posed risks to fundamental human rights, such as the rights to life and family life. The judgment emphasized that corporations had a responsibility to respect human rights, aligning with such international standards as the Guiding Principles on Business and Human Rights. Shell had an obligation to limit its emissions to mitigate climate change. The judgment underscored the principle that businesses have a duty of care to prevent activities that could harm the environment and, by extension, human rights.

92. Extractive industries must incorporate human rights considerations into their energy transition programmes and all other initiatives, ensuring respect for ecosystems and communities' rights. Current laws fail to address human rights issues in energy transitions. Human rights must be considered for a just transition, with a focus on creating decent work opportunities, addressing energy poverty and ensuring fair economic transitions for Indigenous and small-scale fisher communities.¹⁵³

93. In cases of business-related human rights abuses, States have an obligation to ensure access to justice and effective remedies to victims through independent grievance mechanisms, including, for example, legislation to counter undue corporate influence and install mechanisms to protect ocean defenders so that they can enjoy a safe environment and keep performing their role.¹⁵⁴

VI. Conclusions and recommendations

94. **The ocean, which is critical for balancing life on Earth, faces dire threats due to unsustainable human activities, including fossil fuel extraction, industrial fishing and agribusiness, risky marine technologies and inadequately planned urbanization. Marginalized communities, particularly in large ocean States, bear the brunt of those impacts, which are exacerbated by colonial legacies and unequal economic systems, rendering them highly vulnerable to the impacts of climate change, biodiversity loss and pollution. In parallel, many viable community-based solutions are under way that could inspire significant protection and the reversal of trends needed for ocean protection.**

95. **Over 600 ocean-related agreements exist, but weak rule of law and fragmented governance have resulted in a failure to prevent ocean damage, safeguard the environment and human rights and enforce restoration and accountability. Coordinated efforts using an ecosystem- and human rights-based approach that recognizes traditional science and knowledge systems are needed urgently across such ocean-related sectors as fishing, tourism, coastal planning, marine protected areas and shipping to immediately halt further ocean degradation and its impact on the right to a healthy environment.**

96. **Priority must be given to securing the customary and traditional ocean-related rights of Indigenous Peoples and small-scale fishers, ensuring gender equity through the active participation of women in decision-making and access to resources, protecting intergenerational equity for present generations, including children and young people, as well as future generations and protecting ocean defenders and their invaluable role. Strengthening transparency, participation and accountability within existing legal frameworks can improve ocean governance and align it with the human rights principles of universality, interdependence and indivisibility. States and**

¹⁵² See <https://www.milieurecht.nl/nieuws/milieudefensie-et-al-v-royal-dutch-shell-plc>.

¹⁵³ See [A/78/155](#).

¹⁵⁴ See Guiding Principles on Business and Human Rights.

businesses must provide capacity-building, financial support and infrastructure to help communities to mitigate and adapt to the triple planetary crisis.

97. Immediate, ambitious and coherent action is necessary for the achievement of Sustainable Development Goal 14 and other multilateral goals to mitigate irreparable loss and damage, advance restoration and protect humanity and marine species. The implementation of the human right to a clean, healthy and sustainable environment can inspire better ocean governance, reduce poverty and promote sustainable development within planetary boundaries.

98. The Special Rapporteur urges States, businesses, the United Nations system and the whole of society to recognize that ocean issues are also human rights issues, affecting the rights of present and future generations.

99. Every effort relating to the ocean, therefore, must be implemented in a gender-responsive, holistic and integrated way, using a rights-based ecosystem approach, with recognition and protection of the knowledge, values, rights and sovereignty of Indigenous Peoples, small-scale fishers and local communities, and mainstreaming the human right to a clean, healthy and sustainable environment.

100. States must promote sustainable ocean practices to prevent further severe and irreversible damage, including by:

(a) Protecting marine areas effectively and prioritizing fragile and rare ecosystems, while respecting, protecting and fulfilling the human rights of people and communities, including Indigenous Peoples, coastal communities, young people, children, women and other marginalized people, through participatory, transparent and accountable processes, respecting their free, prior and informed consent, promoting co-management and ensuring equitable benefit-sharing. The effective protection of marine-protected areas requires abstaining from authorizing and implementing such activities as mining and unsustainable industrial fisheries that seriously threaten protected areas, their biodiversity and ecosystems and having sufficient financial and personnel resources;

(b) Undertaking comprehensive environmental and human rights impact assessments prior to authorizing and implementing activities that might harm the ocean or coastal areas or the right holders connected to them, including all offshore projects, industrial fishing and aquaculture, urban and tourism developments and energy projects. The assessments must evaluate the potential socioeconomic and cultural impacts using an intersectional approach, incorporating an ecosystem-based perspective and recognizing ocean interconnectedness;

(c) Implementing the precautionary principle to effectively protect the ocean and coastal ecosystems, especially the most fragile and vulnerable areas, such as the deep seabed. States, with the support of the United Nations system, including entities concerned with the law of the sea, should apply the precautionary principle to extractive activities in the deep seabed, including mining, trawling and geoengineering, to prevent serious and irreversible harm to it. Such activities should be authorized only if and when scientific certainty indicates that there is no risk of severe and irreversible damage to the ocean and once comprehensive regulations and safeguards are in place;

(d) Significantly reducing pollution from greenhouse gas emissions from fossil fuels, especially industrialized and high-emitting States, prioritizing:

(i) The control and monitoring of such high-emitting sectors as shipping and compliance with international commitments to reduce emissions;

(ii) The halting of new offshore oil and gas projects unless there is comprehensive prior environmental and human rights impact assessment, consideration of energy alternatives and the advancement of an effective, just transition towards a net-zero emissions economy consistent with international commitments, while respecting human rights;

(iii) The effective control of ocean plastic pollution through adequate regulations, control and monitoring of the entire life cycle of plastics;

- (iv) Cooperation with other States in multilateral negotiations to agree to a strong and ambitious binding treaty to globally phase out, control and remediate plastic pollution.
- (e) Protecting the human rights of coastal communities, women, Indigenous Peoples, people of African descent, small-scale fishers, peasants, young people, children, older people and marginalized groups in all ocean-related activities by recognizing customary rights, securing preferential access and the co-management of coastal areas and resources, respecting free, prior and informed consent and local and traditional governance systems and guaranteeing their participation in bodies and processes relating to the ocean-climate-biodiversity nexus at all levels;
- (f) Providing a safe space for environmental human rights defenders who protect the ocean, recognizing their critical role and addressing their vulnerabilities through an intersectional lens;
- (g) Controlling and monitoring effectively industrialized fisheries, using the best available science and updated information, prioritizing biodiversity conservation and small-fisher communities' rights, preventing harms in other jurisdictions and areas beyond national jurisdictions and effectively ending harmful subsidies through the ratification of and compliance with the Agreement on Fisheries Subsidies of the World Trade Organization;
- (h) Ensuring adequate control of land-based pollution, including through access to equitable sanitation services and the treatment of wastewater for coastal communities in urban areas, control of agrobusiness and other industries in or that have an impact on coastal areas and effective planning of urban and other developments;
- (i) Ensuring that blue economy initiatives are implemented with a human rights-based approach, considering planetary boundaries, promoting the implementation of the sustainable use of natural resources and preventing false solutions;
- (j) Protecting the ocean common heritage, including areas beyond national jurisdiction, through the ratification and implementation of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, respecting Indigenous Peoples' and small-scale fishers' rights and incorporating ancestral knowledge, access to ocean resources and equitable benefit-sharing for marginalized groups;
- (k) Prioritizing the restoration of ocean and coastal ecosystems and biodiversity, focusing on the most fragile, such as coral reefs and mangrove forests, ensuring the effective participation and inclusion of Indigenous Peoples, coastal communities, women, children and young people, recognizing and valuing ancestral knowledge in reparation and restoration efforts, including in blue economies, and adhering to the polluter pays principle;
- (l) Guaranteeing adequate access to information, public participation and access to justice on ocean-related matters, including by proactively publishing accessible information relating to the state of the ocean, projects, efforts and initiatives, and enabling effective public participation in decision-making processes, including regulatory processes, and the planning, implementation and evaluation of projects and activities;
- (m) Ensuring that all multilateral, regional and bilateral negotiations and conferences relating to the ocean include a human rights- and ecosystem-based approach, while incorporating the human right to a clean, healthy and sustainable environment, starting with the United Nations Ocean Conference to be held in Nice, France, in 2025, the Conference of the Parties to the United Nations Framework Convention on Climate Change, the Conference of the Parties to the Convention on Biological Diversity and the work of the intergovernmental negotiating committee to

develop an internationally legally binding instrument on plastic pollution, including in the marine environment;

(n) Cooperating effectively with other States to advance the protection, conservation and remediation of the ocean and coastal areas, including through the implementation of international law and the incorporation of international human rights law obligations, standards and guidelines for ocean management. Priority actions include:

- (i) Providing adequate and equitable funding, considering common and differentiated responsibilities, enabling participation, transparency and accountability and promoting grant-based funding;
- (ii) Expanding and increasing participatory and inclusive research on the ocean, considering ancestral knowledge and promoting technical exchanges.

101. Businesses should recognize and comply with their obligation to respect human rights in relation to all ocean efforts, in line with the Guiding Principles on Business and Human Rights and regional and national regulations, and should:

(a) Collaborate with States, the United Nations system, regional efforts and other initiatives to contribute to the advancement of measures to protect and conserve the ocean, implementing a human rights- and ecosystem-based approach and abstaining from undue influence resulting in human rights violations, exacerbating ocean degradation and the triple planetary crisis and delaying the necessary urgent solutions;

(b) Act with due diligence to respect human rights in activities that might increase ocean and coastal degradation, including by adopting robust, time-bound targets that address ecosystem degradation, and systematically assess the impact of their activities, considering the totality of their value chains;

(c) Ensure the fulfilment of their decommissioning liabilities and cover the full cost of the closure and clean-up of industrial complexes in marine areas, including the proper decommissioning of offshore oil and gas infrastructure, to avoid contributing to the toxic legacy of such complexes.

102. The United Nations system, including agencies and specialized institutions on ocean-related issues, should promote coordination among States, international and regional entities and private and public stakeholders and promote integration and coherence among all multilateral processes for global reporting and assessment of the state of climate change, pollution and ocean, marine and coastal biodiversity, while balancing environmental, socioeconomic, cultural and human rights considerations.

Certificate of Annexure

Federal Court of Australia
 District Registry: Victoria
 Division: General

No. VID1400 of 2025

AUSTRALIAN CONSERVATION FOUNDATION INC

Applicant

MINISTER FOR THE ENVIRONMENT AND WATER & ANOTHER

Respondents

This is the annexure marked **DB-5** produced and shown to David Burke at the time of affirming his affidavit of 13 November 2025.



.....
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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and the environment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño, in accordance with Human Rights Council resolution [55/2](#).

* [A/80/150](#).



Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño

Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment

Summary

The Special Rapporteur on the human right to a clean, healthy and sustainable environment clarifies States' obligations regarding environmental impact assessment processes and the need to include human rights and social impacts for comprehensive and integrated assessments. The report, by highlighting challenges and best practices aligned with human rights and international obligations, is intended to improve these processes, presenting ways in which existing assessment frameworks must evolve to effectively and comprehensively evaluate potential environmental, climate, biodiversity, health, social, cultural, economic and human rights impacts through comprehensive and integrated assessments, on the basis of the best-available science, including Indigenous and traditional science, and through transparent, participatory processes.

I. Introduction

1. Environmental impact assessments are the world's most common, legally mandated environmental protection mechanism. They are mandatory under customary international law, designed to prevent transboundary harm and incorporated into multilateral environmental agreements and domestic legislation in more than 180 States.¹ The fundamental purpose of this tool is to ensure that Governments make sound decisions when evaluating activities and projects that might have significant environmental impacts, while aligning them with their planning priorities and obligations, through comprehensive, prior and effective assessment processes that can prevent and mitigate adverse environmental, social and human rights impacts before harm materializes.

2. Worldwide, the full purpose and scope of impact assessment processes are often ignored for several reasons, including the misconception that these are only procedural requirements or even obstacles to progress; conflicts of interest; or the mistaken understanding that these processes are mere technical evaluations that do not require taking into consideration human rights or an integrated multidisciplinary approach. Ensuring that impact assessments are properly done is critical, especially in the context of the triple planetary crises of climate change, biodiversity loss and pollution, along with the urgent need to phase out fossil fuels, stop environmental degradation and respect human rights while advancing a just transition and sustainable development.

3. The Special Rapporteur issued a call for input to inform the present report. She thanks the Governments of Azerbaijan, Cuba, Cyprus, Guatemala, Honduras, Saudi Arabia, Singapore, Slovenia, Uzbekistan, as well as the State of Palestine, and the Council of Europe and the European Union, as well as 99 Indigenous Peoples, civil society organizations, academics and individuals, for their contributions.² She is grateful also to more than 150 participants who attended eight consultations to inform the report.³

II. Understanding environmental, social and human rights impact assessments

4. Environmental impact assessments originated in the 1970s and have evolved into comprehensive and integrated processes. This evolution responds to decades of lessons learned showing that impact assessments should not be an isolated technical analysis of natural resources. Environmental, social and human rights impact assessments must be implemented by multidisciplinary teams to identify, prevent, mitigate and monitor potential project-related environmental, social and human rights harms before they materialize, providing tools and measures in cases in which remediation is needed. While these assessments are known by various names, in the present report they will be referred to as environmental impact assessments or environmental, social and human rights impact assessments interchangeably.

5. A comprehensive and integrated approach enables effective government decision-making and adequate risk management before a project or activity starts, for ongoing projects if regulations were not in place before it started or when a significant

¹ See United Nations Environment Programme (UNEP), *Environmental Rule of Law: First Global Report* (2019); International Court of Justice, "Obligations of States in respect of climate change", advisory opinion, 23 July 2025, paras. 136 and 297.

² Available at www.ohchr.org/en/calls-for-input/2025/environmental-impact-assessments-strategic-environmental-impact-assessments.

³ See www.ohchr.org/en/documents/thematic-reports/a80187-framework-environmental-social-and-human-rights-impact.

expansion and modification of activities and projects occurs. Environmental, social and human rights impact assessments must proactively assess whether, and under what conditions, the proposed activity or project – potentially posing a risk of significant harm to the environment, the climate, biodiversity or human rights – should receive government approval.

6. The criteria to decide whether a project requires an impact assessment should be based on the potential risk that it creates to the environment and human rights. Therefore, exemptions by States must be made only on the basis of best-available science, with an adequate analysis of proportionality, opportunity and need.

7. Strategic environmental assessments are complementary tools that evaluate higher-level government decision-making about broader proposed legislation, policies, plans and programmes. Strategic environmental assessments and environmental, social and human rights impact assessments are and should be pivotal, proactive and participatory development planning and risk management processes and be based on a human rights-approach.⁴ Critically, higher-level strategic environmental assessments should precede and inform activity or project-level assessments and associated government decisions. While the present report will present an analysis of environmental impact assessments, a forthcoming report will focus on planning tools, including strategic environmental assessments.

III. Critical failures of impact assessments

A. Conflict of interest

8. On the basis of research, consultations and input received for the present report, the biggest challenge is the conflict of interest that negatively influences impact assessment processes worldwide. Project proponents typically conduct impact assessments directly or through contracted external consultants, jeopardizing the scientific rigour and integrity of evaluations. Often, entities conducting assessments have financial incentives to benefit proponents' interests, even when this might compromise the assessments' accuracy or objectivity. For example, former company employees often join committees charged with reviewing their past employer during impact assessment processes. This revolving door practice was reported in many jurisdictions and inappropriately affects assessment outcomes.⁵

9. Project promoters frequently influence authorities to approve proposals, including where the proponent is a State-owned or -controlled business.⁶ Such interference takes numerous forms, including corruption, greenwashing, undue influence over political actors and coercively restricting resources to State agencies.⁷ In 2023, the United States Environmental Protection Agency Inspector General found “extensive political interference in the scientific work of the EPA”, weakening the agency's ability to conduct, review or oversee well-run, independent impact assessments free from political manipulation.⁸

⁴ See UNEP, *Assessing Environmental Impacts: A Global Review of Legislation* (2018).

⁵ Submissions from: Clínica de Gestión Ambiental Universidad del Pacífico-Perú; Fundación Ambiente y Recursos Naturales; Westendarp; Friends of the Earth Malaysia; Korean Federation for Environmental Movement; Anitha Shenoy; International Commission of Jurists.

⁶ Submissions from: Transparency International; Natural Justice.

⁷ Submission from: Franciscans International, with contributions from Guatemala, Mozambique, the Philippines and Uganda.

⁸ See Transparency International, “Strengthening the independence of environmental protection agencies and participation in environmental impact assessments” (2024).

B. Failure to prioritize prevention and poor quality of assessments

10. Environmental, social and human rights impact assessments are frequently conducted under the presumption of project approval, often prioritizing compensation and disproportionately focusing on risk mitigation over harm avoidance, thus failing to consider comprehensive and integrated alternatives and no-project options.⁹ A lack of sound assessment methodologies and a science-based approach and the absence of clearly understood objectives also undercut assessments' primary harm prevention purpose.¹⁰

11. States frequently allow private economic interests to supersede collective and public rights concerning livelihoods, Indigenous Peoples, community land tenure, human health and other essential matters, even where project proposals are claimed to have benefits for the public. In some cases, such as in Cambodia, Honduras and South Africa, authorities conducted impact assessments only after affected individuals and communities had initiated legal proceedings.¹¹

12. Inadequate financial and human resources limit decision-making institutions' ability to perform their impact assessment obligations. For example, limited budgets, assessor expertise and information availability and a lack of access to the equipment necessary to measure the potential and actual damages of projects have all led to superficial assessments.¹²

C. Check-the-box approaches

13. Environmental, social and human rights impact assessment processes are frequently considered obstacles to development. Because activities usually require additional permits and licences for operation, impact assessments become perceived as yet another procedural requirement needed before project commencement, rather than as a requisite evaluation to determine whether the project will take place.¹³ Given this flawed yet common perspective, the obligation to ensure that impact assessments occur in a comprehensive and integrated manner, considering cumulative impacts, is often neglected.¹⁴ Shortcomings include inadequate reviews of cumulative impacts, superficial or generic technical proposals and assessments that exclude social dynamics and project-affected community knowledge.¹⁵

14. For example, in Argentina, pursuant to a court ruling in 2024, a comprehensive cumulative assessment of lithium mining was ordered in an area where at least 12 companies were operating, notwithstanding critical water scarcity and several irregularities, including a lack of cumulative and comprehensive environmental, social and human rights impact assessments and a lack of both consent from Indigenous Peoples and public participation.¹⁶ Similarly, in Tasmania, Australia, since 2012 industrial salmon farms have proliferated without any environmental impact

⁹ Submissions from: Climate Whistleblowers; Human Rights Watch.

¹⁰ Submissions from: Coastal Dynamics Limited; Dejusticia.

¹¹ Submissions from: Human Rights Watch; Center for Gender and Refugee Studies-University of California and Wild Coast Case (3491/2021).

¹² Submissions from: Clínica de Derechos Humanos y Derecho Ambiental-Universidad Estatal de Amazonas y Grupo de Investigación sobre Derechos Humanos en la Amazonia; Oxfam.

¹³ Submission from: Comité Municipal en Defensa de Bienes Comunes y Públicos de Tocoa.

¹⁴ Submissions from: State of Palestine; Proyecto de Derechos Económicos, Sociales y Culturales.

¹⁵ Submission from: Hungarian Ombudsman for Future Generations.

¹⁶ Submissions from: Atacameños del Altiplano, Asamblea Socioambiental Pueblos Catamarqueños en Resistencia y Autodeterminación; Clínica de Derechos Humanos Universidad Torcuato Di Tella.

assessments being conducted, threatening endemic species, such as the Maugean skate.¹⁷

15. The absence of an ecosystem-based approach in environmental, social and human rights impact assessments also fosters the misconception that environmental, social and human rights impacts are not interrelated. Although developers and consultants commonly assess impacts on water, soil and air, they often fail to recognize, analyse and prevent interrelated impacts that transcend these resource categories.¹⁸

D. Project fragmentation

16. Project fragmentation excludes fundamental stages or parts of a project or activity, often to avoid thorough assessments and sometimes to reduce the perceived risk, resulting in incomplete and unreliable evaluations.¹⁹ Multiple courts, including in Argentina, Canada, Mexico and Türkiye, have recognized it as an illegal practice that should be expressly prohibited.²⁰

E. Arbitrary exempting sectors and projects

17. States have exempted entire sectors and projects from environmental, social and human rights impact assessment requirements, including primary drivers of the climate, biodiversity and pollution crises, such as fossil fuel exploration and energy projects, or extractive industries, including industrial fisheries. Exceptions often lack scientific basis and are made on the basis of project size and category. Often, Governments cite purported national, security or public interest needs without a proper analysis of proportionality, actual need and opportunity, thus avoiding impact assessment requirements, in contravention of international law. For example, in India, building, construction and township projects often require only a questionnaire-based clearance, without an impact assessment study or public hearing.²¹ Mexico exempted major infrastructure projects from environmental impact assessments, arguing public interest and national security, notwithstanding significant environmental impacts risks.²² Japan has circumvented Okinawa's impact assessment law for military projects such as United States Marine Corps base expansion.²³

18. Some States, also arguing “national interest”, have abbreviated impact assessment procedures or fast-tracked approvals while potential impacts are not comprehensively addressed. For example, Poland's 2023 environmental impact assessment law introduced a new category of “strategic investment”, excluding from public participation its assessments.²⁴

19. Energy transition and climate action have also been used to justify exemptions from impact assessments. For example, critical minerals projects pose significant environmental and human rights risks, especially in the Global South where most of these materials are located, threatening the territories of Indigenous Peoples, peasants

¹⁷ See Government of Australia, “EPBC Act Reconsideration Requests-Macquarie Harbour Salmon Farming”, MS23-002605 (2023).

¹⁸ Submissions from: Coastal Dynamics Limited; ClientEarth.

¹⁹ Submissions from: CartoCritica; Franciscans International, et al.; CIEL.

²⁰ Argentina: FSM 113686/2017/12/1/RH13; Canada: *MiningWatch Canada v. Canada*; México: 54/2021; Türkiye: Danıştay 14. D., E. 2017/2082.

²¹ Submission from: Legal Initiative for Forest and Environment.

²² See OTH 99/2022.

²³ See CERD/EWUAP/115thsession/2025/CS/BJ/ks.

²⁴ Submission from: ClientEarth.

and other groups. Environmental, social and human rights impact assessment processes are similarly critical for other “green” activities that carry substantial environmental and human rights risks, including carbon market projects and renewable energy activities, as United Nations Special Rapporteurs have highlighted.²⁵ In the European Union, it is presumed under the Renewable Energy Directive that renewable energy projects do not have significant effects on the environment, override public interest and are in service of health and safety. In the absence of project alternatives, European Union law allows these projects to proceed without an impact assessment.²⁶

F. Monitoring and compliance

20. Authorized projects are seldom subject to adherence review processes. Enforcement-related information, such as compliance reports, often remains confidential and/or difficult to gain access to, with public participation during monitoring and fulfilment commonly being virtually non-existent.²⁷ It was emphasized through contributions and consultations supporting the present report that States often did not ensure consistent access to information and meaningful, effective, open and inclusive participation. For example, research on 193 hydropower projects across the Tibet region reveals that environmental impact assessments were either poorly enforced, conducted post-construction or rubber-stamped with no transparency or community participation and no avenues for negotiation to protect local ecosystems, historic cultural sites and communities.²⁸

G. Weak rule of law

21. Regulations regarding impact assessments take a limited view of their scope and content, with older legislation tending to exclude climate impacts, human rights and ecosystem-based approaches.²⁹ In some jurisdictions, assessment regulations and other permits are dispersed throughout multiple laws, creating loopholes that can be exploited, to the detriment of the environment and human rights.³⁰

22. There is also a tendency towards deregulation across impact assessment frameworks.³¹ For example, in Angola, State efforts to “progressively simplify” impact assessment laws have resulted in the approval of resource extraction and weakly enforced impact assessment processes.³² Similarly, regressive changes or proposals to impact assessment laws have recently occurred in Brazil,³³ Indonesia,³⁴ Peru,³⁵ Serbia,³⁶ Uganda,³⁷ the United Kingdom of Great Britain and Northern Ireland³⁸ and

²⁵ See [A/HRC/54/25](#), [A/HRC/54/31](#) and [A/80/188](#).

²⁶ See Council regulation (EU) 2022/2577.

²⁷ Submission from: Legal Rights and Natural Resources Centre-Friends of the Earth Philippines.

²⁸ See AL CHN (8.2024).

²⁹ Submissions from: State of Palestine; Uzbekistan, ARTICLE19; Danish Institute for Human Rights; Environment Institute of Australia and New Zealand.

³⁰ Submissions from: Anti-Jindal-Anti-POSCO Movement; Greek National Commission for Human Rights.

³¹ Submission from: Diyarbakır Bar Association’s Environment and Urban Law Commission.

³² Submission from: International Commission of Jurists.

³³ See OL BRA 5/2025.

³⁴ Submission from: Greenpeace.

³⁵ Submission from: Sociedad Peruana de Derecho Ambiental.

³⁶ Submission from: Renewables and Environmental Regulatory Institute.

³⁷ Submission from: Franciscans International, et al.

³⁸ Submission from: Students at the University of Manchester.

the United States of America,³⁹ where initiatives regularly dilute environmental and participatory rights. Some States, such as Honduras, while arguing the need for investment, created special economic zones exempting those areas and projects there from impact assessments.⁴⁰

H. Investor-State dispute settlement

23. Several States have faced multimillion dollar arbitration proceedings brought by companies whose investments have been thwarted by lawful State action that is consistent with the right to a clean, healthy and sustainable environment.⁴¹ Conducting inadequate environmental, social and human rights impact assessments can increase the risk of investor-State dispute settlement claims. Therefore, it is in all parties' interest that impact assessment processes be well implemented, considering the financial, human and environmental costs of inaction.⁴² Cases in which States action to mitigate unlawful exceptions to environmental, social and human rights impact assessments led to multimillion dollar litigation, such as against Honduras, demonstrating the urgency of reforming investor-State arbitration systems to advance investor accountability and obligations to respect human rights and protect the environment.

I. Neglecting procedural rights

24. Access to information and public participation during impact assessment processes is commonly restricted, incomplete, outdated, deficient, discriminatory, misleading and hampered by language barriers. In addition, technical expertise is required for comprehension of the processes and their content, and notification of participation methods and of mechanisms to gain access to information is inadequate. National legislation, such as in Chile, Honduras, India, Malaysia and Peru, includes categories of projects that exclude public participation or mandatory public access to information during the assessment processes.⁴³ The right to participate is sometimes contingent on the request of potentially affected individuals and communities to be part of the assessments process.⁴⁴

25. The time frames for participation tend to be limited and often unreasonable, considering the amount of information, expertise and technical and specialized knowledge that environmental, social and human rights impact assessments require.⁴⁵ In China, the public participation period lasts 10 working days, which reportedly complicates rural residents' ability to participate in a timely manner.⁴⁶ In cases such as the Greece-to-North Macedonia gas pipeline, there was no opportunity to comment and the information was so difficult to find that it was inaccessible to interested persons.⁴⁷ There have been cases of communities being manipulated by developers

³⁹ See United States Environmental Protection Agency, "EPA launches biggest deregulatory action in U.S. history", 12 March 2025.

⁴⁰ Submission from: Center for Gender & Refugee Studies-University of California.

⁴¹ See [A/78/168](#).

⁴² Submission from: Child Rights International Network.

⁴³ Submissions from: Greenpeace; Instituto de Derecho Ambiental de Honduras, et. al.; Legal Initiative for Forest and Environment; Center to Combat Corruption and Cronyism.

⁴⁴ Submission from: Clínica Ambiental y Resolución de Conflictos del Departamento de Enseñanza Clínica del Derecho-Universidad de Chile.

⁴⁵ Submission from: Defensoría del Pueblo de la Nación-Argentina.

⁴⁶ See www.mee.gov.cn/gzkg/gz/202112/t20211211_963803.shtml [in Chinese].

⁴⁷ Submission from: Bankwatch.

offering promises in exchange for people's attendance at meetings and their support for a project.

26. Material aspects of public participation such as language, geographical distances and how and which relevant information is published also constitute significant barriers to effective participation. Announcements of impact assessment procedures in some States often omit clear publication dates or appear in limited-circulation outlets.⁴⁸ In the Bakun dam hydropower megaproject in Sarawak, Malaysia, the impact assessment study was made available after protests, displayed for just one day and accessible only in English at a government office more than 1,300 km away from where the affected population lived.⁴⁹ Even when people and communities manage to participate, their comments, concerns and proposals are frequently overlooked in the final analysis and decision.⁵⁰

IV. State obligations to regulate, undertake, monitor and enforce impact assessment processes

27. States' obligations to respect, protect and fulfil human rights, in particular the human right to a clean, healthy and sustainable environment, entail the obligation to prevent significant environmental harm by public and private actors, as concluded by, among others, the Human Rights Committee in its general comment No. 36 (2018) (paras. 26 and 62) and the *Cáceres vs. Paraguay* case (para. 7). Moreover, according to the International Court of Justice, prevention should be prioritized because, once environmental harm occurs, full restoration tends to be impossible.⁵¹ It is also mandated under international environmental law, including the Convention on Biological Diversity (see art. 14), the United Nations Convention on the Law of the Sea (see arts. 204–206), the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (see art. 28), the Convention on Environmental Impact Assessment in a Transboundary Context (see art. 2), the European Union Environmental Impact Assessment Directive (annex IV) and the Association of Southeast Asian Nations Agreement on the Conservation of Nature and Natural Resources (see art. 10) that States should prevent significant environmental harm caused by proposed activities.

28. With regard to impact assessment processes, the duty of States includes regulating, undertaking, monitoring and enforcing these processes and ensuring adequate access to information, public participation and access to justice and effective remedies. The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child indicate States' critical human rights obligations to ensure that all projects or activities posing a risk of significant environmental harm are subject to comprehensive, independent and integrated impact assessments.

29. In transboundary contexts, the obligation to prevent environmental harm is part of customary international law, as reiterated by the International Court of Justice.⁵² Furthermore, the International Court of Justice, along with the International Tribunal

⁴⁸ Submission from: Egyptian Foundation for Environmental Rights.

⁴⁹ Submission from: Center to Combat Corruption and Cronyism.

⁵⁰ Submission from: Clínica Jurídica-Universitat Pompeu Fabra.

⁵¹ See International Court of Justice, *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, 1997; draft articles on prevention of transboundary harm from hazardous activities, with commentaries, 2001.

⁵² See International Court of Justice, "Legality of the threat or use of nuclear weapons", advisory opinion, 8 July 1996, *Costa Rica v. Nicaragua* (San Juan River), 2015, and "Obligations of States in respect of climate change", paras. 272 and 297.

for the Law of the Sea and the Inter-American Court of Human Rights, have specifically interpreted this duty to encompass climate impacts, also in relation to ocean and human rights protection.⁵³

30. Decisions from human rights entities consistently rule that States must undertake impact assessments.⁵⁴ As the Committee on the Rights of the Child concluded in *Sacchi et. al. v. Argentina et. al.*, a State may breach its extraterritorial human rights duty when it has effective control over polluting greenhouse gas emissions, and a causal link exists between its acts or omissions and human rights violations occurring in another State.

31. Given these obligations, States may not automatically approve proposed activities and projects, and approval may be denied where, notwithstanding mitigation and prevention measures, significant harm or human rights violations might occur. This also applies when significant environmental harm is plausible but data gaps prevent scientific certainty or adequate assessment.⁵⁵ States should reject activities and projects known to cross these thresholds, including by immediately banning the dumping of nuclear and hazardous waste, destructive fishing practices, fracking, offshore drilling and fossil fuel activity in protected or highly biodiverse areas, and new fossil fuel projects.⁵⁶

32. To respect, protect and fulfil these obligations in a manner consistent with the right to a clean, healthy and sustainable environment, States must satisfy interconnected substantive and procedural obligations.⁵⁷ On the basis of international law, such as the Revised African Convention on the Conservation of Nature and Natural Resources (Maputo Convention), the Convention on Biological Diversity, the Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction, the European Union Environmental Impact Assessment Directive, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement), Inter-American Court of Human Rights jurisprudence, the Kunming-Montreal Global Biodiversity Framework, and United Nations Environment Programme and International Association for Impact Assessment guidelines, environmental, social and human rights impact assessment processes must:

(a) Be undertaken as early as possible and prior to any proposal authorization or the commencement of any activity, or when significant modification and/or expansion is proposed;

(b) Assess proposals' direct, indirect, domestic, transboundary, adverse, positive, cumulative, comprehensive, long-term, short-term, climate, biodiversity, environmental, health, cultural, social and human rights impacts, alongside proposals' compatibility with the State's international legal obligations and policies;

⁵³ International Tribunal of the Law of the Sea, advisory opinion No. 31, para. 252; Inter-American Court of Human Rights advisory opinion 32/25, paras. 359–363.

⁵⁴ See Committee on Economic, Social and Cultural Rights, general comment No. 24; Inter-American Court of Human Rights, advisory opinion 23/17; and African Commission on Human and Peoples' Rights, *SERAC v. Nigeria*.

⁵⁵ See European Union, *Guidance on integrating climate change and biodiversity into environmental impact assessment* (2013).

⁵⁶ See [A/HRC/58/59](#) and [A/HRC/59/42](#).

⁵⁷ See International Court of Justice, "Obligations of States in respect of climate change", paras. 289 and 393.

- (c) Follow precautionary, prevention, proportionality, best-available science, maximum disclosure and equity and non-discrimination principles;
- (d) Be prepared by independent, qualified experts;
- (e) Ensure understandable, accessible, timely and complete information relevant to the proposal and assessment process;
- (f) Provide effective, meaningful, open and inclusive public participation throughout each stage of the assessment process, including the monitoring of approved projects according to the terms and conditions of approval;
- (g) Ensure access to justice and effective remedies, including for violations of assessment procedures and foreseeable human rights violations;
- (h) Ensure special measures for the protection of the rights of marginalized people and groups.

A. Obligation to regulate impact assessments

33. States must enact clear, robust regulations mandating environmental, social and human rights impact assessment processes before licensing any public or private activity or project posing risks to human rights or a risk of significant environmental harm,⁵⁸ or when expansion and modifications are proposed. States must periodically update their laws and regulations, taking into consideration emerging risks, new international standards and evolving best-available science. Proposed reforms and new regulatory frameworks must be guided by the principle of progressivity and non-regression.⁵⁹

34. Regulations, based on international law and best practices such as the Aarhus Convention and the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), the Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction, the European Union Environmental Impact Assessment Directive and International Tribunal of the Law of the Sea and Inter-American Court of Human Rights advisory opinions, must specify, at a minimum, the following:

- (a) Full range of activities and associated impacts subject to examination, specifying physical and technical characteristics (including geographical and ecosystem sensitivity), requiring an assessment of direct, indirect, cumulative and transboundary impacts and an analysis of a no-action baseline among any other project alternatives;
- (b) Applicable procedure, including how access to information, public participation and access to justice will be guaranteed;
- (c) Delineation of responsibilities and duties across proponents, competent authorities, experts conducting assessments and decision-making bodies, including those responsible for liability, redress, insurance and compensation;
- (d) The manner in which assessments shall inform and govern decisions regarding proposed activities and monitoring;

⁵⁸ See International Court of Justice, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, and “Obligations of States in respect of climate change”, paras. 295–298, and Inter-American Court of Human Rights, advisory opinion 32/25, para. 361.

⁵⁹ Inter-American Court of Human Rights, *La Oroya v. Peru*, para. 186; Inter-American Court of Human Rights, advisory opinion 32/25, para. 222.

- (e) Steps and measures to be adopted in the event of non-compliance;
- (f) Assessments for modifications of approved projects, including expansions.

35. The Special Rapporteur underlines that, at a minimum, regulations must mandate environmental, social and human rights impact assessments for all activities and projects with the potential to worsen the triple planetary crises of climate change, biodiversity loss and pollution, considering increasing risks created.⁶⁰ If ongoing or, for exceptional reasons, new projects are proposed, and as the advisory opinions from the International Tribunal for the Law of the Sea (No. 31, para. 234) and the Inter-American Court of Human Rights (No. 32, on the climate emergency and human rights, paras. 232–237) have clarified, a stricter due diligence applies in assessing their impacts is required regarding the full cycle of projects, including exploration and exploitation, which, according with the International Court of Justice in its recent advisory opinion on climate change, might violate international law (see para. 427 of its advisory opinion dated 23 July 2025). This is especially vital considering the industry's significant negative impacts on the right to a healthy environment, including clean air, a safe climate and⁶¹ healthy biodiversity, ecosystems and water. Size-oriented thresholds exempting high-risk sectors from impact assessment are also incompatible with State obligations under the right to a healthy environment.

36. Exceptions or automatic licensing entitlements enabling the circumvention of impact assessment requirements must not be granted. Given the detrimental and disproportionate environmental impacts of many industries, including fossil fuels, industrial fisheries, agribusiness and extractive industries, these exemptions violate a State's duty to protect the human rights to a healthy environment and to life, and other rights.⁶²

37. Consequently, environmental, social and human rights impact assessment regulations must explicitly require the evaluation of activities or projects that may cause significant harm to the environment and the climate, alter natural habitats, affect ecosystem services, deplete species diversity, generate waste or toxic pollution or threaten human rights, including but not limited to the following:

- (a) Fossil fuel exploration, extraction and use;
- (b) Chemical and petrochemical production and recycling facilities;
- (c) Industrial agriculture and other land-use changes;
- (d) Industrial aquaculture and industrial fishing;
- (e) Large infrastructure and energy developments;
- (f) Metal ore and rare earth element mining, and the mining of other materials such as sand and gravel;
- (g) Climate and energy transition projects, such as wind, solar, geothermal and others; and mitigation, such as geoengineering, including in marine areas and applying a precautionary principle, and adaptation actions;
- (h) Wastewater treatment, sewage systems and industrial effluent outlets;
- (i) Waste management, including municipal, industrial, electronic and hazardous waste, incineration plants and large-scale composting;

⁶⁰ See [A/HRC/59/42](#) and [A/HRC/58/59](#).

⁶¹ See [A/79/270](#); UNEP, *Emissions Gap Report 2024*.

⁶² See [CCPR/C/GC/36](#) and Committee on Economic, Social and Cultural Rights, general comment No. 14.

(j) Metallurgical smelters, cement and lime factories and pulp-and-paper mills;

(k) Battery manufacturing and recycling, and data centres.

38. Everyone conducting environmental, social and human rights impact assessments should be licensed or registered by a public body,⁶³ subject to eligibility criteria ensuring proven, multidisciplinary expertise in human rights, ecology, other technical and scientific fields, public health, social sciences and cumulative impact methodologies. Regulations should mandate that consultants undertake periodic compulsory capacity-building and human rights training, strengthening their understanding of cultural heritage and Indigenous and traditional knowledge systems, and ecosystem services.

39. Regulations must establish safeguards to prevent and address possible conflicts of interest and undue influence from the private and public sectors, including through mandatory conflict of interest declarations; a functional separation between proponents and authorities;⁶⁴ the exclusion of individuals with financial or professional ties to proponents; and administrative and criminal sanctions for breaching these safeguards.

40. Regulations must also establish a robust enforcement and monitoring framework ensuring that authorities have the powers and resources necessary to impose penalties, administrative sanctions and other means of remedying violations of assessment procedures or project approval conditions. States must ensure that all individuals, communities and Indigenous Peoples have access to effective remedies when breaches of substantive and procedural impact assessment requirements occur.

B. Obligation to undertake impact assessment processes

41. As explained above, States have a permanent obligation to evaluate activities and projects that may cause human rights violations or significant environmental harm and must therefore undertake environmental impact assessments, whether they implement them or request parties proposing a project or activity to do so, prior to the licensing of an activity. Environmental, social and human rights impact assessment processes must be based on the principles and framework mentioned above, considering specific contexts and incorporating five core stages: screening, scoping, assessment review, decision-making, and monitoring and compliance. These must ensure effective, meaningful, open and inclusive public participation, in line with the Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction and the Convention on Wetlands of International Importance especially as Waterfowl Habitat,⁶⁵ among others.

1. Screening

42. Screening usually takes place after a project proponent applies for an environmental permit or project approval. During screening, the State conducts or oversees a preliminary evaluation of the proposal to determine whether an impact assessment is required and its requirements. While screening assessments are preliminary, it is indicated in the Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction and the Maputo Convention that they must cover all

⁶³ European Union, Environmental Impact Assessment Directive, art. 5.

⁶⁴ Ibid., art. 9 (a).

⁶⁵ See also Conference of the Contracting Parties to the Convention on Wetlands, "Guidelines for incorporating biodiversity-related issues into environmental impact assessment legislation and/or processes and in strategic environmental assessments", resolution VIII.9 (2002).

impact types evaluated during a full assessment, including all environmental, climate, biodiversity, social, health, cultural and human rights impacts. To ensure a comprehensive assessment screening, the State must consider the ecological sensitivity of project sites, surroundings, ecosystem services and impact receptors such as water sources, the duration and reversibility of potential impacts, the likelihood of associated or secondary developments and the specific circumstances of potentially impacted marginalized groups.⁶⁶

43. Screening must include a project report that provides details on the proposal and a preliminary management plan outlining measures to prevent and mitigate anticipated and comprehensive impacts. These reports must identify the proposal's area of influence and consider the proposed activity's nature, magnitude, location, timing, reversibility, likelihood and how impacts and their risks interact.⁶⁷

44. Public participation in the screening process is vital, and States must involve rights holders in identifying potential impacts. The screening report must consider community priorities and comply with free, prior and informed consent when Indigenous lands, territories, resources or rights might be affected, including the United Nations Declaration on the Rights of Indigenous Peoples and Inter-American Court of Human Rights jurisprudence.

45. States must prevent the fragmentation of projects or activities, including preventing the segmenting of submissions and the assessment of components, impacts and phases. Good practices to avoid fragmentation include legislation that requires the screening of cumulative, direct and indirect impacts, prohibits project-splitting and excludes from screening only projects with minor or less-than-significant environmental impacts.⁶⁸

2. Scoping

46. Scoping is fundamental because it determines the content, issues and procedures of the assessment necessary to fulfil its decision-making purpose. Scoping must include the following:

(a) All project-related environmental, climate, biodiversity, social, cultural, health and human rights short- and long-term impacts, including in relation to the rights of children and future generations;

(b) Project alternatives and a “no-action” baseline, accompanied by associated harm prevention, mitigation, restoration and remediation measures, against which the proposal can be objectively compared.⁶⁹

47. The scope of assessed impacts and risk prevention and mitigation measures must span the entire project life cycle, including initiation, implementation, decommissioning and post-closure environmental restoration.⁷⁰ Such requirements

⁶⁶ Inter-American Court of Human Rights, *U'wa Peoples v. Colombia*, para. 136; draft principles on protection of the environment in relation to armed conflicts, 2022, principle 14.

⁶⁷ See Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services, *Thematic Assessment Report on the Interlinkages among Biodiversity, Water, Food and Health* (2025); Escazú Agreement, art. 7 (17).

⁶⁸ Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, art. 30; Protocol on Environmental Protection to the Antarctic Treaty, art. 8.

⁶⁹ Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction, art 31; Aarhus Convention, art. 6; Espoo Convention, art. 5; see also Government of the United Kingdom of Great Britain and Northern Ireland, Department for Energy Security and Net Zero, “Environmental impact assessment: assessing effects of scope 3 emissions on climate” (October 2024).

⁷⁰ See Inter-American Court of Human Rights advisory opinion 23/17.

are especially important in relation to the fossil fuel industry, given that major oil and gas companies frequently abandon wells when their activities conclude, without properly closing them, as is necessary, in order to avoid pollution.⁷¹

48. Including long-term impacts in the scoping stage is crucial to effectively prevent significant and potentially irreversible damages, achieving the effective protection of human rights, including prioritizing the rights and interests of children and future generations, as reflected in Committee on the Rights of the Child general comment 26, Inter-American Court of Human Rights advisory opinion No. 32, the United Nations Framework Convention on Climate Changes and the Maastricht Principles on the Human Rights of Future Generations.

49. Scoping should result in terms of reference for environmental, social and human rights impact assessments, developed with public participation, detailing the specific issues, analysis, procedures and rules governing it. Terms of reference should integrate contributions from the public and considerations regarding cumulative, climate change, ecosystem and human rights criteria and ensure that Indigenous and local knowledge informs baseline studies and terms of references methodologies.⁷²

(a) Climate change scoping

50. In the context of the climate crisis posing an existential threat to humanity and as a substantive element of the human right to a healthy environment, ensuring a safe climate requires States to assess the full impact of activities and projects that may cause significant harm to the climate system. This includes greenhouse gas emissions, harm to carbon sinks, such as the ocean,⁷³ or exacerbating climate impacts owing to increasing risks, ecosystem destruction, land use change or the impact of other substantive elements of the right to a healthy environment, such as clean air or healthy ecosystems and biodiversity.

51. States and project proponents therefore have the obligation to include all emissions in impact assessment processes: direct greenhouse gas emissions from the project or activity (scope 1); indirect emissions from the generation of acquired and consumed electricity (scope 2); and all other indirect emissions not considered in scope 2, including upstream and downstream emissions across the value chain, such as combustion in a third country (scope 3).⁷⁴ States must also ensure independent, participatory and comprehensive assessments of the measures taken to phase out fossil fuels.

52. A growing body of judicial decisions confirms that States and businesses must consider the full scope of a project's cumulative, direct and indirect climate impacts during impact assessment processes, including scope 1, 2 and 3 emissions. For example, South Africa's High Court invalidated a coal-fired power station's environmental authorization because no climate change impact assessment had been

⁷¹ See Center for American Progress, "How the federal government can hold the oil and gas industry accountable", 19 September 2023.

⁷² Espoo Convention, art. 1, appendix II (b); see also Economic Commission for Latin America and the Caribbean, "Recommendations for incorporating a human rights-based approach in environmental impact assessment of mining projects" (2019).

⁷³ International Tribunal of the Law of the Sea, advisory opinion No. 31, para. 390.; Inter-American Court of Human Rights, advisory opinion 32/25, paras. 229 and 321; International Court of Justice, "Obligations of States in respect of climate change", para. 359.

⁷⁴ See European Free Trade Association Court, *Föreningen Greenpeace Norden and Natur og Ungdom v. Norway*; European Commission, "Guidelines on reporting climate-related information" (2019); International Court of Justice, "Obligations of States in respect of climate change", para. 398.

conducted.⁷⁵ The Hague's Court of Appeals confirmed that businesses must limit their emissions across their entire value chain.⁷⁶ Project permits granted without considering scope 3 emissions have been invalidated in Norway⁷⁷ and the United Kingdom,⁷⁸ while in Guyana the country's Environmental Protection Agency amended the terms of reference of Hammerhead offshore oil developments to explicitly include scope 3 emissions after citizens had filed a case concerning the lack of these in the project's impact assessment.⁷⁹

53. In its advisory opinion concerning the *Greenpeace Nordic & Nature Youth v. Ministry of Petroleum and Energy* case, the Court of Justice of the European Free Trade Association found that the European Union's Environmental Impact Assessment Directive required accounting of scope 3 emissions of fossil fuel projects in determining their climate impact. The Court ruled that burning fossil fuels after they were sold to third parties was an objectively foreseeable result of oil and gas extraction and that requiring emission estimates of subsequent combustion was not an unduly burdensome request to developers.⁸⁰

54. The International Court of Justice and the Inter-American Court of Human Rights ruled that States must assess the impact of a project or activity to particularly significant proposed individual activities contributing to greenhouse gas emissions⁸¹ and those that entail the risk of generating significant greenhouse gas emissions.⁸²

(b) Ecosystem-based approach

55. Healthy ecosystems is another substantive element of the right to a healthy environment. Environmental, social and human rights impact assessments must include an ecosystem-based approach with a comprehensive consideration of all elements of nature, promoting its conservation and sustainable use, in line with Convention on Biological Diversity decisions, including the Kunming-Montreal Framework and Human Rights Council resolution 58/16. The implementation of such an approach requires the application of "appropriate scientific methodologies focused on levels of biological organization", recognizing also "that humans, with their cultural diversity, are an integral component of many ecosystems" and groups such as Indigenous Peoples and local communities hold distinctive knowledge that "can contribute to effective land management, predictions of natural disasters, and identification of longer-term climate change".⁸³ The implementation of environmental, social and human rights impact assessments also needs sufficiently long time frames for the development of robust baselines and assessment of proposal sites, to meaningfully evaluate probable biodiversity trends and impacts over time.⁸⁴

⁷⁵ See High Court of South Africa, *Earthlife Africa Johannesburg v. Minister of Environmental Affairs*; submissions from: African Synthesis Centre for Environment, Development and Climate Change; University of Pretoria.

⁷⁶ See The Hauge Court of Appeals, *Milieudefensie v. Shell*.

⁷⁷ See Supreme Court of Norway, *Greenpeace Nordic & Nature Youth v. Ministry of Petroleum and Energy*.

⁷⁸ See United Kingdom, Court of Appeal, *Finch v. Surrey*; United Kingdom, Court of Sessions, *Greenpeace UK and Uplift v. Secretary of State for Energy Security and Net Zero*.

⁷⁹ See Guyana Chronicle, "EPA clarifies high court ruling on EIA carbon dioxide emissions for "Hammerhead" project", 28 March, 2025.

⁸⁰ See *Föreningen Greenpeace Norden and Natur og Ungdom v. Norway*.

⁸¹ International Court of Justice, "Obligations of States in respect of climate change", para. 298.

⁸² Inter-American Court of Human Rights, advisory opinion 32/25, para. 359.

⁸³ See Conference of the Parties to the Convention on Biological Diversity, fifth meeting, decision V/6; Intergovernmental Panel on Climate Change, *Special Report on Climate Change and Land*.

⁸⁴ International Association for Impact Assessment, Biodiversity and Ecosystem Services in Impact Assessment, Special Publication Series No. 3 (March 2018).

56. To guarantee an ecosystem-based approach, scoping must: (a) prioritize the conservation of ecosystem structure and functioning to maintain critical processes and services; (b) identify and respect the limits of ecosystem functioning and key ecological thresholds; (c) define spatial boundaries and scales that correspond to the ecological units and connectivity under review; (d) embed adaptive management through iterative monitoring and “learning-by-doing” to address uncertainties and surprises; and (e) draw on scientific, Indigenous and traditional knowledge systems to inform baseline studies and impact predictions and support biocultural approaches with long-term sustainability in place-based conservation measures.⁸⁵

57. Where proposals potentially have an impact on Indigenous Peoples, peasants, people of African descent, small-scale fisheries and other communities, scoping must mandate baseline studies on traditional systems, including women’s, land and resource rights. Terms of reference must also require the consideration of impacts on cultural rights, biodiversity and all other elements of the right to a healthy environment, traditional systems of land and resource tenure, and Indigenous and traditional knowledge, innovation and practices.⁸⁶

3. Assessment

58. Assessments must be carried out objectively by independent experts employing the best-available science. This should consider the traditional knowledge, methodologies and cultural heritage of Indigenous Peoples, peasants, people of African descent, fishers and women to fully understand ecosystem and human rights impacts, as indicated by the Inter-American Court of Human Rights (advisory opinion No. 32) and in the Kunming-Montreal Global Biodiversity Framework. The obligation to ensure that environmental, social and human rights impact assessments adhere to the proportionality principle requires assessment detail to be commensurate with the proposal’s significance.⁸⁷ Therefore, assessments and associated reports must consider the probability and severity of all potential impacts evaluated. Where an impact’s likelihood is unknown or uncertain, the confidence level or margin of error must be specified, and knowledge gaps must be described.⁸⁸

59. When evaluating climate impacts, those conducting assessments must verify that a project’s total emissions align with the State’s mitigation target and strategy and the Paris Agreement’s 1.5° Celsius maximum limit, while also accounting for linear and non-linear effects and the risk of irreversible tipping-point thresholds, considering also justice elements.⁸⁹

60. Prevention and mitigation measures should be detailed in a management plan addressing each impact identified and its interconnectedness. This plan should form the basis of binding approval conditions resulting from any State decision to approve a proposal.⁹⁰ Assessment and resulting management plans must prioritize the prevention of adverse impacts, followed by the mitigation of the remaining risks and

⁸⁵ See Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services *The Underlying Causes of Biodiversity Loss and the Determinants of Transformative Change and Options for Achieving the 2050 Vision for Biodiversity: Summary for Policymakers* (2025).

⁸⁶ See Akwé: Kon Voluntary Guidelines.

⁸⁷ See Inter-American Court of Human Rights, advisory opinion 23/17.

⁸⁸ See European Union Environmental Impact Assessment Directive.

⁸⁹ See Intergovernmental Panel on Climate Change, “Proposals for expert meetings and workshops for the seventh assessment cycle” (2025); Inter-American Court of Human Rights, advisory opinion 32/25, para. 327; International Court of Justice, “Obligations of States in respect of climate change”, para. 224.

⁹⁰ See World Bank, *Good Practices in National Systems for Environmental and Social Impact Assessment: A Literature Review* (2022).

the restoration and remedying of residual potential harms.⁹¹ They must be carried out in the context of relevant planning instruments and policy frameworks, considering State obligations on human rights, climate change, biodiversity and other environmental commitments.⁹²

61. Guided by the terms of reference and as part of their enforcement obligations, States must conduct substantive and procedural reviews of impact assessment processes to verify that they form a sound basis for decision-making. Aligned with a human rights-based approach and with the Espoo Convention (art. 3), the Escazú Agreement (art. 6), the Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters (Bali Guidelines) and the European Union Environmental Impact Assessment Directive (art. 11), the reviews should ensure that assessment procedures are respected, including adequate access to information, public participation and justice, and that substantive issues such as the capacity of project proponents to implement identified preventive and mitigation measures are adequately evaluated.

62. States should also establish multi-stakeholder review mechanisms to ensure adequate, multidisciplinary expertise at the review stage. For example, in Canada, Cyprus and New Zealand, environmental impact assessment processes include external advisory committees or participation, including from Indigenous Peoples in Canada and New Zealand.⁹³

4. Decision-making

63. During the decision-making stage, authorities must explicitly explain how public participation influenced approval, modification or rejection. Where authorities approve a proposal, they must establish binding environmental, social and human rights approval conditions. For approved proposals, States should legislatively require that prevention, mitigation, environmental restoration and other remedial measures be captured in environmental, social and human rights management and monitoring plans. These plans, along with a proposal's approval conditions, must be public and legally binding for those responsible for the project, as stated in the Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction (art. 32), the European Union Environmental Impact Assessment (art. 8 (a)), the Aarhus Convention (art. 6), the Convention on Wetlands of International Importance especially as Waterfowl Habitat (resolution VIII.9 of 2002) and the Maputo Convention (art. XIV).

64. Lastly, during the assessment and decision-making stages, States should give due attention to community-driven project alternatives that are more sustainable than the proponent's proposal and should consider whether these proposals are better aligned with respecting, protecting and fulfilling human rights and achieving sustainable development.

C. Obligation to monitor and enforce

65. States must monitor and enforce compliance with environmental, social and human rights impact assessment regulations. Accordingly, as clarified in jurisprudence, including that of the International Court of Justice and the European

⁹¹ See UNEP/CBD/COP/8/27/Add.2; International Finance Corporation, "Performance standard 1: assessment and management of environmental and social risks and impacts" (2012).

⁹² See Inter-American Court of Human Rights, advisory opinion 32/25, paras. 359–363.

⁹³ Submissions from: Cyprus; Transnational Justice Clinic-McGill University; Ocean Vision Legal.

Court of Human Rights, if projects are approved, then States must put in place well-resourced, independent monitoring and oversight mechanisms to:

- (a) Verify that projects implement their environmental, social and human rights management plans, monitoring plans and other binding approval conditions;⁹⁴
- (b) Verify that project proponents produce adequate assessment reports;
- (c) Exert administrative control over public and private agents;⁹⁵
- (d) Investigate, punish and redress abuse through effective policies, regulations and adjudication.

66. Monitoring measures include regular unannounced inspections, independent audits and mandatory reporting requirements for project proponents, the results of which must be publicly available in their entirety.

67. States must enforce legal requirements and the management plan and sanction non-compliance, including by revoking permits, while ensuring access to justice and effective remedies where a project violates domestic or international law. Enforcement may comprise interinstitutional collaboration, monitoring and inspection, administrative guidance, investigation, prosecution and judicial or quasi-judicial proceedings.

68. While monitoring and enforcement are often the most neglected phase of the environmental, social and human rights impact assessment process, these obligations run throughout every stage of the process and an approved project's life cycle. As with human rights and environmental due diligence processes, the monitoring of approved projects must be ongoing and the extent and duration must be proportionate to the nature, location and size of the project and significance of its impact, as established in the European Union Environmental Impact Assessment Directive. If monitoring reveals unforeseen or escalating risks of environmental harm or human rights violations, States may modify, suspend or revoke authorizations. They must also require adaptive management and mitigation measures.⁹⁶

69. Monitoring processes must be transparent and participatory, granting communities timely access to reports and monitoring data, enabling community-based oversight and participation in the review of monitoring reports. States must ensure recourse to judicial or administrative review where non-compliance is detected. The transparent communication of project performance and effective third-party auditing are vital facets of this stage.⁹⁷ For example, under the guidelines on public participation in the Philippines, "Multi-Partite Monitoring Teams" are mandated. These assemble project proponents, environmental regional staff, local governments and community representatives to monitor environmental impacts and compliance with environmental safeguards and management plans.⁹⁸

⁹⁴ See International Court of Justice, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*; European Court of Human Rights, *Budayeva v. Russia*.

⁹⁵ See Inter-American Court of Human Rights, advisory opinion 23/17, paras. 153–154; Committee on Economic, Social and Cultural Rights, general comment No. 3; [A/HRC/4/35/Add.1](#).

⁹⁶ See the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond National Jurisdiction and the Convention on Wetlands of International Importance especially as Waterfowl Habitat (resolution VIII.9); World Bank, *Environmental and Social Framework* (2017).

⁹⁷ See World Bank, *Good Practices in National Systems for Environmental and Social Impact Assessment: A Literature Review*.

⁹⁸ See Government of the Philippines, Department Administrative Order No. 2017 15d.

D. Procedural obligations

70. Access to information, public participation and access to justice are human rights and procedural elements of the right to a healthy environment, and, aligned with the Aarhus Convention and the Escazú Agreement, States must ensure them throughout environmental, social and human rights impact assessment processes.

1. Access to information

71. Access to information within environmental, social and human rights impact assessment processes is governed by the principles of maximum disclosure and active transparency.⁹⁹ States have positive obligations to proactively publish and share all information concerning the proposed environmental, social and human rights impact assessment process, including potential human rights, environmental and social impacts, and to establish adequate mechanisms for requesting all relevant information. This includes ensuring that private actors disclose the greenhouse gas emissions throughout their project value chain.¹⁰⁰

72. Information should be complete, up to date, understandable, provided in a timely and proactive manner, accessible regarding cost, language, format and other factors, and tailored to diverse segments of the population, especially marginalized groups.

73. States must ensure that all information relevant to a proposal and impact assessment process is of high technical quality, following the best-available science, and directed towards ensuring that affected communities and the general public understand the potential benefits and risks of the proposed activity on their human rights. This includes information to fully understand the potential human rights impacts of the triple planetary crises and the interconnectedness between the right to a healthy environment and other human rights.¹⁰¹ All relevant information should be presented alongside non-technical summaries and made available in the languages of affected communities and formats accessible to disabled and non-literate persons.¹⁰² Information on impact assessments can be made widely accessible to the public through websites, publications in daily local newspapers and audiovisual information, as well as information sessions with affected communities.¹⁰³

74. Exceptions to disclosure should be limited, narrowly prescribed through law and applied only after a proportionality test demonstrates the necessity of restricting the right to access information, based on article 19 of the International Covenant on Civil and Political Rights, the Aarhus Convention, the Escazú Agreement and the Inter-American Court of Human Rights (see *Claude Reyes v. Chile*). Authorities should provide written justification for each exception¹⁰⁴ and inform requesters of available appeal procedures.¹⁰⁵

2. Public participation

75. States must ensure that affected communities and the public have timely, meaningful participation in all stages of environmental, social and human rights impact assessment processes, as international law, jurisprudence and guidelines systematically agree, including the Aarhus Convention, the Escazú Agreement, the

⁹⁹ Escazú Agreement, art. 6 (1); [A/79/270](#); submission from: secretariat of the Aarhus Convention.

¹⁰⁰ Inter-American Court of Human Rights, advisory opinion 32/25, para. 347.

¹⁰¹ See [A/79/176](#).

¹⁰² See [CCPR/C/GC/34](#); Akwé: Kon Voluntary Guidelines.

¹⁰³ See findings on communication [ACCC/C/2006/16](#) (Lithuania).

¹⁰⁴ See Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*.

¹⁰⁵ Aarhus Convention, art. 4 (8); see also [CCPR/C/GC/34](#).

Bali Guidelines, the Akwé: Kon Voluntary Guidelines, jurisprudence from the Inter-American and European human rights systems, and European Commission recommendation 2023/2863. First, States must ensure the identification of potentially affected communities, experts, civil society organizations, rights holders and the public. Second, public participation procedures must include reasonable time frames for the public to prepare and participate effectively. Given that the human right to a healthy environment encompasses both individual and collective dimensions, States should also ensure that the public has adequate opportunities to voice its concerns and recommendations.

76. States must ensure that the authority effectively notifies and consults the public before carrying out a project. The outcome of public participation should be given full and fair consideration in the decision-making process at each stage, and all decisions must explicitly outline how the public's views were considered.

77. States must facilitate public participation by strengthening marginalized groups' capacity to engage, adapting to social, economic, cultural, marginalization, geographical and gender characteristics and reducing obstacles and power imbalances between affected communities and implementers. Public hearings and workshops must be scheduled at accessible times and venues, with translation, transport, childcare support and remote options to ensure the inclusion of women, youth, older persons, persons with disabilities and other marginalized groups.

78. States must also ensure protection for individuals and organizations advocating for human rights and the environment and environmental human rights defenders, ensuring their safe participation without fear of persecution or harm.

3. Access to justice

79. Access to justice and effective remedies should be available at every stage of the environmental, social and human rights impact assessment process, including remedies for breaches of human rights obligations and for deficiencies in access to information and public participation.¹⁰⁶ Impacted people and the public should also be able to challenge the legality of permits, having legal standing to seek interim measures to suspend non-compliant activities and orders for environmental restoration and the enforcement of monitoring and redress conditions, and to prevent or remedy foreseeable harm to the environment. In cases of transboundary harm, affected persons in other States should have access to remedies on the same terms as domestic claimants. States should also ensure prompt enforcement of final judgments and orders. Protections against reprisals, such as anti-strategic litigation against public participation (SLAPP) measures and whistleblower safeguards, should be in place to preserve the integrity of the process.

V. Obligations towards marginalized groups

80. States must take special measures to ensure that marginalized people and groups are protected from activities that might disproportionately impact their rights.¹⁰⁷ Therefore, measures to provide special protection are important during impact assessment processes, including to safeguard rights holders' meaningful participation

¹⁰⁶ Inter-American Court of Human Rights, advisory opinion 23/17, paras. 238–239; [CCPR/C/GC/34](#); Maputo Convention, art. XVI (2); findings on communication ACCC/C/2011/58 (Bulgaria), ECE/MP.PP/C.1/2013/4.

¹⁰⁷ See International Tribunal of the Law of the Sea, advisory opinion No. 31; International Court of Justice, "Obligations of States in respect of climate change", paras. 257 and 382; Inter-American Court of Human Rights, advisory opinion 32/25, paras. 412 and 434.

as mentioned above, and to prevent discrimination against them. States must act under a strict due diligence standard in impact assessment processes in which marginalized groups are affected by a proposed project.

A. Indigenous Peoples

81. States must ensure that assessment processes are consistent with Indigenous Peoples' individual and collective rights, including the rights to life, self-determination, free, prior and informed consent, property, development, cultural heritage, traditional knowledge, and associated intellectual property. Authorities and project proponents must consult and cooperate in good faith with Indigenous Peoples and their representatives to obtain their free, prior and informed consent before approving any project affecting their lands, resources or rights, in particular in connection with the project, and the utilization or exploitation of mineral, water or other resources. Consultation must be culturally appropriate, accessible, free from coercion and allow enough time for Indigenous Peoples to fully understand the proposed project's scope, nature and impacts. To ensure trust, good faith and mutual respect, consultation procedures must stem from consensus between Indigenous Peoples and third parties. States should also cooperate with Indigenous Peoples in determining new impact assessment frameworks in accordance with Indigenous methodologies and knowledge.¹⁰⁸

B. Peasants, small-scale fishers and rural communities

82. Where any exploitation of natural resources held or used by peasants is contemplated, States are required under the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas to ensure a duly conducted environmental and social assessment, good faith consultation with the potentially impacted peasant communities and mutually agreed upon procedures for the fair and equitable sharing of benefits. These obligations apply even where envisaged impacts may not be significant and they support the tremendous nature stewardship contributions of peasants, including small-scale fisher communities, pastoralists, small-scale farmers, Afro-descendant peoples and rural communities.

C. Women

83. Under the Convention on the Elimination of All Forms of Discrimination against Women, States have the full and immediate obligation to eliminate discrimination against women in all fields, including those related to the environment, development planning and the distribution of associated benefits. Following recommendations of the Committee on the Elimination of Discrimination against Women, legislation must recognize women's rights to meaningfully participate in impact assessment processes and require: (a) assessment of gender-differentiated impacts; (b) data disaggregated by gender, age and other grounds for discrimination; (c) gender parity among process participants; and (iv) that assessment hearings be held under circumstances that enable women's effective participation.¹⁰⁹

¹⁰⁸ See United Nations Declaration on the Rights of Indigenous Peoples; International Labour Organization, Indigenous and Tribal Peoples Convention, 1989 (No. 169); [A/HRC/45/34](#).

¹⁰⁹ See Committee on the Elimination of Discrimination against Women, general recommendation 40 and general comment 37.

D. Children and future generations

84. All impact assessment processes concern children. As acknowledged in Committee on the Rights of the Child general comment 26, children are among those most vulnerable to the consequences of environmental and social harm. The contributions of projects to climate change and environmental degradation will have the most pronounced implications for the rights and the well-being of youth and future generations. Moreover, a range of potentially environmentally harmful activities are reliant on child labour.¹¹⁰

85. Given these realities, the Committee on the Rights of the Child (see its general comment 26, para. 75) requires States to ensure that impact assessment processes always reflect the best interest of the child. Participatory and rigorous “child rights impact assessments” must be integrated into existing impact assessment processes and must be conducted ex ante and ex post. Furthermore, children have a right to gain access to accurate, reliable environmental information relevant to assessment processes, to receive such information in child-friendly formats and to participate in decision-making processes in a safe, age-appropriate manner. To support their participation in impact assessment processes, children proposed that Governments create official entry points for their participation (e.g., child assemblies); provide support to child environmental human rights defenders; and collaborate with learning centres. However, children’s participation in impact assessment processes is often restricted by arbitrary age limits or a lack of accommodation.¹¹¹

VI. Business responsibilities

86. Impact assessment processes must be complementary within ongoing human rights and environmental corporate due diligence processes to ensure that risk identification informs enterprise decisions, policies, governance, budget allocations and oversight.¹¹² Preventive and mitigation measures identified through assessments must be integrated into corporate decision-making, risk management systems and public reporting. In this regard, companies are required to establish and maintain grievance mechanisms and provide adequate redress for human rights violations that they have caused or contributed to. States have especially stringent obligations to prevent human rights abuses by State-owned enterprises.

87. International finance institutions, conservation organizations and other actors that finance, regulate or implement projects share these responsibilities. They must mandate independent impact assessment processes and condition financing and support with a project’s adherence to the highest human rights standards, including by requiring comprehensive, transparent stakeholder engagement and effective grievance mechanisms.¹¹³ Overall, international financial institutions, which can heavily influence how environmental, social and human rights impact assessments are undertaken, must align their guidelines and procedures with human rights law.

¹¹⁰ See [A/HRC/51/35](#); International Labour Organization, “Child labour in mining and global supply chains” (2019).

¹¹¹ Submission from: Child Rights International Network.

¹¹² See Guiding Principles on Business and Human Rights; Organisation for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (2023).

¹¹³ See World Bank, *Environmental and Social Framework*, “Assessment and management of environmental and social risks and impacts”; International Finance Corporation, “Performance standard 1: assessment and management of environmental and social risks and impacts”.

VII. Recommendations

88. In compliance with their obligations to respect, protect and fulfil the right to a clean, healthy and sustainable environment, in benefit of present and future generations, States must:

(a) **Always request and conduct effective, comprehensive, integrated and adequate environmental, social and human rights impact assessments as a fundamental process to be fully implemented prior to authorizing and starting projects or activities or prior to significant modifications or project expansion that might cause human rights impacts and/or significant environmental harm;**

(b) **Address and prevent situations of conflict of interest, undue influence or biased decision-making related to impact assessments, penalizing actors both private and public, thus guaranteeing that assessment processes are implemented by independent, objective and expert multidisciplinary teams;**

(c) **Abstain from weakening regulations, including through regressive amendments to impact assessment legislation or project licences unless a full consideration of alternatives, human rights impacts and the principles of necessity and proportionality are complied with. Instead, States must implement, strengthen and update legal frameworks in accordance with their obligations and the interpretation of such frameworks in the context of climate change, biodiversity loss and pollution;**

(d) **Guarantee that regulations, processes and decisions regarding environmental, social and human rights assessments incorporate and are based on international law principles, including the preventive, precautionary and “polluter pays” principles. States must abstain from approving projects or activities that pose significant or irreversible risks to the environment, including a safe climate and healthy biodiversity and ecosystems, and to human rights, including human health, and where there is no scientific certainty on how to avoid these harms;**

(e) **Abstain from excluding potentially harmful sectors or projects from impact assessment requirements based on strategic, national security, national interest or climate and biodiversity measures, including projects related with fossil fuels and their related activities, industrial activities such as fisheries, agribusiness, mining and climate-related activities;**

(f) **Guarantee access to information, public participation and access to justice and effective remedy regarding all impact assessment processes stages, in compliance with States’ obligations to control and monitor public and private entities;**

(g) **Build and strengthen the capacities of national and subnational authorities to adequately implement environmental, human rights and social assessments and to collaborate and coordinate with other States in exchanging information, expertise and technical capacities;**

(h) **Ratify and implement international agreements related to preventing environmental impacts, including the Agreement on Marine Biological Diversity of Areas beyond National Jurisdiction, and regional agreements, that provide better tools and options to advance international collaboration, towards improving protection for the environment and human rights.**

89. International financial institutions and United Nations entities must update their environmental impact assessment guidelines for projects in which they will invest,

approve loans, support or be involved in any way, to make sure that they are comprehensive and incorporate human rights- and climate-related impacts.

90. Businesses, when implementing assessments, projects and activities, should:

(a) **Comply with international and national regulations regarding environmental, social and human rights impact assessments and abstain from exerting undue influence;**

(b) **Contribute to ensuring that impact assessments are undertaken for projects and that they complement ongoing due diligence processes, aligning with the Guiding Principles on Business and Human Rights and Organisation for Economic Co-operation and Development guidelines;**

(c) **Ensure that all projects, including in relation to climate and biodiversity actions, are adequately assessed and comply with State obligations, especially climate and human rights obligations.**



Special Rapporteur on the human right to a clean, healthy and sustainable environment

Integrating Climate Change into Environmental, Social and Human Rights Impact Assessments

Annex 1

To the report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño, titled 'Framework for Environmental Social and Human Rights Impact Assessments and the right to a clean, healthy and sustainable environment' (A/HRC/80/187)

This annex provides concise guidelines for States and businesses to comply with their obligations and responsibilities, including in relation to core human rights principles, and sector-specific expectations. These guidelines implement States' obligation to integrate climate change into Environmental, Social and Human Rights Impact Assessments (ESHRIAs) under the human right to a clean, healthy and sustainable environment.

The annex aims to expand the information included in the report, in particular paragraphs 50-54, in order to further clarify main elements and considerations for including climate change in ESHRIA processes.

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Special Rapporteur on the human right to a clean, healthy and sustainable environment

1. Obligation of States to integrate climate change in Environmental, Social, Human Rights and Impact Assessments (ESHRIA)

Because climate change poses an existential threat to life on the planet, States must act under enhanced and stringent due diligence to prevent harm to the climate system and human rights violations, including to the right to a clean, healthy, and sustainable environment. A key tool to achieve both objectives are comprehensive, science-based environmental, social and human rights impact assessments. It is important to note that, based on what is analysed in the report, environmental impact assessments must also include social and human rights impacts and thus, the Special Rapporteur understands these processes as Environmental, Social and Human Rights Impact Assessments, or ESHRIAs.

Three international tribunals – the International Tribunal for the Law of the Sea (ITLOS), the Inter-American Court of Human Rights (IACtHR) and the International Court of Justice (ICJ) – have concurred in acknowledging that preventing harm to the climate system is a stringent due diligence obligation incumbent upon all States. These courts also recognised that some States must act with greater diligence and ambition in fulfilling this duty, due to their current and historical contribution to climate change and in light of the principle of common but differentiated responsibilities and respective capabilities.

In this respect, the ICJ has stated “on one end of the spectrum are the most developed States which have contributed significantly to the overall amount of GHG emissions since the Industrial Revolution, and which have resources and the technical capacity to implement wide-ranging emission reductions. On the other end are those least developed States that have contributed only minimally to historical emissions and have only a limited capacity to transform their economies. In between are States that have progressed considerably in their development since the conclusion of the UNFCCC in 1992”.¹

For its part, the IACtHR has held that “the nations that have emitted the most GHG throughout history should assume greater responsibility in relation to mitigation because they have had the most harmful impact on the global climate system. The largest current emitters of GHG should also make a commitment that matches their emissions. Other States should weigh their historical emissions and their current emissions to determine their corresponding commitment to mitigation based on their contribution to the alteration of the global climate system”.²

Similarly, ITLOS has observed that the scope and content of necessary measures to prevent pollution of the marine environment due to GHG emissions “requires a State with greater capabilities and sufficient resources to do more than a State not so well placed”.³

¹ International Court of Justice, advisory opinion on the obligations of states in respect of climate change, para. 150.

² Inter-American Court of Human Rights, advisory opinion 32/2025, para. 328.

³ International Tribunal for the Law of the Sea, advisory opinion No. 31, para. 241.

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It is essential to highlight in any case that stringent due diligence means that all States must implement adequate measures to protect the climate system.

All States must provide for and conduct environmental impact assessments “with respect to particularly significant proposed individual activities contributing to GHG emissions to be undertaken within their jurisdiction or control, on the basis of the best available science.”⁴ As a guiding principle, States must abstain from approving projects or activities that pose severe or irreversible risks to the climate system.⁵

2. Business Responsibility for climate-related ESHRIAs

As the United Nations Working Group on Businesses and Human Rights has recognised, businesses bear distinct but complementary responsibilities to conduct climate-related impact assessments.⁶ This stems from businesses responsibilities under the UN Guiding Principles on Businesses and Human Rights to “integrate climate change considerations in all aspects of the human rights due diligence process throughout their operations”; “identify all their Scope 1, 2 and 3 greenhouse gas emissions throughout their operations,” and “use their leverage over their business relationships to prevent, reduce or mitigate any climate change-related human rights impacts that they contributed to or are directly linked to through operations, products or services.”⁷

ESHRIAs apply to specific projects and activities that require licensing processes. In addition, as part of their due diligence obligations, businesses must extend human rights, environmental and climate assessments across their entire value chain and product life cycle. Companies engaged in fossil fuel operations, petrochemical production, energy, mining and other extractive industries, large-scale land use change, or other high-emitting sectors have an enhanced responsibility to assess, reduce and disclose the GHG emissions associated with their activities, products and services.⁸

3. Cross-cutting principles for all climate-related ESHRIAs

⁴ International Court of Justice, advisory opinion on the obligations of states in respect of climate change, para. 298.

⁵ A/HRC/59/42, “The imperative of defossilizing our economies,” Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Elisa Morgera.

⁶ Working Group on the issue of human rights and transnational corporations and other business enterprises, “Information Note on Climate Change and the Guiding Principles on Business and Human Rights, 2023”.

⁷ Working Group on the issue of human rights and transnational corporations and other business enterprises, “Information Note on Climate Change and the Guiding Principles on Business and Human Rights, 2023”, paras 16-22.

⁸ The higher a business’s carbon-intensity, the higher its due diligence. In this regard, the IACtHR has determined that “States should establish differentiated obligations with regard to climate action based on the actual and historical contribution of business enterprises to climate change, and impose stricter obligations on those whose activities are major sources of GHG emissions. Such obligations could relate, for example, to their operating conditions, tax burden, contributions to just transition plans and strategies, investment in education, and measures of adaptation or to measures to address loss and damage.” Inter-American Court of Human Rights, advisory opinion 32/2025, para. 350.



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The Special Rapporteur underscores that all ESHRIAs must follow a set of core obligations and principles stemming from international human rights law, public international law, and international environmental law ([report](#), paras. 27-40). Due to their particular relevance for assessing projects posing a risk of significant harm to the climate system, the Special Rapporteur will expand on the principles of use of the best available science, precaution, equality and non-discrimination, and intergenerational equity.

a. Best available science

Both in terms of substance and methodology, ESHRIAs must be guided by the best available science. States and project proponents must assess the climate impact of activities considering the current scientific consensus as reflected in the reports of the Intergovernmental Panel on Climate Change (IPCC), together with the traditional knowledge of Indigenous Peoples and local communities, where appropriate.⁹

Specifically, ESHRIAs must determine whether projects and activities posing a risk of significant harm to the climate system are aligned with reduction emission pathways consistent with keeping global average temperature increase below 1.5°C - the scientifically based consensus limit under the Paris Agreement¹⁰

States and project proponents must also determine if and how the concerned activity fosters or undermines climate adaptive capacity, resilience of natural and human systems, and the imperative of a fossil fuel phase-out.¹¹ Both considerations apply to projects and activities causing significant harm to carbon sinks and reservoirs, including forests and the ocean.

States should consider these factors when deciding whether to approve or reject the proposed project or activity.

b. Precautionary principle

Any technological intervention proposed to mitigate or adapt to climate change that carries a plausible risk of significant environmental harm or human rights violations must also be evaluated. As in other situations, when there are irreversible or significant risks to the environment or health, and there is scientific uncertainty on how to prevent such risks, then the lens of the precautionary principle must apply. In practice, this requires, at a minimum, that States comply with the current moratoria on geoengineering and the precautionary pause in relation to deep sea bed mining of

⁹ Regarding IPCC reports as best available science in the climate context see: International Court of Justice, advisory opinion on the obligations of states with respect of climate change, paras. 74, 77-83, 277-279 and 284; Inter-American Court of Human Rights, advisory opinion 32/2025, para. 487; International Tribunal of the Law of the Sea, advisory opinion No. 31, para 208. See also, ECHR, *Case of Verein KlimaSeniorinnen Schweiz et al. v. Switzerland*, para. 429.

¹⁰ International Court of Justice, advisory opinion on the obligations of states with respect of climate change, para. 224. See also, IPCC, *Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development. In: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty.*

¹¹ A/HRC/59/42.



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critical minerals, as well as to ensure a rigorous, case by case assessment of other technologies, such as carbon capture and storage.

c. Equality and non-discrimination

Climate change deepens existing inequalities and vulnerabilities of marginalized individuals, groups and peoples.¹² A human rights-based approach to climate-related impact assessments requires an intersectional evaluation of how the project and its expected impacts will harm or benefit those disproportionately affected by climate change.¹³ Assessments must include a disaggregated analysis of how climate impacts affect specific groups and include tailored impact mitigation and remediation measures.

When States or project proponents have identified project-affected communities, they must ensure their access to information, participation and justice in the assessment procedure, and in the case of Indigenous Peoples, ensure their free, prior and informed consent.

States and businesses must ensure that procedural obligations are proactively met throughout the project lifecycle (report para. 70).

d. Intergenerational equity

Assessments must explicitly include long-term modelling, evaluating the project or activities impacts on future generations.

The International Court of Justice has stated that “intergenerational equity is a manifestation of equity in the general sense and thus shares its legal significance as a guide for the interpretation of applicable rules. Accordingly, considerations of intergenerational equity must play a role *infra legem*, without displacing or exceeding the limits of the applicable law. Due regard for the interests of future generations and the long-term implications of conduct are equitable considerations that need to be taken into account where States contemplate, decide on and implement policies and measures in fulfilment of their obligations under the relevant treaties and customary international law”.¹⁴

Similarly, the Inter-American Court has underscored that States must “promote mechanisms to integrate the interests of ... future generations in their climate actions” and that delays in mitigation and adaptation “mean transferring an extraordinary responsibility to future generations, and increase the risk of suffering the negative effects of climate change, particularly for the most vulnerable.”¹⁵

¹² International Court of Justice, advisory opinion on the obligations of states in respect of climate change, para. 382; and Inter-American Court of Human Rights, advisory opinion 32/25, para. 594.

¹³ Inter-American Court of Human Rights, advisory opinion 32/25, paras. 242, 310, and 389 (i).

¹⁴ International Court of Justice, advisory opinion on the obligations of states with respect of climate change, para. 157.

¹⁵ Inter-American Court of Human Rights, advisory opinion 32/2025, paras. 194 and 469.

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This requires a conscious effort to avoid placing a disproportionate burden upon future generations, for example, with relation to mitigation, adaptation or transition costs.

4. How to assess activities posing significant climate risks

Every climate-related ESHRIA should, at minimum, address four interrelated dimensions:

- First, the **greenhouse gas emissions associated with the project**. Assessments must quantify anticipated emissions - including direct (scope 1), energy-related (scope 2), and value chain emissions (scope 3) - and assess consistency with national and international climate obligations. In all cases, ESHRIAs must determine whether the proposed activity contributes or undermines the global 1.5°C temperature limit.
- Second, the project's **impact on carbon sinks and reservoirs**. Land use change, deforestation, and marine ecosystem disruption reduce the capacity of natural systems to absorb carbon dioxide and thus contribute to climate change mitigation.¹⁶ ESHRIAs must therefore, through an ecosystem-based approach, analyze whether the activity preserves or depletes forests and other terrestrial vegetation; soils (mineral soils, peatlands, permafrost); inland waters and their sediments (rivers, lakes, reservoirs, floodplains); coastal “blue-carbon” ecosystems (mangroves, salt marshes, seagrasses); and the open ocean and marine sediments (solubility/biological pumps).
- Third, the project's **effect on the resilience of human and natural systems**. Assessments must examine how projects (including adaptation and mitigation measures) improve or deteriorate adaptive capacity, including impacts on food systems, water resources, clean air, public health, and cultural heritage. They must examine how a project alters exposure and vulnerability to climate hazards for affected populations, with disaggregated attention to age, gender, disability, indigeneity and socioeconomic status, and must address adaptive capacity in ecosystems whose stability underpins rights.
- Fourth, the **project's viability considering climate impacts**. Assessments must include climate risk modelling and assess if and how climate change will affect the project's viability and proposed benefits.

5. Sector-specific guidance (illustrative)

As described in the report (para. 37), environmental, social and human rights impact assessment regulations must explicitly require the evaluation of activities or projects that may cause significant harm to the environment and the climate, alter natural habitats, affect ecosystem services, deplete species diversity, generate waste or toxic pollution or threaten human rights, including but not limited to the following:

¹⁶ Both ITLOS and the Inter-American Court have emphasized that the protection of the ocean, forests, and other carbon sinks forms part of States' obligations to prevent environmental harm and protect human rights.



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(a) Fossil fuel exploration, extraction and use

As a starting point, ESHRIAs for new fossil fuel projects or any expansions must recognise that new coal, oil and gas development is incompatible with the 1.5 °C temperature limit,¹⁷ and the right to a clean, healthy, and sustainable environment. Permits for new fossil fuel projects, especially those carried out or funded by industrialised States and high emitters should be carefully examined and preferably rejected, as they may entail international responsibility for these States.¹⁸

Where new projects are carried out in the context of a fossil fuel phase-out, States shall require ESHRIAs to: (i) quantify Scope 1, 2, 3 and full life-cycle emissions; (ii) fully evaluate alternatives such as renewable energy and demand-side management; and (iii) mandatory methane mitigation and zero flaring policies. Prevention and mitigation measures outlined in the project's management must include decommissioning and just transition plans.

(b) Chemical and petrochemical production and recycling

ESHRIAs must (i) quantify toxic and GHG emissions (e.g., volatile organic compounds, persistent organic pollutants); (ii) require dispersion/cumulative exposure analysis, and (iii) assess implications for workers and nearby communities. To prevent associated air pollution, States must ensure appropriate safe distance between facilities and nearby communities to reduce exposure to ambient air pollution in line with WHO Air Quality thresholds.¹⁹

(c) Industrial agriculture and other land-use change

ESHRIAs must (i) quantify methane (livestock, rice), nitrous oxide (soils/fertilizer), and carbon dioxide emissions (deforestation/peatlands); (ii) assess impacts on sinks (forests, peat, mangroves); (iii) respect Indigenous property rights whether or not formally titled. Projects that cause widespread deforestation or significant harm to carbon sinks and reservoirs should be rejected.

(d) Industrial aquaculture and industrial fishing

ESHRIAs should: (i) analyse impacts on water quality, wild fish populations, benthic habitats and carbon-sequestering ecosystems such as mangroves and seagrass; (ii) assess feed supply chains, and (iii) ensure the active participation of coastal communities and fisherfolk.²⁰ Projects that cause significant harm to the marine environment or ocean pollution should be rejected.

¹⁷ See, e.g. IEA (2023), Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach, IEA, Paris <https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-0c-goal-in-reach>, Licence: CC BY 4.0

¹⁸ In this regard, the ICJ has recently held the following: “Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State,” para. 427.

¹⁹ See, for example, on the requirement for safe distances, Directive 2012/18/EU (Seveso III), art. 13. See also WHO Air Quality Guidelines (2021).

²⁰ FAO. Environmental impact assessment and monitoring in aquaculture. FAO Fisheries and Aquaculture Technical Paper. No. 527. Rome, FAO. 2009. See also, A/HRC/58/59.



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(e) Large infrastructure and energy developments

Large infrastructure projects (like dams, roads, ports, airports, pipelines and transmission lines) can lock in high-emission pathways, fragment habitats, displace communities and generate significant cumulative climate impacts and cause human rights violations. Therefore, ESHRIAs must assess construction and operational GHGs, induced demand, air and noise pollution, stormwater and wastewater discharges, and social impacts including displacement and resettlement.

(f) Mining of metal ores, rare earths, sand and gravel

ESHRIAs must quantify GHG emissions (like fugitive methane from coal mines), assess acid mine drainage, evaluate the stability of tailings storage facilities and plan for mine closure and rehabilitation.

(g) Renewable energy projects

ESHRIAs must address land and community rights, lifecycle footprints and grid integration emissions.

(h) Wastewater treatment, sewage systems and industrial effluent outlets

ESHRIAs must quantify pollutant loads, including GHG (like methane and nitrous oxide), sludge pathways, and human rights impacts on ecosystems and clean water sources.

(i) Waste management (municipal, industrial, electronic, hazardous; incineration; large-scale composting)

ESHRIAs must assess air toxics (including particulate matter), climate impacts of processing, combustion and transport, and transboundary waste movements.

(j) Metallurgical smelters, cement, lime, pulp-and-paper mills

ESHRIAs must quantify process GHGs, energy combustion, co-pollutants (SO_x, NO_x, heavy metals, PM), water use and land impacts, with facility and value chain analysis

(k) Battery manufacturing & recycling, and data centres

ESHRIAs should evaluate life cycle emissions, water use, supply chain labour conditions and end of life recycling or circular economy strategies.



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Environmental and legal risks of flawed impact assessment

Annex 2

Flawed an inadequate environmental, social and human rights impact assessments increases the risk of litigation, mostly lost by the State and developers, Complementing the Report [A/80/187](#), on environmental, social and human rights assessments, this document summarizes main findings from dozens of litigation cases involving issues around these processes. It is important to remember that while referring to these processes as environmental impact assessments is more common, this report and the Special Rapporteur refers to them as environmental, social and human rights impact assessments (ESHRIA) to reflect on the need to also include social and human rights impacts related to the projects and activities. This is also aligned with obligations from States, as described in the report.

Some States and companies have argued that ESHRIAs are a procedural burden for investment, becoming an obstacle for development, and even increasing litigation. The below analysis of a sample of 92 litigation cases from 29 countries,¹ and over the last 30 years (1996 to 2025), reinforces conclusions from the report: **inadequate impact assessments can and is leading to increased conflict, including a rise in litigation, with additional delays and economic losses, alongside human rights violations and environmental impacts, including to climate, biodiversity and increasing pollution.**

As detailed in the report, effective, proper and thorough ESHRIAs can prevent these legal conflicts and their consequences. As these examples evidenced, in the majority of litigation against ESHRIA (57 proceedings out of 92, representing 62% of the total) courts resolved in favour of the correct implementation of these processes. Therefore, it is more effective and efficient both for States and businesses to make sure that ESHRIAs are done prior to starting a project and activity, and complying with its requirements, including guaranteeing adequate access to information, public participation and access to justice.

Globally, failure to request or undertake comprehensive ESHRIA processes before a project or activity starts, have originated litigation. Among the most common deficiencies of ESHRIAs and thus, reasons for litigation include:

¹ These cases were brought to the Special Rapporteur's attention during the consultations conducted to inform her report and through the inputs received. They were heard in Argentina, Australia, Brazil, Canada, Chile, Colombia, Egypt, Guatemala, Honduras, India, Indonesia, Ireland, Japan, Kenya, Malaysia, Mexico, Norway, Peru, Philippines, Romania, Serbia, South Africa, Tanzania, Thailand, Türkiye, Uganda, United Kingdom, United States of America, and Zimbabwe.



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I. Failure to assess climate change

The most frequently cited argument presented by the plaintiffs was that States and businesses failed to assess climate change, including scope 3 emissions (15 cases or 26.3%). The growing successful litigation concerning the inclusion of climate impacts in environmental impact assessments is consistent with this obligation. Even some States, such as Australia, have argued in court that lack of climate assessment can be grounds to reject authorization to a project.²

II. Violation of procedural rights

The second most cited reason for litigating ESHRIAs is the violation of procedural rights (14 cases or 24.5%). Commonly, plaintiffs allege that they are not aware or informed of projects until they have already begun, hence their participation is limited. Courts have repeatedly emphasised that proponents must share complete information, in line with the obligation to guarantee adequate access to information and public participation to individuals and interested communities. Courts also agreed that exempting projects from public participation or denying participation *de facto* can nullify a project or require it to be either revised or redone.

On these grounds, courts have halted projects or ordered a new evaluation with explicit instructions to guarantee access to information and public participation that is inclusive, effective and free of coercion.

Lack of information has resulted in missed legal deadlines, which delayed the right to access justice. In one case, the court order to suspend the project was not fulfilled, which led to a violation of due process.³

III. Violation of the obligation to guarantee Free, Prior and Informed Consent

² Gloucester Resources Limited v. Minister for Planning, File Number: 2017/383563, Medium Neutral Citation: [2019] NSWLEC 7.

³ Okyay and Others v. Turkey, Application No. 36220/97.



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The obligation to guarantee FPIC to Indigenous Peoples is binding as courts concluded in all cases where this right was being argued (9 cases or 15.7%). In several ESHRIA processes, courts have ruled to correct this omission by conducting an FPIC process or involving the Indigenous Peoples in the process. However, only a limited number of cases have resulted in the suspension of projects or the revocation of permits.

IV. Failure to conduct a comprehensive and/or cumulative assessment

About over 20% of cases (12 cases or 21%) address the failure to conduct a comprehensive and/or cumulative assessment, including failing to use the best available science. Regarding these cases, courts commonly agree on requesting adequate assessments, considering the area that might be impacted, including fragile ecosystems, social contexts linked to the environment, and the combined impacts of other facilities and industries already installed. In these cases rulings have ordered the suspension of projects during the proceedings and their subsequent reassessment. However, in at least two cases, the projects were carried out as originally presented.⁴

In another case addressing a faulted ESHRIA process the court annulled the project because most of it was constructed under an illegitimate procedure.⁵

V. Absence of ESHRIA

The lack of an ESHRIA is also a common claim presented before courts (9 cases or 15.7%). In three cases judgments ordered to vacate the permits, halt the project completely or to conduct a new assessment, yet the decisions were not fulfilled or were overturned in the higher courts.⁶

VI. Failure to monitor and implement ESHRIA

When courts have encountered failures in the monitoring and implementation (4 cases or 7%) phase, they often order restoration, further monitoring and even compensation of impacts caused.⁷

VII. Conflict of interest

⁴ Yasemin Pelenk and others, Case No. 2017/33865; and T. Muruganandam v. Ministry of Environment & Forests, Appeal no. 50/2012, Civil appeal no. 1811-1812 of 2015.

⁵ Regulatory Institute for Renewable Energy and the Environment v. City Administration of the City of Zrenjanin and others, ^[11]SEP Case No. 18354/20.

⁶ Regulatory Institute for Renewable Energy and the Environment v. Administrative Commission of the Government of the Republic of Serbia, Case No. 30649/21; Pahwa Plastics Pvt Ltd. vs Dastak Ngo, Civil Appeal No. 4795 of 2021; and Alembic Pharmaceuticals Ltd. vs Rohit Prajapati, Civil Appeal No. 1526 of 2016.

⁷ HIDROCEP case; New Life Covenant Church v. Trustees of the Harare Wetlands Trust and 2 Others^[11]SEP, Civil Appeal No. SC 401/20; Wayúu Indigenous Peoples petitioners v Cerrejón coal mine pollution and the State, ruling T-614 of 2019; and Ramdas Janardan Koli vs The State Of Maharashtra^[11]SEP, Application No. 19 of 2013 (An order of Interim Relief in Application No.19/2013).



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There were three cases (5%) related to conflict of interest, where the courts rejected the practice to appoint unqualified personnel, individuals with interests in the project's approval and/or individuals tied to the promoters, ordering to set aside the permits.⁸ It's worth noting that all three cases occurred in India where the legislation incorporates safeguards around conflict of interest and thus these situations are subject to be reviewed in court, bringing an important opportunity to analyse this issue.

VIII. Deregulation, regressive legislation and arbitrary exemptions

There were three cases (5%) where courts assessed legislation changes related with deregulation or regressive measures to the ESHRIA process. In these, the courts addressed situations excluding climate from the assessment,⁹ arbitrary thresholds to avoid ESHRIA¹⁰ or to weaken safeguards around conflict of interest.¹¹ The courts ordered injunctions to stay the execution of said changes to incorporate criteria in line with the obligation to undertake proper ESHRIAs. Finally, in one project that was exempted from ESHRIA, the court nullified the exemption.¹²

Only 14 cases (15%) were won by the defendants. Four cases were dismissed by courts due to lack of standing to sue or other procedural issues;¹³ and another was lost because the court lacked jurisdiction over the case.¹⁴

Finally, only in three cases courts considered that the assessments had been carried out correctly.¹⁵ For another, although the ruling recognised and established the legal problem at hand –legality of the exemption to conduct ESHRIA– it did not rule on it and allowed the project to continue. In another case,¹⁶ claims arose because the State's national planning framework did not include an assessment of its impacts on climate change. The court dismissed the case arguing that a quantitative assessment of a policy document is not feasible because it does not authorise any specific project. In one case concerning the impacts of a project's emissions, the court found that 'future emissions from exported oil are too uncertain to bar the

⁸ Hanuman Laxman Aroskar v. Union of India, ^[SEP]Civil Appeal No. 12251 of 2018; Tularam Gogoi vs. Union of India, Appeal No. 2011 of 2019; and Writ Petition (Civil) No. 9340/2009 & CM APPL Nos. 7127/09, 12496/2009.

⁹ Held v. State of Montana^[SEP], Case no. 12/18/2024.

¹⁰ Case No. 2017/2082 in Türkiye.

¹¹ Kalpavriksh Ors vs Union Of India Ors, ^[SEP]Application No. 116 of 2013.

¹² Noble M Paikada vs Union Of India^[SEP], Civil Appeal Nos. 1628-1629 of 2021.

¹³ Awyu Indigenous Community v. Papua Provincial Government & PT Indo Asiana Lestari, Decision No. 458 K/TUN/LH/2024; Simba and 2 Others v. The Director General of the Environmental Management Agency and 4 Others, Case No. HC 345/23; Proyecto Hidroeléctrico Puebla 1, *Amparo* under Review 598/2016; and Bakun Dam Hydropower Megaproject.

¹⁴ Wilfred J. Anr vs MoEE Ors, M.A. No. 182 of 2014 & M.A. No. 239 of 2014 in Appeal No. 14 of 2014; and M.A. No. 277 of 2014 in original Application No. 74 of 2014.

¹⁵ Bartell Ranch LLC, et al. v. Ester M. McCullough, et al., Case No. 3:21-cv-00080-MMD-CLB; Peter Makau Musyoka & 19 others (Suing on their own behalf and on behalf of the Mui Coal Basin Local Community) v Permanent Secretary Ministry of Energy & 14 others, ^[SEP]Constitutional Petition Numbers: 305 of 2012; 34 of 2013 & 12 of 2014; and case 572/2020 in Mexico.

¹⁶ Friends of the Irish Environment v. Ireland, Record No. 2018/391 JR.



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granting of these petroleum exploration licences.’¹⁷ Lastly, in one case the local regulations were dismissed, prioritizing other legislation and allowing the project to continue.¹⁸

The remaining cases (21 or 22.8%) are still waiting for a resolution. Most plaintiffs base their claims on the same issues already addressed.

List of identified cases

1. [Bartell Ranch LLC, et al. v. Ester M. McCullough, et al., Case No. 3:21-cv-00080-MMD-CLB](#)
2. [Föreningen Greenpeace Norden and Natur og Ungdom v. State of Norway, Case No. E-18/24](#)
3. [Greenpeace Romania v. OMV Petrom and Romgaz](#)
4. [Menengai West Stakeholders Forum & 10 others v National Environmental Management Authority & another, Case No. ELCLA/E001/2024](#)
5. [Petitions by Greenpeace Ltd & Uplift for Judicial Review, Case No. CSOH 10/2025](#)
6. [Held v. State of Montana, Case no. 12/18/2024](#)
7. [African Climate Alliance v Minister of Mineral Resources and Energy, Case No. 56907/202](#)
8. [Awyu Indigenous Community v. Papua Provincial Government & PT Indo Asiana Lestari, Decision No. 458 K/TUN/LH/2024.](#)
9. [El Quimbo Case, Case No. 11001-03-24-000-2014-00682-00](#)
10. [C-280/2024.](#)
11. [R Finch on behalf of the Weald Action Group & Others v. Surrey County Council, Case No. CO/4441/2019 and C1/2021/0261](#)
12. [Regulatory Institute for Renewable Energy and the Environment v. City Administration of the City of Zrenjanin and others, Case No. 18354/20](#)
13. [Amparo ruling AA-1459-2021](#)
14. [Noble M Paikada vs Union Of India, Civil Appeal Nos. 1628-1629 of 2021](#)
15. [HIDROCEP Case](#)
16. [Simba and 2 Others v. The Director General of the Environmental Management Agency and 4 Others, Case No. HC 345/23](#)
17. [Birsu Hydroelectric Dam project, Case No. 2023/779, Decision No. 2024/481](#)
18. [Guitian, Román E. v. National Executive Branch and another, Environmental Protection Action, Case No. 054/2022](#)
19. [North Sea Fields Case, Greenpeace Nordic and Nature & Youth v. Energy Ministry, Case No. 23-099330TVI-TOSL/05](#)
20. [Case of Inhabitants of La Oroya v. Peru](#)
21. [Yasemin Pelenk and others, Case No. 2017/33865](#)
22. [Regulatory Institute for Renewable Energy and the Environment v. Administrative Commission of the Government of the Republic of Serbia, Case No. 30649/21](#)
23. [Case No. 2023 \(Gyo-Hi\) 143](#)
24. [Prafulla Samantara vs Union Of India, Appeal No. 21/2022/EZ](#)
25. [Greenbelt Movement & 4 others v National Environmental Management Authority & another, Case No. 19 of 2020](#)
26. [Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors, Case No. \(No 6\) \[2022\] QLC 21](#)
27. [Amparo 572/2020;](#)
28. [Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others, Case No. 3491/2021](#)
29. [Pahwa Plastics Pvt Ltd. vs Dastak Ngo, Civil Appeal No. 4795 of 2021](#)
30. [New Life Covenant Church v. Trustees of the Harare Wetlands Trust and 2 Others, Civil Appeal No. SC 401/20](#)
31. [Marisi, Leandro et al. v. National Executive Branch –PEN– Ministry of Transportation of the Nation et al., Case No. FSM 113686/2017/12/1/RH13](#)
32. [Uma Maheshwar, Appeal No. 46 of 2016](#)
33. [Greenpeace Nordic Ass’n v. Ministry of Petroleum and Energy, Case no. 20-051052SIV-HRET](#)
34. [Groundwork Trust v. Acting Director-General Department of Water and Sanitation, Appeal No. WT02/18/ MP](#)
35. [Friends of the Irish Environment v. Ireland, Record No. 2018/391 JR](#)
36. [Alembic Pharmaceuticals Ltd. vs Rohit Prajapati, Civil Appeal No. 1526 of 2016](#)

¹⁷ Greenpeace Nordic Ass’n v. Ministry of Petroleum and Energy, Case no. 20-051052SIV-HRET.

¹⁸ Case No. 2023 (Gyo-Hi) 143.



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37. [Philippi Horticultural Area Food and Farming Campaign v. MEC for Local Government, Environmental Affairs and Development Planning: Western Cape \(PHA\), Case no. 16779/17](#)
38. [Hanuman Laxman Aroskar v. Union Of India, Civil Appeal No. 12251 of 2018](#)
39. [Wayúu Indigenous Peoples petitioners v Cerrejón coal mine pollution and the State, Ruling T-614 of 2019](#)
40. [The Trustees for the Time Being of the Groundwork Trust v. The Minister of Environmental Affairs and others, Case No. 61561/17](#)
41. [Amparo under Review 598/2016](#)
42. [Tularam Gogoi vs. Union Of India, Appeal No. 2011 of 2019;](#)
43. [Gloucester Resources Limited v. Minister for Planning, File Number: 2017/383563, Medium Neutral Citation: \[2019\] NSWLEC 7](#)
44. [Baleni and Others v Minister of Mineral Resources and Others, Case no: 73768/2016](#)
45. [Ruling SU-123 of 2018](#)
46. [Case No. 2017/2082](#)
47. [Common Cause vs Union Of India, Writ Petition\(s\)\(Civil\) No\(s\). 114/2014](#)
48. [Amparo under Review 641/2017](#)
49. [Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others, Case No. 65662/16](#)
50. [M/S Electrothem \(India\) Ltd vs Patel Vipulkumar Ramjibhai & Ors, Civil Appeal No. 7222 of 2016, Arising out of SLP \(Civil\) No.16860 of 2012](#)
51. [Paryawaran Sanrakshan Sangharsh Samiti Lippa v. Union of India, Appeal No. 28 of 2013](#)
52. [T-361 de 2017](#)
53. [Vikrant Kumar Tongad v. Noida Metro Rail Corporation and Ors, Application No. 478 of 2015](#)
54. [Peter Makau Musyoka & 19 others \(Suing on their own behalf and on behalf of the Mui Coal Basin Local Community\) v Permanent Secretary Ministry of Energy & 14 others, Constitutional Petition Numbers: 305 of 2012; 34 of 2013 & 12 of 2014](#)
55. [T. Muruganandam v. Ministry of Environment & Forests, Appeal no. 50/2012, Civil appeal No. 1811-1812 of 2015](#)
56. [High Country Conservation Advocates v. United States Forest Service, Civil Action No. 13-cv-01723-RBJ](#)
57. [Kalpavriksh Ors vs Union Of India Ors., Application No. 116 of 2013](#)
58. [Wilfred J. Anr vs Moef Ors, M.A. No. 182 of 2014 & M.A. No. 239 of 2014 in Appeal No. 14 of 2014 and M.A. No. 277 of 2014 in original Application No. 74 of 2014](#)
59. [Ramdas Janardan Koli vs The State Of Maharashtra, Application No. 19 of 2013 \(An order of Interim Relief in Application No.19/2013\)](#)
60. [T-294/2014](#)
61. [Goa Foundation vs Union Of India & Ors, Writ Petition No. 435 of 2012](#)
62. [Amparo under review 631/2012](#)
63. [Orissa Mining Corporation Ltd vs Ministry Of Environment & Forest & Ors., Writ Petition \(Civil\) No. 180 of 2011](#)
64. [Save Mon Region Federation and Ors v. Union of India and Ors, MA No. 104/2012 in Appeal No. 30/2012](#)
65. [Adivasi Majdoor Kisan Ekta Sangathan ... vs Moef And Others, Appeal No. 3/2011 \(T\) \(NEAA No. 26 of 2009\)](#)
66. [MiningWatch Canada v. Canada, Case No. 2010 SCC 2](#)
67. [Writ Petition \(Civil\) No. 9340/2009 & CM APPL Nos. 7127/09, 12496/2009](#)
68. [Salas, Dino et al. v. Salta, Province of and National Government, Case no. S1144XLI](#)
69. [Okayay and Others v. Turkey, Application No. 36220/97](#)
70. [US Mid States Coalition for Progress and Others v. Surface Transportation Board, Case No. 02-1359](#)
71. [Bakun Dam Hydropower Megaproject](#)
72. [Africa Institute for Energy Governance \(AFIEGO\) from Uganda, the Center for Food and Adequate Living Rights \(CEFROHT\) from Uganda, Natural Justice \(NJ\) from Kenya, and the Centre for Strategic Litigation \(CSL\) from Tanzania v. East African Crude Oil Pipeline \(EACOP\), Reference No. 39 of 2020](#)
73. [Puerta al Sureste project in Mexico, Appeal](#)
74. [Plants A and B in Afşin-Elbistan in Türkiye](#)
75. [Tren Maya project in Mexico](#)
76. [WWF v Norwegian Parliament](#)
77. [Residents of Omkoi v Expert Committee on EIA Consideration et al., Black Case No. Sor. 1/2565](#)
78. [AFIEGO, Friends of the Earth France, NAPE/Friends of the Earth Uganda, Survie, and TASHA Research Institute v. Total Energies](#)
79. [AFIEGO & Ugandan Youth v. NEMA & PAU, Miscellaneous Case No. 140 of 2019](#)
80. [Cixsi \(Eskiagaçlı\) Solar Power Plant, Case No. 2025/367;](#)
81. [Lice Mizag \(Kılıçlı\) Copper Mine; Case No. 2024/694](#)
82. [Zori River Kayser Hydroelectric Dam Case, Case No. 2023/1195;](#)
83. [Diyarbakir Bar Association & Ecology Association vs. Diyarbakir Governorship, Case No. 2024/245](#)
84. [Poultry farm Akutzá project](#)
85. [Tampakan Copper-Gold Mining Project](#)
86. [Cerro Blanco Gold Mine project](#)



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87. [Friends of the Earth U.S. v. Export-Import Bank of the United States, Case 1:25-cv-02235](#)
88. [Kawésqar National Reserve Chile](#)
89. [Autazes Potash project](#)
90. [Belo Monte Hydroelectric Power Plant](#)
91. Case No. 403 of Judicial Year 71; and
92. [Fraude sobre el Gualcarque Case](#)



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Annex III

Investor-State Dispute Settlements regarding environmental, social and human rights impact assessments

As mentioned in the report [A/80/187 of the](#) Special Rapporteur on the right to a clean, healthy and sustainable environment on a framework for environmental, social and human rights assessments (ESHRIA), there has been an increase of cases and risk of investor-State Dispute Settlements (ISDS) against States for exercising lawful actions consistent with the right to a clean, healthy and sustainable environment, either with the intention to protect the environment, the climate system or both. This annex provides examples of such cases, evidencing how these mechanisms based on International Investment Agreements (IIA) urgently need to be reviewed to prevent prioritizing investor private interests even at the expense of international law and the planet.

This annex and list of cases is not intended to be an exhaustive exercise but to illustrate the situation; reiterating the need for States to profoundly review ISDS and make sure the protection of the environment and human rights, as the public interest, prevails.

Since the publication of the report ‘Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights,’ [A/78/168](#), in 2023, by former Special Rapporteur, David R. Boyd, nine new ISDS cases related with ESHRIA were identified. From the information available, the claims from those cases total more than USD \$50 billion, noting that the amounts claimed from three of these cases is not disclosed.

Since 2000, at least 68 cases related with environmental impact assessments that ended in ISDS were identified, including the ones addressed in the 2023 report and new ones. Out of these, 23 cases (33.8%) concluded in favour of the investor; 23 (33.8%) in favour of the State; and 22 (32.4%) are still pending.

The amount that States should pay investors from the 23 cases lost total over USD \$4 billion. The lowest amount awarded in this period is for USD \$3.1 million, in the *Unglaube v. Costa Rica* case (2008); while the highest amount to be paid so far is USD \$1.2 billion in *Crystallex v. Venezuela* (2011). Having in mind that the amounts that States must pay might even be higher, due to arbitration costs. For example, in the case of *Cayman v. El Salvador* (2009), while the resolution was in favour of the State, it had to pay USD \$8 million in arbitration costs. This evidences that even when ISDS might be ultimately in favour of a State, often millionaire litigation costs must be paid.

The sectors that have initiated the most proceedings are mining (36), followed by the oil and gas industry and real estate (with eight each). The energy industry is third on the list, with six



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proceedings, and waste collection and management is fourth, with five proceedings. It's important to note that 21 out of the 22 pending proceedings are related either with mining or oil and gas extraction. Financially speaking, these 22 proceedings represent more than USD \$84 billion and awaiting decisions by arbitration tribunals.

Out of the 39 States¹ that have faced ISDS, from the decided cases, Mexico compiles three (decided against); Bolivia, Canada, Chile, Costa Rica, Poland and Venezuela have two decided cases each, and Bosnia and Herzegovina, Dominican Republic, Ecuador, Guatemala, Italy, Kazakhstan, Peru, and Türkiye, with one each. Most of these cases are against low and middle-income countries, as mentioned above.

The information used for this annex is based in the Investment Dispute Settlement Navigator² from the UN trade & development website, the Permanent Court of Arbitration website,³ the International Centre for Settlement of Investment Disputes website⁴, and italaw.com as main sources. The selected cases involve environmental impact assessment as an important aspect of the claimed issue. This means that:

1. The dispute concerns a project or activity whose impact assessment was denied by the State, revoked due to litigation, granted but halted in any way, or not conducted. Any of these circumstances resulted in arbitration proceedings;
2. The dispute had a “regulatory chill”⁵ effect resulting in the approval of environmental permits, despite the potential for substantial environmental and/or human rights harm;
3. The dispute concerns legislation, policies or programmes that mandate higher standards for environmental protection through stricter environmental impact assessment rules;
4. The dispute concerns the revocation of environmental permits due to the cancellation of other permits such as contracts and concessions; and
5. The dispute concerns non-compliance with the terms of reference of the environmental permits that had been granted.

The cases included are those with resolutions awarded to the State, the investor, or pending; those discontinued, settled, or in neither favour were not included, as well as those that in further proceedings the award was annulled. The search covers cases filed during the period of 2000-2025.

¹ Armenia, Australia, Barbados, Bolivia, Bosnia and Herzegovina, Canada, Chile, Colombia, Congo, Costa Rica, Croatia, Dominican Republic, Ecuador, Egypt, El Salvador, France, Guatemala, Honduras, Italy, Kazakhstan, Kenya, Laos, Lithuania, Mexico, Mongolia, Nicaragua, North Macedonia, Oman, Panama, Peru, Poland, Romania, Slovakia, Slovenia, Spain, Türkiye, United Kingdom, United States of America, and Venezuela.

² <https://investmentpolicy.unctad.org/investment-dispute-settlement>

³ <https://pca-cpa.org/en/cases/>

⁴ <https://icsid.worldbank.org/cases>

⁵ A/78/168, paras. 49-52

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Table 1. Identified ISDS cases regarding ESHRIA

#	Case name	Case ID	Brief description	Status	Award/claim amount (USD) ⁶	Sector	EIA status
2025							
1	Woodhouse Investment and West Cumbria Mining v. United Kingdom	ICSID Case No. ARB/25/37	West Cumbria Mining planned the UK's first new coal mine in 30 years. In September 2024, a British court (High Court of Justice, King's Bench Division, case AC-2023-LON-000377) cancelled its planning permit, ruling that granting the planning permit without considering environmental information, including climate change impacts was unlawful.	Pending	Unknown	Oil, Gas & Mining	Not conducted
2024							
2	Almaden and Almadex v. Mexico	ICSID Case No. ARB/24/23	Indigenous Peoples initiated legal proceedings v. the lack of FPIC in the "Ixtaca mining project", they alleged that the companies tried to substitute FPIC with the consulting stage of the EIA. The Supreme Court of Justice (Amparo under Review 134/2021) ruled that the mining concessions were void and null, and the mining companies had to consult the Indigenous Peoples before considering granting said concessions.	Pending	200 million	Mining of metal ores	Revoked due to litigation
3	Berkeley Exploration v. Spain	ICSID Case No. ARB/24/22	The claimant's local subsidiary, Berkeley Minera España, S.A., proposed the construction of a uranium mining site in Retortillo as part of its "Salamanca project". The environmental authority granted a "pre-authorization" for the mining site; however, claims arose out of the Nuclear Safety Council (NSC) refusal to authorize the construction due to "numerous deficiencies, both in relation to technical quality and content." (Resolution CSN/PDT/RETOR/RETOR/2106/08).	Pending	1 billion	Mining of metal ores	Preliminary permit granted, later full EIA required
4	Zeph v. Australia (III)	PCA Case No. 2024-23	Claims arising out of a Queensland Land Court recommendation and subsequent decisions of the Queensland Government to refuse an application by Waratah Coal for a mining lease and environmental authority (permit) for activities in Queensland's Galilee Basin, under the project "Galilee Coal Project".	Pending	45 billion	Mining of coal and lignite	Denied by the State

⁶ The arbitration, legal and fees –other than awards–, are estimated on figures provided in the resolutions that can be consulted in the corresponding source, each can be consulted in: <https://investmentpolicy.unctad.org/investment-dispute-settlement>.

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5	Zeph v. Australia (IV)	PCA Case No. 2024-48	Waratah Coal's Galilee Coal Project. Claims arising out of decisions of the Queensland Government to refuse environmental authority (permit) and development approval for a proposed coal-fired power plant as part of Waratah Coal's Galilee Coal Project.	Pending	6.8 billion	Electricity, gas, steam and air conditioning supply	Denied by State
6	Franco-Nevada v. Panama	ICSID Case No. ARB/24/26	Claims arising out of a November 2023 ruling of the Supreme Court of Justice of Panama declaring Law 406 unconstitutional. This law approved the concession contract between the State and the claimants. According to the claimant, the Supreme Court ruling led to the continued suspension of commercial operations at the Cobre Panamá mine and the halt of precious metal stream deliveries to the claimant, which were due under a stream agreement for gold and silver production from the mine concluded by the claimant with the concession holders.	Pending	5 billion	Mining of metal ores	Granted
7	Orla Mining v. Panama	ICSID Case No. ARB/24/27	The National Assembly of Panama passed Law 407 in November 2023 that included a moratorium on granting, renewing, or extending concessions for the exploration, extraction, or exploitation of metal mining in Panama. In consequence, on December 15, 2023, the claimants received three resolutions rejecting the request for extension for the three mining concessions comprising the Cerro Quema Project, retroactively declared the concessions cancelled, and declared the area comprising the concessions to be a reserve. By that moment, only a Pre-feasibility Study had been completed.	Pending	400 million	Mining of metal ores	Preliminary study only
8	Petaquilla Minerals v. Panama	ICSID Case No. ARB/24/12	Claims arising out of the Government's 2015 cancellation of the gold mining concession for the Molejón project held by the claimant's local subsidiary. The project's EIA was conducted after the mining activities had started and several allegations were raised against its lack of compliance.	Pending	Unknown	Mining of metal ores	Conducted after the project had started
2023							
9	Próspera and others v. Honduras	ICSID Case No. ARB/23/2	Claims arising out of the government's actions to repeal the legal framework for special economic zones known as "ZEDE", allegedly interfering with the Próspera ZEDE in which the claimant had invested. These economic zones do not enforce the obligation to conduct ESHRIA.	Pending	Unknown	Real estate activities	Not conducted

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10	Ruby v. Canada	ICSID Case No. ARB/23/5	Claims arising out of the government's 2022 decision to refuse authorization for the construction of the Énergie Saguenay Project, a liquefied natural gas facility project that the claimant had invested in through Symbio. The government's decision also allegedly stalled the claimant's parallel natural gas pipeline project in Quebec (the Gazoduq Project). According to the claimant, the government's rejection of the projects, after a federal agency's environmental assessment report, and related actions by the province of Quebec were arbitrary and discriminatory.	Pending	20 billion	Manufacture of coke and refined petroleum products	Denied by State
2022							
11	Ascent v. Slovenia	ICSID Case No. ARB/22/21	Claims arising out of the decision to require the claimant's joint venture to conduct an environmental impact assessment to use hydraulic stimulation for the exploration and exploitation of hydrocarbons in a gas field. Initially (2011) gas production was deemed below the thresholds stipulated by Slovenian law above which an EIA would be required. In 2019 Slovenian Environment Agency (ARSO) held that an EIA was required.	Pending	512.8 million	Extraction of crude petroleum and natural gas	Not conducted
12	Junefield v. Ecuador	PCA Case No. 2023-35	Claims arising out of the Government's alleged inaction related to local community protests and illegal mining activities in the Río Blanco mining concession area of the claimant's local subsidiary. In addition, court rulings suspended the claimant's mining operations due to lack of FPIC and environmental concerns.	Pending	480 million	Mining of metal ores	Suspended by the State
2021							
13	Interconexión Eléctrica v. Chile	ICSID Case No. ARB/21/21	The claimant alleged that the delays and duration of the ESHRIA process for the "New Cardones-Polpaico Line" project prevented it from fulfilling the contract it had entered with the State of Chile to build it within the agreed period. The claimant considered the delays to be justified, and therefore regarded the fines imposed due to contractual non-compliance as arbitrary and disproportionate. The claimant asserted that the delays were due to force majeure and were justified.	In favour of the investor	16.1 million	Electricity, gas, steam and air conditioning supply	Deferred by the State
14	Discovery Global v. Slovakia	ICSID Case No. ARB/21/51	Claims arising out of the Government's alleged actions preventing drilling activities of the claimant's subsidiary, Alpine Oil & Gas, at three oil and gas wells – Smilno, Ruská Poruba and Krivá Oľka wells in north-eastern	Pending	2.1 billion	Extraction of crude petroleum and natural gas	Preliminary permit granted, later full EIA required

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			Slovakia— despite granted exploration licences. According to the claimant, its planned drilling operations were rendered impossible by local activists' protests blocking the well sites as well as local authorities' decisions ordering full-scope environmental impact assessments. An amendment to the Environmental Impact Assessment Act has been in effect since the beginning of 2017, according to which new exploratory wells are subject to an environmental impact assessment process.				
15	Glencore v. Colombia (III)	ICSID Case No. ARB/21/30	Claims arising out of an order of Colombia's constitutional court to suspend Cerrejón's partial modification of Bruno creek, a water stream that passes through the La Puente mining project area. In the local proceedings the Constitutional Court deemed plaintiffs' rights violated due to the danger in which the company's operations put them. Also, it concluded that the company did not comply with the Ruggie Principles while assessing environmental impacts. It ordered immediate compliance to restore affected natural resources, such as emission controls, cleanup, and a technical commission to oversee environmental restoration. In practice, the Court ordered a new set of Terms of Reference for the EIA.	Pending	489.2 million	Mining of coal and lignite	Preliminary permit granted, later full EIA required
16	Alamos Gold v. Türkiye	ICSID Case No. ARB/21/33	Claims arising out of the Government's alleged non-renewal of the claimants' mining licences and related permits for the Kirazlı gold mine development project, resulting in the suspension of construction activities on the Kirazlı project, in the Çanakkale province in Turkey. The EIA has been subject of legal disputes in court between locals and the company. The main allegations refer to water pollution due to cyanide heap leaching.	Pending	1 billion	Mining of metal ores	Denied by State
17	Congo Mining and Midus v. Congo	ICSID Case No. ARB/21/58	Claims arising out of the Government's revocation of the exploitation permit held by Congo Mining, Midus' local subsidiary, for the Mayoko-Moussondji iron ore project. At the moment, only a pre-feasibility study had been conducted.	Pending	Unknown	Mining of metal ores	Preliminary study only
18	EEPL v. Congo	ICSID Case No. ARB/21/53	Claims arising out of the Government's revocation of exploitation permits for two iron ore projects in the Mayoko-Moussoundji iron ore project in which the claimant had invested. At	Pending	1.134 billion	Mining of metal ores	Preliminary study only

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			the time, only a pre-feasibility study had been conducted.				
19	Energía y Renovación Holding v. Guatemala	ICSID Case No. ARB/21/56	The claimant alleges the state's failure to protect its hydroelectric infrastructure in San Mateo Ixtatán, "Central Pojom II", "Central San Andrés", and a transmission line "Innovación Nor Occidente" especially amidst local protest and violent interference. Non-contending parties in the proceedings raised EIA related arguments such as the lack of due diligence in identifying the social and cultural risks associated with the project; the lack of due diligence in the prior consultation process with the affected populations; the lack of due diligence in terms of public participation; and the lack of due diligence in identifying environmental risks.	In favour of the investor	64.5 million, plus 3.9 million as arbitration costs and legal fees	Electricity, gas, steam and air conditioning supply	Granted
20	Severgroup v. France	PCA Case No. 2022-13	The dispute centres on France's refusal to renew the mining concession for the Montagne d'Or gold mine in French Guiana—a project in which the claimants had significant investment interests via Nordgold. The refusal, tied to environmental concerns and policy shifts, forms the basis of the investors' allegations that France breached its obligations under the Bilateral Investment treaty (BIT).	Pending	Unknown	Mining and quarrying	Denied by State
2020							
21	GreenX Metals (formerly Prairie) v. Poland (I)	PCA Case No. 2020-52	The dispute arose from Poland's refusal to grant permits for two proposed coal mining projects in eastern and southern Poland: the Jan Karski project in the Lublin Basin and the Dębieńsko project.	In favour of the investor	330.7 million	Mining of coal and lignite	Denied by State
22	GreenX Metals (formerly Prairie) v. Poland (II)	PCA Case No. 2021-06	The dispute arose from Poland's refusal to grant permits for two proposed coal mining projects in eastern and southern Poland: the Jan Karski project in the Lublin Basin and the Dębieńsko project.	In favour of the investor	240.1 million	Mining of coal and lignite	Denied by State
23	Campos de Pesé v. Panama	ICSID Case No. ARB/20/19	The company alleged that Panama's regulatory changes around bioethanol, a sector in which the claimant had invested and owned facilities, were reversed following a spill in the La Villa River. This incident was considered an environmental crime resulting in sanctions. The EIA, therefore, was breached.	In favour of the State	287,605 paid by investor to the State as arbitration costs	Manufacture of chemicals and chemical products	Granted but unfulfilled
2019							
24	Mamacocha and Latam Hydro v. Peru	ICSID Case No. ARB/19/28	Claims arose after an administrative and judicial review process of the environmental permitting of the hydroelectric project Mamacocha that found illegalities and errors	In favour of the State	754,152 as arbitration costs each	Electricity, gas, steam and air	Granted w/ irregularities and

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			around the EIA process and declared the permit null and void.			conditioning supply	then annulled
25	Skubenko and others v. North Macedonia	ICSID Case No. ARB/19/9	Claims arising out of the Government's termination in March 2018 of the claimants' concession for the exploitation of copper, gold and silver at the Kazandol deposit in southern Macedonia. Allegedly no cumulative impact assessment of 86 mining concessions had been conducted and the EIA of the Kazandol mine complex presented harmful results such as air pollution.	Pending	423.3 million	Mining of metal ores	Granted
26	Odyssey v. Mexico	ICSID Case No. UNCT/20/1	"Don Diego" deep sea mining in Golfo de Ulloa, Baja California Sur. SEMARNAT suspended the EIA several times. The denial of the EIA process was challenged by the investor as part of a violation of the Fair and Equitable Treatment (FET) standard.	In favour of the investor	37.1 million	Mining and quarrying	Denied by State
2018							
27	Renco v. Peru (II)	PCA Case No. 2019-46	Claims arising out of the Government's alleged imposition of additional environmental obligations related to the La Oroya mining operations in which the claimant's affiliate Doe Rue Peru held interests and the Government's refusal to grant reasonable extensions to complete environmental projects at the site, allegedly forcing the company to cease operations, followed by bankruptcy and liquidation.	Pending	Unknown	Mining of metal ores	Granted but unfulfilled
28	Red Eagle v. Colombia	ICSID Case No. ARB/18/12	Claims arising out of the Colombian Constitutional Court's decision to ban mining operations in the páramos, which led to the claimants EIA requests being not granted.	In favour of the State	461,119 paid by the State to the claimant as arbitration costs.	Mining of metal ores	Denied by the State
29	Lee-Chin v. Dominican Republic	ICSID Case No. UNCT/18/3	Claims arising out of the Government's denial to renew the environmental permit for the operation of a waste facility owned by the claimant's subsidiary due to breaches of the previous environmental permit.	In favour of the investor	43.6 million	Waste collection, treatment and disposal activities; materials recovery	Granted but unfulfilled and later revoked
30	Montauk Metals (formerly Galway Gold) v. Colombia	ICSID Case No. ARB/18/13	Claims arising out of the Colombian Constitutional Court's decision to ban mining operations in the páramos. The claimant used the Environmental Management Plan as a permit to operate, however, this was not an actual permit according to Colombian laws.	In favour of the State	504,258 paid by the State to claimant as arbitration costs.	Mining of metal ores	Preliminary study only
31	Kappes v. Guatemala	ICSID Case No. ARB/18/43	Claims arising out of Guatemalan courts' suspension of Exmingua's mining licences for the "El Tambor" project and the company's right to	Pending	350.5 million	Mining of metal ores	Revoked due to litigation

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			export minerals, related to amparo actions for alleged failure to conduct consultations with local communities during the EIA process. According to the claimants, the Government has also failed to provide Exmingua with access to the “Santa Margarita” mining site, which was blocked by protesters.				
32	Borkowski and Rasia FZE v. Armenia	ICSID Case No. ARB/18/28	Claims arising out of the Government’s alleged breach of concession contracts granted to the claimants by turning to other companies for the implementation of the infrastructure projects. The State considered the project proposed by the claimant environmentally unfeasible, per the corresponding study’s results, among other issues.	In favour of the State	427,150 paid by claimants to the State as arbitration costs.	Land transport and transport via pipelines, and civil engineering	Not conducted
2017							
33	The Lopez-Goyne Family Trust and others v. Nicaragua	ICSID Case No. ARB/17/44	Claims arising out of the termination of a 3,400 square kilometre concession for hydrocarbon exploration and exploitation relating to an oil concession granted to a Nicaraguan company Industria Oklahoma Nicaragua S.A., in Nicaragua’s Pacific region. During the proceedings, the State alleged breaches to the EIA permit, especially regarding the closure and abandonment stages.	In favour of the State	1.5 million paid by claimants to the State as arbitration costs.	Mining support service activities	Granted, but unfulfilled
34	Rockhopper v. Italy	ICSID Case No. ARB/17/14	Claims arising out of the decision in February 2016 by the Ministry of Economic Development not to award the claimants a production concession covering the Ombrina Mare field located within 12 miles of the coast of Italy, following the Government’s re-introduction of a general ban on oil and gas exploration and production activity within the 12-mile limit of the coastline. Furthermore, in 2016, the authorities requested that the claimant carry out an integrated environmental impact assessment, which the Tribunal considered disproportionate given that an EIA had already been granted.	In favour of the investor	194 million	Extraction of crude petroleum and natural gas	Granted
35	Elitech and Razvoj v. Croatia	ICSID Case No. ARB/17/32	Claims arising out of Croatia’s allegedly arbitrary and unfair actions that have led to a standstill in construction of a golf resort near Dubrovnik. Related facts include opposition from local politicians and residents, who complained that the project would damage the environment and threaten Dubrovnik’s UNESCO World Heritage Site status. Also, a Croatian court ruling attempted to overturn the energy and environment ministry approval of the resort’s construction.	In favour of the State	Unknown	Construction, real estate, and sports activities and amusement and recreation activities.	Granted

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2016							
36	Goljevšček and others v. Bosnia and Herzegovina	ICSID Case No. ARB/16/36	Claims arising out of alleged acts and omissions of the Government of Republika Srpska, a region within Bosnia and Herzegovina, which allegedly frustrated the claimants' two hydroelectric power plant projects on the Vrbas River. In 2004, the claimants' subsidiary HES Vrbas signed concession contracts to build and operate the power plants, but the facilities were never built, allegedly due to Republika Srpska's failure to issue the necessary permits (including environmental) or approve an updated conceptual project design, and its granting of concession rights to State-owned company ZP Hidroelektrane to build a competing power plant on the river without a public tender.	In favour of the investor	77 million	Electricity, gas, steam and air conditioning supply	Not conducted
2015							
37	Gabriel Resources v. Romania	ICSID Case No. ARB/15/31	Claims arising out of the allegedly discriminatory measures relating to the denial of an environmental impact assessment permit required to start exploitation of the claimant's mining project, Roşia Montană Project.	In favour of the State	2,366,215 paid by the claimant to the State as arbitration costs.	Mining of metal ores	Denied by State
38	Cortec Mining v. Kenya	ICSID Case No. ARB/15/29	Investments in the Kenyan mining sector, including a 21-year mining license for the extraction of rare earths at the Mrima Hill project in the southern part of the country. The Tribunal went on to find that the Claimants failed to comply with the mandatory preconditions, including the provision of the EIA Study. The claimants failed to obtain an EIA licence (or approval in any valid form).	In favour of the State	3,548,990 paid by claimant to State as arbitration costs.	Mining and quarrying	Conducted after the project had started
2014							
39	Ballantine v. Dominican Republic	PCA Case No. 2016-17	Claims arising out of the rejection by the Ministry of Environment and Natural Resources of the claimants' request to expand Jamaca de Dios, a residential and tourism project in the municipality of Jarabacoa, as well as other actions by the central and local government.	In favour of the State	5,000 paid by the State to claimants as arbitration costs.	Real estate activities	Denied by State
40	Corona Materials v. Dominican Republic	ICSID Case No. ARB(AF)/14/3	Claims arising out of the Government's refusal to grant an environmental permit to the claimant which effectively prevented Corona Materials from building and operating a construction aggregate mine in the Dominican Republic, despite allegedly receiving assurances and previous formal approvals from senior government officials.	In favour of the State	Half of the Arbitration Costs each. Amount unclear.	Mining and quarrying	Denied by State

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41	Bear Creek Mining v. Peru	ICSID Case No. ARB/14/2/1	Claims arising out of the enactment by the Government of Supreme Decree 032 that revoked claimant's permit to operate the Santa Ana mining project in Peru on the grounds that it was no longer in the national interest, resulting in a complete cease of activities at Santa Ana and alleged significant damages to the claimant. After the public hearing, the Respondent issued 196 observations identifying deficiencies in Claimant's ESIA. The Santa Ana approval got suspended for 12 months. The ESIA presentation was given in Spanish and used technical language. The indigenous translation was poor.	In favour of the investor	18.2 million	Mining of metal ores	Granted, later revoked due to legislative changes
42	Aven and others v. Costa Rica	ICSID Case No. UNCT/15/3	Claims arising out of the Government's termination of claimants' hotel, beach club and villas construction project "Las Olas", following the revocation of an environmental viability permit after determining that the property included wetlands and a protected forest, and criminal investigations against one of the claimants.	In favour of the State	1,090,905 paid by claimant to State as arbitration costs.	Real estate activities	Granted but revoked due to review processes
2013							
43	Windstream Energy v. Canada (I)	PCA Case No. 2013-22	Claims arising out of a moratorium imposed by the Government of Ontario on offshore wind farms due to lack of sufficient research on the projects' impacts. This suspended the EIA process and the claimant's investment in this sector.	In favour of the investor	21.4 million	Electricity, gas, steam and air conditioning supply	Deferred by the State
44	South American Silver v. Bolivia	PCA Case No. 2013-15	Claims arising out of the Government's decision to revoke environmental permits held by the claimant's subsidiary, following protests and social unrest within the Indigenous Peoples in the mining area.	In favour of the investor	25.8 million	Mining of metal ores	Granted but revoked due to review processes
45	Lone Pine v. Canada	ICSID Case No. UNCT/15/2	Claims arising out of the revocation by the Government of Quebec of claimant's environmental permits for petroleum and natural gas exploration in the Utica shale gas basin, including beneath the St. Lawrence River.	In favour of the State	703,511 each as arbitration costs.	Extraction of crude petroleum and natural gas	Granted but revoked due to review processes
2012							
46	Veolia v. Egypt	ICSID Case No. ARB/12/15	Claims arising out of disagreements over the performance of a contract entered between Veolia's subsidiary, Onyx Alexandria, and the governorate of Alexandria to provide waste management services. The State argued that the claimant disregarded some environmental concerns raised by the corresponding authority and the EIA process was started late.	In favour of the State	1,117,430 paid by the claimant as arbitration costs.	Waste collection, treatment and disposal activities; materials recovery	Granted

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47	Sanum Investments v. Laos (I)	PCA Case No. 2013-13	Claims arising out of an alleged series of measures by the Government of Laos, including its courts and provincial authorities, that affected claimant's bundle of rights for the construction and operation of two hotels and casinos, among other gaming facilities in which the claimant had invested. The EIA license was not conducted further than a feasibility plan.	In favour of the State	1,313,252 paid by claimant to the State for legal costs, plus 465,000 for arbitration costs.	Gambling and betting activities	Not conducted
2011							
48	Al Tamimi v. Oman	ICSID Case No. ARB/11/33	The claimant had an EIA permit to mine hard rock limestone at Jebel Wasa in the Buraimi region of Oman. The company disregarded the terms of its approvals leading to the termination of the relevant lease agreements and the confiscation of the mining facilities by the Royal Oman police.	In favour of the State	5,667,410 paid by the claimant to the State as arbitration costs.	Mining and quarrying	Granted but unfulfilled
49	Crystallex v. Venezuela	ICSID Case No. ARB(AF)/11/2	Claims arising out of the Government's termination of claimant's mine operation contract over a gold deposit situated in Las Cristinas, after it refused to issue an environmental permit allowing extraction to initiate.	In favour of the investor	1.2 billion	Mining of metal ores	Denied by State
2010							
50	Beijing Shougang and others v. Mongolia	PCA Case No. 2010-20	Claims arising out of the cancellation of environmental licenses held by the claimants in the Tumurtei iron ore mine in 2012. The State considered EIA's terms breached.	In favour of the State	238,891 million as arbitration costs	Mining of metal ores	Granted but revoked due to review processes
51	Stati and others v. Kazakhstan	SCC Case No. 116/2010	Claims arising out of the alleged campaign of harassment by the Kazakh State which culminated with the abrupt cancellation of oil and gas exploration contracts held by claimant's local operating companies, followed by the seizure of its Kazakh assets. The claimant held contracts for oil exploration and development; assets and infrastructure related to oil field operations, including a Liquid Petroleum Gas plant. After several environmental, taxes, and labour assessments, among others, the State rescinded the contracts. The State considered the claimant failed to comply with environmental obligations.	In favour of the investor	497 million	Extraction of crude petroleum and natural gas	Unknown
52	Allard v. Barbados	PCA Case No. 2012-06	The claimant alleged that the Graeme Hall Nature Sanctuary, a 34-acre natural wildlife sanctuary in Barbados owned by the claimant suffered environmental degradation to the point of making its ecotourism operations impossible. The EIA and its plan were used to prove that the degradation was somewhat already	In favour of the State	567,162 as costs of arbitration plus 2,508,144 as costs incurred paid by the	Real estate activities	Granted

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			in place before the ecotourism project was developed and this was known to the investor.		claimant to the State.		
2009							
53	Abengoa v. Mexico	ICSID Case No. ARB(AF)/09/2	Claims arising out of the stalled opening of a hazardous waste landfill and treatment plant built by the claimants in the Mexican state of Hidalgo, due to several alleged acts by the municipality of Zimapan and certain federal authorities, including Mexico's Ministry of the Environment and Natural Resources and the Ministry of the Interior. The EIA was granted by federal authorities, yet the sub-national government raised environmental concerns and revoked other permits.	In favour of the investor	40.3 million	Waste collection, treatment and disposal activities; materials recovery	Granted
54	Chevron and TexPet v. Ecuador (II)	PCA Case No. 2009-23	Claims arising out of Texaco's historical activities under oil concession contracts, and the alleged Government's misconduct in subsequent domestic litigation against Texaco for environmental remediation. In the so-called "Lago Agrio" judgment of 2012, the Ecuadorian court ordered Chevron and TexPet to pay USD 9.5 billion for environmental damage. The environmental assessment found evidence of environmental harm.	Pending	Unknown	Extraction of crude petroleum and natural gas	Granted but unfulfilled
55	Reinhard Unglaube v. Costa Rica	ICSID Case No. ARB/09/20	Claims arising out of Costa Rica expropriation of the land owned by Mr. Reinhard. The government options were to either expropriate and compensate or grant permits to develop an ecotourism project proposed by the claimant if the EIA process could avoid damage to the turtles. The State did not process the EIA permit request.	In favour of the investor	4 million to be paid by the State to the claimant and the State must transfer the property object of the dispute back to the claimant.	Real estate activities	Unprocessed by the State
56	Pac Rim Cayman v. El Salvador	ICSID Case No. ARB/09/12	Claims arising out of the Government's refusal to issue necessary environmental licences as a prior requisite for mining licenses for Pacific Rim's El Dorado gold mining project in northern El Salvador due to alleged environmental concerns including the company's use of certain chemicals in the extraction process.	In favour of the State	8 million as arbitration costs to be paid by the State to the Claimant.	Mining of metal ores	Denied by State
57	Gold Reserve v. Venezuela	ICSID Case No. ARB(AF)/09/1	Claims arising out of the Government's alleged deprivation of claimant's rights in the "Brisas Concession" and the "Unicornio Concession" for the extraction of gold, copper and molybdenum, following the issuance of an administrative ruling by the Ministry	In favour of the investor	713 million	Mining of metal ores	Granted w/ irregularities and then annulled

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			of the Environment declaring the nullity of environmental permits and the subsequent termination of claimant's mining concessions.				
2008							
58	Perenco v. Ecuador	ICSID Case No. ARB/08/6	The claimant alleged that Ecuador deprived it of its contractual right to an agreed participation percentage of the crude oil produced in the Blocks 21 and 7. The Tribunal found that the claimant did not comply with the EIA terms and conditions and was ordered to remediate.	In favour of the investor	448.8 million to be paid by the State to the claimant. Also, the claimant must pay 54.4 million to the State as costs of restoring the environment in areas within Blocks 7 and 21 and remedying the infrastructure in these two Blocks.	Extraction of crude petroleum and natural gas	Granted but unfulfilled
59	Marion Unglaube v. Costa Rica	ICSID Case No. ARB/08/1	Claims arising out of Costa Rica expropriation of the land owned by Mrs. Reinhard. The government options were to either expropriate and compensate or grant permits to develop an ecotourism project proposed by the claimant if the EIA process could avoid damage to the turtles. The State did not process the EIA permit request.	In favour of the investor	3.1 million	Real estate activities	Unprocessed by the State
60	Clayton/Bilcon contra Canadá	PCA Case No. 2009-04	Claims arising out of the Government's rejection of the investors' project to operate a quarry and marine terminal in the Canadian province of Nova Scotia, following a negative environmental assessment process.	In favour of the investor	7 million	Mining and quarrying	Denied by State
2007							
61	Gallo v. Canada	PCA Case No. 55798	Claims arising out of Mr. Gallo's Canadian company owned a former open-pit iron ore mine (the Adams Mine Site) that was intended to serve as a landfill for non-hazardous household and commercial waste for the City of Toronto. The Ontario Legislature's imposition of Bill 49, which prevented disposal of waste at the Adams Mine Site, led to the EIA revocation.	In favour of the State	450,000 as arbitration costs.	Waste collection, treatment and disposal activities; materials recovery	Granted, later revoked due to legislative changes
2006							

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62	Quiborax v. Bolivia	ICSID Case No. ARB/06/2	Claims arising out of the revocation by Presidential Decree of eleven mining concessions held by claimants and the consequent revocation of environmental permits. The State alleged breaches to the EIA permits.	In favour of the investor	48.6 million	Manufacture of other non-metallic mineral products	Granted, later revoked due to legislative changes
2005							
63	Parkerings v. Lithuania	ICSID Case No. ARB/05/8	Claims arising out of the rejection of environmental permitting due to cultural and social concerns to develop underground garages in Sereikiskiu Park, in the Vilnius Region of Lithuania.	In favour of the State	Half arbitration costs each. Amount unclear.	Warehousing and support activities for transportation	Denied by State
2003							
64	Glamis Gold Ltd. v. United States of America	Unknown	Claims arising out of federal government actions and California state measures regarding the Imperial project (mining) in the south of the Indian Pass Area of Critical Environmental Concern ("ACEC") in the Chocolate Mountains, California, USA. During the EIA process the State denied the EIA by choosing "No Action alternative" under environmental and cultural grounds.	In favour of the State	1/3 paid by the State and 2/3 paid by the claimant. Amount unknown.	Mining of metal ores	Denied by State
65	Industria Nacional de Alimentos v. Peru	ICSID Case No. ARB/03/4	Claims arising out of the revocation by the Municipality of Lima of construction permits previously granted to the investor and of local decrees purporting to expropriate the investor's land for environmental reasons. The project didn't comply with various environmental conditions based on which the license was granted. The EIA process identified high risk to a protected wetland called "Los Pantanos de Villa".	In favour of the State	Half arbitration costs each. Amount unclear.	Manufacture of food products	Conducted after the project had started
2002							
66	PSEG v. Türkiye	ICSID Case No. ARB/02/5	Claims arising out of several disagreements concerning a concession contract entered with the government for the construction of a lignite-fired thermal power plant around Konya Ilgin as well as subsequent measures adopted by the respondent such as preventing the claimant from obtaining certain necessary treasury guarantee for the project. EIA process brought up several impacts, but they were incompatible with the investor's results. However, the environmental permit was eventually granted.	In favour of the investor	9 million	Electricity, gas, steam and air conditioning supply	Granted
2001							
67	MTD v. Chile	ICSID Case No. ARB/01/7	Development of a township of 600 hectares of Fundo El Principal de Pirque. Claims arising out of the Government's denial of a zoning modification allegedly necessary for	In favour of the investor	5.8 million	Real estate activities	Denied by State



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			the claimant to execute a residential development project in Chile. The project required zonification change and EIA, neither was granted.				
2000							
68	Tecmed v. Mexico	ICSID Case No. ARB(AF)/00/2	The case involved a toxic waste landfill located in the city of Hermosillo, Sonora, owned by Cytrar, S.A. de C.V., a subsidiary of the Spanish company Tecmed. In 1996 and 1997, the National Institute of Ecology (INE) granted Cytrar operating permits. However, in November 1998, it denied the renewal of the permit and ordered the permanent closure of the landfill.	In favour of the investor	5.5 million	Waste collection, treatment and disposal activities; materials recovery	Granted but revoked due to review processes